

Statement of Attorney Jonathan Perkins
Regarding Senate Bill No. 445

AN ACT CONCERNING LIABILITY FOR THE RECREATIONAL USE OF LAND

March 29, 2012

Mr. Chairman and members of the Judiciary Committee:

My name is Jonathan Perkins. I am an attorney practicing with Jonathan Perkins Injury Lawyers with offices in the Hartford, New Haven and Bridgeport areas.

I am testifying in strong support of Senate Bill Number 445, An Act Concerning Liability for the Recreational Use of Land. I urge you to vote in favor of this bill for the following reasons:

1. **The Whole Purpose of the Act is to Encourage Private Landowners to Make Their Unimproved Land Available to Members of the Public at No Charge**

In 1996, the Connecticut Supreme Court, referencing the legislative discussions which had occurred in 1971 when the Recreational Use Statute was enacted, stated:

"The intention of the act is to **encourage the farmer**, the party who has hundreds of thousands of acres to invite the public in to make use of the land without having [the] liability that they normally would have under the common law." Conway v. Town of Wilton, 238 Conn. 653, 667-668 (1996). (Emphasis added.) "The act helped to make the option of opening **private land** for public recreational use more viable by decreasing liability to landowners and decreasing costs to governmental entities seeking to provide recreational lands. Absent the exercise of its right of condemnation, the government is powerless to compel private landowners to open their property for recreational use. Moreover, budget deficits limiting governments' ability to invest in recreational lands sufficient to satisfy the ever increasing demand effectively eliminated even this option. The act furnished a solution. '[T]his would open up land in the state of Connecticut at no cost to the state, town or federal government at all.' 14 H.R. Proc., Pt. 4, 1971 Sess., p. 1809, remarks of Representative Peter F. Locke, Jr." Conway, supra at 670. (Emphasis added.)

The legislature, in enacting this section, recognized that "more and more Americans were participating in an expanding range of outdoor recreational activities. Overpopulation and increased leisure time had strained existing public recreation areas. State and municipal governments were struggling to locate alternative resources to accommodate increasing demand for recreational property. One such alternative under consideration was the utilization of **privately owned land** for public recreation. G. Thompson & M. Dettmer, 'Trespassing on the Recreational User Statute,' 61 Mich. B.J. 726, 727 (1982)." Conway v. Town of Wilton, 238 Conn. 653, 666 (1996). (Emphasis added.)

Again, the purpose of Connecticut General Statutes Section 52-557g "is an attempt to satisfy the public's need for recreation and is an attempt to satisfy the public's need for recreational and **open space** by encouraging **private land** owners, through limiting their liability, to open their land to public use. Genco v. Connecticut Light and Power Co., 7 Conn. App. 164, 168 (1986). (Emphasis added.) The immunity conferred by the act was the carrot that legislators dangled before **private** landowners to encourage them to make their property available for public recreation. Scrapchansky v. Plainfield, 226 Conn. 446, 462 (1992). (Emphasis added.)

"In those instances where **private owners** are willing to make their land available to members of the general public without charge, it is possible to argue that every reasonable encouragement should be given to them." G. Thompson & M. Dettmer, 'Trespassing on the Recreational User Statute,' 61 Mich. B.J. 726, 727 (1982). (Emphasis added.)

2. The Statute Currently Creates Substantial Ambiguity by Making Public Owners Immune from Suit if Someone is Injured on Improved Land

This was clearly not the intent of the statute (in fact, it has almost exactly the opposite effect to the intent behind the statute). Let me give an example: if a young boy is injured due to a rusty nail being allowed to stick up out of the surface of a municipal boardwalk, even if he develops a very serious case of tetanus requiring weeks of hospitalization and even if the municipal public works department was aware of this rusty nail sticking up for weeks and did nothing about it, if his family were to bring a claim to have the huge medical bills which they have to incur paid for by the municipality, their case will be dismissed under this statute even though this is not private land held open to the public at no charge and even though the "land" in question was improved.

3. We are supposed to be a Nation Where Government Protects the People Equally

It does not make sense to allow someone who is injured in a municipal swimming pool to potentially make a claim, but not someone who is injured on a municipal boardwalk. In other words, the statute as written permits some users of public recreational areas to sue for their injuries and precludes others from doing so. We should strive to have the effects of our laws be as fair and as predictable as possible. This proposed amendment, while it does not make this law perfect by any means, certainly makes its effects a lot fairer and more predictable than they are currently.

4. There are Other Defenses and Protections Which Municipalities Have to Protect Themselves

It is very difficult to prevail in a personal injury suit against a municipality in the State of Connecticut even without the protections afforded in the Recreational Use Statute. For example, in order to prevail in a claim for injury resulting from a defective road, a plaintiff

has to show that the negligence of the municipal defendant was the "sole proximate cause" of his injury (an exceptionally difficult burden of proof to meet).

And specifically dealing with municipal immunity, please imagine a situation (and this type of thing happens every school day in our state) where a young girl goes to her first cheerleading class in her local public school. The coach has some other young kids who are also brand new at this throw her up into the air time-after-time to practice "flying". In the meantime, the coach walks off to take a telephone call and, of course, in his absence, some of the kids learning cheerleading forget to catch the young "flyer", who falls to the ground, breaks her back and is paralyzed for the rest of her life. Because, in Sec. 52-557n(a)(2)(B), this body enacted a statute making any political subdivision of the state immune from liability unless the injured person can prove that the negligent act which injured her did not require "the exercise of judgment or discretion" (a very, very difficult thing to do), she effectively has no cause of action.

So municipalities are currently very heavily protected in Connecticut in ways which private entities and people are not. They do not need an **additional** layer of immunity for public beaches, boardwalks, bleachers and paved sidewalks open to the public.

5. We are Supposed to be a Country Where Government Protects the Citizenry

I assume that the reason that municipal land has been statutorily included for protection under the Recreational Use Act (when that was not the intent behind the act) is because municipalities have argued strongly that their budgets must be protected at all costs. I ask, though, that the Committee keep in mind what Lincoln said at Gettysburg: that we are a nation where government is "of the people, by the people, **for the people**". That is prototypically "American". It makes us different; it makes us exceptional in the world. Please don't be part of a government that protects government at the expense of people who are injured through no fault of their own. Rather, please take a stand and do whatever you can to be a government "for the people".

6. Conclusion.

The amendment contemplated here is far from radical. It simply encourages municipalities to responsibly care for more of their facilities in a context where it is already very difficult for an injured person to prevail against a municipality when he or she is injured due to municipal fault.

Thank you very much for allowing me the opportunity to speak to you about this important issue.