

Testimony of Beth Bryan Critton, submitted electronically February 16, 2011

Proposed Bills before the Planning & Development Committee; public hearing held on February 14th, 2011	Support/ Oppose
S.B. 43: AN ACT EXPANDING THE RECREATIONAL LAND USE ACT.	Support
S.B. 90: AN ACT CONCERNING THE RECREATIONAL LAND USE ACT.	Support
H.B. 5254: AN ACT EXPANDING THE RECREATIONAL LAND USE ACT	Support

Co-Chairs Cassano and Gentile, and members of the Planning and Development committee:

My name is Beth Critton. I live at 39 Cumberland Road in West Hartford, Connecticut. I offer this testimony in support of S.B. 43, S.B. 90 and H.B. 5254 regarding municipal liability for recreational activity.

I am a land use and environmental attorney at Shipman & Goodwin, LLP, where I represent a wide range of clients, including private and public property owners. I am also past chair of the Connecticut Chapter of the Appalachian Mountain Club (CT-AMC) and am active in many outdoor recreational organizations. As a hike leader for CT-AMC, I have led hikes on over 500 miles of blue-blazed trails (maintained by the CFPA) and the Appalachian Trail in CT.

I was inspired to start hiking after one of my sons completed a hike of the 2,181 mile Appalachian Trail (AT). But his hiking accomplishments did not begin in Springer Mountain, Georgia, where the AT starts. They began in Westmoor Park and at the Metropolitan District reservoir in West Hartford, Connecticut - in the very places that this proposed legislation deals with. That is why I am submitting testimony. I believe that Connecticut must do everything reasonably possible to foster opportunities for all of us - and most important, for our children and grandchildren - to get outdoors. Restoring municipal recreational immunity is critical to this goal.

My interest in outdoor recreational liability began in the 1990s, when I worked as assistant corporation counsel for the Town of West Hartford. In 1992, the Connecticut Supreme Court, in Manning v. Barenz, 221 Conn. 256 (1992), held definitively that Connecticut's recreational immunity statute, Conn. Gen. Stat. §§ 52-557f through 52-557i, inclusive (adopted in 1971), included municipalities. In 1996, the Supreme Court overruled Manning in Conway v. Wilton, 238 Conn. 653, a 3-2 decision that narrowly interpreted the word "owner" in the statute, finding it did not include municipalities.

In April, 2010, I helped to organize and spoke at a statewide conference on recreational liability. My research for the conference made me aware that neighboring states - specifically, Massachusetts (ALM GL 21, §17C) and Rhode Island (R.I. Gen. Laws §§ 32-6-1 to 32-6-5, inclusive) - include municipalities within

the scope of their recreational immunity statutes as Connecticut did before the Conway decision.

Since Conway, municipalities and quasi-municipal agencies have become increasingly fearful of liability relating to outdoor recreation. This has had a chilling effect on decisions ranging from municipal open space acquisition to municipal participation in the creation of rail-trails. After Conway, most municipalities with cliffs closed their cliffs to rock climbers, sending Connecticut climbers and their dollars to other states with open climbing venues.

Fear of liability has been shown to be justified by several widely reported recent cases (a \$ 2.9 million verdict against the Metropolitan District Commission relating to a bicycle accident and an \$ 8 million settlement by the City of Waterbury relating to a snow-tubing accident). Many municipalities and the MDC are considering further limitations on recreational activities on their lands.

I am aware that lobbyists for special interest groups are advising legislators that municipalities are protected under existing immunity statutes. This is not true. Since Conway, municipalities have no protection under the recreational liability statutes. With regard the more general provisions of Conn. Gen. Stat. § 52-557n, subsection (b)(1) protects municipalities and employees from liability resulting from "[t]he condition of natural land or unimproved property." But once a trail, bike path, climbing route, or similar recreational "use-way" has been established, the property arguably is no longer "natural land or unimproved property" and the municipality would not have immunity protection.

Conn. Gen. Stat. § 52-557n(b)(4) provides protection from liability with respect to "the condition of an unpaved road, trail or footpath, the purpose of which is to **provide access** to a recreational or scenic area, if the political subdivision has not received notice and has not had a reasonable opportunity to make the condition safe." Nothing in § 52-557n provides any specific protection with regard to unpaved roads, trails or footpaths that **are** the recreational or scenic area. The section makes no reference to, and therefore provides to immunity relating to, bike paths or rock-climbing routes.

In addition, Conn. Gen. Stat. § 52-557n(a), which governs claims of negligence for which there is no specific statutory immunity, forces municipalities into costly and time-consuming discovery and other litigation proceedings focusing on whether the municipality was acting in a discretionary or ministerial capacity. These costs could be reduced or eliminated by restoring recreational immunity under § 52-557f, et seq. to municipalities and quasi-municipal agencies.

The same special interest group has submitted testimony that, because municipalities have historically made their open space available to the public, there is no need to encourage municipalities to do so now. But the reality is that, with diminishing revenue, with fewer employees, and with increasing, justifiable fear of

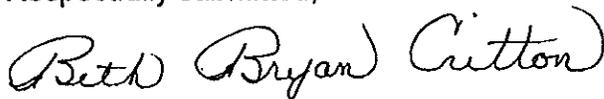
liability, municipalities have a powerful incentive not to acquire open space and, if they acquire it, not to make it accessible to the public through trail systems.

Restoring recreational immunity to municipalities and quasi-municipal agencies will:

- (1) Encourage municipal acquisition and preservation of open space; promote free public access to those open spaces; and foster an appreciation of the natural environment;
- (2) Improve Connecticut's public health, economic viability (tourism, recreation-related businesses) and quality of life;
- (3) Meet the need for free, local recreational opportunities, which is particularly important for the many Connecticut residents for whom the "stay-cation" has replaced the vacation;
- (4) Reduce costs to municipalities and municipal taxpayers relating to increased insurance premiums and to the defense or settlement of frivolous lawsuits; and
- (5) Provide consistency by placing municipalities on the same legal footing as private property owners and the State, which, pursuant to Conn. Gen. Stat. § 4-160(c), has rights equal to the "rights and liability of private persons in like circumstances." In this time of tightening municipal budgets and staff reductions, it is unfair to hold municipalities to a standard higher than the standard applied to other property owners, including the State.

As a lawyer and outdoor recreation enthusiast, as a mother and a grandmother, I respectfully ask the legislature to restore recreational immunity to Connecticut municipalities and quasi-municipal agencies.

Respectfully submitted,



Beth Bryan Critton