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TO: MEMBERS OF THE JUDICIARY COMMITTEE
FROM: THE CONNECTICUT TRIAL LAWYERS ASSOCIATION
RE: OPPOSITION TO HB6557, AAC LIABILITY FOR THE RECREATIONAL USE OF LAND

It is the position of the Connecticut Trial Lawyers Association that adding municipalities, political subdivisions of the state, nonprofit municipal corporations and railroads to the recreational land use liability law is against public policy, unwarranted and **provides an undue burden on injured victims who sustain their injuries on public lands through no fault of their own.** The Connecticut Constitution guarantees in section 10 that *"All courts shall be open, and every person, for an injury done to him in person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay."*

These proposals close the doors of the courts to injured people, merely because of where that injury occurred.

The original intention of the narrow immunity provided to private land owners in the recreational land use statute was to offer them an incentive to open their lands to public use, as they were under no compulsion by law to do so. There is no need to likewise encourage municipalities, as they have always historically made their open space open to the public, as it is the public's land.

The Connecticut Supreme Court, in Conway v. Wilton, 238 Conn. 653, laid out how including these municipalities in this statute would be against public policy, since municipalities, through taxes, spread the costs of negligence among residents, thereby shifting the burden of municipal negligence away from the injured party, who under this bill would be not only hurt but also held footing the entire bill for their recovery!

In fact, the Conway court stated "[t]o apply the act to municipalities imposes too high a societal cost and serves no useful or intelligible purpose.", emphasis added.

Finally, the addition is unwarranted as well because municipalities already enjoy a powerful defense under the doctrine of governmental immunity.

**PLEASE OPPOSE HOUSE BILL 6557
CONCERNING AND EXPANDING RECREATIONAL LAND USE**

The Connecticut Trial Lawyers Association respectfully objects for these additional reasons to House Bill 6557, which seeks to extend the recreational use immunity set forth in C.G.S. § 52-557f to municipalities, non-profit municipal corporations, and political subdivisions of the state. The extension of recreational use immunity to municipalities runs contrary to the legislative history of the statute, and the established rulings of the Connecticut Supreme Court. Further, it is logically inconsistent with the broad scheme of protection afforded to municipalities by the doctrine of governmental immunity, a doctrine that has been tested by over 100 years of judicial decisions and now codified at C.G.S. § 52-557n. The proposed immunity imposes too high a societal cost, and deprives injured victims from access to the courts for injuries sustained on public land through no fault of their own.

1. The recreational use immunity statute was never intended to extend to municipalities, and the Supreme Court has rejected such extension.

The Connecticut Recreational Use Immunity Statute, codified at C.G.S. § 52-557f, was first enacted in 1971. The Connecticut statute tracked a model act promulgated in 1965 by the Council of State Governments. It is very clear from the legislative history that the purpose of the statute was to encourage private landowners to open their land for public recreational use. *Conway v. Wilton*, 238 Conn. 653, 666-673 (1996). As noted by the *Conway* Court:

“The legislature was not contemplating immunity for governmental entities. At the time the act was enacted, the legislature was interested in increasing the availability of land for public recreational use...The legislature’s sole motive was to encourage private citizens to donate their land... *Conway*, *supra* at 673.

For the first 21 years following the enactment of the statute, the immunity was not applied to municipalities in any reported decision of the Connecticut Supreme, Appellate or Superior Courts. Immunity was applied to municipalities for a short period of time following the *Manning v. Barenz* in 1992. Very quickly thereafter, the Supreme Court undertook the rare and extraordinary measure of reversing its own precedent, and overturned the *Manning* decision in the case of *Conway v. Wilton*, 238 Conn. 653 (1996).

The *Conway* decision is particularly relevant in that the Supreme Court undertook a comprehensive analysis of all of the legal and societal arguments advanced by the municipalities in favor of extending the immunity. Many of the same arguments are being offered in support of this legislation. After full consideration and analysis, the Supreme Court rejected each of these arguments, and refused to extend the recreational use immunity to municipalities.

The *Conway* Court focused on the uniquely public nature of lands owned by municipalities. Municipalities make land available through taxes, which in effect constitute an implicit charge for the use of the land. *Conway*, *supra* at 674. The land is owned by the public – municipalities can not deprive the public of the right to use public land. Municipalities are able to insure against the risk and costs of injuries caused by municipal negligence by spreading the costs of that insurance among all residents, thereby shifting the burden of municipal negligence away from the injured party. Municipalities should be required to bear the risk of their own negligence, since the municipality is uniquely in a position to take steps to avoid and correct its own municipal negligence and the negligence of its employees.

As stated above, it is this reasoning which led the *Conway* Court to conclude:

[T]o apply the [recreational use immunity] act to municipalities imposes too high a societal cost and serves no useful or intelligible purpose. . . Our analysis of Manning persuades us that its analytical underpinnings are flawed... Conway, supra at 674-676.