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SCHALLER, J., dissenting. The majority reverses the decision of the trial court, which applied the general rule of governmental immunity for discretionary acts and barred the plaintiff, Sharon Durrant, from recovering damages from the defendant board of education of the city of Hartford. I respectfully disagree with this result because it expands one of the limited exceptions to this general rule. Because the adult plaintiff was on school property to pick up her child, who was attending an extracurricular, after school day care and homework study program, I believe that the majority has exceeded the firm standards established by our Supreme Court in *Burns* v. *Board of Education*, 228 Conn. 640, 638 A.2d 1 (1994), and more recently in *Prescott* v. *Meriden*, 273 Conn. 759, 873 A.2d 175 (2005). I conclude that the trial court's well reasoned decision properly determined that the plaintiff's recovery is barred by governmental immunity and that she is not an identifiable member of a foreseeable class of persons on the basis of our jurisprudence. Accordingly, I respectfully dissent.

I

Before discussing the specifics of the present case, it is useful to identify the relevant general principles of law. The appropriate starting point is a discussion of governmental immunity. "A municipality itself was generally immune from liability for its tortious acts at common law . . . but its employees faced the same personal tort liability as private individuals. It was once said that as a general rule governmental officers and employees were personally liable for their torts, more or less without exception, even where the governmental unit itself was protected by an immunity. . . . [Our Supreme Court] first adopted a version of qualified official immunity in 1920 in *Wadsworth* v. *Middletown*, 94 Conn. 435, 439, 109 A. 246 (1920) . . . ." (Citations omitted; internal quotation marks omitted.) *Gordon* v. *Bridgeport Housing Authority*, 208 Conn. 161, 165–66, 544 A.2d 1185 (1988).

In *Wadsworth*, our Supreme Court noted: "Where the discretion has been exercised erroneously but in good faith through an error of judgment, the public official should not be required to pay damages for his acts. The affairs of government cannot be conducted with absolute exactitude, and public officials cannot be expected to act in all cases with certain judgment. Timidity and doubt would govern their performance of public duty if they acted in the consciousness that personal liability might follow, no matter how closely they followed their best discretion. Courts should not too closely scrutinize the acts of discretion on the part of the public official . . . even though there be an erroneous exercise of discretion, when the good faith of the

transaction is manifest and the most that the situation indicates is an error of judgment.'' *Wadsworth* v. *Middletown*, supra, 94 Conn. 440.

''The general rule is that governments and their agents are immune from liability for acts conducted in performance of their official duties. The common-law doctrine of governmental immunity has been statutorily enacted and is now largely codified in General Statutes § 52-557n. A defendant is entitled to judgment as a matter of law if the duties allegedly breached required the exercise of judgment or discretion, in some measure, by the governmental employee.'' *Bonamico* v. *Middletown*, 47 Conn. App. 758, 761, 706 A.2d 1386, vacated on other grounds, 49 Conn. App. 605 (1998).[1] Simply put, ''[a] municipal employee . . . has a qualified immunity in the performance of a governmental duty, but he may be liable if he misperforms a ministerial act, as opposed to a discretionary act.'' (Internal quotation marks omitted.) *Purzycki* v. *Fairfield*, 244 Conn. 101, 107, 708 A.2d 937 (1998).

Three exceptions to the general rule of governmental immunity have developed in our law on the basis of ''*compelling* policy considerations.'' (Emphasis added; internal quotation marks omitted.) Id., 120 (*Callahan*, *C. J.*, dissenting). ''The immunity from liability for the performance of discretionary acts by a municipal employee is subject to three exceptions or circumstances under which liability may attach even though the act was discretionary: first, where the circumstances make it apparent to the public officer that his or her failure to act would be likely to subject an identifiable person to imminent harm . . . second, where a statute specifically provides for a cause of action against a municipality or municipal official for failure to enforce certain laws . . . and third, where the alleged acts involve malice, wantonness or intent to injure, rather than negligence.'' (Citations omitted.) *Evon* v. *Andrews*, 211 Conn. 501, 505, 559 A.2d 1131 (1989). The identifiable person-imminent harm exception applies to narrowly defined classes of foreseeable victims as well as identifiable individuals. *Colon* v. *Board of Education*, 60 Conn. App. 178, 184, 758 A.2d 900, cert. denied, 255 Conn. 908, 763 A.2d 1034 (2000); see also *Burns* v. *Board of Education*, supra, 228 Conn. 646; *DeConti* v. *McGlone*, 88 Conn. App. 270, 273, 869 A.2d 271, cert. denied, 273 Conn. 940, 875 A.2d 42 (2005); *Gajewski* v. *Pavelo*, 36 Conn. App. 601, 620, 652 A.2d 509 (1994), aff'd, 236 Conn. 27, 670 A.2d 318 (1996).

II

In order to explain my disagreement, it is necessary to trace the path of relevant case law pertaining to the ''member of an identifiable class'' exception to the rule granting governmental immunity to municipal employees for discretionary acts in the school setting. This journey begins with *Burns*, decided in 1994,[2] and con-

cludes with *Prescott*. The plaintiff in *Burns* was a schoolchild who was required by statute to attend the school where he sustained an injury during school hours on an icy courtyard. *Burns* v. *Board of Education*, supra, 228 Conn. 650. Our Supreme Court decided that the child was one of a class of foreseeable victims to whom the defendant superintendent owed a duty of protection. Id. The defense of governmental immunity did not apply under the circumstances in which parents are statutorily compelled to relinquish protective custody of their children to a school board and its employees. Id., 649–51. Central to the holding in *Burns* was the statutory requirement that the plaintiff attend school, coupled with his entitlement to a public education as guaranteed by article eighth, § 1, of the Connecticut constitution. Id., 649.

"In delineating the scope of a foreseeable class of victims exception to governmental immunity, our courts have considered numerous criteria, including the imminency of any potential harm, the likelihood that harm will result from a failure to act with reasonable care, and the identifiability of the particular victim. . . . Other courts, in carving out similar exceptions to their respective doctrines of governmental immunity, have also considered whether the legislature specifically designated an identifiable subclass as the intended beneficiaries of certain acts . . . whether the relationship was of a voluntary nature . . . the seriousness of the injury threatened . . . the duration of the threat of injury . . . and whether the persons at risk had the opportunity to protect themselves from harm. (Citations omitted.) Id., 647–48.

In *Purzycki* v. *Fairfield*, supra, 244 Conn. 103–104, the minor plaintiff suffered injuries when he was tripped by another student in an unmonitored school hallway. In discussing the applicable exception to governmental immunity, our Supreme Court reiterated that "*schoolchildren who are statutorily compelled to attend school, during school hours on school days*, can be an identifiable class of victims." (Emphasis added.) Id., 109. The court concluded that the "limited time period and limited geographical area, namely, the one-half hour interval when second grade students were dismissed from the lunchroom to traverse an unsupervised hallway on their way to recess" constituted sufficient evidence for a jury to find imminent harm. Id., 110.

In *Colon* v. *Board of Education*, supra, 60 Conn. App. 177–80, a teacher negligently opened a door and struck the minor plaintiff in the head and facial area. The trial court rendered summary judgment in favor of the defendant on the ground that the opening of the door was a discretionary act and that none of the exceptions to governmental immunity applied. Id., 180. This court considered the "imminency of any potential harm, the likelihood that harm will result from a failure to act with

reasonable care, and the identifiability of the particular victim,'' and concluded that *schoolchildren* are members of an identifiable class of foreseeable victims because they are statutorily required to attend school. Id., 184. In reversing the judgment of the trial court, we concluded that the teacher opened the door in a negligent manner, the danger was limited to a specific time and location, and there was a potential for significant injury. Id., 187–88.

We reached a different conclusion in *Doe* v. *Board of Education*, 76 Conn. App. 296, 819 A.2d 289 (2003). In that case, three male students accosted and sexually assaulted the twelve year old plaintiff at school. Id., 297. The trial court struck the plaintiff's complaint on the ground of governmental immunity. Id., 298. In discussing the exceptions to the rule of governmental immunity, we again emphasized the importance of the fact that, as a school-aged child, the plaintiff was statutorily required to attend school. Id., 301. We also stated that this exception ''has *received very limited recognition in this state*.'' (Emphasis added; internal quotation marks omitted.) Id., 302. We affirmed the judgment of the trial court on the ground that, unlike *Burns* and *Purzycki*, the alleged danger was not limited to a particular time or place within the school. Id., 304–306.

Finally, in *Prescott*, our Supreme Court refused the adult plaintiff's invitation to enlarge the category of foreseeable victims, emphasizing that the only class of foreseeable victims that we have recognized for these purposes is that of schoolchildren attending public schools during school hours. *Prescott* v. *Meriden*, supra, 273 Conn. 764. The unsuccessful plaintiff in *Prescott*, which was decided in 2005, was the parent of a high school student-athlete. Id., 761. The plaintiff, attending his son's football game as a spectator, was on school grounds after school hours. Id., 761–62. Our Supreme Court, in applying the *Burns* doctrine, first concluded that the plaintiff, as the parent of a student, was not entitled to any special consideration in the face of dangerous conditions. Id., 764. More specifically, the court stated that parents are not the intended beneficiaries of any particular duty of care imposed by statute, nor are they legally required to attend school. Id. The court then advanced three other considerations that militated in favor of the defendants. First, the plaintiff's attendance at the game was purely voluntary. Id. In other words, he was no different from any other member of the general public. Second, the court expressly stated that, in this particular legal context, parents are different from children in the context of determining the applicability of an exception to governmental immunity. Id., 764–65. Third, to allow this plaintiff to qualify for the exception would ''mean that all spectators at a public municipal event would constitute a class of foreseeable victims for these purposes, *thus making the exception so broad that it would threaten to swallow the rule*.''

(Emphasis added.) Id., 765. The court went on to say that the public policy of promoting parental involvement in a child's education did not justify extending the duty of care abrogating governmental immunity to parents attending school sponsored activities. Id., 766.

Prescott reaffirmed the factors deemed important by the *Burns* court. The *Prescott* court did not suggest areas in which the exception should be expanded, nor did it provide any test for expanding the exception. Moreover, our Supreme Court did not give any indication that we should expand the doctrine on the basis of some undefined policy consideration. Because *Prescott* rejected any extension of the *Burns* doctrine on exceptions to governmental immunity under these circumstances and, in fact, confirmed its viability, we are left with *Burns* as the sole guide for future situations. The fact that *Prescott* addressed a scenario that, if recognized, would have expanded *Burns*, does not cause the original *Burns* doctrine to be expanded.

The following common features can be distilled from an analysis of these cases. First, the ''identifiable class of foreseeable victims'' is a narrow exception to the general rule entitling municipal employees to governmental immunity for discretionary acts. Second, the appellate courts of this state primarily have applied this exception when the plaintiff has been a school-aged child.[3] Children are required by statute to attend school. Moreover, due to their age and inexperience, children need to be safeguarded from their propensity to disregard dangerous conditions and circumstances. *Neal* v. *Shiels, Inc.*, 166 Conn. 3, 11, 347 A.2d 102 (1974); see generally *LePage* v. *Horne*, 262 Conn. 116, 124, 809 A.2d 505 (2002); *State* v. *Guess*, 244 Conn. 761, 776, 715 A.2d 643 (1998). Municipalities, therefore, through the school board and school officials, specifically are required to care for and protect the children during school hours, and public policy favors allowing recovery for an injured child when this obligation is performed negligently.

III

I now apply the relevant law to the facts of the present case. The claimant in this case is not the six year old *schoolchild*, but, rather, the child's parent. In her complaint, the adult *plaintiff* alleged that she sustained injuries in a fall caused by a puddle of water at the bottom of a set of exterior steps of a city school. It is noteworthy that the crucial concerns involving schoolchildren, initially identified in *Burns*, are absent in the present case.

The majority, nonetheless, approaches this case from the standpoint of the plaintiff's child, hypothesizing that the *child* would be a member of the *Burns* class. At the outset, because this issue is not before us, in my view, it is improper for us to postulate an answer to

that question. Any discussion of this issue constitutes, at best, dicta and, at worst, an advisory opinion. ''This court does not render advisory opinions. . . . As our Supreme Court explained more than a century ago, [s]uch action on our part would be clearly extra-judicial. It would be a case purely of advice and not of judgment. . . . Our action being extra-judicial . . . it cannot be of any binding character whatever. No Judge of the Supreme or Superior Court, in any case hereafter before him, would be bound by our opinion. We ourselves [would] not be bound by it. Being merely advice, it would be in contemplation of law . . . . *Reply of the Judges*, 33 Conn. 586, 586–87 (1867).'' (Citations omitted; internal quotation marks omitted.) *National Amusements, Inc.* v. *East Windsor*, 84 Conn. App. 473, 485, 854 A.2d 58 (2004).

Furthermore, unlike my colleagues in the majority, I am not at all persuaded that ''[i]t is not a large judicial leap to reason that the six year old student should be allowed to maintain an action against a municipality because, although not legally required to be on the premises after the school day had concluded, the child was legally present on the premises for the after school program by invitation from the defendants.'' *Burns* and *Prescott* limited the exception to schoolchildren attending school as required by law. The plaintiff's child was attending a purely voluntary after school program. The child participated in the program on a voluntary basis and attended on the day in question on a voluntary basis.[4] The majority's cursory resolution of this issue, in my view, suggests an unwarranted expansion of liability for all events that take place on school grounds. For example, would *Burns* apply if a child is injured while performing in a school event? What if a child is injured while playing football, or attending a school football game, as the adult plaintiff did in *Prescott*? These hypotheticals are meant to suggest my fundamental concerns with the unsupported expansion of the scope of this exception to governmental immunity.

The majority reasons that ''the six year old student would be in an identifiable class of foreseeable victims had he been the one who was allegedly injured.'' This apparently facilitates the ''judicial leap'' from *Burns* to the adult plaintiff in the present case. In my view, the gap between *Burns* and the present case is vast. By assuming that the six year old student would be within the ''class of foreseeable victims, the majority relies on a ''stepping stone'' for its ''judicial leap.'' Simply stated, I do not believe that such a ''stepping stone'' should be found in this case. Additionally, in making this ''judicial leap,'' the majority imports subtle changes in the way the *Burns* test is applied. The majority states that, contrary to the present factual setting, the presence of the plaintiff in *Prescott* was ''*not purely voluntary*.'' (Emphasis added). The *Burns* court, however, focused on the requirement that parents are ''*statutorily com-*

pelled to relinquish protective custody of their children to a school board and [therefore] its employees, the superintendent [had] the duty to protect the pupils in the board's custody from dangers that may reasonably be anticipated." (Emphasis added.) *Burns* v. *Board of Education*, supra, 228 Conn. 649. Presence that is "not purely voluntary" is vastly different from presence that results from statutory compulsion. The majority, however, appears to equate the two.

I also note that just as an extension favoring the *Prescott* plaintiff would have enlarged the class to include nonparental members of the public, a holding in the present case would do the same. How could an expansion in the present case not logically include nonparents who nevertheless are related to or have a social connection with the child? What if an older sibling slipped at the school while escorting the child? A family friend? An employee? Anyone entering the school premises as a designee of parents might well have to be included in the class of persons. As a result, the *exceptions could swallow the rule*, one of the main concerns of our Supreme Court in *Prescott*.

Just as the trial court in the present case accurately followed the *Burns* guidelines, so should we follow those guidelines. Because the *Prescott* case was decided less than one year ago, I can think of no reasonable basis on which we can determine, on the basis of "evolving expectations," that we should enlarge the class of persons to whom school officials owe duties of care beyond those previously specified. If our Supreme Court wants to expand the class of protected persons to persons in the class of the plaintiff in this case, it has authority to do so. As an intermediate appellate court, we are bound to follow the mandate of *Burns* in the absence of any language opening the door to expanding the class. To expand the exception to governmental immunity in this case, however, appears extremely dubious in light of *Prescott*.[5]

The facts of the present case, while not identical, are substantially similar to those in *Prescott*, in which our Supreme Court soundly rejected the plaintiff's claim. Both cases involve parents of schoolchildren who were participating in activities on school property after the school day had concluded. Both parents were present on school property by invitation or, at least, permission of the school officials. The *Prescott* plaintiff did not argue that he was required to attend the event. The plaintiff in the present case does present that argument in her appeal. As the trial court correctly noted, however, her pleadings failed to include any allegation that her presence was mandated. The first mention of that argument was in her memorandum of law submitted in connection with the summary judgment proceeding. Because *Burns* and its progeny, including *Prescott*, clearly rely on the statutory duty to attend school, and

because no such fact is part of the pleadings in this case, the trial court was correct, and its judgment should not be reversed because the court decided as it did in strict adherence to the dictates of our Supreme Court.[6]

The majority opinion approves the plaintiff's reasoning that her presence at the school was not voluntary because, as a parent, she was obligated to accompany her child from school to home. The majority goes on to explain that her legal duties as a parent required her to escort her child home. While it is true that parents have legal duties to care for children, those ''duties'' do not constitute the kind of mandatory, i.e., statutory, duties addressed by our Supreme Court in determining what individuals are part of an identifiable class of foreseeable persons. While no one would consider parental duties *voluntary* in the ordinary sense of the word, that does not mean that everything a parent does to care for a child is *required by law*. No statute or legal doctrine required the plaintiff to enroll her child in this after school program, nor did any law require her to allow her child to remain at school on that particular day or to pick up her child *personally* on this or any given day. All those actions were voluntary, notwithstanding the general parental duties of care. None of her voluntary choices should impose an additional duty of care on school authorities pursuant to the *Burns* standards.

The ''evolving expectations of a mature society'' language used in *Burns* does not justify this court, on the basis of its personal views of social policy, to enlarge the class of persons entitled to circumvent the protective bar of immunity that enables governmental entities to carry out their discretionary activities without liability concerns.[7]

In *Burns*, our Supreme Court held that the ''network of statutory and constitutional provisions'' require school officials to bear the responsibility for ''failing to act to prevent the risk of imminent harm to school children as an identifiable class of beneficiaries'' and ''[a]t least during school hours on school days'' when parents are required to relinquish custody of their children, the school has a duty to protect children from dangers that may reasonably be anticipated. *Burns* v. *Board of Education*, supra, 228 Conn. 649. In *Prescott*, that duty was not extended to parents because adults do not require such protection, nor are they required to be on school grounds, in the same manner that children are.[8] I do not believe, therefore, that we should look to the ''evolving standards of society'' in light of this precedent. Because our Supreme Court has created the framework to guide both this court and the Superior Court on this issue, our function is to employ those guidelines in the present factual setting by applying *Burns* and *Prescott*.

It is worth examining the ''evolving expectations''

language on which the majority relies so heavily. That phrase was quoted from a Massachusetts case, *Irwin* v. *Ware*, 392 Mass. 745, 756, 467 N.E.2d 1292 (1984), in the following context: ''The ultimate test of the existence of a duty to use care is found in the foreseeability that harm may result if it is not exercised. . . . Foreseeability in this context is a flexible concept, and may be supported by reasonable reliance, impeding others who might seek to render aid, statutory duties, property ownership or other factors. See [id., 756]. Moreover, just as the doctrine of governmental immunity and its exceptions are the product of the policy considerations that aid the law in determining whether the interests of a particular type are entitled to protection . . . so may evolving expectations of a maturing society change the harm that may reasonably be considered foreseeable. [Id.], 756–57. (Citations omitted; internal quotation marks omitted.) *Burns* v. *Board of Education*, supra, 228 Conn. 647. Chief Justice Peters clearly used the ''evolving expectations'' language in speaking of the ''harm that may reasonably be considered foreseeable.'' The language in question found its origin in *Irwin* in a similar context. *Irwin* involved an action by an injured motorist against a town under the Massachusetts Tort Claims Act. The issue was whether a town police officer's duty to remove an intoxicated operator of a motor vehicle from a highway was ministerial or discretionary for purposes of exemption from liability. The Supreme Judicial Court of Massachusetts determined that it was not discretionary. In addressing the special relationship between the town and the injured plaintiff, the court said: ''It has been said that such foreseeability can be based on reasonable reliance by the plaintiff, impeding other persons who might seek to render aid, statutory duties, property ownership or some other basis. As the harm which safely may be considered foreseeable to the defendant changes with the evolving expectations of a maturing society, so change the 'special relationships' upon which the common law will base tort liability for the failure to take affirmative action with reasonable care.'' *Irwin* v. *Ware*, supra, 756–57.

It is evident to me that our Supreme Court, in using the language from the Massachusetts Supreme Judicial Court in both *Burns* and *Prescott* was not extending an invitation for us to create and apply in the course of an appeal without an evidentiary basis, expanded duties and relationships that we might prefer to recognize on the basis of our individual perceptions of ''evolving expectations of a maturing society . . . .'' Id., 756.

I understand that, at first blush, it may seem compelling to adopt a policy that allows this plaintiff to recover damages for her alleged injuries. When the purpose for doing so is put in terms of avoiding ''the harm that may come to a six year old child in an urban setting if permitted to leave a school building unattended after a school program,'' the action seems even more persua-

sive. When the policy is urged as an appropriate action of a ''maturing society,'' further force is added. It is difficult, however, for me to envision such a policy being rationally limited to situations arising in urban settings. If such a policy were to be adopted, it would likely involve expanding the exception to immunity, not only to virtually all schoolchildren—in urban and nonurban settings alike—attending *all* extracurricular programs, but also to individuals other than parents on school premises for designated purposes. Truly, the exception ''would threaten to swallow the rule.'' *Prescott* v. *Meriden*, supra, 273 Conn. 765. Despite whatever momentary appeal such a policy might have, the consequences for school boards and municipalities would likely be enormous. If such a policy is to be considered, it is not our place to do so. We are obligated to follow the clear and unambiguous guidelines established by our Supreme Court in *Burns* and its progeny.

Finally, I note that the majority concludes by stating: ''The scope of the 'foreseeable class of victims' test is the 'product of the policy considerations that aid the law in determining whether the interests of a particular type are entitled to protection,' and these policy considerations are influenced by the 'evolving expectations of a maturing society' that may 'change the harm that may reasonably be considered foreseeable.' '' Supreme Court precedent has made it unmistakably clear that such is not the law at this time. Our obligation is to follow the well defined standards established in *Burns* and *Prescott*, in which our Supreme Court declined to expand the exception. Those standards, I believe, require that we affirm the judgment of the trial court.

For the foregoing reasons, I respectfully dissent.

[1] ''The Supreme Court remanded the [*Bonamico*] case to this court for reconsideration in light of *Purzycki* v. *Fairfield*, supra, 244 Conn. [101]. *Bonamico* v. *Middletown*, 244 Conn. 923, 714 A.2d 8 (1998). On remand, this court vacated its previous decision, reasoning that *Purzycki* controlled and required a result contrary to that previously reached. *Bonamico* v. *Middletown*, 49 Conn. App. 605, 606, 713 A.2d 1291 (1998).'' *Colon* v. *Board of Education*, 60 Conn. App. 178, 187, 758 A.2d 900, cert. denied, 255 Conn. 908, 763 A.2d 1034 (2000).

[2] Our Supreme Court previously had recognized the public duty of a public official to protect an identifiable person from imminent harm. See *Sestito* v. *Groton*, 178 Conn. 520, 528, 423 A.2d 165 (1979); see also *Shore* v. *Stonington*, 187 Conn. 147, 153, 444 A.2d 1379 (1982).

[3] See, e.g., *DeConti* v. *McGlone*, supra, 88 Conn. App. 271 (exception did not apply where tree fell, damaged motor vehicle on street); cf. *Tryon* v. *North Branford*, 58 Conn. App. 702, 710, 755 A.2d 317 (2000) (fellow firefighter considered member of identifiable class).

[4] If the child's presence is purely voluntary, can the parent's presence be deemed mandatory?

[5] Although *Prescott* may not have expressly excluded the parents of students from class status in all circumstances, it did follow the principle that exceptions to governmental immunity are narrowly drawn in this state.

[6] I also note that the majority excuses the plaintiff from expressly pleading a duty to be present, and concludes that is what the plaintiff pleaded. I believe the trial court was correct when it concluded that she could not raise on summary judgment an issue of fact that she had failed to raise in any pleading.

[7] ''One purpose of governmental immunity is to avoid injecting monetary claims of the public alleging harm arising out of the day-to-day operation

of discretionary municipal functions.'' *Tryon* v. *North Branford*, supra, 58 Conn. App. 723.

[8] The majority refers to General Statutes § 17b-737 and argues that it ''clearly allows grants to 'municipalities' and 'boards of education' in order to 'encourage the use of school facilities for the provision of child day care services before and after school.' '' The majority continues in its reasoning and states that the enactment of § 17b-737 indicates a legislative public policy in favor of allowing recovery for parents who pick their children up from school after participating in child care services before or after school. I do not understand how § 17b-737 requires or compels the plaintiff's presence at her child's school. I also disagree that § 17b-737 indicates legislative intent to expand the holdings of *Burns* and its progeny. The liability insurance requirement serves to protect against various types of risks associated with operating child care services. For example, such insurance would provide coverage if a child were injured and came within one of the recognized exceptions to governmental immunity. I cannot see how a general requirement of insurance for child care services indicates an implicit, sub silentio legislative intent to expand *Burns*.

I note that our Supreme Court has stated: ''[W]hen a statute is in derogation of common law or creates a liability where formerly none existed, it should receive a strict construction and is not to be extended, modified, repealed or enlarged in its scope by the mechanics of [statutory] construction. . . . In determining whether or not a statute abrogates or modifies a common law rule the construction must be strict, and the operation of a statute in derogation of the common law is to be limited to matters clearly brought within its scope. . . . This court has previously stated that [a] municipality itself was generally immune from liability for its tortious acts at common law . . . . We have also long recognized that, [u]nder our rule, the principle of governmental immunity extends to the construction and maintenance of fire equipment as well as to its use for fire protection. . . . We have also recognized, however, that governmental immunity may be abrogated by statute. . . . Thus, the general rule developed in our case law is that a municipality is immune from liability for negligence unless the legislature has enacted a statute abrogating that immunity.'' (Citation omitted; internal quotation marks omitted.) *Spears* v. *Garcia*, 263 Conn. 22, 28, 818 A.2d 37 (2003). I do not believe that the issue presented in this case is clearly within the scope of § 17b-737.