CONWAY v. TOWN OF WILTON

238 Conn. 653 (1996) | Cited 82 times | Supreme Court of Connecticut | August 6, 1996

In Manning v. Barenz, 221 Conn. 256, 603 A.2d 399 (1992),this court held that municipalities and their employees are "owners" underGeneral Statutes § 52-557f (3) and are, therefore, entitled to immunityfrom liability for injuries sustained on land available to the public forrecreational purposes. Today, we reconsider Manning, conclude that it wasnot properly decided and, accordingly, overrule it.

The following facts are undisputed. The plaintiff, Amy Jeanne Conway,brought this action against the town of Wilton (town), David Dixon, theparks and recreation director for the town, and the Connecticut Associationof Secondary Schools (association),[1] for personal injuries sustainedwhile participating in a state high school tennis tournament sponsored bythe association on premises owned by the town. The plaintiff alleged thaton June 9, 1986, the Connecticut Interscholastic Athletic Conference(conference)[2] held a championship tennis tournament for high schoolgirls at the Wilton High School tennis courts>. No fee had been charged forthe use of the tennis courts>. The plaintiff further alleged that, whilecompeting in the tournament, she fell as a result of a defect in the courts>and sustained serious injuries to her knee and ankle. Additionally, theplaintiff alleged that the proximate cause of her injuries was thenegligence of Dixon and his staff in maintaining the tennis courts>, and thenegligence of the association in failing to inspect the courts> in order toensure that the town repair any unsafe conditions and in failing tosupervise the administration of the tournament.

The defendants moved for summary judgment claiming immunity underGeneral Statutes § 52-557g, the immunity provision of the Connecticut

[238 Conn. 656]

Recreational Land Use Act (act), General Statutes § 52-557f et seq.[3]In her opposition to the association's motion, theplaintiff argued, inter alia, that the association "owed [her] an

[238 Conn. 657]

affirmative duty of care to choose a safe place for the tournament to beheld and otherwise to properly run a safe event . . . and . . . it breached[that duty] when it brought her to the defective courts>." The trial courtgranted the defendants' motions for summary judgment on the ground thatthey were immune from liability pursuant to the act.

On appeal to the Appellate Court, the plaintiff claimed that "thetrial court improperly granted the motions for summary judgment because (1)the act as applied to the plaintiff violates article first, § 10, of theConnecticut constitution, (2) the association owed a duty to the plaintiffthat is independent of the act, and (3) Dixon and the town failed to makethe premises `available to the public,' and, therefore, are not entitled tostatutory immunity." Conway v. Wilton, 39 Conn. App. 280, 282-83,664 A.2d 327 (1995). The Appellate Court rejected all three claims. Id.,285-89. The plaintiff also claimed that Manning v. Barenz, supra,221 Conn. 256, should be overruled. Because the Appellate Court cannotoverrule a Supreme Court decision, it declined to review that claim. Conwayv. Wilton, supra, 39 Conn. App. 283 n. 5.

Thereafter, the plaintiff petitioned this court for certification toappeal, which we granted, limited to the following questions: (1) "Shouldthis court reconsider its holding in Manning v. Barenz, [supra,221 Conn. 256], that the recreational land use statute, General Statutes

[238 Conn. 658]

§ 52-557f et seq., applies to municipalities?" and (2) "If the answerto the first question is no, did the Appellate Court improperly concludethat the trial court was correct in rendering summary judgment in favor ofthe defendant Connecticut Association of Secondary Schools [association],where the plaintiff claimed that [the association] owed a duty to theplaintiff independent of any duty it may have owed as an `owner of land'within the meaning of the recreational land use statute?" Conway v.Wilton, 235 Conn. 934, 934-35, 667 A.2d 1271 (1995).

We begin with the rule of stare decisis.[4] This court hasrepeatedly acknowledged the significance of stare decisis to our system ofjurisprudence because it gives stability and continuity to our caselaw.[5] Jolly, Inc. v. Zoning Board of Appeals,237 Conn. 184, 196, ___ A.2d ___ (1996). Stare decisis is "a formidableobstacle to any court seeking to change its own law." C. Peters, "FoolishConsistency: On Equality, Integrity, and Justice in Stare Decisis," 105Yale L.J. 2031, 2036 (1996). It "is the most important application of atheory of decisionmaking consistency in our legal culture" and it is anobvious manifestation of the notion that decisionmaking consistency itselfhas normative value. Id., 2037. Stare decisis does more than merely pushcourts> in hard cases, "where they are not convinced about what justicerequires, toward decisions that conform with decisions made by previouscourts>." Id., 2090. The doctrine is justified because it allows forpredictability in the ordering of conduct, it promotes the necessary

[238 Conn. 659]

perception that the law is relatively unchanging, it saves resources and itpromotes judicial efficiency. A. Kronman, "Precedent and Tradition," 99Yale L.J. 1029, 1038-39 (1990) ("respect for past decisions is desirable tothe extent that it increases the sum of social welfare . . . by enhancingthe law's predictability, economizing judicial resources, strengthening theprestige of legal institutions,

etc.").

As this court has stated many times, "[t]he true doctrine of staredecisis is compatible with the function of the courts>. . . . [T]here is noquestion but that [a] decision of this court is a controlling precedentuntil overruled or qualified. . . . [S]tare decisis . . . serve[s] thecause of stability and certainty in the law — a condition indispensable toany well-ordered system of jurisprudence. . . ." (Citations omitted;internal quotation marks omitted.) White v. Burns, 213 Conn. 307, 335,567 A.2d 1195 (1990).

Whether stare decisis serves the interests of judicial efficiency,protection of expectations, maintenance of the rule of law, or preservationof judicial legitimacy, however, is not dispositive. The value of adheringto precedent is not an end in and of itself, however, if the precedentreflects substantive injustice. Consistency must also serve a justicerelated end. B. Cardozo, The Nature of the Judicial Process (1921) p. 150(favoring rejection of precedent when it "has been found to be inconsistentwith the sense of justice or with the social welfare"). When a priordecision is "seen so clearly as error that its enforcement [is] for thatvery reason doomed"; (emphasis added) Planned Parenthood of SoutheasternPennsylvania v. Casey, 505 U.S. 833, 854, 112 S.Ct. 2791, 120 L.Ed.2d674 (1992); the court should seriously consider whether the goals of staredecisis are outweighed, rather than dictated, by the prudential andpragmatic considerations that inform the doctrine to enforce a clearly

[238 Conn. 660]

erroneous decision. Stare decisis is not an "`inexorable command.'" Id.The court "must weigh [the] benefits [of stare decisis] against its burdensin deciding whether to overturn a precedent it thinks is unjust. The ruleof stare decisis may entail the sacrifice of justice to the parties inindividual cases, but, far from being immune from considerations ofjustice, it must always be tested against the ends of justice moregenerally." C. Peters, supra, 105 Yale L.J. 2047.

Indeed, this court has long believed that although "`[s]tare decisisis a doctrine developed by courts> to accomplish the requisite element ofstability in court-made law, [it] is not an absolute impediment tochange. . . . [S]tability should not be confused with perpetuity. If lawis to have a current relevance, courts> must have and exert the capacity tochange a rule of law when reason so requires. . . .' In re Stranger Creek &Tributaries in Stevens County, 77 Wn.2d 649, 653, 466 P.2d 508 (1970)."White v. Burns, supra, 213 Conn. 335. "`[I]t is more important that thecourt should be right upon later and more elaborate consideration of thecases than consistent with previous declarations. Those doctrines onlywill eventually stand which bear the strictest examination and the test ofexperience.' Barden v. Northern Pacific R. Co., 154 U.S. 288, 322, 14S.Ct. 1030, 38 L.Ed. 992 (1894). The United States Supreme Court has saidthat when it has become `convinced of former error,' it has `never feltconstrained to follow precedent.' Smith v. Allwright, 321 U.S. 649, 665,64 S.Ct. 757, 88 L.Ed. 987 (1943), reh. denied, 322 U.S. 769, 64 S.Ct.1052, 88 L.Ed. 1594 (1944)." White v. Burns, supra, 336.

"[One] well recognized exception to stare decisis under which a courtwill examine and overrule a prior decision . . . [is when that priordecision] is clearly wrong. . . . The doctrine [of stare decisis] requiresa clear showing that an established rule is incorrect and harmful before it

[238 Conn. 661]

is abandoned." (Citation omitted; internal quotation marks omitted.)White v. Burns, supra, 213 Conn. 335; see Kluttz v. Howard, 228 Conn. 401,406, 636 A.2d 816 (1994) ("a court should not overrule its earlierdecisions unless the most cogent reasons and inescapable logic require it"[internal quotation marks omitted]); Herald Publishing Co. v. Bill,142 Conn. 53, 62, 111 A.2d 4 (1955) ("[a] court, when once convinced thatit is in error, is not compelled to follow precedent"). Because "staredecisis is not a rule of law but a matter of judicial policy . . . it doesnot have the same kind of force in each kind of case so that adherence toor deviation from that general policy may depend upon the kind of caseinvolved, especially the nature of the decision to be rendered that mayfollow from the overruling of a precedent." (Internal quotation marksomitted.) Ozyck v. D'Atri, 206 Conn. 473, 483, 538 A.2d 697 (1988)(Healey, J., concurring).

"The arguments for adherence to precedent are least compelling,furthermore, when the rule to be discarded may not be reasonably supposedto have determined the conduct of the litigants. . . . Hopson v. St.Mary's Hospital, 176 Conn. 485, 496 n. 5, 408 A.2d 260 (1979), quoting B.Cardozo, [supra] p. 151. . . . Rarely do parties contemplate theconsequences of tortious conduct, and rarely if at all will they givethought to the question of what law would be applied to govern theirconduct if it were to result in injury. W. Reese, `Conflict of Laws andthe Restatement Second,' 28 Law & Contemp. Prob. 679, 699 (1963); accordGriffith v. United Air Lines, Inc., [416 Pa. 1, 23-24, 203 A.2d 796(1964)]; Wilcox v. Wilcox, 26 Wis.2d 617, 622, 133 N.W.2d 408 (1965); R.Sedler, `The Governmental Interest Approach to Choice of Law: An Analysisand a Reformulation,' 25 U.C.L.A. L. Rev. 181, 230 (1977)." (Internalquotation marks omitted.) O'Connor v. O'Connor, 201 Conn. 632, 644-45,519 A.2d 13 (1986) (refusal to adhere to lex loci delicti does not defeatthe

[238 Conn. 662]

legitimate prelitigation expectations of parties founded in reliance on ourprior decisions).

Moreover, we have deemed it appropriate, in other contexts, to departfrom common law precedents where we have found compelling reasons and logicfor doing so. See Ely v. Murphy, 207 Conn. 88, 95, 540 A.2d 54 (1988) (inview of legislative determination that minors are incompetent to assimilateresponsibly effects of alcohol and lack legal capacity to do so, theirconsumption of alcohol is not intervening act necessary to break chain ofproximate causation and does not insulate one who provides alcohol tominors from liability for ensuing injury; overruled earlier rulings inSlicer v. Quigley, 180 Conn. 252, 429 A.2d 855 [1980], Nelson v. Steffens,170 Conn. 356, 365 A.2d 1174 [1976], and Moore v. Bunk, 154 Conn. 644,228 A.2d 510 [1967]); Moore v. McNamara, 201 Conn. 16, 25-34, 513

A.2d 660(1986) (paternal duty of support of minor children); O'Connor v. O'Connor,supra, 201 Conn. 637 (where strict application of common law rule of lexloci delicti undermines important state policy, we refuse to apply it). Wehave also overruled precedent interpreting a statute even when thelegislature has had numerous occasions to reconsider that interpretationand has failed to do so. Chairman v. Freedom of Information Commission,217 Conn. 193, 201, 585 A.2d 96 (1991).

In short, consistency must not be the only reason for deciding a casein a particular way, if to do so would be unjust. Consistency obtains itsvalue best when it promotes a just decision. In this case, consistent withthe proper performance of our judicial function, we, therefore, reexaminethe challenged precedent.

In Manning v. Barenz, supra, 221 Conn. 260, this court held, on thebasis of what we determined to be the clear and unambiguous language of §52-557f (3), that the defendant municipality was an owner within the

[238 Conn. 663]

meaning of that statute because it "possesse[d] the fee interest in thepark in question." Having determined that the language was clear andunambiguous, the court saw "no need to resort to the legislative history."Id., 260 n. 3. Although we acknowledged the Appellate Court's discussion ofthe legislative history of the act in Genco v. Connecticut Light & PowerCo., 7 Conn. App. 164, 508 A.2d 58 (1986), wherein that court applied theact to a private property owner, we concluded that the clear andunambiguous language of the act provided for its application togovernmental property owners as well as to private property owners.Manning v. Barenz, supra, 260 and n. 3. Thereafter, in Scrapchansky v.Plainfield, 226 Conn. 446, 450, 454, 627 A.2d 1329 (1993), a majority ofthis court examined whether, under the facts of that case, the defendantmunicipality had made the land "available to the public" as contemplated by§ 52-557g and whether a league baseball game was a "recreational purpose"as contemplated by § 52-557f (4). The plaintiff in Scrapchansky did notask this court to reexamine the decision in Manning that municipalitieswere owners within the meaning of § 52-557f (3), and the dissent, suasponte, raised the issue and concluded that the act was not intended toapply to municipalities. Id., 461 (Katz, J., dissenting). We nowreconsider Manning and overrule it.

"Our analysis of the plaintiff's claims is guided by well establishedtenets of statutory construction. [O]ur fundamental objective is toascertain and give effect to the apparent intent of the legislature. . . .In seeking to discern that intent, we look to the words of the statuteitself, to the legislative history and circumstances surrounding itsenactment, to the legislative policy it was designed to implement, and toits relationship to existing legislation and common law principlesgoverning the same general subject matter." (Internal quotation marks

[238 Conn. 664]

omitted.) M. DeMatteo Construction Co. v. New London, 236 Conn. 710,714-15, 674 A.2d 845 (1996); see Metropolitan District Commission v.AFSCME, Council 4, Local 184, 237 Conn. 114, 120, ___ A.2d ___ (1996);State v. Burns, 236 Conn. 18, 22-23, 670 A.2d 851 (1996); State v. Spears,234 Conn. 78, 86-87, 662 A.2d 80, cert. denied, ___ U.S. ___, 116 S.Ct.565, 133 L.Ed.2d 490 (1995). "Furthermore, [w]e presume that laws areenacted in view of existing relevant statutes; Pollio v. PlanningCommission, 232 Conn. 44, 55, 652 A.2d 1026 (1995); Kinney v. State,213 Conn. 54, 65, 566 A.2d 670 (1989) [cert. denied, 498 U.S. 898, 111S.Ct. 251, 112 L.Ed.2d (1990)]; Shortt v. New Milford Police Dept.,212 Conn. 294, 302, 562 A.2d 7 (1989); and that [s]tatutes are to beinterpreted with regard to other relevant statutes because the legislatureis presumed to have created a consistent body of law. . . . In re ValerieD., 223 Conn. 492, 524, 613 A.2d 748 (1992)." (Internal quotation marksomitted.) M. DeMatteo Construction Co. v. New London, supra, 715.

"Use of these tools of construction in this case suggests that theimmunity conferred by the act was the carrot that legislators dangledbefore private landowners to encourage them to make their propertyavailable for public recreation . . . [and] that the decision by this court[in Manning] to include municipalities within the act's definition of owneris not consistent with the true legislative intent and, in effect, bestowsa benefit on government never contemplated." Scrapchansky v. Plainfield,supra, 226 Conn. 462 (Katz, J., dissenting).

At first glance the term "owner," which is defined as "the possessorof a fee interest, a tenant, lessee, occupant or person in control of thepremises"; General Statutes § 52-557f (3); is not opaque. Indeed, weconcluded in Manning v. Barenz, supra, 221 Conn. 260, that the clear andunambiguous meaning of that term encompassed municipal property owners.Nevertheless, upon closer scrutiny of this issue, we conclude that an

[238 Conn. 665]

ambiguity arises in the application of the statute to municipalities.State v. Cain, 223 Conn. 731, 744-45, 613 A.2d 804 (1992) (ambiguity instatute may be found not only in literal text of language itself, but inapplication of that language to particular facts of case at issue).Specifically, the ambiguity in this seemingly unambiguous language becomesapparent when, in deciding whether "owner" applies to a municipality, thelegislative history and public policy underlying the statute areconsidered.

Moreover, consideration of related statutory provisions, GeneralStatutes §§ 52-557g (c) and 52-557h (2), reveals additionalambiguity on the subject of land owned or controlled by public entities.Section 52-557g (c) grants immunity to an owner who leases land to thestate, absent written agreement to the contrary. Section 52-557h (2),although creating an exception to immunity coverage for owners who chargepersons entering on the land for recreational purposes, also provides thatconsideration received for land leased to the state or a subdivisionthereof shall not be deemed a charge within the meaning of the section.See footnote 3. By carving out different rules for lands leased to thestate or its

subdivisions, the statutes suggest that the legislature didnot intend public and private "owners" to be treated identically under thestatute.

"When application of the statute to a particular situation reveals alatent ambiguity in seemingly unambiguous language . . . we turn forguidance to the purpose of the statute and its legislative history toresolve that ambiguity." University of Connecticut v. Freedom ofInformation Commission, 217 Conn. 322, 328, 585 A.2d 690 (1991). We beginto ascertain the legislative intent by examining the statute in the contextof the particular social problems it seeks to address. "`Identifying thesocietal problems which the legislature sought to address may beparticularly helpful in determining the true meaning of the statute.'

[238 Conn. 666]

State v. Parmalee, 197 Conn. 158, 161-62, 496 A.2d 186 (1985). More andmore Americans were participating in an expanding range of outdoorrecreational activities. Overpopulation and increased leisure time hadstrained existing public recreation areas. State and municipal governmentswere struggling to locate alternative resources to accommodate increasingdemand for recreational property. One such alternative under considerationwas the utilization of privately owned land for public recreation. G.Thompson & M. Dettmer, `Trespassing on the Recreational User Statute,' 61Mich. B.J. 726, 727 (1982).

"As part of its attempt to foster availability of private land forpublic recreational use, the Connecticut legislature created a vehicle toincrease public access to private property. Parroting a model actpromulgated in 1965 by the Council of State Governments,[6] the

[238 Conn. 667]

Connecticut legislature enacted General Statutes§§ 23-27a through 23-27k, entitled `An Act Limiting the Liability ofProperty Owners Toward Persons Using Their Land for Recreation,'in 1967.[7] See G. Thompson & M. Dettmer, supra, [61 Mich. B.J.726-27]. This precursor to the Recreational Land Use Act was intended totarget an underutilized resource. `The intention of the act is toencourage the farmer, the party who has hundreds of thousands of acres toinvite the public in to make use of the land without having [the] liability

[238 Conn. 668]

that they normally would have under the common law. The Department ofAgriculture feels that this would greatly increase the open space usethroughout the state of Connecticut.' 12 H.R. Proc., Pt. 9, 1967 Sess., p.4254, remarks of Representative Bernard Avcollie. `It will for the mostpart in my opinion do something that many of us who live in the rural areashave for a long time wanted. . . . Within a very short driving distance ofevery major city in this state there are vast areas of land that

could beused for recreational purposes and the only thing in the path standing inthe way, the only thing which has prevented the owners from allowing use oftheir land for recreational purposes has been the possible liability whichthey would incur if people using it for recreational purposes were injuredon their land. [T]his is the target point of this bill. To say to anylandowner if you register your land for recreational purposes and those whocome on are injured again through no fault of yours, the owner, then youwill not be liable. I think the state of Connecticut and a largepercentage certainly of the urban population are going to benefit underthis bill, it relieves the state of the necessity for purchasing, itrelieves the state of the necessity for maintaining land that could verywell serve for picnicking, for hiking, for horseback riding and for manyother recreational activities which, because of lack of faith in the urbanareas is very limited at the present time.' 12 H.R. Proc., Pt. 9, 1967Sess., pp. 4255-56, remarks of Representative Robert King. `A review ofthe legislative history reveals that the clear purpose of § 52-557g is anattempt to satisfy the public's need for recreational and open space byencouraging private land owners, through limiting their liability, to opentheir land to public use.'. . . Genco v. Connecticut Light & Power Co.,[supra, 7 Conn. App. 168-69].

"Connecticut passed the Recreational Land Use Act in 1971. Withoutpublished comment, the legislature repealed §§ 23-27a through 23-27k of

[238 Conn. 669]

title 23, entitled `Parks, Forests and Public Shade Trees,' and enacted §§52-557f through 52-557i in its place. Public Acts 1971, No. 249. Thephilosophy behind the legislation was again made clear — to make theoption of opening private land for public recreational use moreattractive.[8] Representative David Lavine, one of the primary sponsorsof the act, in his remarks before the House of Representatives, clearlycontrasted land owned by private individuals with that owned by federal,state and municipal bodies. `We should realize, though, that neitherfederal, state [nor] local implementation of recreational plans are goingto require or set aside enough land for the recreational needs of ourcitizens. For certain and many types of outdoor activities such as hiking,hunting, fishing, enjoyment of the rural life in Connecticut, we have longdepended and will continue to depend upon the generosity of private ownersof land and water to open their property to the use and enjoyment oftheir fellow citizens.'

[238 Conn. 670]

14 H.R. Proc., Pt. 4, 1971 Sess., pp. 1804-1805. Representative Lavine'scomments were echoed by several other legislators. Senator Romeo Petroninoted that `it is an important bill and . . . it will have I think thepositive [e]ffect as far as people who own private lands opening them upfor recreation. . . .' 14 S. Proc., Pt. 4, 1971 Sess., p. 1679.

"The act helped to make the option of opening private land for publicrecreational use more viable by decreasing liability to landowners anddecreasing costs to governmental entities seeking to provide

recreationallands. Absent the exercise of its right of condemnation, the government ispowerless to compel private landowners to open their property forrecreational use. Moreover, budget deficits limiting governments' abilityto invest in recreational lands sufficient to satisfy the ever increasingdemand effectively eliminated even this option. The act furnished asolution. `[T]his would open up land in the state of Connecticut at nocost to the state, town or federal government at all.' 14 H.R. Proc., Pt.4, 1971 Sess., p. 1809, remarks of RepresentativePeter F. Locke, Jr.[9]

"As stated, this act sought to increase the availability ofrecreational lands by limiting liability for accidents occurring on theproperty. Landowners are protected in two ways from liability for injuriessuffered by entrants. When a landowner directly or indirectly invitesanother to use his property for a recreational purpose without fees, theentrant does not thereby become a licensee or invitee. General Statutes §52-557g. The landowner `owes no duty of care to keep the land, or the partthereof so made available, safe for entry or use by others for recreational

[238 Conn. 671]

purposes, or to give any warning of a dangerous condition, use, structureor activity on the land to persons entering for recreational purposes.'General Statutes § 52-557g (a). Historically, the common law places asuccessively greater duty on the landowner to visitors, depending onwhether the visitor is a trespasser, a licensee, or an invitee. Morin v.Bell Court Condominium Assn., Inc., 223 Conn. 323, 327-28, 612 A.2d 1197(1992). The act drastically alters these principles. Except where thereis consideration; General Statutes § 52-557h; the act fundamentally changesthe law by shifting the burden of liability for injuries from the landoccupier, who may be in a better position to prevent accidents, to theentrant, regardless of his or her classification at common law, who may bepowerless to avoid them. This fundamental change is consistent with theunderlying objective of the legislation to encourage free use of land. Theact reflects the judgment of the legislature that the public benefit ofattracting private landowners to allow their land to be used outweighs therisk of potential injuries.

"The inherent costs to society that can result from removing thecaretaking responsibilities and duty to warn against known or discoverablehazards imposed upon public landowners at common law, however, are notoutweighed by any benefit conferred upon society by the act. Public landsare lands already held open to the public." (Emphasis in original.)Scrapchansky v. Plainfield, supra, 226 Conn. 462-68. (Katz, J.,dissenting). Municipalities provide recreational land as part of theirtraditional function. National League of Cities v. Usery, 426 U.S. 833,851, 96 S.Ct. 2465, 49 L.Ed.2d 245 (1976), overruled on other grounds,469 U.S. 528, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985). Because they arein the business of providing parks, pools, ball fields, etcetera, thelegislature had less incentive to dangle the carrot of immunity to

[238 Conn. 672]

encourage municipalities to do what they historically have always done.The cost benefit calculation

that immunity was necessary to further thegoal of opening private land to recreation has less application to publiclyowned recreational facilities, which are, by definition, already availableto the public. Moreover, although municipal immunity could reduce cost tomunicipalities, which in turn would enable municipalities to purchase andmaintain more land, in the absence of a clear intent to abrogate the commonlaw, we will not indulge this speculative benefit.[10]

There are other compelling reasons why, in the absence of explicitdirection from the legislature, this court should not read the term "owner"to include municipalities. "At common law a municipality was generallyimmune from liability for its tortious acts. Ryszkiewicz v. New Britain,193 Conn. 589, 593, 479 A.2d 793 (1984). Its employees had a qualifiedimmunity in the performance of a governmental duty. If an employeemisperformed a ministerial act, he was potentially liable; if, however, hemisperformed a discretionary act, he was immune from liability subject tothree exceptions. Evon v. Andrews, 211 Conn. 501, 505, 559 A.2d 1131(1989). General Statutes § 52-557n, enacted as part of tort reform in1986; Public Acts 1986, No. 86-338, § 13; was `intended, in a generalsense, both to codify and to limit municipal liability. . . .' Sanzone v.Board of Police Commissioners, 219 Conn. 179, 188, 592 A.2d 912 (1991). In1971, when the act was enacted; Public Acts 1971, No. 249; as well as in1967, immunity for municipalities was alive and well. Accordingly, therewas even less incentive to craft the act in order to grant immunity to an

[238 Conn. 673]

entity that was already protected in order to supplement availablerecreational land."[11] Scrapchansky v. Plainfield, supra, 226 Conn. 469n. 7 (Katz, J., dissenting).

The legislature was not contemplating immunity for governmentalentities. At the time the act was enacted, the legislature was interestedin increasing the availability of land for public recreational use. See 12H.R. Proc., Pt. 9, 1967 Sess., pp. 4255-56. Consequently, municipalitieswould have had to identify additional land and pay large sums to purchaseand maintain it in order to accomplish that goal had the legislation notsucceeded. The legislature's sole motive was to encourage private citizensto donate their land as an alternative to this costly enterprise. There isno indication that the legislature was seeking to permit a municipality tohave immunity for responsibilities arising out of property that it alreadyowned.

We reject the defendants' argument that Manning was correctly decided,on the theory that the statutory immunity attaches only to public land madeavailable without charge, and that the legislature rationally drew adistinction between free public facilities and those that citizens must payto use.[12] This rationale ignores reality. Municipalities make land

[238 Conn. 674]

available through taxes, which in effect constitute an implicit "charge"for the use of the land. If

taxes do indeed constitute a "charge," themunicipality is stripped of immunity. See General Statutes §§ 52-557g and52-557h. Taxes play another role in this area. By providing immunity toprivate landowners, the statute shifts the burden from the otherwise liablelandowner to the injured citizen on the theory that the public will benefitfrom having more recreational land available. Where a municipality is thelandowner, however, this balance shifts because, through taxes,municipalities are able to spread costs among residents and thereby shiftthe burden of negligence away from the injured citizen. Becausemunicipalities essentially pass on the costs for all recreationalfacilities or services to the citizenry in the form of taxes, providingthem with immunity would be at best anomalous.

In conclusion, "[t]here is nothing in the legislative history tosuggest that the legislature intended or even contemplated that the actwould provide immunity for governmental entities. Therefore, to apply theact to municipalities imposes too high a societal cost and serves no usefulor intelligible purpose." Scrapchansky v. Plainfield, supra,226 Conn. 468-69 (Katz, J., dissenting). "The protection granted throughthe act was an incentive for private owners to open up new lands for publicuse. It was not an attempt to provide an immunity shield for existing stateor municipal recreational areas." Id., 470. In the absence of any expresslegislative provision covering publicly owned lands, we decline to read the

[238 Conn. 675]

statute to extend the immunity beyond private landowners. For states thathave express legislation affording immunity to municipalities, see, e.g.,Ala. Code §§ 35-15-20 through 35-15-28 (1991 & Sup. 1995); Ariz. Rev. Stat.Ann. § 33-1551 (Sup. 1995); Colo. Rev. Stat. Ann. §§ 33-41-102 through33-41-105 (1995); Idaho Code § 36-1604 (1994); Ill. Ann. Stat. c. 745, ¶10/3-106 (Smith-Hurd 1993); Ind. Code Ann. § 14-22-10-2 (Burns 1995); Me.Rev. Stat. Ann. tit. 14, § 8104-A (West Sup. 1995); Mo. Rev. Stat. §§537.345 through 537.348 (1994); Mont. Code Ann. § 70-16-302 (1995); N.H.Rev. Stat. Ann. § 212:34 (1989) and § 508:14 (1983 and Sup. 1995); N.D.Cent. Code §§ 53-08-01 through 53-08-06 (1989 and Sup. 1995); S.D. CodifiedLaws Ann. §§ 9-38-55 and 9-38-105 (1995); Tenn. Code Ann. §§ 70-7-101through 70-7-104 (1995); Utah Code Ann. §§ 57-14-1 through 57-14-7 (1994);Va. Code Ann. § 15.1-291 (Michie Sup. 1995); Wash. Rev. Code § 4-24-210(1988 and Sup. 1996); Wis. Stat. Ann. § 895.52 (West Sup. 1995).[13]

[238 Conn. 676]

"Aware that neither reason nor authority in the law `offers theslightest encouragement to the notion that time petrifies into unchangingjurisprudence a palpable fallacy'; see Flagiello v. Pennsylvania Hospital,417 Pa. 486, 511, 208 A.2d 193 (1965); our reexamination, we submit, hasbeen thorough and sound." White v. Burns, supra, 213 Conn. 336. We havedetermined that the challenged precedent involves "fallacy." Our decisionthat we should not overrule precedent unless cogent reason and inescapablelogic require it has particular force when the precedent involved concernsthe interpretation or construction of a statute. Pouch v. Prudential Ins.Co. of America, 204 N.Y. 281, 287,

97 N.E. 731 (1912). There may well beprecedent nevertheless that, when challenged and reexamined, mandates that"[j]udicial honesty dictates corrective action." Olin Mathieson ChemicalCorp. v. White Cross Stores, Inc., 414 Pa. 95, 100, 199 A.2d 266 (1964).This appeal presents such a case.

Our reexamination of Manning persuades us that its analyticalunderpinnings are flawed. What we viewed once as clear and unambiguouslanguage — the statutory definition of "owner" — is not, despite itssuperficial unambiguity. Furthermore, Manning ignores the legislativehistory, including not only the statements made on the floor of the Senateand the House of Representatives when it was passed, but the origin of thestatute in the model act. A careful and comprehensive reading of thathistory, however, evinces a clear legislative intent that "owner," despitethe breadth of its statutory definition, means private, not municipal, feeowners.

Furthermore, as a result of Manning, which misinterpreted the act,some litigants have not had the days in court to which they were entitled,and of which the legislature never intended to deprive them. Leaving thedecision in Manning in place would mean that future litigants, including

[238 Conn. 677]

those who might, in reliance on Manning, forgo making otherwise validclaims, will be similarly disadvantaged. Because this state of affairs isthe result of our mistake, it is better that we remedy it now.

Finally, we note that, in the present case, as in most unintentionaltort cases, there is no reason to suppose that the defendants planned theirconduct with the intention of availing themselves of the benefits of recentlaw. See O'Connor v. O'Connor, supra, 201 Conn. 645. Under suchcircumstances, reliance is not a consideration. Furthermore, there is noargument made, nor does the record support the argument, thatmunicipalities decided not to purchase liability insurance in reliance onManning. We think it unlikely that, in the four years since we decidedManning, municipalities have ordered their affairs, by structuring eithertheir liability insurance or self-insuring protection, based on an immunityarising only out of the use of free parks or other municipal recreationalfacilities. We conclude, therefore, for all the aforestated reasons, thatManning was not correctly decided and that, consequently, that decisionand its progeny must be overruled.

After we interpret a statute, the legislature will often act inresponse. See, e.g., State v. Blasko, 202 Conn. 541, 558, 522 A.2d 753(1987). Had the legislature, after our decision in Manning, expressed aview that established definitively the meaning of the term "owner" in §52-557f (3), that view would , of course, be honored. Bell v. New Jersey,461 U.S. 773, 784, 103 S.Ct. 2187, 76 L.Ed.2d 312 (1983).[14]

[238 Conn. 678]

In this case, however, the legislature failed to amend the statuteafter our decision in Manning.

Although we have looked to legislativeinaction following a decision as a signal of acquiescence in the holding ofthe court; see, e.g., Ralston Purina Co. v. Board of Tax Review,203 Conn. 425, 439, 525 A.2d 91 (1987); we have more recently questionedthe use of the legislative acquiescence rule as a tool by which to divinelegislative intent. See, e.g., Streitweiser v. Middlesex Mutual AssuranceCo., 219 Conn. 371, 379, 593 A.2d 498 (1991); Greenwich v. Dept. of PublicUtility Control, 219 Conn. 121, 127-28 n. 6, 592 A.2d 372 (1991). The UnitedStates Supreme Court has been particularly critical of the use of thelegislative acquiescence doctrine as a measure of accuracy of a court'sinterpretation of a statute. See Aaron v. Securities & ExchangeCommission, 446 U.S. 680, 694 n. 11, 100 S.Ct. 1945, 64 L.Ed.2d 611(1980) ("failure of Congress to overturn . . . interpretation falls farshort of providing a basis to support a construction of § 10(b) [of theSecurities Exchange Act of 1934]"); see also Red Lion Broadcasting Co. v.Federal Communications Commission, 395 U.S. 367, 381-82 n. 11, 89 S.Ct.1794, 23 L.Ed.2d 371 (1969) ("unsuccessful attempts at legislation arenot the best of guides to legislative intent"). We have even frowned atthe use of legislative inaction regarding one section of a statute as areliable indicator of legislative intent when the legislature hasundertaken to amend other sections of the same statute. Streitweiser v.Middlesex Mutual Assurance Co., supra, 379 (despite having undertaken onseveral occasions to amend General Statutes § 38-175c, failure oflegislature to change rulings of this court that term "uninsured motorist"

[238 Conn. 679]

was not intended to include hit-and-run operators did not impliedlyincorporate those rulings into statute); but see Cappellino v. Cheshire,226 Conn. 569, 576, 628 A.2d 595 (1993).

In this case, since Manning, four bills have been introduced by thelegislature to amend the act. In 1993, House Bill No. 6634 was introducedto remove explicitly municipalities and their employees from the definitionof "owner" in § 52-557f (3). Although the House Judiciary Committeefavorably reported the bill out of committee (approved by a 32 to 0 vote),the full legislature never voted on this bill. In 1994, the judiciarycommittee voted in favor of two bills, House Bill No. 5700, approved by a30 to 1 vote, and Substitute House Bill No. 5532, approved by a 21 to 1vote, that would have amended § 52-557h, the "exceptions" provisionof the act, making municipalities liable "for the creation or maintenanceof a dangerous structure or failure to guard or warn against a dangerousstructure that is the sole proximate cause of an injury." Substitute HouseBill No. 5532, § 2, File No. 587. Finally, in 1995, Raised Bill No. 6634proposed an amendment to § 52-557f to exclude explicitly municipalitiesfrom the definition of "owner"; however, there is no indication in thelegislative record why that bill never made it out of committee.

The defendants would like us to conclude, on the basis of these failedattempts to amend explicitly the act, that the interpretation of "owner"given by this court in Manning was indeed approved by the legislature. Theplaintiff argues that, in light of the judiciary committee's recommendationand overwhelming support for the elimination of municipal immunity, onthree separate occasions, it is unreasonable to view the legislature asacting in approval or acquiescence of Manning. "[W]e are

reluctant to drawinferences regarding legislative intent from the failure of a legislativecommittee to report a bill to the floor, because in most cases the reasons

[238 Conn. 680]

for that lack of action remain unexpressed and thus obscured in the midstof committee inactivity." In re Valerie D., 223 Conn. 492, 518 n. 19,613 A.2d 748 (1992).[15] Rather than draw inferences from the judiciarycommittee's decision to recommend the amendments or, conversely, drawinferences from the failure of the bill to reach the floor of eitherchamber, we conclude that the four years' worth of silence is notsufficiently unambiguous and longstanding to overcome the other soundreasons for our conclusion to overrule Manning.

Accordingly, we now hold that municipalities are not "owners" withinthe act. Therefore, the trial court improperly rendered summary judgmentagainst the plaintiff.[16]

II

In light of our resolution of the first question, we do not answer thesecond question on which we granted certification.

This court, in phrasing the questions for certification, limited its reviewto whether Manning should be overruled and, if Manning is not overruled,whether the association owed a duty to theplaintiff separate and apart from any duty it owed as an owner.[17] We

[238 Conn. 681]

neglected to ask what duty the association would owe if Manning is indeedoverruled, thereby stripping the town of its immunity, and concomitantly,whether the association can nevertheless be an "owner" under the act eventhough it has not opened its property to the public. Although theAppellate Court concluded that the association was an "owner" under theact; Conway v. Wilton, supra, 39 Conn. App. 287; that decision was made inthe context of our holding in Manning, which we have now overruled.

The judgment of the Appellate Court is reversed and the case withrespect to the association is remanded to that court for consideration ofwhether the association is an "owner" under § 52-557f (3) in order todefine the scope of the association's liability; the case with respect tothe town and Dixon is remanded to the Appellate Court with direction toremand the case to the trial court for further proceedings according tolaw.

In this opinion BORDEN and PALMER, Js., concurred.

1. The Connecticut Association of Secondary Schools is now named theConnecticut Association of Schools.

2. The conference is an extension of the association that directs andcontrols athletic competition between the secondary schools of Connecticut.

3. General Statutes § 52-557f provides: "As used in sections 52-557f to52-557i, inclusive: "(1) `Charge' means the admission price or fee asked in return forinvitation or permission to enter or go upon the land; "(2) `Land' means land, roads, water, watercourses, private ways andbuildings, structures, and machinery or equipment when attached to therealty; "(3) `Owner' means the possessor of a fee interest, a tenant, lessee,occupant or person in control of the premises; "(4) `Recreational purpose' includes, but is not limited to, any ofthe following, or any combination thereof: Hunting, fishing, swimming,boating, camping, picnicking, hiking, pleasure driving, nature study, waterskiing, snow skiing, ice skating, sledding, hang gliding, sportparachuting, hot air ballooning and viewing or enjoying historical,archaeological, scenic or scientific sites." Although the current revision of § 52-557f (4) includes specificactivities under "recreational purpose" that were not included in thestatute in 1986 when this action arose, the statute is otherwise the same. General Statutes § 52-557g provides: "(a) Except as provided insection 52-557h, an owner of land who makes all or any part of the landavailable to the public without charge, rent, fee or other commercialservice for recreational purposes owes no duty of care to keep the land, orthe part thereof so made available, safe for entry or use by others forrecreational purposes, or to give any warning of a dangerous condition,use, structure or activity on the land to persons entering for recreationalpurposes. "(b) Except as provided in section 52-557h, an owner of land who,either directly or indirectly, invites or permits without charge, rent, feeor other commercial service any person to use the land, or part thereof,for recreational purposes does not thereby: (1) Make any representationthat the premises are safe for any purpose; (2) confer upon the person whoenters or uses the land for recreational purposes the legal status of aninvitee or licensee to whom a duty of care is owed; or (3) assumeresponsibility for or incur liability for any injury to person or propertycaused by an act or omission of the owner. "(c) Unless otherwise agreed in writing, the provisions of subsections(a) and (b) of this section shall be deemed applicable to the duties andliability of an owner of land leased to the state or any subdivisionthereof for recreational purposes." General Statutes § 52-557h provides: "Nothing in sections 52-557f to52-557i, inclusive, limits in any way the liability of any owner of landwhich otherwise exists: (1) For wilful or malicious failure to guard orwarn against a dangerous condition, use, structure or activity; (2) forinjury suffered in any case where the owner of land charges the person orpersons who enter or go on the land for the recreational use thereof,except that, in the case of land leased to the state or a subdivisionthereof, any consideration received by the owner for the lease shall not bedeemed a charge within the meaning of this section." General Statutes § 52-557i provides: "Nothing in sections 52-557f to52-557i, inclusive, shall be construed to relieve any person using theland of another for recreational purposes from any obligation which he mayhave in the absence of said sections to exercise care in his use of suchland and in his activities thereon, or from the legal consequences offailure to employ such care."

4. Black's Law Dictionary (6th Ed. 1990) defines stare decisis as "[t]oabide by, or adhere to, decided cases."

5. Stare decisis plays an integral role in our legal culture and hasbeen the subject of numerous commentaries. See, e.g., K. Llewellyn, "CaseLaw," in 3 Encyclopedia of the Social Sciences (E. Seligman ed., 1930) p.249; R. Pound, "The Theory of Judicial Decision," 36 Harv. L. Rev. 940,942-43 (1923); L. Powell, "Stare Decisis and Judicial Restraint," 47 Wn.& Lee L. Rev. 281, 286-87 (1990).

6. "The model act provided in part: "`PUBLIC RECREATION ON PRIVATE LANDS: LIMITATIONS ON LIABILITY. . . "`Section 1. The purpose of this act is to encourage owners of land tomake land and water areas available to the public for recreational purposesby limiting their liability toward persons entering thereon for suchpurposes. "`Section 2. As used in this act: "`(a) "Land" means land, roads, water, watercourses, private ways andbuildings, structures, and machinery or equipment when attached to therealty. "`(b) "Owner" means the possessor of a fee interest, a tenant, lessee,occupant or person in control of the premises. "`(c) "Recreational purpose" includes, but is not limited to, any ofthe following, or any combination thereof: hunting, fishing, swimming,boating, camping, picnicking, hiking, pleasure driving, nature study,water skiing, winter sports, and viewing or enjoying historical,archaeological, scenic, or scientific sites. "`(d) "Charge" means the admission price or fee asked in return forinvitation or permission to enter or go upon the land. "`Section 3. Except as specifically recognized by or provided inSection 6 of this act, an owner of land owes no duty of care to keep thepremises safe for entry or use by others for recreational purposes, or togive any warning of a dangerous condition, use, structure, or activity onsuch premises to persons entering for such purposes. "`Section 4. Except as specifically recognized by or provided inSection 6 of this act, an owner of land who either directly or indirectlyinvites or permits without charge any person to use such property forrecreational purposes does not thereby: "`(a) Extend any assurance that the premises are safe for any purpose. "`(b) Confer upon such person the legal status of an invitee orlicensee to whom a duty of care is owed. "`(c) Assume responsibility for or incur liability for any injury toperson or property caused by an act of omission of such persons. "`Section 5. Unless otherwise agreed in writing, the provisions ofSections 3 and 4 of this act shall be deemed applicable to the duties andliability of an owner of land leased to the state or any subdivisionthereof for recreational purposes. "`Section 6. Nothing in this act limits in any way any liability whichotherwise exists: "`(a) For willful or malicious failure to guard or warn against adangerous condition, use, structure, or activity. "`(b) For injury suffered in any case where the owner of land chargesthe person or persons who enter or go on the land for the recreational usethereof, except that in the case of land leased to the state or asubdivision thereof, any consideration received by the owner for such leaseshall not be deemed a charge within the meaning of this section. "`Section 7. Nothing in this act shall be construed to: "`(a) Create a duty of care or ground of liability for injury topersons or property. "`(b) Relieve any person using the land of another for recreationalpurposes from any obligation which he may have in the absence of this actto exercise care in his use of such land and in his activities thereon, orfrom the legal consequences of failure to employ such care. "`Section 8. [Insert effective date.]' 24 Council of StateGovernments, `Public Recreation on Private Lands: Limitations onLiability,' Suggested State Legislation (1965) pp. 150-52." Scrapchanskyv. Plainfield, supra, 226 Conn. 463-64 n. 2 (Katz, J., dissenting).

7. "Public Acts 1967, No. 623." Scrapchansky v. Plainfield, supra,226 Conn. 464 n. 3 (Katz, J., dissenting).

8. "Connecticut's statute, like those of many other states, had itsgenesis in the model act. G. Thompson & M. Dettmer, [supra, 61 Mich. B.J.726]. The introductory statement of the reasons for the model act istherefore entitled to consideration. The preamble provides: `Recent yearshave seen a growing awareness of the need for additional recreational areasto serve the general public. The acquisition and operation of outdoorrecreational facilities by governmental units is on the increase. However,large acreages of private land could add to the outdoor recreation resourcesavailable. . . . [I]n those instances where private owners are willing tomake their land available to members of the general public without charge,it is possible to argue that every reasonable encouragement should be givento them. "`In something less than one-third of the states, legislation has beenenacted limiting the liability of private owners who make their premisesavailable for one or more public recreational uses. This is done on thetheory that it is not reasonable

to expect such owners to undergo the risksof liability for injury to persons and property attendant upon the use oftheir land by strangers from whom the accommodating owner receives nocompensation or other favor in return. "`The suggested act which follows is designed to encourageavailability of private lands. . . .' 24 Council of State Governments,`Public Recreation on Private Lands: Limitations on Liability,' SuggestedState Legislation (1965) p. 150." Scrapchansky v. Plainfield, supra,226 Conn. 466 n. 4 (Katz, J., dissenting).

9. "It was also remarked before the Senate that `this is an importantbill. And will probably do more to open up land to recreation purposeswithout the expenditure of a single penny on the part of the state.' 14 S.Proc., Pt. 4, 1971 Sess., p. 1679, remarks of Senator Roger W. Eddy."Scrapchansky v. Plainfield, supra, 226 Conn. 467 n. 5 (Katz, J.,dissenting).

10. Because immunity conferred by General Statutes § 52-557g is inderogation of the common law, it should be strictly construed to effectuateits intended purpose; McKinley v. Musshorn, 185 Conn. 616, 621,441 A.2d 600 (1981); and "is to be limited to matters clearly broughtwithin its scope." Willoughby v. New Haven, 123 Conn. 446, 454,197 A. 85 (1937).

11. "We have often stated that we will not assume the legislatureenacted legislation that serves no useful purpose. Hartford Electric LightCo. v. Water Resources Commission, 162 Conn. 89, 99, 291 A.2d 721 (1971);Anthony v. Administrator, 158 Conn. 556, 565, 265 A.2d 61 (1969).Furthermore, if a statute is susceptible to an interpretation by which sucha consequence can be avoided, that interpretation will be found. HartfordElectric Light Co. v. Water Resources Commission, supra [99]."Scrapchansky v. Plainfield, supra, 226 Conn. 469 n. 7 (Katz, J.,dissenting).

12. The defendants also urge this court to follow the Appellate Courtopinion in Drisdelle v. Hartford, 3 Conn. App. 343, 345-46, 488 A.2d 465,cert. denied, 196 Conn. 801, 491 A.2d 1104 (1985), wherein that court heldthat a municipality was a landowner as defined within General Statutes §52-557j, which limits the liability of landowners for injuries sustained bysnowmobilers riding on their lands. Although that decision is not bindingon this court and we take no position as to its propriety, we note that §§52-557j and 52-557g serve different purposes: § 52-557g offers immunity asan incentive for private landowners to open up their land to free publicuse, while the purpose of § 52-557j is to immunize landowners fromliability to snowmobilers regardless of whether their land is open to thepublic for recreational use and regardless of whether the owner even knowsthat others are using its land. See 14 H.R. Proc., Pt. 8, 1971 Sess., p.3544.

13. We note that four states explicitly exclude public entities fromtheir recreational land use statutes. See Haw. Rev. Stat. §§ 520-1 through520-3 (1993); Iowa Code §§ 461C.1 through 461C.7 (Sup. 1996); Minn. Stat.§§ 604A.21 through 604A.25 (Sup. 1996); N.C. Gen. Stat. §§ 38A-1 through38A-2 (1995). We further note that ten states have judicially extended theimmunity under their recreational land use statutes to public entities;see, e.g., Stone Mountain Memorial Assn. v. Herrington, 225 Ga. 746,171 S.E.2d 521 (1969); Page v. Louisville, 722 S.W.2d 60 (Ky. App. 1986);Anderson v. Springfield, 406 Mass. 632, 549 N.E.2d 1127 (1990); Matthewsv. Detroit, 141 Mich. App. 712, 367 N.W.2d 440 (1985); Watson v. Omaha,209 Neb. 835, 312 N.W.2d 256 (1981); Trimblett v. State,156 N.J. Super. 291, 383 A.2d 1146 (1977); Johnson v. New London,36 Ohio St.3d 60, 521 N.E.2d 793 (1988); Hughey v.Grand River Dam Authority, 897 P.2d 1138 (Okla. 1995); Hoggv. Clatsop County, 46 Or. App. 129, 610 P.2d 1248 (1980);Commonwealth v. Auresto, 511 Pa. 73,511 A.2d 815 (1986); and four states have judicially excluded publicentities from the immunity provided by their recreational land usestatutes. See, e.g., Delta Farms Reclamation District v. Superior Court,33 Cal.3d 699, 660 P.2d 1168, 190 Cal.Rptr. 494,cert. denied, 464 U.S. 915, 104 S.Ct. 277, 78 L.Ed.2d 257 (1983);Pensacola v. Stamm, 448 So.2d 39 (Fla. Dist. Ct. App. 1984); Ferres v.New

Rochelle, 68 N.Y.2d 446, 510 N.Y.S.2d 57, 502 N.E.2d 972 (1986);Stamper v. Board of Education, 191 W. Va. 297, 445 S.E.2d 238 (1994).

14. The town argues that to overrule Manning would constitute aviolation of article second of the Connecticut constitution, as amended byarticle eighteenth of the amendments, which provides in relevant part:"The powers of government shall be divided into three distinct departments,and each of them confided to a separate magistracy, to wit, those which arelegislative, to one; those which are executive, to another; and those whichare judicial, to another." We disagree. The municipal immunity thedefendants seek to preserve stems from a judicially crafted interpretationof the term "owner." For all the aforestated reasons, that interpretationwas incorrect. The legislature that passed the act never articulated theneed for municipal immunity to ensure adequate public recreationalfacilities. Its sole focus was on private landowners. This court actswell within its powers when it disavows its earlier interpretation withoutsignificantly interfering with the orderly conduct of the essentialfunctions of another branch of government. See Bartholomew v. Schweizer,217 Conn. 671, 676, 587 A.2d 1014 (1991).

15. In In re Valerie D., supra, 223 Conn. 517-26, we examined twoproposed bills that took directly contrary approaches to the issue beforethe committee in question. Under those "limited circumstances . . . thecommittee's endorsement of one bill and rejection of the other, coupledwith the legislature's passage of the bill endorsed by the committee,provide[d] a sufficient foundation for an inference regarding legislativeintent." Id., 518 n. 19.

16. Because the town is not an "owner," neither the town, as theprincipal, nor Dixon, its parks department director, as its agent, isimmune by virtue of the act. To hold otherwise would "completely bypass"the act. Manning v. Barenz, supra, 221 Conn. 262.

17. With respect to the second certified question, the plaintiff claimsthat even if the association is an "owner" within the meaning of the actbased upon its control over the property during the tournament and itsresponsibilities as an "owner" to inspect the and to ascertain andremedy any dangerous conditions, the association also had a legal dutyseparate and apart from its responsibilities as an owner to make areasonable site selection. See Wagenblast v. Odessa School District,110 Wn.2d 845, 852-56, 758 P.2d 968 (1988) (due to intimate relationshipbetween interscholastic sports and other aspects of public education,school district owes duty of care to athletes engaged in interscholasticsports, which duty may delegate to private interscholastic activitiesassociation); see also Carabba v. Anacortes School District,72 Wn.2d 939, 435 P.2d 936 (1967).

18. In this case, the record for legislative acquiescence in our decisionin Manning v. Barenz, supra, 221 Conn. 256, is unusually strong because itdoes not depend on mere legislative silence. Testimony at hearings beforethe Joint Committee on the Judiciary in 1993, 1994 and 1995 informed thelegislature of the competing positions of tort claimants and recreationalfacility providers with respect to Manning. See Conn. Joint StandingCommittee Hearings, Judiciary, Pt. 6, 1995 Sess., pp. 2025-38; Conn. JointStanding Committee Hearings, Judiciary, Pt. 5, 1995 Sess., pp. 1718-20,1739, 1769; Conn. Joint Standing Committee Hearings, Judiciary, Pt. 3, 1994Sess., pp. 803-806, 822-32, 855-66, 888-99; Conn. Joint Standing CommitteeHearings, Judiciary, Pt. 4, 1993 Sess., pp. 1126-28, 1131-32, 1197-1203,1238-39, 1289-92, 1414. Although the Judiciary Committee approved billsthat would have changed the outcome in Manning, the legislature did notenact them. This record demonstrates, at the least, that the legislaturewas informed of the Manning decision and

chose to take no further actionin response thereto.

19. The highest of our sister states have also applied aheightened standard when considering whether to overturn precedentinvolving the construction of a statute. See, e.g., In re Speer,53 Idaho 293, 299-300, 23 P.2d 239 (1933); Samselv. Wheeler Transport Services, Inc., 246 Kan. 336, 356-57,789 P.2d 541 (1990), overruled on other grounds, Bair v. Peck,248 Kan. 824, 844, 811 P.2d 1176 (1991); Geier v.Mercantile-Safe Deposit & Trust Co., 273 Md. 102, 124, 328 A.2d 311(1974); Kansas City Public Service Co. v. Ranson, 328 Mo. 524, 536-37,41 S.W.2d 169 (1931); Bottomly v. Ford, 117 Mont. 160, 167-68, 157 P.2d 108(1945); Jensen v. Labor Council, 68 Nev. 269, 280-81, 229 P.2d 908 (1951);Higby v. Mahoney, 48 N.Y.2d 15, 18-19, 396 N.E.2d 183, 421 N.Y.S.2d 35(1979); People v. Hobson, 39 N.Y.2d 479, 488-90, 348 N.E.2d 894,384 N.Y.S.2d 419 (1976); In re Burtt's Estate,353 Pa. 217, 231-32, 44 A.2d 670(1945); Powers v. Powers, 239 S.C. 423, 427, 123 S.E.2d 646 (1962).

20. The United States Supreme