THOMAS PRIORE *v.* STEPHANIE HAIG
(SC 20511)

Robinson, C. J., and McDonald, D'Auria, Mullins,
Kahn, Ecker and Keller, Js.

Syllabus

Pursuant to the common law of this state, communications made in the course of and in furtherance of administrative proceedings that are quasi-judicial in nature are absolutely privileged.

Pursuant further to *Kelley* v. *Bonney* (221 Conn. 549), in determining whether an administrative proceeding is quasi-judicial in nature, a court may consider whether the body or entity conducting the proceeding has the discretion to apply the law to the facts and the authority (1) to exercise judgment and discretion, (2) to hear and determine or to ascertain facts and decide, (3) to make binding orders and judgments, (4) to affect the personal or property rights of private persons, (5) to examine witnesses and to hear the litigation of the issues, and (6) to enforce decisions or to impose penalties.

The plaintiff sought to recover damages for, inter alia, defamation in connection with statements that the defendant had made about the plaintiff at a public hearing before a town planning and zoning commission in connection with the plaintiff's application for a special permit to construct a new house and to install a new sewer line on his property. At the hearing, the defendant expressed her concerns regarding the plaintiff's application, stating, inter alia, that the plaintiff had not been trustworthy in prior dealings involving his application, that he had "a serious criminal past," and that he had paid more than $40 million in fines to the federal agency charged with enforcing federal securities

laws. The defendant filed a motion to dismiss the plaintiff's action for lack of subject matter jurisdiction, claiming that her statements were entitled to absolute immunity. The trial court granted the defendant's motion, concluding that her statements were entitled to absolute immunity because the proceeding before the commission was quasi-judicial in nature and the defendant's statements were pertinent to the proceeding. Accordingly, the trial court rendered judgment dismissing the action, from which the plaintiff appealed to the Appellate Court. The Appellate Court affirmed the trial court's judgment, reasoning that the first five factors set forth in *Kelley*, as well as certain public policy interests, weighed in favor of a determination that the proceeding was quasi-judicial. On the granting of certification, the plaintiff appealed to this court. *Held* that the Appellate Court incorrectly determined that the public hearing before the commission was a quasi-judicial proceeding, the defendant's statements therefore were not entitled to absolute immunity, and, accordingly, this court reversed the Appellate Court's judgment and remanded the case for further proceedings: courts charged with determining whether a proceeding is quasi-judicial in nature may consider, in addition to the six factors set forth in *Kelley*, any other factors that are relevant to the particular proceeding, including the procedural safeguards in place to ensure the reliability of the information presented at the proceeding and the authority of the body or entity to regulate the proceeding, and those courts must carefully scrutinize whether there is a sound public policy justification for affording absolute immunity in any given context; in the present case, the commission had discretion, pursuant to well settled principles of administrative law and the applicable municipal code, to apply the law to the facts set forth in the plaintiff's special permit application, the relevant statutes and regulations authorized the commission to approve, deny or table decision on the application, thus empowering the commission to make binding orders, and the commission's action on a special permit application generally would affect the property rights of the applicant or surrounding property owners, such that the first four factors set forth in *Kelley* weighed in favor of a determination that the proceeding at issue was quasi-judicial in nature; nevertheless, this court concluded that the hearing on the plaintiff's special permit application was not quasi-judicial in nature because it lacked procedural safeguards that would have served to ensure the reliability of the information presented, as there was no requirement that a declarant appearing before the commission make his or her statements under oath or otherwise certify that the information conveyed is accurate, there was no practical opportunity to meaningfully challenge the veracity of a declarant's statement, and there was no remedy available to the commission during a hearing if a witness were to convey knowingly false information, such as a charge of perjury; moreover, a local commission generally has limited authority to reject evidence, hold speakers accountable for statements made during the hearing, or other-

wise limit what information is presented to ensure the reliability of the proceeding, and public policy considerations militated against a conclusion that the proceeding at issue was quasi-judicial in nature because the public benefit to be derived from affording absolute immunity to statements made during a commission hearing was not sufficiently compelling in view of the possible damage that untruthful statements may cause to individual reputations, the lack of procedural safeguards in place to ensure reliability, and the protection afforded by the statute (§ 52-196a (b)) permitting a court to dismiss a complaint based on an opposing party's exercise of his or her constitutional right to free speech in connection with a matter of public concern; furthermore, this court's conclusion that the defendant's statements before the commission were not entitled to absolute immunity was consistent with the decisions of sister state courts that have determined that proceedings before a planning and zoning commission are not quasi-judicial in nature.

(Three justices concurring in part in one opinion)

Argued January 10—officially released September 7, 2022*

Procedural History

Action to recover damages for defamation, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the court, *Povodator, J.*, granted the defendant's motion to dismiss and rendered judgment dismissing the action, from which the plaintiff appealed to the Appellate Court, *Alvord*, *Prescott* and *Pellegrino*, *Js.*, which affirmed the trial court's judgment, and the plaintiff, on the granting of certification, appealed to this court. *Reversed*; *further proceedings*.

Eric D. Grayson, for the appellant (plaintiff).

Richard W. Bowerman, with whom, on the brief, was *Michael G. Caldwell*, for the appellee (defendant).

Opinion

McDONALD, J. This certified appeal requires us to determine whether a public hearing on a special permit application before a town's planning and zoning com-

* September 7, 2022, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

mission is a quasi-judicial proceeding such that public statements made during the hearing are entitled to absolute immunity. The plaintiff, Thomas Priore, brought this defamation action against the defendant, Stephanie Haig, seeking to recover damages for injuries that he claims to have sustained as a result of the defendant's allegedly defamatory statements about the plaintiff made during a hearing before the Greenwich Planning and Zoning Commission. The plaintiff appeals from the judgment of the Appellate Court, which affirmed the trial court's judgment, concluding that the defendant's statements were entitled to absolute immunity. *Priore* v. *Haig*, 196 Conn. App. 675, 695, 712, 230 A.3d 714 (2020). On appeal, the plaintiff contends that the Appellate Court incorrectly concluded that the defendant's statements were entitled to absolute immunity because the hearing before the commission was not quasi-judicial and the statements concerning the plaintiff were not relevant to the subject matter of the commission's hearing. We agree with the plaintiff that the public hearing was not quasi-judicial in nature and, accordingly, reverse the judgment of the Appellate Court.

The record and the Appellate Court's opinion set forth the facts and procedural history; see id., 677–83; which we summarize in relevant part. In "2015, the plaintiff, through a limited liability company, purchased a property located at 15 Deer Park Meadow Road in Greenwich . . . . The property is part of a private subdivision known as the Deer Park Association . . . ." Id., 677. After purchasing the property, the plaintiff intended to demolish the existing house and build a new house. In addition to constructing the new house, the plaintiff agreed to replace an inaccessible sewer line that ran through the middle of his property and serviced a number of up-line users. Through an easement that the plaintiff agreed to grant, the new sewer

line would be available to other members of the association for access and repairs.

As part of the process for obtaining the commission's approval to construct the new house and to place the new sewer line on his property, the plaintiff was required to submit an application for a special permit. The plaintiff submitted the application and a final site plan, and, in January, 2016, the commission held a public hearing on the plaintiff's application. The hearing was to be the final hearing concerning the approval of the plaintiff's application. The primary issue to be addressed at the hearing was the location of the new sewer line. The record is silent as to whether the plaintiff attended the hearing.

The plaintiff's engineer, Anthony D'Andrea, attended the hearing and was the first person to address the commission concerning the plaintiff's application. He discussed various aspects of the plan to install the sewer line, including the way in which the installation of the sewer line might affect certain trees still existing on the property. "D'Andrea stated that trees had been 'removed during the demolition of the house' and that . . . a planting plan would be submitted 'that [would] include at least twenty [new] trees.' " Id., 678. D'Andrea also stated that the placement of the sewer line would protect the trees in the area, and the goal was to maximize the number of trees that could be preserved.

Thereafter, members of the public were invited to address the commission. The president of the Deer Park Association spoke first and informed the commission, among other things, that "subsequent speakers . . . would address the commission about trees that were important to members of the association. According to the president, the trees were important because they 'provide[d] privacy [and were] part of the character' of the neighborhood." Id. Michael Finkbeiner, a surveyor

and consulting professional forester retained by a member of the Deer Park Association, next addressed the commission. He stated that certain trees had already been cut down on the plaintiff's property and, "as a result of the plaintiff's representations [in his filings], the commission may have 'been deceived into thinking [that the trees shown in a topographic survey are] existing trees, but they are no more.' " Id., 679.

Later in the hearing, the defendant, the plaintiff's neighbor to the west, addressed the commission. She explained that she was worried that the plaintiff's proposed "sewer line would impact the health of the trees that she claimed to 'co-own' with the plaintiff. She also stated that the plaintiff had been 'very disrespectful of the neighbors' " throughout the process. Id. Important to the present appeal, the defendant went on to state that the plaintiff "does have a criminal past. I will not go into the exact details of it, but it's a serious criminal past. He's paid [more than] $40 million in fines to the [Securities and Exchange Commission]." In response, a planning and zoning commission member stated, "[t]hat's not of relevance to the [commission]." The defendant then concluded her remarks by expressing her desire for the commission to provide "real good oversight" of the project "because [the plaintiff] has not been trustworthy in the first dealings with us, and there are many more dealings to go."

D'Andrea again addressed the commission and acknowledged that a drawing of the property submitted by the plaintiff failed to indicate that certain trees had already been cut down. He also claimed, however, that the trees that the plaintiff had removed were present on the property at the time the application was submitted. In response, a member of the commission noted that the drawing the plaintiff had submitted was incomplete because it did not accurately depict the trees. The chairperson of the commission asked D'Andrea to

reconcile the drawing in light of the information that Finkbeiner had submitted. D'Andrea agreed to do so.

The commission adjourned the hearing and "tabl[ed] the decision on whether to approve the application until the plaintiff or his representatives provided it with the clarifications and information that it had requested." *Priore* v. *Haig*, supra, 196 Conn. App. 680. Thereafter, "the commission ultimately approved the plaintiff's [special permit] application 'with very little change or requirements from the town . . . .' " Id.

The plaintiff commenced this action in October, 2016. In his second revised complaint, sounding in libel per se, libel per quod, slander per se, slander per quod, and defamation, the plaintiff alleged that he had suffered "reputational damage . . . in his standing in the community and in his profession" because, during the January, 2016 public hearing, the defendant falsely accused him of prior criminal misconduct and of being untrustworthy. The defendant filed an answer and special defenses, denying the allegations and asserting, among other things, that she was immune from suit for defamation because she made those statements in the course of a quasi-judicial proceeding. The plaintiff moved to strike that defense.

The defendant then filed an objection to the plaintiff's motion to strike and, in the same document, moved to dismiss the plaintiff's action, claiming, among other things, that the trial court lacked subject matter jurisdiction over the plaintiff's action because the statements she made during the commission's hearing were entitled to absolute immunity. The plaintiff filed an objection to the defendant's motion to dismiss.

In January, 2018, the trial court granted the defendant's motion to dismiss. The trial court reasoned that it did not have jurisdiction over the plaintiff's claims because the statements that the defendant made about

the plaintiff at the commission's hearing were entitled to absolute immunity. In reaching this conclusion, the court determined that the commission's hearing on the special permit application constituted a quasi-judicial proceeding. The court also determined that the defendant's statements were pertinent to the subject matter of the hearing because they concerned the plaintiff's credibility. The court reasoned that the commission had to weigh the plaintiff's credibility when reviewing the representations that the plaintiff and his agents made to the commission in order to decide whether to approve his application. The plaintiff subsequently filed a motion to reargue and for reconsideration, which the trial court denied.

Thereafter, the plaintiff appealed to the Appellate Court, which affirmed the judgment of the trial court. *Priore* v. *Haig*, supra, 196 Conn. App. 712. The Appellate Court agreed with the trial court's conclusion that the defendant's statements were entitled to absolute immunity because the hearing before the commission was quasi-judicial and the defendant's statements were pertinent to the hearing. See id., 690–91, 705, 711. In reaching its conclusion that the hearing was quasi-judicial, the Appellate Court applied the six factors enumerated by this court in *Kelley* v. *Bonney*, 221 Conn. 549, 567, 606 A.2d 693 (1992); see *Priore* v. *Haig*, supra, 696–703; and determined that the first five factors weighed in favor of the determination that the hearing was quasi-judicial. Id., 697. The Appellate Court also concluded that public policy interests further supported this conclusion. Id., 705. In so concluding, however, the court also stated: "[W]e take this occasion to express our concern that this case arguably lies near the outer boundaries of the public policy justifications that underlie the absolute litigation immunity doctrine." Id., 711.

The plaintiff subsequently filed a petition for certification to appeal, which we granted, limited to the follow-

ing issue: "Did the Appellate Court correctly conclude that the defendant's public statements about the plaintiff at the meeting of the [commission] were entitled to absolute immunity, depriving the trial court of subject matter jurisdiction over the plaintiff's defamation action?" *Priore* v. *Haig*, 335 Conn. 955, 955–56, 239 A.3d 317 (2020).

On appeal, the plaintiff contends that the defendant's statements at the hearing are not entitled to absolute immunity because the hearing before the commission was not quasi-judicial. The plaintiff argues that, notwithstanding the *Kelley* factors, the "focus of whether a hearing is truly quasi-judicial should be centered on whether it . . . resembles a court or tribunal proceeding and has procedural safeguards [that] promote reliability and due process." The plaintiff contends that there were no procedural safeguards in place at the commission's hearing, and, as a result, it was not quasi-judicial. Even if the hearing was quasi-judicial, the plaintiff contends, the defendant's statements were not entitled to absolute immunity because the statements were not relevant to the hearing.[1] The defendant disagrees and contends that the Appellate Court properly applied the *Kelley* factors to conclude that the hearing was quasi-judicial and correctly concluded that the defendant's statements were pertinent to the hearing.

Before addressing the merits of the plaintiff's claim on appeal, we note the standard that governs our review in this case. "A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . A motion to dismiss tests, inter alia, whether, on the

[1] The plaintiff also contends that the Appellate Court improperly applied a "pertinence" standard when it should have applied a "relevance" standard. Because we conclude that the hearing was not quasi-judicial, we need not address this contention. See footnote 8 of this opinion.

face of the record, the court is without jurisdiction. . . . [O]ur review of the trial court's ultimate legal conclusion and resulting [decision to] grant . . . the motion to dismiss will be de novo." (Internal quotation marks omitted.) *Styslinger* v. *Brewster Park, LLC*, 321 Conn. 312, 316, 138 A.3d 257 (2016). "In undertaking this review, we are mindful of the well established notion that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *Cuozzo* v. *Orange*, 315 Conn. 606, 614, 109 A.3d 903 (2015). The parties do not dispute that absolute immunity implicates the trial court's subject matter jurisdiction. See, e.g., *Scholz* v. *Epstein*, 341 Conn. 1, 8–9, 266 A.3d 127 (2021). In addition, the determination of whether a public hearing on a special permit application before a town's planning and zoning commission constitutes a quasi-judicial proceeding presents a question of law, over which our review is plenary. See, e.g., *Craig* v. *Stafford Construction, Inc.*, 271 Conn. 78, 83, 856 A.2d 372 (2004). "Within this limitation, however, whether a particular proceeding is quasi-judicial in nature, for the purposes of triggering absolute immunity, will depend on the particular facts and circumstances of each case." Id., 83–84.

This court has long held that "communications uttered or published in the course of judicial proceedings are absolutely privileged [as] long as they are in some way pertinent to the subject of the controversy." (Internal quotation marks omitted.) *Gallo* v. *Barile*, 284 Conn. 459, 466, 935 A.2d 103 (2007); see, e.g., *Charles W. Blakeslee & Sons* v. *Carroll*, 64 Conn. 223, 232, 29 A. 473 (1894) (recognizing privilege), overruled in part on other grounds by *Petyan* v. *Ellis*, 200 Conn. 243, 510 A.2d 1337 (1986). The effect of such an absolute privilege is that damages cannot be recovered for the publication of a privileged statement, even if the statement

is defamatory. See, e.g., *Craig* v. *Stafford Construction, Inc.*, supra, 271 Conn. 84.

"The policy underlying the privilege is that in certain situations the public interest in having people speak freely outweighs the risk that individuals will occasionally abuse the privilege by making false and malicious statements. . . . The rationale underlying the privilege is grounded [on] the proper and efficient administration of justice. . . . Participants in a judicial process must be able to testify or otherwise take part without being hampered by fear of [actions seeking damages for statements made by such participants in the course of the judicial proceeding]." (Citations omitted; internal quotation marks omitted.) *Hopkins* v. *O'Connor*, 282 Conn. 821, 838–39, 925 A.2d 1030 (2007). "Put simply, absolute immunity furthers the public policy of encouraging participation and candor in judicial . . . proceedings. This objective would be thwarted if those persons whom the common-law doctrine was intended to protect nevertheless faced the threat of suit." *Chadha* v. *Charlotte Hungerford Hospital*, 272 Conn. 776, 787, 865 A.2d 1163 (2005).

"[L]ike the privilege which is generally applied to pertinent statements made in formal judicial proceedings, an absolute privilege also attaches to relevant statements made during administrative proceedings which are quasi-judicial in nature. . . . Once it is determined that a proceeding is [quasi-judicial] in nature, the absolute privilege that is granted to statements made in furtherance of it extends to every step of the proceeding until final disposition." (Citations omitted; internal quotation marks omitted.) *Kelley* v. *Bonney*, supra, 221 Conn. 565–66. We have repeatedly explained, however, that "[t]he . . . proceeding to which [absolute] immunity attaches has not been defined very exactly. It includes any hearing before a tribunal which performs a judicial function, ex parte or otherwise, and whether

the hearing is public or not. It includes . . . lunacy, bankruptcy, or naturalization proceedings, and an election contest. It extends also to the proceedings of many administrative officers, such as boards and commissions, so far as they have powers of discretion in applying the law to the facts which are regarded as judicial or quasi-judicial, in character." (Internal quotation marks omitted.) Id., 566. The uncertainty as to which proceedings are quasi-judicial in nature persists to this day. See, e.g., *Kenneson* v. *Eggert*, 196 Conn. App. 773, 782, 230 A.3d 795 (2020).

This court has formulated various standards for determining whether a proceeding is quasi-judicial. First, in *Petyan* v. *Ellis*, supra, 200 Conn. 243, we described the test for determining whether a proceeding before a board or commission is quasi-judicial as an inquiry into whether the board or commission "ha[s] powers of discretion in applying the law to the facts which are regarded as judicial or quasi-judicial, in character." (Internal quotation marks omitted.) Id., 246. Applying that test, we concluded that information provided by a defendant employer on a " 'fact-finding supplement' " form of the employment security division of the state Department of Labor was entitled to absolute immunity. Id., 247–48. We reasoned that, "[i]n the processing of unemployment compensation claims, the administrator, the referee and the [E]mployment [S]ecurity [B]oard of [R]eview decide the facts and then apply the appropriate law. . . . The employment security division of the . . . department, therefore, acts in a quasi-judicial capacity when it acts [on] claims for unemployment compensation." (Citations omitted; footnotes omitted.) Id., 248–49.

In *Kelley* v. *Bonney*, supra, 221 Conn. 549, this court next considered whether a teaching certificate revocation proceeding before the state Board of Education was quasi-judicial in nature. See id., 566–71. After reiter-

ating the rule from *Petyan* that a proceeding may be quasi-judicial when the body or entity conducting the proceeding has the discretion to apply the law to the facts, this court went on to identify additional factors that could "assist in determining whether a proceeding is [quasi-judicial] in nature. Among them are whether the body has the power to: (1) exercise judgment and discretion; (2) hear and determine or to ascertain facts and decide; (3) make binding orders and judgments; (4) affect the personal or property rights of private persons; (5) examine witnesses and hear the litigation of the issues on a hearing; and (6) enforce decisions or impose penalties." Id., 567. These "factors are not exclusive; nor must all factors militate in favor of a determination that a proceeding is quasi-judicial in nature for a court to conclude that the proceeding is, in fact, quasi-judicial." (Internal quotation marks omitted.) *Carter* v. *Bowler*, 211 Conn. App. 119, 123, 271 A.3d 1080 (2022). We have made clear that these factors are "[i]n addition" to, not in lieu of, the application of the law to fact requirement. *Craig* v. *Stafford Construction, Inc.*, supra, 271 Conn. 85. Indeed, the first two factors largely mirror *Petyan*'s law to fact requirement. See *Petyan* v. *Ellis*, supra, 200 Conn. 246. This court, in *Kelley*, went on to conclude that the teaching certificate revocation proceeding was quasi-judicial. *Kelley* v. *Bonney*, supra, 571. Specifically, the court pointed to the "significant regulatory authority to conduct proceedings of a [quasi-judicial] nature. The detailed procedures, which ensure the reliability of teacher decertification proceedings, and the compelling public policy concern for the protection of [school-age] children persuade us that the decertification proceedings before the state [B]oard of [E]ducation were [quasi-judicial] in nature . . . ." Id.

The plaintiff contends that, although not specifically enumerated in the *Kelley* factors, our case law also

looks to the procedural safeguards that attend to the proceeding and the authority of the entity to regulate the proceeding, which promote reliability and due process, as part of the analysis to determine whether a proceeding is truly quasi-judicial in nature.[2] We agree.

For example, in *Craig* v. *Stafford Construction, Inc.*, supra, 271 Conn. 78, this court, in concluding that an investigation by a police department's internal affairs division constituted a quasi-judicial proceeding; see id., 93; expressly relied on out-of-state case law that considered "the procedural safeguards provided by the statutory scheme governing disciplinary proceedings [that] were adequate to minimize the occurrence of defamatory statements." (Internal quotation marks omitted.) Id., 91. This court explained that the internal affairs investigation at issue in *Craig* provided procedural safeguards, namely, "[t]he witnesses give sworn statements to the investigator during the investigation, and the form on which they sign their statement[s] informs the witness that he or she can be criminally liable for filing a false statement." Id., 87. Moreover, "[a]t the formal hearing, the [police] officer has a right to be represented by counsel. . . . In addition, the [police] department subpoenas witnesses to testify at the formal hearing, and . . . it is undisputed that the witnesses complied with the subpoena and testified before the hearing offi-

[2] The plaintiff also asks us to adopt the standard articulated by the Court of Appeals of Maryland in *Gersh* v. *Ambrose*, 291 Md. 188, 434 A.2d 547 (1981). In *Gersh*, the court explained that the nature and scope of administrative proceedings are "too varied to be circumscribed by specific criteria. Rather, we have decided that whether absolute witness immunity will be extended to any administrative proceeding will have to be decided on a case-by-case basis and will in large part turn on two factors: (1) the nature of the public function of the proceeding and (2) the adequacy of procedural safeguards which will minimize the occurrence of defamatory statements." Id., 197. We decline the plaintiff's invitation to adopt this test to replace an analysis based on the other considerations our case law has identified. We think the better course is to consider procedural safeguards as part of a broader quasi-judicial analysis, as our case law has consistently done.

cer. Witnesses who testify at the formal hearing are sworn and must testify under oath. The [police] officer also has the right to cross-examine the witnesses. In addition, at the formal hearing, a city attorney is present in order to rule on questions of evidence. During the hearing, the hearing officer takes notes on the testimony and evidence presented and, thereafter, transcribes his notes into typed form, which constitutes the record for the purposes of the hearing. After the hearing is concluded, the hearing officer makes findings and a recommendation of decision regarding the appropriate punishment." Id., 88.

Similarly, in *Kelley*, this court looked to the nature of the procedural safeguards that were incorporated in the structure of the proceeding and noted that "a request for revo[king] . . . [a teaching certificate had to be] made under oath . . . . Upon receipt of such request, the state board of education had to conduct a preliminary inquiry to determine whether probable cause for revocation of the certificate existed." *Kelley* v. *Bonney*, supra, 221 Conn. 568–69. In the event the state Board of Education held a hearing, "the holder [of the teaching certificate] was entitled to be heard, to examine the records of investigations, to be present throughout the hearing, to be represented by counsel, to call and cross-examine witnesses and to present oral argument." Id., 570.

In *Petyan*, this court also looked to the procedural safeguards involved and found it significant that the state employment security division possessed subpoena power and that the defendant was required to certify that the information he forwarded to the state was true and correct. See *Petyan* v. *Ellis*, supra, 200 Conn. 250, 251. Finally, in *Hopkins* v. *O'Connor*, supra, 282 Conn. 821, we concluded that a commitment proceeding was judicial in nature "[b]ecause of the significant procedural protections" afforded by the proceeding. Id., 831;

see also id., 831 n.3 (noting that procedural protections include respondent's right to be present at hearing, right to appointed counsel, right to cross-examine witnesses, and right to appeal from adverse decision).

We think it eminently reasonable for courts to consider the procedural safeguards attendant to a proceeding because "[s]tatements made during proceedings that lack basic [due process] protections generally do not engender fair or reliable outcomes." *Spencer* v. *Klementi*, 136 Nev. 325, 333, 466 P.3d 1241 (2020). As a result, proceedings that lack such procedural safeguards do not adequately protect a critical public policy undergirding the doctrine of absolute immunity—to encourage robust participation and candor in judicial and quasi-judicial proceedings while providing some deterrent against malicious falsehoods. In an analogous context, we look to, among other things, the "procedural safeguards [that exist] in the system that would adequately protect against [improper] conduct by [a government] official" when determining whether the official should be accorded absolute judicial immunity. (Internal quotation marks omitted.) *Gross* v. *Rell*, 304 Conn. 234, 249, 40 A.3d 240 (2012). Accordingly, we agree with the plaintiff that the procedural safeguards of the proceeding and the authority of the entity to regulate the proceeding, which promote reliability and due process safeguards to ensure that accusatory or unflattering allegations are subject to the requirements of reliability, are relevant considerations that are part of a court's analysis of whether a particular proceeding is quasi-judicial in nature.[3] See, e.g., 50 Am. Jur. 2d 667–68, Libel and Slander § 283 (2017) ("[w]hether the

[3] Although not explicitly enumerated in *Kelley*, we note that a consideration of the procedural safeguards of a proceeding and the authority of the entity to regulate the proceeding are similar to the fifth *Kelley* factor—whether the entity or the body conducting the proceeding has the power to "examine witnesses and [to] hear the litigation of the issues on a hearing . . . ." *Kelley* v. *Bonney*, supra, 221 Conn. 567.

statements in an administrative proceeding are within the ambit of absolute privilege is decided on a case-by-case basis and turns on the nature of the public function of the proceeding and *the adequacy of procedural safeguards which will minimize the occurrence of defamatory statements*" (emphasis added)). Indeed, given that the *Kelley* factors do not represent an exhaustive list of considerations, there may well be additional considerations relevant in other circumstances.

Finally, in each case in which this court has evaluated whether a proceeding is quasi-judicial, we have explained that it is also "important to consider whether there is a sound public policy reason for permitting the complete freedom of expression that a grant of absolute immunity provides." (Internal quotation marks omitted.) *Craig* v. *Stafford Construction, Inc.*, supra, 271 Conn. 85; see, e.g., *Hopkins* v. *O'Connor*, supra, 282 Conn. 839; *Kelley* v. *Bonney*, supra, 221 Conn. 567. In considering the public policy rationale, we are mindful that "[a]bsolute immunity . . . is strong medicine . . . ." (Internal quotation marks omitted.) *Gallo* v. *Barile*, supra, 284 Conn. 471. In most cases, the policy considerations require balancing the public interest of encouraging public participation and candor, on the one hand, and the private interest of protecting individuals from false and malicious statements, on the other. Cf. id. ("whether and what form of immunity applies in any given case is a matter of policy that requires a balancing of interests" (internal quotation marks omitted)); *Rioux* v. *Barry*, 283 Conn. 338, 346, 927 A.2d 304 (2007) (same).

In sum, a quasi-judicial proceeding is one in which the entity conducting the proceeding has the power of discretion in applying the law to the facts within a framework that contains procedural protections against defamatory statements. As part of their inquiry into whether a proceeding is truly quasi-judicial, courts may consider the relevant factors enumerated by this court

in *Kelley* to determine whether the entity exercises powers akin to a judicial entity. See *Kelley* v. *Bonney*, supra, 221 Conn. 567. Courts may also consider other factors that are relevant to a given proceeding, including the procedural safeguards of the proceeding and the authority of the entity to regulate the proceeding. Finally, courts must always carefully scrutinize whether there is a sound public policy justification for the application of absolute immunity in any particular context.

With this in mind, we turn to the facts of this case. It is well settled that, when acting on a special permit application, a town's planning and zoning commission acts in an administrative capacity. See, e.g., *A.P. & W. Holding Corp.* v. *Planning & Zoning Board*, 167 Conn. 182, 184–85, 355 A.2d 91 (1974). It is also well settled that, when acting in this administrative capacity on a special permit application, a planning and zoning commission has "discretion to determine *whether* the proposal meets the standards set forth in the regulations. If, during the exercise of its discretion, the . . . commission decides that all of the standards enumerated in the special permit regulations are met, then it can no longer deny the application. The converse is, however, equally true. Thus, the . . . commission can exercise its discretion during the review of the proposed special [permit], as it applies the regulations to the specific application before it." (Emphasis in original.) *Irwin* v. *Planning & Zoning Commission*, 244 Conn. 619, 628, 711 A.2d 675 (1998). Indeed, in the present case, the Greenwich Municipal Code requires the commission to exercise its discretion in deciding whether to approve the special permit application. See Greenwich Municipal Code § 6-17 (a) (2016) ("[c]ommission shall determine that the proposed use conforms with the overall intent of these regulations and the purposes of each zone"); id., § 6-17 (d) (commission "shall consider all the standards contained in [§] 6-15 (a)," and it "shall

consider" twelve enumerated attributes of proposed use in special permit application); id., § 6-17 (e) ("[c]ommission may require applicants for special permit to prepare and submit any additional data and studies as necessary to allow the [c]ommission to arrive at its determinations"). Accordingly, we conclude that the commission has the discretion to apply the law, in this case, zoning regulations, to the facts set forth in the application before it. This conclusion militates in favor of a determination that the hearing was quasi-judicial.

Turning to the *Kelley* factors, we note that the first two factors are encompassed in our discussion regarding the commission's powers of discretion to apply the law to the facts. See *Kelley* v. *Bonney*, supra, 221 Conn. 567 (first two *Kelley* factors are "whether the body has the power to . . . (1) exercise judgment and discretion . . . [and] (2) hear and determine or to ascertain facts and decide"). We agree with the Appellate Court's conclusion that the third and fourth factors—whether the commission was empowered to "make binding orders and judgments" and whether the commission had the power to "affect the personal or property rights of private persons"; id.—also weigh in favor of a determination that the hearing was quasi-judicial. *Priore* v. *Haig*, supra, 196 Conn. App. 701–702. The relevant statutes and regulations authorize the commission to approve, deny, or table decision on the plaintiff's application. Thus, the commission is empowered to make binding orders. Moreover, we have explained that "[z]oning regulations . . . are in derogation of [common-law] property rights . . . ." *Planning & Zoning Commission* v. *Gilbert*, 208 Conn. 696, 705, 546 A.2d 823 (1988). Therefore, whatever action the commission takes on a special permit application affects the property rights of the applicant or surrounding property owners. For example, if the commission denies a special permit

application, it would restrict a property owner's ability to use his property in the manner he desires.

Significantly, however, the hearing before the commission had almost no procedural safeguards in place to ensure the reliability of the information presented at the proceeding. Unlike the proceedings in *Craig* and *Petyan*, there is no requirement that a declarant before the commission make her statements under oath or otherwise certify that the information is true and correct.[4] See *Craig* v. *Stafford Construction, Inc.*, supra, 271 Conn. 87; *Petyan* v. *Ellis*, supra, 200 Conn. 250; cf. *DeLaurentis* v. *New Haven*, 220 Conn. 225, 264, 597 A.2d 807 (1991) ("[although] no civil remedies can guard against lies, the oath and the fear of being charged with perjury are adequate to warrant an absolute privilege for a witness' statements"). "The fact that statements [made during a planning and zoning commission hearing] are not under oath occasionally results in knowingly false statements which may affect the application." R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 20:11, p. 611. There is also no practical opportunity to meaningfully challenge the veracity of a statement made by a member of the

[4] Indeed, speakers at a planning and zoning commission public hearing are not witnesses in the traditional sense. Our case law typically recognizes that it is "*parties* to or *witnesses* before judicial or quasi-judicial proceedings [who] are entitled to absolute immunity for the content of statements made therein." (Emphasis added; internal quotation marks omitted.) *Preston* v. *O'Rourke*, 74 Conn. App. 301, 311, 811 A.2d 753 (2002). This is logical because "[a] witness' reliability is ensured by his [or her] oath, the hazard of cross-examination and the threat of prosecution for perjury." *Bruce* v. *Byrne-Stevens & Associates Engineers, Inc.*, 113 Wn. 2d 123, 126, 776 P.2d 666 (1989); see, e.g., *Briscoe* v. *LaHue*, 460 U.S. 325, 333–34, 103 S. Ct. 1108, 75 L. Ed. 2d 96 (1983) ("the [truth-finding] process is better served if the witness' testimony is submitted to the crucible of the judicial process so that the [fact finder] may consider it, after cross-examination, together with the other evidence in the case to determine where the truth lies" (internal quotation marks omitted)). There are often no such constraints on a speaker before a planning and zoning commission to ensure the truthfulness of her statements.

public.[5] Cf. id., § 20:3, p. 593 (public hearing before municipal administrative agency is not required to follow rules of evidence). Additionally, there is no remedy available to the commission during a hearing with respect to a witness who gives knowingly false information, such as a charge of perjury, as there is to a judge during a judicial proceeding. See, e.g., *Stega* v. *New York Downtown Hospital*, 31 N.Y.3d 661, 671, 107 N.E.3d 543, 82 N.Y.S.3d 323 (2018) ("[F]or absolute immunity to apply in a quasi-judicial context, the process must make available a mechanism for the party alleging defamation to challenge the allegedly false and defamatory statements. . . . [A]ny 'character assassination' that occurs in a judicial proceeding is at least in principle subject to charges of perjury."). The lack of procedural safeguards weighs heavily against a conclusion that the hearing was quasi-judicial. For these reasons, we also conclude that the commission did not have the power to "examine witnesses and [to] hear the litigation of the issues," in the traditional sense, as contemplated by the fifth *Kelley* factor. *Kelley* v. *Bonney*, supra, 221 Conn. 567.

Moreover, with respect to the authority of the entity to regulate the proceeding, the commission does not have discretion to reject the admission of evidence or testimony that is submitted, it cannot strike information from the record, and it does not have the power to subpoena witnesses. See, e.g., 9 R. Fuller, supra, § 21:5, p. 646 (In a proceeding before a land use agency, "[t]here is no effective mechanism for excluding evidence based [on] the considerations that apply to court

[5] We recognize that applicants before a planning and zoning commission may have limited opportunities to assert that a witness' statements are false. For example, following a comment made by a member of the public, an applicant could assert that the speaker was not being truthful. We conclude that this limited opportunity is not sufficient to appropriately protect either the private interest in minimizing the occurrence of defamatory statements or the public interest in ensuring reliable public participation.

proceedings. Evidence presented will not be excluded based on claims that it is not relevant, not the best evidence or that it amounts to hearsay."). Rather, sorting through potentially false or misleading public comments is left, informally, to commission members who may be "experienced in considering statements made by opponents, know[ing] their bias and the nature of their interest in the proceeding . . . ." Id., § 20:12, p. 616. Furthermore, administrative agencies, such as planning and zoning commissions, "may consider evidence which would normally be incompetent in a judicial proceeding, as long as the evidence is reliable and probative." Id., § 20:11, p. 612. Indeed, there are no rules of evidence applicable during a hearing on a special permit application. See, e.g., id., § 20:3, p. 593 ("Public hearings before a municipal administrative agency are not required to follow the same procedures required for trial of a civil action in court. Proceedings are informal and conducted without following rules of evidence applying to court proceedings."); see also, e.g., id., § 20:11, p. 611 ("[m]unicipal land use hearings in Connecticut do not follow the rules of discovery and evidence used in court proceedings"). In short, the commission has limited authority to ensure the reliability of information received during the hearing and has no authority to hold speakers accountable for statements made during the hearing. This conclusion also weighs against a determination that the hearing was quasi-judicial.

Turning to the public policy considerations, we acknowledge the Appellate Court's concern that a conclusion that the hearing was not quasi-judicial may serve as a disincentive to citizen participation in local governments by chilling free speech. *Priore* v. *Haig*, supra, 196 Conn. App. 705. "The rationale for extending the absolute [immunity] to statements made during quasi-judicial proceedings rests in the public policy that every

citizen should have the unqualified right to appeal to governmental agencies for redress without the fear of being called to answer in damages . . . .'' 50 Am. Jur. 2d, supra, § 283, pp. 666–67. The importance of ensuring public participation cannot be overstated. This public policy consideration, however, must be considered along with the private interest of protecting individuals from false and malicious statements. Cf. *Rioux* v. *Barry*, supra, 283 Conn. 346 (''the public interest of encouraging complaining witnesses to come forward must be balanced against the private interest of protecting individuals from false and malicious claims''). This is particularly important when, as we explained, the proceeding has minimal procedural safeguards in place to ensure the reliability of the information presented at the proceeding. After all, ''[t]he absolute [immunity] for communications in the context of quasi-judicial proceedings is intended to protect the integrity of the process and [*to*] *ensure that the quasi-judicial decision-making body gets the information it needs*.'' (Emphasis added.) 50 Am. Jur. 2d, supra, § 283, p. 667. In other words, the purpose of promoting citizen participation is, in large part, to ensure that the decision-making entity obtains accurate information to reach the correct result.

Moreover, the concern that declining to extend absolute immunity to statements made in these proceedings would discourage public participation is ameliorated, in some respects, by our state's statutory protection against a ''strategic lawsuit against public participation,'' also known as a SLAPP lawsuit.[6] See General

[6] ''SLAPP is an acronym for strategic lawsuit against public participation, the distinctive elements of [which] are (1) a civil complaint (2) filed against a nongovernment individual (3) because of their communications to government bodies (4) that involves a substantive issue of some public concern. . . . The purpose of a SLAPP [lawsuit] is to punish and intimidate citizens who petition state agencies and have the ultimate effect of chilling any such action.'' (Internal quotation marks omitted.) *Lafferty* v. *Jones*, 336 Conn. 332, 337 n.4, 246 A.3d 429 (2020), cert. denied, U.S. , 141 S. Ct. 2467, 209 L. Ed. 2d 529 (2021).

Statutes § 52-196a. Under this statutory scheme, a party may file a special motion to dismiss when the opposing party's complaint is based on the moving party's exercise of, among other things, the right of free speech or the right to petition the government in connection with a matter of public concern. See General Statutes § 52-196a (b); see also General Statutes § 52-196a (e) (3) (describing circumstances under which trial court must grant party's special motion to dismiss). Although the statutory protection against SLAPP lawsuits does not create a substantive right, the procedural mechanism that § 52-196a establishes, namely, the special motion to dismiss, provides a moving party with the opportunity to have the lawsuit dismissed early in the proceeding and stays all discovery, pending the trial court's resolution of the special motion to dismiss. See General Statutes § 52-196a (d). If the court grants the special motion to dismiss, the moving party is also entitled to costs and reasonable attorney's fees. See General Statutes § 52-196a (f) (1). Thus, speakers at a public hearing before a planning and zoning commission are afforded a procedural vehicle to more quickly vindicate their right to freely participate in planning and zoning commission public hearings in the event that they are subjected to unwarranted litigation seeking to silence their exercise of free speech. Indeed, the legislative history of § 52-196a indicates that the legislature contemplated that this statutory scheme would apply in precisely this type of situation to ensure speech was not chilled.[7] During the debate on the bill, the bill's

[7] We note that subsection (h) (6) of § 52-196a contains a list of instances in which the statute does not apply, including "to a common law or statutory claim for bodily injury or wrongful death, except the exclusion provided in this subdivision shall not apply to claims for (A) emotional distress unrelated to bodily injury or wrongful death or conjoined with a cause of action other than for bodily injury or wrongful death, or (B) *defamation, libel or slander*." (Emphasis added.)

Representative William Tong explained that "the purpose of the statute and the way that it operates is to provide that a plaintiff can dismiss a claim— let's just say for defamation—because they're exercising their constitutional

sponsor, Representative William Tong, explained that one situation in which the statute would apply is when "somebody speaks out often on a zoning issue about a development. They're a private citizen and they oppose a development for example and the developer has comparatively more resources to try to shut down that opposition and they do so by filing a defamation claim. It's sort of [a] textbook definition of what is colloquially known as a [libel] bully and they'll go and . . . initiate litigation to try to spend down the defendant and try to use the litigation process to pressure [the defendant] into standing down. That's the other situation in which we see this." 60 H.R. Proc., Pt. 16, 2017 Sess., pp. 6900–6901; see also 60 S. Proc., Pt. 6, 2017 Sess., pp. 2236–37, remarks of Senator John A. Kissel (explaining reasons for statute, including instances in which "certain folks, developers, if you went to a planning and zoning meeting and spoke against the development, that developer would slap a lawsuit on you and therefore [would be] chilling the public debate on developments . . . . So, what this legislation does is it creates a special mechanism to try to get these [lawsuits] taken out and dismissed as early as possible."); id., p. 2237, remarks of Senator Kissel ("this is a really good mechanism to help free flow of ideas so that folks aren't intimidated, [such as when] . . . someone with a lot of money . . . wants to develop property").

right to free speech. With that [having been] said, we wanted to make sure that this couldn't—that this special motion to dismiss could not otherwise be contorted to be used to dismiss a valid claim of a plaintiff for bodily injury, so a plaintiff shows up and files an action for wrongful death, bodily injury based on environmental pollution for example. You wouldn't want the defendant who might otherwise be guilty of that claim to be able to move to dismiss that claim for bodily injury. With that [having been] said, what we want to make sure is that if there is a counterclaim against the original plaintiff for defamation, [libel], or slander that that person could still use this motion to dismiss [or] . . . the [counterclaim], which is impairing that person's right to speak on initial public concern like for example environmental pollution." 60 H.R. Proc., Pt. 16, 2017 Sess., pp. 6950–51.

Given the absence of procedural safeguards to ensure the reliability of a proceeding before a planning and zoning commission, the public benefit to be derived from statements made by the public during a special permit application hearing before such a commission is not sufficiently compelling to outweigh the possible damage that untruthful statements may cause to individual reputations to warrant granting absolute immunity to such statements. See, e.g., *Burns* v. *Davis*, 196 Ariz. 155, 161, 993 P.2d 1119 (App. 1999) (board of adjustment proceeding was not quasi-judicial because "public policy dictates that [the] need to ensure complete and truthful testimony must be balanced against extending protection to administrative hearings in which a volunteer may defame someone under the guise of protecting the public" (internal quotation marks omitted)), review denied, Arizona Supreme Court, Docket No. CV-99-0365-PR (February 8, 2000). Thus, in balancing the competing policy interests, we conclude that public policy considerations militate against a conclusion that the hearing was quasi-judicial.

In light of the foregoing, we recognize that the commission has discretion to apply the law to the facts of the application before it and that certain *Kelley* factors weigh in favor of a determination that the hearing was quasi-judicial. Nevertheless, the lack of procedural safeguards, the limited authority of the commission to reject evidence or otherwise limit what information is brought before it to ensure the reliability of the proceeding, and the lack of a public policy rationale for extending the "strong medicine" of absolute immunity in this context lead us to conclude that a public hearing on a special permit application before a town's planning and zoning commission is not quasi-judicial.[8]

[8] Because we conclude that the hearing was not quasi-judicial, we need not address the plaintiff's contention that the defendant's statements were not relevant to the hearing.

Other jurisdictions have similarly concluded that proceedings before a planning and zoning commission are not quasi-judicial. For example, under circumstances similar to the present case, the Supreme Court of Nevada recently concluded that the plaintiff's neighbor was not entitled to absolute immunity for statements made during the public comment period of a planning commission meeting. *Spencer* v. *Klementi*, supra, 136 Nev. 325. The court reasoned that, "[d]uring the [public comment] period of . . . meetings [before a board and a planning commission], the public is invited to speak about relevant community issues. Although both proceedings provided parties the opportunity to present personal testimony during this period, neither required an oath or affirmation. Further, although [the speakers] were allowed to speak freely during the [public comment] periods, neither was subject to cross-examination or impeachment. Because these [public comment] periods lacked the basic [due process] protections we would expect to find in a court of law, they were not quasi-judicial in nature." Id., 332. The court went on to explain that "[e]xtending the [judicial proceedings] privilege to such statements thus does not comport with the privilege's policy to promote the [truth-finding] process in a judicial proceeding. . . . Based on our conclusion that the [public comment] periods . . . lacked basic [due process] protections, we conclude that public policy considerations do not weigh in favor of applying the [judicial proceedings] privilege . . . ." (Citation omitted; internal quotation marks omitted.) Id., 333.

The New Hampshire Supreme Court has also concluded that proceedings before a zoning board are not quasi-judicial. The court reasoned that "[z]oning boards and commissions are created by the legislature as a part of an administrative organization designed to effect flexible application of zoning rules, regulations and restrictions. They are delegated administrative power

with respect to permits, variances and nonconforming uses in order to provide a forum to individual property owners and others to voice the pro and con of zoning law, its application and administration. . . . Still, many elements of a true judicial proceeding [that] afford safeguards to the participants therein are not made a part of the required procedure at hearings held before such boards and commissions. . . .

"We find meager support for [the speaker's] contention that her remarks made before the zoning board of adjustment were entitled to the protection of an absolute privilege. . . . Nor do we feel that the public or private interests sought to be effectuated by public hearings held prior to the allowance or refusal of a petition for a variance dictate that such total immunity should obtain. The occasion determines the existence and scope of the privilege, if any . . . and the availability of an absolute privilege must be reserved for those situations [in which] the public interest is so vital and apparent that it mandates complete freedom of expression without inquiry into a [speaker's] motives." (Citations omitted.) *Supry* v. *Bolduc*, 112 N.H. 274, 275–76, 293 A.2d 767 (1972). We find the rationale of our sister state courts persuasive.

Accordingly, having concluded that a hearing on a special permit application before a town's planning and zoning commission is not quasi-judicial in nature, we also conclude that the Appellate Court incorrectly determined that the defendant's statements were entitled to absolute immunity. Thus, the Appellate Court improperly affirmed the judgment of the trial court dismissing the plaintiff's action for lack of subject matter jurisdiction.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to reverse the trial court's judgment and to remand the

case to the trial court for further proceedings according to law.

In this opinion MULLINS, KAHN and KELLER, Js., concurred.

D'AURIA, J., with whom ROBINSON, C. J., and ECKER, J., join, concurring in part and concurring in the judgment. I agree with the majority that the defendant in the present case, Stephanie Haig, has not established that the public hearing on the special permit application submitted by the plaintiff, Thomas Priore, before the Planning and Zoning Commission of the Town of Greenwich (commission) was a quasi-judicial hearing. Like the majority, I therefore conclude that she has not demonstrated that her statements before that commission are entitled to absolute immunity under the litigation privilege. I write separately, however, for two reasons.

First, although I agree with the majority's ultimate holding, I do not agree with certain aspects of its analysis. In short, I believe that the majority (1) understates the benefit of the plaintiff, an applicant before the commission, within that very same forum, being able to refute any false statements made about him at the public hearing, (2) overemphasizes the need for "due process" safeguards within that forum, and (3) overstates protections afforded to the defendant by Connecticut's "strategic lawsuits against public participation" (anti-SLAPP) statute, General Statutes § 52-196a. Second, the defendant's statements might be covered by an absolute immunity of a different strain. Specifically, although there are no clear precedents in this state, I believe that a public hearing on a special permit application before a town's planning and zoning commission may constitute a legislative proceeding, and, as such, comments made during and relevant to such a proceeding may be entitled to absolute immunity. Because that

issue has not been raised either in the trial court or in this court, however, that is an issue for another day.

I

The majority supports its conclusion that the public hearing on the plaintiff's special permit application was not a quasi-judicial proceeding in part by its description of the plaintiff's ability to refute the defendant's statement before the commission as a "limited opportunity . . . ." Although I conclude that this opportunity is not a sufficient procedural safeguard to assist the defendant in demonstrating that the commission undertakes a quasi-judicial function, I believe that the majority understates this opportunity.

Proceedings before such local agencies are not known for formality. The defendant made her statement during a period devoted to public comment on the plaintiff's application to, among other things, relocate a sewer line that ran through his property and serviced a number of "up-line users." A number of people, including the defendant, spoke against the application because of how it would affect trees in the neighborhood. The majority notes that the "record is silent on whether the plaintiff attended the hearing." If he chose to attend, the plaintiff undoubtedly could have responded to the defendant's allegation that he had a "serious criminal past," including that he had "paid [more than] $40 million in fines to the [Securities and Exchange Commission]." (Internal quotation marks omitted.) In fact, the plaintiff's engineer, Anthony D'Andrea, who did attend the hearing, responded to a number of assertions made by those who opposed the application. And, even if the plaintiff was not at the hearing, there does not appear to be anything that would have prevented him from correcting the record after the hearing. In fact, we know, as the majority observes, that the commission "adjourned the hearing and tabl[ed] the decision on

whether to approve the application until the plaintiff or his representatives provided it with the clarifications and information that it had requested." (Internal quotation marks omitted.) Surely, with that requested information, the plaintiff could have, if he wished, provided the commission with information explaining that the defendant's statement was false. Specifically, he could have informed the commission, as he informed the trial court in his memorandum of law in support of his motion to strike the defendant's special defenses, that, in an action entitled *Securities & Exchange Commission* v. *ICP Asset Management, LLC*, United States District Court, Docket No. 10 Civ. 4791 (LAK) (S.D.N.Y. September 6, 2012), he personally was assessed only a "modest" civil fine of approximately $487,000.[1]

Although it cannot be disputed that it was not the commission's responsibility, or perhaps not within its jurisdiction, to adjudicate the truthfulness of the defendant's statement about the plaintiff's supposed criminal

[1] In support of his memorandum of law in support of his motion to strike, the plaintiff attached as an exhibit the final judgment in *Securities & Exchange Commission* v. *ICP Asset Management, LLC*, supra, United States District Court, Docket No. 10 Civ. 4791 (LAK). He also provided this exhibit in the appendix to his brief to this court. Pursuant to that judgment, the plaintiff was found liable for disgorgement in the amount of $797,337, prejudgment interest in the amount of $215,045, and a civil penalty in the amount of $487,618, for a total amount due of $1,500,000. As to the other defendants in that federal securities case, the final judgment held ICP Asset Management, LLC, and Institutional Credit Partners, LLC, liable, jointly and severally, for disgorgement in the amount of $13,916,005 and prejudgment interest of $3,709,028; held ICP Asset Management, LLC, liable for a civil penalty in the amount of $650,000; and held ICP Securities, LLC, liable for disgorgement in the amount of $1,637,581, prejudgment interest in the amount of $301,893, and a civil penalty in the amount of $1,939,474. In total, the final judgment required the defendants to pay $23,653,981. The plaintiff in the present case, Priore, consented to the entry of this final judgment on behalf of himself and on behalf of all other defendants as president/CEO of those companies. This consent judgment was specifically limited to resolving civil liability. This court is not aware, however, of any criminal action brought in relation to this case.

past, this "limited opportunity" for the plaintiff to respond could have helped ensure the accuracy of the information placed before the commission in two ways: (1) The plaintiff, who had the greatest interest in making sure that the commission received accurate information to reach the right result on his application, could have corrected the record, and (2) once the plaintiff disputed or refuted the statement, the agency could have investigated the veracity of the statement at issue if it considered it important to a determination of the plaintiff's special permit application.

The majority disregards the benefit of this opportunity, I believe in large part, because of its overreliance on what it labels the lack of adequate "due process" safeguards before the commission. I agree that procedural safeguards are necessary to promote the reliability of the result before the commission, but the kind of due process rights contemplated by the majority is not implicated in the present case. The majority appears to contend that, for a planning and zoning commission proceeding to be eligible for quasi-judicial status, when a witness makes a statement before that commission, there must be sufficient procedural safeguards to give the plaintiff an opportunity not only to rebut the statement but for the agency to determine the statement's veracity so as to protect the plaintiff's reputation—in essence, a name-clearing hearing. The plaintiff, however, has no due process right to a determination of the accuracy of the statement of a witness who was not a state actor before a planning and zoning commission.

More is required to establish a due process violation than a simple claim of defamation: "[When] a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential. . . . [T]he remedy mandated by the [d]ue [p]rocess [c]lause of the [f]ourteenth [a]mendment is an opportunity to refute

the charge. . . . The purpose of such notice and hearing is to provide the person an opportunity to clear his name . . . ." (Citation omitted; internal quotation marks omitted.) *Hunt* v. *Prior*, 236 Conn. 421, 441, 673 A.2d 514 (1996). "However, under *Paul* v. *Davis*, [424 U.S. 693, 710–12, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976)], government acts defaming an individual implicate a liberty interest only [when] the individual suffers a related alteration of his legal status or deprivation of a right recognized under state law." *Hunt* v. *Prior*, supra, 441; see also *Singhaviroj* v. *Board of Education*, 301 Conn. 1, 6 n.5, 17 A.3d 1013 (2011) ("[s]uch an action is referred to as a stigma-plus claim; it involves an injury to one's reputation (the stigma) coupled with the deprivation of some tangible interest or property right (the plus), without adequate process" (internal quotation marks omitted)).

In the present case, there is no allegation that the government did anything to the plaintiff to place his "good name, reputation, honor, or integrity . . . at stake . . . ." (Internal quotation marks omitted.) *Hunt* v. *Prior*, supra, 236 Conn. 441. The commission is not even a party to the case. Rather, the plaintiff complains that the defendant, a member of the public and not a government actor, referred to his " 'criminal past' " at a public meeting. Even putting aside that there is no state action involved, to make out a due process claim, not only would the plaintiff have to demonstrate that he was injured in some way beyond being defamed (i.e., a stigma), but he also would have to demonstrate the deprivation of some tangible interest or property right (i.e., a plus). In the present case, the plaintiff alleges only that the defendant made the allegedly false statement "intentionally . . . to cause damage to [his] reputation" and that this statement did in fact "cause reputational damage . . . in his profession . . . ." Although it is true that "a liberty interest is implicated

when a plaintiff can show both harm to his reputation and serious damage to his prospects for future employment in his profession"; (internal quotation marks omitted) *Hunt* v. *Prior*, supra, 441; the plaintiff in the present case merely alleges harm to his professional reputation, not any "serious damage to his prospects for future employment in his profession . . . ." (Internal quotation marks omitted.) Id. Even if these allegations were sufficient to establish a stigma-plus claim, the plaintiff alleges harm to his professional reputation only as part of his damages; he does not assert a due process claim. Thus, although I agree with the majority that we must consider procedural safeguards when determining whether a proceeding is quasi-judicial, the majority's reliance on due process principles erroneously heightens the defendant's burden in establishing immunity from suit because the plaintiff has not alleged harm by a state actor or asserted a stigma-plus claim.

Finally, I also believe that the majority overstates the protections afforded to the defendant by our anti-SLAPP statute. The majority contends that § 52-196a "appl[ies] in precisely this type of situation to ensure speech [is] not chilled." In my view, § 52-196a does little to protect the defendant's first amendment rights, as it does not provide the defendant with any new or additional substantive rights. Compare *Trinity Christian School* v. *Commission on Human Rights & Opportunities*, 329 Conn. 684, 696, 189 A.3d 79 (2018) ("when the legislature intends to confer immunity from liability or from suit, it does so in distinctive and unmistakable terms"), with General Statutes § 52-196a. Rather, the statute merely creates a procedure by which the defendant may have her first amendment defense considered in an expedited fashion, as early as possible in the litigation, before the defendant is burdened by the cost of discovery. See General Statutes § 52-196a (b). It still requires litigation, albeit expedited, to determine

whether the first amendment protects the defendant's statements. See General Statutes § 52-196a (e) (1). Moreover, the special motion to dismiss permitted under § 52-196a is easily defeated under a probable cause standard. See General Statutes § 52-196a (e) (3). Thus, in my view, the anti-SLAPP statute does little to ameliorate the concern that lawsuits such as this one, brought against defendants for statements made in these proceedings, will discourage public participation before an agency such as the commission.

II

If a public hearing on a special permit application before a town's planning and zoning commission is not quasi-judicial, and I agree with the majority that the defendant has not established that it is, it may nonetheless very well constitute a legislative proceeding. Although Connecticut appellate courts have not addressed this issue, other jurisdictions have held that witnesses in a legislative proceeding are entitled to absolute immunity. These jurisdictions have applied different approaches to arrive at this conclusion.

For example, some state courts have held that, under their common law, the litigation privilege extends to both quasi-judicial and legislative proceedings so that witness comments made in a legislative proceeding are entitled to absolute immunity. See, e.g., *In re IBP Confidential Business Documents Litigation*, 755 F.2d 1300, 1310–11 (8th Cir. 1985) (granting defendant absolute immunity for statements made in letter submitted to congressional subcommittee, explaining that, under common law of New York and Tennessee, "[a] witness actually testifying before a legislative committee, like a witness testifying in court, enjoys absolute immunity from liability for defamation for statements made that are pertinent to the subject of inquiry or responsive to questions asked"); *Fiore* v. *Rogero*, 144 So. 2d 99, 102

(Fla. App. 1962) (one who testifies before legislative body or committee is "generally subject to the same rules of privilege accorded similar testimony in judicial proceedings"); *Erickson* v. *Marsh & McLennan Co.*, 117 N.J. 539, 563, 569 A.2d 793 (1990) ("[a] statement made in the course of judicial, administrative, or legislative proceedings is absolutely privileged and wholly immune from liability").

Other courts have held that the litigation privilege extends to witness statements made in a legislative proceeding because their state follows the Restatement (Second) of Torts. See, e.g., *Beverly Enterprises, Inc.* v. *Trump*, 1 F. Supp. 2d 489, 493 (W.D. Pa. 1998) (The defendant was entitled to absolute immunity for unsworn statements she made at a town hall meeting because "Pennsylvania has adopted section 590A of the Restatement (Second) of Torts as its common law. . . . That section provides, 'A witness is absolutely privileged to publish defamatory matter as part of a legislative proceeding in which he is testifying or in communications preliminary to the proceeding, if the matter has some relation to the proceeding.' . . . This testimonial immunity is absolute and similar in all respects to that afforded a witness in a judicial proceeding." (Citations omitted.)), aff'd, 182 F.3d 183 (3d Cir. 1999), cert. denied, 528 U.S. 1078, 120 S. Ct. 795, 145 L. Ed. 2d 670 (2000); *Burns* v. *Davis*, 196 Ariz. 155, 162, 993 P.2d 1119 (App. 1999) ("the Restatement [(Second) of Torts] extends absolute immunity in limited specified situations to judicial officers, attorneys at law, parties to judicial proceedings, witnesses in judicial proceedings, jurors, legislators, [and] witnesses in legislative proceedings"), review denied, Arizona Supreme Court, Docket No. CV-99-0365-PR (February 8, 2000). The defendant, however, in the present case does not ask this court to extend our litigation privilege to statements made in and relevant to legislative proceedings; nor

does she ask that this court adopt provisions of the Restatement (Second) of Torts.

Finally, another avenue by which state courts have granted absolute immunity to witness statements made in a legislative proceeding is by extending the scope of the legislative privilege. In Connecticut, this privilege applies to certain statements made by legislators in legislative proceedings. See, e.g., *Office of Governor* v. *Select Committee of Inquiry*, 271 Conn. 540, 563, 858 A.2d 709 (2004); *Traylor* v. *Gerratana*, 148 Conn. App. 605, 611–12, 88 A.3d 552, cert. denied, 312 Conn. 901, 91 A.3d 908, and cert. denied, 312 Conn. 902, 112 A.3d 778, cert. denied, 574 U.S. 978, 135 S. Ct. 444, 190 L. Ed. 2d 336 (2014). Other state courts have held that this privilege extends to witnesses, not just the legislators. See, e.g., *Arlington Heights National Bank* v. *Arlington Heights Federal Savings & Loan Assn.*, 37 Ill. 2d 546, 549, 229 N.E.2d 514 (1967) ("Traditionally, the members of legislative and judicial bodies have been accorded absolute privilege in the performance of their official acts and duties . . . and it is clear that an individual citizen is similarly privileged to some extent in his appearances and actions before these bodies." (Citations omitted.)). If a witness enjoys absolute immunity for statements made before a committee of the legislature, I would have trouble distinguishing the defendant in the present case from any other legislative witness, as she petitioned her local government to consider information that, in her view, was important when acting on the plaintiff's special permit application. See *Beverly Enterprises, Inc.* v. *Trump*, supra, 1 F. Supp. 2d 493 ("[A] legislative proceeding [is not] limited to an official hearing called by a legislative body, or by duly formed committees of that body, where witnesses are compelled to appear and testify under oath. . . . [T]he definition of a legislative proceeding is broad enough to encompass proceedings—including informal

fact-finding, information gathering, or investigative activities—that are conducted by legislators with the objective purpose of aiding the legislators in the drafting, debating, or adopting of proposed legislation." (Citations omitted.)); *J. D. Construction Corp.* v. *Isaacs*, 51 N.J. 263, 271, 239 A.2d 657 (1968) (absolute immunity may be accorded statements made before municipal governing body hearing zoning appeal depending "on individual circumstances and the . . . pertinency and relevancy of remarks or contentions to the questions legitimately before the governing body"). The defendant, however, has not claimed that the legislative privilege applies in the present case.

Thus, it remains an issue for this court to decide, another day, whether a public hearing on a special permit application before a town's planning and zoning commission constitutes a legislative proceeding and, if so, whether absolute immunity applies to public statements made at such a proceeding.

Accordingly, I concur in part.

STATE OF CONNECTICUT *v.* SHOTA MEKOSHVILI
(SC 20442)

Robinson, C. J., and McDonald, D'Auria, Mullins,
Kahn, Ecker and Keller, Js.

Syllabus

Convicted of the crime of murder in connection with the stabbing death of the victim, the defendant appealed. The defendant had hailed a taxicab that the victim was driving, and, after the victim drove the defendant to his destination, the defendant stabbed the victim repeatedly, robbed him, and fled the scene. At trial, the defendant admitted that he had stabbed the victim after accepting a ride from him but claimed that he had acted in self-defense. The defendant specifically testified that the victim had made a romantic advance toward him, a fight ensued, and, during the struggle, the victim took out a knife and began to attack the defendant but that the defendant wrestled the knife away and stabbed the victim repeatedly. The state presented abundant evidence from

which the jury reasonably could have concluded either that the defendant had fabricated various aspects of his story or that he had used more force than was necessary to defend himself against the smaller and older victim. At the conclusion of the trial, defense counsel requested that the trial court give a specific unanimity instruction that the jurors must agree unanimously as to which factor of this state's four factor self-defense test the state had disproved. The court denied counsel's request and, instead, instructed the jury on the law of self-defense largely in accordance with this state's model criminal jury instructions. The jury unanimously found the defendant guilty of murder, thereby rejecting his claim of self-defense, and the trial court rendered judgment in accordance with the jury's verdict. The Appellate Court affirmed the trial court's judgment, concluding that, pursuant to this court's prior decisions, although a jury must reject a claim of self-defense unanimously before it may find a defendant guilty, there is generally no requirement that jurors agree on which of the self-defense factors the state has disproven. On the granting of certification, the defendant appealed to this court, claiming that this court should revisit its precedent and conclude that, in order to reject a claim of self-defense, the jurors must unanimously agree as to which factor or factors of that defense the state has disproven beyond a reasonable doubt. The defendant also claimed that a specific unanimity instruction is warranted, even for a factually straightforward self-defense claim, such as his claim, in light of the complexity of the model criminal jury instruction on self-defense. *Held*:

1. This court declined the defendant's invitation to adopt a rule requiring that, even in factually straightforward cases, jurors unanimously agree as to which factor or factors of the claim of self-defense the state has disproven, and the Appellate Court correctly concluded that a specific unanimity instruction on self-defense was not constitutionally required: having reviewed this court's prior decisions concerning the issue presented, which involved factually uncomplicated scenarios and distinct theories of self-defense or distinct statutory exceptions to the defense of self-defense, this court determined that, in the ordinary case, the constitutional requirement that the jury agree unanimously that the state has established each element of the crime charged beyond a reasonable doubt did not apply to the defense of self-defense, and, accordingly, a jury need not be unanimous as to each component of a defendant's claim of self-defense; moreover, the defendant's argument that specific unanimity is constitutionally required rested on a flawed analogy between a crime and a justification for otherwise criminal conduct, such as self-defense, insofar as the defendant asserted that, just as jurors must agree that the state has proven each element of a crime beyond a reasonable doubt, the state also must persuade jurors as to which element of self-defense it has disproven, because a crime is distinct from a defense in ways that make the unanimity requirement inapplicable

to the latter; in the present case, regardless of the specific conclusion drawn by each juror, the state persuaded every juror of the fact that the defendant did not reasonably believe that the degree of force he used was necessary to protect himself from the victim, and there was no reason why the jurors, having rejected one or more aspects of the defendant's account of the events surrounding the stabbing of the victim and having unanimously concluded, beyond a reasonable doubt, that the defendant killed the victim without adequate justification, were required to also reach a further consensus about what components of his claim of self-defense failed.

2. The defendant could not prevail on his claim that a specific unanimity instruction was warranted in his uncomplicated case on the ground that Connecticut's model criminal jury instruction on self-defense was so convoluted that jurors could not readily grasp and apply the law of self-defense: there was no reasonable possibility that the defendant's conviction resulted from the jurors' misunderstanding of the self-defense instructions, as there was more than an adequate basis in the record for the jurors to find that every aspect of the defendant's story that he had acted in self-defense was implausible; moreover, to the extent that the model instructions were unnecessarily confusing, the most reasonable solution was for the Judicial Branch's Criminal Jury Instruction Committee to clarify and simplify those instructions, rather than for this court to impose a novel constitutional requirement, especially insofar as the model instructions arguably provided the defendant with more protection than he was constitutionally entitled to.

(*One justice concurring separately*)

Argued November 15, 2021—officially released September 13, 2022

Procedural History

Substitute information charging the defendant with the crime of murder, brought to the Superior Court in the judicial district of Stamford-Norwalk and tried to the jury before *Blawie, J.*; verdict and judgment of guilty, from which the defendant appealed; thereafter, the Appellate Court, *Lavine*, *Devlin* and *Beach*, *Js.*, affirmed the trial court's judgment, and the defendant, on the granting of certification, appealed to this court. *Affirmed.*

Norman A. Pattis, for the appellant (defendant).

Ronald G. Weller, senior assistant state's attorney, with whom, on the brief, were *Paul J. Ferencek*, state's

attorney, and *James Bernardi*, supervisory assistant state's attorney, for the appellee (state).

Opinion

MULLINS, J. The question presented by this appeal is whether jurors, in order to reject a criminal defendant's claim of self-defense, must unanimously agree as to which component or factor of that defense the state has disproven beyond a reasonable doubt. The Appellate Court, which affirmed the murder conviction of the defendant, Shota Mekoshvili, answered that question in the negative. *State* v. *Mekoshvili*, 195 Conn. App. 154, 164, 170, 223 A.3d 834 (2020). The Appellate Court read this court's precedents in *State* v. *Bailey*, 209 Conn. 322, 551 A.2d 1206 (1988), and *State* v. *Diggs*, 219 Conn. 295, 592 A.2d 949 (1991), to mean that, although a jury must reject a self-defense claim unanimously before it may find a defendant guilty, there is generally no requirement that jurors agree on which specific factor of Connecticut's four factor test[1] for self-defense the state has disproven. See *State* v. *Mekoshvili*, supra, 167–70. We agree and, accordingly, affirm the judgment of the Appellate Court.

I

The record and the opinion of the Appellate Court set forth the relevant facts that the jury reasonably

[1] For an act of violence to be justified as self-defense, (1) the defendant must actually have believed that the victim was using or was about to use physical force against him, (2) a reasonable person, viewing all the circumstances from the defendant's point of view, would have shared that belief, (3) the defendant must actually have believed that the degree of force he used was necessary for defending himself or herself, and (4) a reasonable person, viewing all the circumstances from the defendant's point of view, also would have shared that belief. See Connecticut Criminal Jury Instructions 2.8-1, available at https://jud.ct.gov/JI/Criminal/Criminal.pdf (last visited September 7, 2022); see also General Statutes § 53a-19 (a). When the defendant uses deadly force in purported self-defense, then he must actually and reasonably believe that the victim was "using or about to use deadly physical force" or was "inflicting or about to inflict great bodily harm." General Statutes § 53a-19 (a).

could have found. See id., 156–57, 165–66. Only a brief recitation is necessary for our purposes. In 2014, the victim, Mohammed Kamal, and his business partner operated a taxicab business. The victim typically worked the night shift. "On the evening of Tuesday, August 26, 2014, the victim left home for his shift in the taxi between 9 and 10 p.m. At approximately 12:30 a.m. on August 27, the victim briefly returned home and told his wife that he had forgotten to take the money for his share of the [$475 weekly taxi company] fee that he needed to leave in the taxi; he said he also planned to send some money to his family in Bangladesh. The victim's wife observed him take money out of an armoire, after which the victim returned to his shift. At approximately 3 a.m., the defendant hailed the victim's taxi and directed the victim to drive to Doolittle Road in Stamford. While on Doolittle Road, the defendant began to stab the victim repeatedly. At some point, the defendant opened the glove compartment, stole [more than $400] that the victim had set aside for the taxi fee and for his family in Bangladesh, took the victim's credit card, and fled the scene toward the defendant's apartment." Id., 156–57.

Following his confrontation with the victim, the defendant called his friend, Eugene Goldshteyn, and offered Goldshteyn $100 to come pick him up immediately. The defendant later told Goldshteyn that he had been injured and bloodied during an attempted burglary and that he had stabbed the homeowner repeatedly to silence him when the homeowner would not "shut up . . . ." No other local stabbings were reported that evening.

On the morning of August 27, 2014, the Stamford police found the victim's body lying on the lawn at 150 Doolittle Road in Stamford. An autopsy revealed that the victim had been stabbed 127 times. The victim's death resulted from this stabbing, which included deep

stab wounds to his lung and jugular vein, and also numerous cuts to his face. The police also discovered the taxicab in a wooded area across the street. The victim's blood was on the interior of the taxicab. The glove compartment was ajar, and there was no money inside.

The defendant testified in his own defense at trial. He testified that, sometime around 3 a.m. that morning, he accepted a ride home from the victim. He admitted that, after the taxi came to a stop on Doolittle Road, he stabbed the victim repeatedly and then "left [the victim] behind at the crime scene covered in blood . . . ."

The defendant claimed, however, that he had acted in self-defense and without any intent to kill the victim. The Appellate Court summarized the defendant's account of the events that transpired on the night of the killing as follows. "The victim invited [the defendant] to ride along for free while he picked up another fare. The victim then instructed him to move into the front seat to allow the paying fare to ride in the back. At some point, the victim stopped the car and indicated to the defendant that he wanted to 'have some fun.' The victim subsequently grabbed the defendant's genitalia, and the defendant reacted by punching the victim in the face. The victim then grabbed a knife and began attacking the defendant. A struggle between them ensued, and the victim threatened to kill the defendant. The defendant managed to wrestle the knife away from the victim and stabbed him repeatedly." *State* v. *Mekoshvili*, supra, 195 Conn. App. 165–66. For its part, the state presented abundant evidence from which the jurors reasonably could have concluded either that the defendant had fabricated various aspects of his story or that, even if the story were true, he had used more force than was necessary to defend himself from the victim, who was substantially smaller and older than the defendant.

The following procedural history is relevant to the defendant's claim. The state charged the defendant with murder in violation of General Statutes § 53a-54a (a). At the conclusion of the trial, defense counsel filed a request to charge that would have required that the trial court give a specific unanimity instruction, that is, an instruction that the jurors must agree unanimously as to which factor of our state's four factor self-defense test the state had disproved. The trial court held a hearing on the matter and denied the defendant's request. Instead, the court instructed the jury as to the law of self-defense largely in accordance with our state's model jury charge.[2] See Connecticut Criminal Jury Instructions 2.8-1, available at https://jud.ct.gov/JI/Criminal/Criminal.pdf (last visited September 7, 2022).

After less than three days of deliberations, the jury unanimously found the defendant guilty of murder,

[2] In relevant part, the trial court instructed the jury that "[y]ou must find that the defendant did not act in self-defense if you find any one of the following . . . .

"The state has proved beyond a reasonable doubt that, when the defendant used physical force, he did not actually [believe] that [the victim] was using or about to use physical force against him. If you have found that the force used by the defendant was deadly physical force, then the state must prove that the defendant did not actually believe that [the victim] (a) was using or about to use deadly physical force against him or (b) was inflicting or about to inflict great bodily harm upon him.

"Or the state has proven beyond a reasonable doubt that the defendant's actual belief concerning the degree of force being, or about to be, used against him was unreasonable, in the sense that a reasonable person, viewing all the circumstances from the defendant's point of view, could not have shared that belief.

"Or the state has proved beyond a reasonable doubt that, when the defendant used physical force to defend himself against [the victim], the defendant did not actually believe that the degree of force he used was necessary for that purpose. Here, again, as with the first requirement, an actual belief is an honest, sincere belief.

"Or the state has proven beyond a reasonable doubt that, if the defendant did actually believe that the degree of force he used to defend himself against [the victim] was necessary for that purpose, that belief was unreasonable, in the sense that a reasonable person, viewing all the circumstances from the defendant's point of view, would not have shared that belief."

thereby rejecting his claim of self-defense. The trial court rendered judgment in accordance with the jury's verdict and imposed a total effective sentence of sixty years of incarceration. The Appellate Court affirmed the trial court's judgment, rejecting, among other claims, the defendant's argument that the trial court had committed prejudicial error and violated his constitutional rights by failing to give the requested specific unanimity instruction on self-defense. See *State* v. *Mekoshvili*, supra, 195 Conn. App. 164, 167–70. This certified appeal followed.[3]

II

The defendant invites us to depart from our precedents and adopt a rule whereby, even in a factually straightforward case such as this one, jurors would have to agree unanimously as to which factor of a self-defense claim the state has disproven. He contends that the complexity of Connecticut's self-defense jury instructions warrants such a novel rule. We decline the invitation.

A

The following well established principles frame our analysis. "An improper instruction on a defense, like an improper instruction on an element of an offense,

[3] We granted certification, limited to the following issue: "Did the Appellate Court correctly conclude that the trial court had properly denied the defendant's request for a jury instruction that would require the jury to reach a verdict of not guilty unless it was unanimous in its conclusion that the state disproved *each element* of the defendant's self-defense claim beyond a reasonable doubt?" (Emphasis added.) *State* v. *Mekoshvili*, 334 Conn. 923, 223 A.3d 60 (2020). Both parties agree, and we concur, that the certified question misstates the law of self-defense. The state is not required to disprove each component of self-defense. We therefore restate the question to properly read: "Did the Appellate Court correctly conclude that the jury did not need to be unanimous in its conclusion as to which particular component or components of the defense the state had disproved." See, e.g., *Gomez* v. *Commissioner of Correction*, 336 Conn. 168, 174–75 n.3, 243 A.3d 1163 (2020) (this court may restate certified question).

is of constitutional dimension. . . . [T]he standard of review to be applied to the defendant's constitutional claim is whether it is reasonably possible that the jury was misled." (Internal quotation marks omitted.) *State* v. *Clark*, 264 Conn. 723, 729, 826 A.2d 128 (2003). The constitutional requirements that inform those instructions are a matter of law that we review de novo. See, e.g., *State* v. *David N.J.*, 301 Conn. 122, 158, 19 A.3d 646 (2011).

Before a defendant may be found guilty of a criminal offense by a jury, the sixth and fourteenth amendments to the federal constitution require that the jury agree unanimously that the state has established each element of the charged crime beyond a reasonable doubt. See *Ramos* v. *Louisiana*, U.S. , 140 S. Ct. 1390, 1397, 206 L. Ed. 2d 583 (2020) (unanimity requirement applies to state criminal proceedings); see also *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970) (state must establish each element of crime beyond reasonable doubt). However, the United States Supreme Court has never identified a constitutional requirement as to unanimity on the elements or components of a defense.[4] See, e.g., 6 W. LaFave et al., Criminal Procedure (4th Ed. 2015) § 22.1 (e), p. 26.

Although the United States Supreme Court has not spoken on the question, we do not write on a blank slate. In *State* v. *Bailey*, supra, 209 Conn. 322, and *State* v. *Diggs*, supra, 219 Conn. 295, this court considered whether those same constitutional principles require that a jury not only reject a self-defense claim unanimously, but also agree as to which specific component

[4] Although, at times, we have spoken loosely of the "elements" of a self-defense claim; e.g., *State* v. *Singleton*, 292 Conn. 734, 747, 974 A.2d 679 (2009); the different components of a justification defense are not, strictly speaking, essential elements. Rather, they are more properly thought of as "special triggering circumstances . . . ." (Internal quotation marks omitted.) Id., 749.

or circumstance of the defense the state has disproven beyond a reasonable doubt.

In *Bailey*, the defendant claimed, inter alia, that "the trial court [had] erred in . . . failing to instruct the jury that it had to agree unanimously [on] which of the alternative ways the state had disproven the defendant's claim of self-defense . . . ." *State* v. *Bailey*, supra, 209 Conn. 328. Recognizing the "fundamental distinctions between proof of liability and disproof of self-defense"; id., 335; this court expressed "serious reservation[s] about the applicability of the unanimity requirement to [the components of] self-defense . . . ." Id., 336. This court stopped short of holding "that a specific unanimity charge would never be required for claims of self-defense," however, because it was clear that the facts of *Bailey* did not warrant such an instruction.[5] Id.

[5] Specifically, *Bailey* did not involve "separate incidents implicating alternative or *conceptually distinct* bases of liability"; (emphasis added; internal quotation marks omitted) *State* v. *Bailey*, supra, 209 Conn. 336; nor was it a case in which "the complexity of the evidence or other factors create[d] a genuine danger of jur[or] confusion." (Internal quotation marks omitted.) Id., 337.

We note that, at the time that *Bailey* was decided, this court recognized that a count may be impermissibly duplicitous if it charges the defendant with violating more than one provision of a criminal statute (multiple elements), but we had not yet recognized that there is a potential duplicity problem when a single count charges a defendant with multiple instances of violating a single statutory provision (multiple instances). The defendant in *Bailey* asked this court to resolve his challenge to the trial court's self-defense instructions pursuant to the then prevailing federal standard for multiple elements cases, the so-called *Gipson* test; see id., 333; see also *United States* v. *Gipson*, 553 F.2d 453 (5th Cir. 1977); under which a count is not duplicitous if it charges a defendant with violating a statute that provides that the crime may be committed in one of several itemized ways but those ways of committing the crime are not conceptually distinct. See *United States* v. *Gipson*, supra, 456–59. We recognize that the United States Supreme Court has since held that the *Gipson* test, standing alone, is too indeterminate to resolve a multiple elements challenge. See *Schad* v. *Arizona*, 501 U.S. 624, 635, 111 S. Ct. 2491, 115 L. Ed. 2d 555 (1991) (plurality opinion). Although, in *Bailey*, this court, at times, used the "conceptually distinct" language drawn from *Gipson*; *State* v. *Bailey*, supra, 209 Conn. 336; we do not believe that the outcome of that case would have been any

Several years after *Bailey*, this court again confronted the question of whether, and when, a trial court should instruct a jury that it must unanimously agree as to the basis for rejecting a claim of self-defense, but again did not definitively resolve this issue. See *State* v. *Diggs*, supra, 219 Conn. 301–302. This court reiterated its "serious reservation[s] about the applicability of the [specific] unanimity requirement to self-defense"; (internal quotation marks omitted) id.; observing that it was unaware of any authority that supported the defendant's claim that a specific unanimity instruction was required under the type of factual scenario presented by that case. Id., 302. In rejecting the defendant's claim, this court emphasized that "the encounter between the victim and the defendant was a single incident, which was brief and took place within a small area. [Although] the testimony bearing on the defendant's claim of self-defense varied somewhat from witness to witness, it certainly was not complicated and the trial was relatively short. [This court thus did] not perceive in the record a complexity of evidence or any other factors creating jury confusion and a consequent need for a specific unanimity charge." Id.

This court followed a similar path in *State* v. *Rivera*, 221 Conn. 58, 602 A.2d 571 (1992), relying on *Bailey* and *Diggs* to reject a specific unanimity instruction with respect to self-defense in a factually uncompli-

different under *Schad*, which held that jurors need not be unanimous as to a single theory of murder, so long as they all agree that first degree murder was committed, whether by premeditation or by felony murder. See *Schad* v. *Arizona*, supra, 630–45. Similarly, as we explain herein, jurors need not be unanimous as to which specific factor of a self-defense justification the state has disproven, so long as they all agree that self-defense was disproven beyond a reasonable doubt. And, in addition, this court ultimately concluded in *Bailey* that *Gipson* did not speak to the question at issue, namely, whether specific unanimity is required in the context of a self-defense justification. See *State* v. *Bailey*, supra, 334–35.

cated case.[6] See id., 76. The Appellate Court also has rejected the need for a specific unanimity instruction with respect to a self-defense claim. See *State* v. *Chace*, 43 Conn. App. 205, 209 n.4, 682 A.2d 143 (1996) (applying *Bailey* and *Diggs*). The handful of sister state courts that have considered the question likewise have held that no specific unanimity instruction is necessary, even when, as in those Connecticut cases, distinct theories of self-defense or distinct statutory exceptions to the self-defense justification were at issue.[7]

Although we are not prepared to say that a specific unanimity instruction could never be required for a self-defense claim; see footnote 12 of this opinion and

[6] For a third time, however, this court declined to rule out the possibility that a specific unanimity charge might be required for more factually complex self-defense claims. See *State* v. *Rivera*, supra, 221 Conn. 76.

[7] See, e.g., *People* v. *Mosely*, 488 P.3d 1074, 1078 (Colo. 2021) ("[d]ue [p]rocess [d]oes [n]ot [r]equire [j]ury [u]nanimity on the [s]pecific [r]eason [s]elf-[d]efense [w]as [d]isproven [b]eyond a [r]easonable [d]oubt"); *Commonwealth* v. *Humphries*, Docket No. 15-P-1018, 2017 WL 118085, *3 (Mass. App. January 12, 2017) (decision without published opinion, 91 Mass. App. 1101, 75 N.E.3d 1148) ("[t]here is no requirement that the jury be unanimous as to how the absence of self-defense was proved"), review denied, 477 Mass. 1104, 88 N.E.3d 1166 (2017); *State* v. *Macchia*, Docket No. A-5473-17, 2021 WL 4515342, *11 (N.J. Super. App. Div. October 4, 2021) ("nothing in our jurisprudence suggests that the jury's findings need be unanimous on how the [s]tate disproves self-defense so long as the jury unanimously agrees that the [s]tate disproved self-defense beyond a reasonable doubt"), cert. granted, 250 N.J. 548, 274 A.3d 1218 (2022); *Rodriguez* v. *State*, 212 S.W.3d 819, 821 (Tex. App. 2006) ("To ensure that the [s]tate's burden of proof is met, the jurors must unanimously agree that the defendant's conduct was not justified by self-defense. It is not necessary, however, that they unanimously agree as to why."); *Harrod* v. *State*, 203 S.W.3d 622, 625 n.2 (Tex. App. 2006) ("[w]e have found no case that has extended the law of unanimity to the negation of at least one element of self-defense"); see also, e.g., *State* v. *Mower*, Docket Nos. 41484-8-II, 41485-6-II, 2012 WL 3679593, *6 (Wn. App. August 28, 2012) (decision without published opinion, 170 Wn. App. 1016) (rejecting need for specific unanimity instruction with respect to medical authorization defense to marijuana growing charge and observing that "[the defendant] fail[ed] to cite any law requiring an instruction that the jury must be unanimous on which element of an affirmative defense has been proved or disproved"), review denied, 176 Wn. 2d 1015, 297 P.3d 707 (2013).

accompanying text; today, we definitively answer the question that *Bailey* and subsequent cases did not have to answer directly and hold that, in the ordinary case, a criminal defendant's constitutional right to unanimity does not apply to the defense of self-defense, and thus the jury was not required to be unanimous as to each component of the defendant's claim of self-defense. The defendant's argument that specific unanimity is required rests on an analogy between a crime, such as murder, and a justification for otherwise criminal conduct, such as self-defense. He contends that, just as jurors must agree that the state has proven each essential element of the crime beyond a reasonable doubt, the state also must persuade jurors as to which of the "elements" of self-defense it has disproven. This analogy fails for at least three reasons, which boil down to the fact that a crime, to which the right of unanimity attaches, is distinct and different from a defense in ways that make the unanimity requirement inapplicable.

First, as our sister state courts have recognized, the fact that criminal conduct was not justified, such as by self-defense, is more analogous, for unanimity purposes, to a finding that a single element of a crime was committed than to the crime itself. See, e.g., *People* v. *Mosely*, 488 P.3d 1074, 1080 (Colo. 2021). All of the statutory factors of the defense of self-defense[8]—that the act be one of defense, that it stem from an objectively and subjectively reasonable belief that the defen-

[8] General Statutes § 53a-19, which codifies our state's common law of self-defense; see, e.g., *State* v. *Havican*, 213 Conn. 593, 598, 569 A.2d 1089 (1990); provides in relevant part that "a person is justified in using reasonable physical force upon another person *to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force, and he may use such degree of force which he reasonably believes to be necessary for such purpose*; except that deadly physical force may not be used unless the actor reasonably believes that such other person is (1) using or about to use deadly physical force, or (2) inflicting or about to inflict great bodily harm." (Emphasis added.) General Statutes § 53a-19 (a).

dant or another is at imminent risk of physical force, that it be proportionate to that risk—simply summarize what it meant under the common law for the otherwise criminal use of force against another person to be deemed "reasonable." See, e.g., *State* v. *Terwilliger*, 314 Conn. 618, 654, 104 A.3d 638 (2014); see also, e.g., *Rodriguez* v. *State*, 212 S.W.3d 819, 821–22 (Tex. App. 2006) ("[e]ach of these reasons for rejecting [the defendant's] self-defense claim results in the same conclusion: [the defendant] was not justified in using deadly force under the circumstances and [was] therefore guilty of murder"). The various statutory components of a self-defense claim thus are not independently essential elements of a self-defense justification defense that must each be disproven. See footnote 4 of this opinion. Rather, those components are more accurately understood as merely "triggering circumstances"; (internal quotation marks omitted) *State* v. *Singleton*, 292 Conn. 734, 749, 974 A.2d 679 (2009); or "factors relevant to a determination [of] whether the defendant acted in self-defense." (Internal quotation marks omitted.) *Commonwealth* v. *Humphries*, Docket No. 15-P-1018, 2017 WL 118085, *3 (Mass. App. January 12, 2017) (decision without published opinion, 91 Mass. App. 1101, 75 N.E.3d 1148), review denied, 477 Mass. 1104, 88 N.E.3d 1166 (2017).

For the same reason, just as jurors need not agree as to the specific details by which the state proves each element of a charged crime, they need not agree as to the specific factors or triggering circumstances by which it disproves a claim of self-defense. For most crimes,[9] the state must persuade every juror that the

[9] As we noted; see footnote 5 of this opinion; a different analysis for specific unanimity, not directly relevant to the present discussion, applies when a statute provides that a crime may be committed in one of several itemized ways. Under those circumstances, whether jurors must specifically agree as to which of the statutory subelements is satisfied is determined by the framework established in *Schad* v. *Arizona*, 501 U.S. 624, 111 S. Ct. 2491, 115 L. Ed. 2d 555 (1991), and its progeny.

core components of the crime—the requisite mens rea, actus reus, and any required results or attendant circumstances—have been established, but there is no specific requirement that jurors unanimously agree on the underlying brute facts or even on the theory of the crime. As United States Supreme Court Justice Antonin Scalia explained in his concurring opinion in *Schad* v. *Arizona*, 501 U.S. 624, 111 S. Ct. 2491, 115 L. Ed. 2d 555 (1991), "[t]hat rule is not only constitutional, it is probably indispensable in a system that requires a unanimous jury verdict to convict. When a woman's charred body has been found in a burned house, and there is ample evidence that the defendant set out to kill her, it would be absurd to set him free because six jurors believe he strangled her to death (and caused the fire accidentally in his hasty escape), while six others believe he left her unconscious and set the fire to kill her." Id., 650 (Scalia, J., concurring in part and concurring in the judgment). By the same token, once the state has successfully convinced the entire jury that the essence of a self-defense justification is lacking, that is, that the defendant's acts of violence were not a reasonable and justified use of physical force, the constitution does not require jurors to agree on why, specifically, the defendant's choice to engage in otherwise criminal conduct was not reasonable.

Some sister state courts have analogized the components of a self-defense justification to the brute facts that underlie an actus reus element of a crime. See, e.g., *Commonwealth* v. *Humphries*, supra, 2017 WL 118085, *2–3 ("[T]he five propositions [that define self-defense] are evidentiary in nature . . . . [I]t is the absence of self-defense, and not the theory thereof, that is subject to the reasonable doubt standard. . . . Requiring unanimity on the theory of self-defense would effectively require unanimity as to minute factual details within a single episode, a form of unanimity that we

have never required." (Citations omitted; internal quotation marks omitted.)). Other courts suggest that the components are more akin to motives, or the legal theories by which the state proves mens rea. See, e.g., *Harrod* v. *State*, 203 S.W.3d 622, 627 (Tex. App. 2006) ("Self-defense is not a specific actus reus element of the crime, or put another way, it is not which act [the defendant] committed to kill the decedent. Rather, self-defense is 'why' [the defendant] says he committed the actus reus of the crime . . . . As such, it is more analogous to the 'manner and means' by which the specific actus reus element was committed and on which the jury is not required to unanimously agree."). In either event, the state should not be held to a higher burden in disproving a self-defense claim than when establishing that the defendant committed the charged crime. See, e.g., *People* v. *Mosely*, supra, 488 P.3d 1081 ("[b]ecause a jury must unanimously agree only on whether, but not how, each element of a charged offense was established . . . we conclude that the jury need not unanimously agree on the means by which self-defense is disproved so long as the jury unanimously agrees that self-defense was disproven beyond a reasonable doubt" (emphasis omitted)).

The second reason that the defendant's analogy between a crime and a justification, such as self-defense, breaks down is that, whereas the state must prove every essential element of the crime, it need only disprove a single factor or triggering circumstance to overcome a claim of self-defense. In that sense, the state's burden with respect to a justification is the very opposite of its burden with respect to proving a crime. Even if jurors disagree as to the specific reason why the crime was not a justified act of self-defense, "the jury's guilty verdict established that [the jurors] all agreed that the prosecution disproved self-defense, and that is all due process requires." Id.

Indeed, because the lack of any one triggering circumstance causes a self-defense claim to fail, imposing a specific unanimity requirement as to self-defense would lead to absurd results. The same twelve jurors, applying essentially the same law to the same factual findings, could find the defendant not guilty in one jurisdiction but reject his self-defense claim in a different jurisdiction based solely on the arbitrary manner in which those different jurisdictions group and combine the various components or triggering circumstances that define self-defense. Surely, due process does not compel such an outcome.

The third key distinction between a crime and a justification defense that militates against the defendant's analogy is that, as a practical matter, the state has far less control over how the latter is presented to the jury. Whereas the state, in bringing a prosecution, must tell the "story" of the crime; *Old Chief* v. *United States*, 519 U.S. 172, 186–89, 117 S. Ct. 644, 136 L. Ed. 2d 574 (1997); it is typically "the defendant [who] controls the shape and direction of a self-defense claim. The state must apply its proof to factual circumstances raised or illuminated by the defendant." *State* v. *Bailey*, supra, 209 Conn. 335. The state typically has little or no control over how detailed, how plausible, or how multifaceted a theory of self-defense will be in any particular case. For this reason, as we explained in *Bailey*, it would be particularly unreasonable to require more specific juror unanimity with respect to disproof of self-defense than with respect to proof of liability. "In occupying this inferior tactical position, the state would face a Herculean task if it were required to present for the jury's unanimous agreement a definitive set of facts, neatly synthesized in a unified theory, designed to explain why the defendant's conduct was not justified. . . . [T]he defendant's argument [that the state must disprove one specific factor to the jury's unanimous satisfaction]

. . . would lead to a practical incongruity in the state's role of disproving self-defense." Id., 335–36.

This court also emphasized in *Bailey* that a genuine instance of self-defense often will involve "a whirlwind of physical and emotional turbulence . . . that realistically could not be atomized into discrete, distinct events."[10] Id., 337. Particularly in a case such as this, in which the defendant's testimony provided the only eyewitness account of the events in question, the outcome hinges largely on the jury's resolution of highly subjective and speculative questions. The jury had to make determinations regarding the accuracy and credibility of the defendant's account, what exactly transpired on the night in question, what the defendant might have been thinking and feeling during each moment of the incident, and how a reasonable person would have reacted to the perceived events.

It is quite possible that all twelve jurors in the present case concluded that the defendant's testimony lacked credibility in numerous respects. Some jurors may have concluded that the defendant did not truly believe that the victim's actions warranted a lethal response. Some jurors may have concluded that the defendant's tale was an utter fabrication, concocted to conceal a premeditated robbery and murder. Still others may have concluded that he overreacted to a nonthreatening, romantic advance and then chose to terminate the ensuing struggle with excessive, deadly force. Many (or all) jurors may have reached more than one such conclu-

[10] The same thing could, of course, be said of many violent crimes that are not justified by self-defense. But the jury in such cases merely needs to agree that the defendant committed a crime such as assault or murder against a particular victim while motivated by a sufficiently voluntary mental state. In the context of self-defense, then, it makes little sense to require juror agreement on specific factual questions regarding the defendant's beliefs and internal mental process, such as whether he believed that the victim posed no risk or, rather, that the victim posed a risk but the defendant believed that the risk was insufficient to justify the degree of force used.

sion. In any case, the defendant's justification for the killing is lacking; the state has persuaded every juror of the one thing that is necessary to overcome a self-defense justification, namely, that the defendant did not actually hold a reasonable belief that the degree of force he used was necessary to protect himself from the victim. We see no reason why the jurors, having rejected one or more aspects of the defendant's account and having unanimously concluded, beyond a reasonable doubt, that he killed the victim without adequate justification, must also reach a further consensus on what components of the defense failed.

The unanimity requirement fosters thorough deliberations by forcing the entire jury to consider dissenting viewpoints before concluding that the state has established each essential element of a charged crime beyond a reasonable doubt. See, e.g., *United States* v. *Lopez*, 581 F.2d 1338, 1341 (9th Cir. 1978). The same holds true with respect to the question of whether the defendant's conduct was justified. We fail to see, however, how the purposes behind the unanimity requirement would be served by requiring a properly charged jury—one instructed that it had to be unanimous in its rejection of self-defense—to engage in further deliberations to reach unanimous consensus as to the specific brute facts and legal theories underlying the conclusion that the defendant's use of force was unjustified under the circumstances. To require jurors to agree on such details would result in "hung juries in cases in which the jurors actually agree [on] the defendant's guilt . . . ." (Internal quotation marks omitted.) J. Fayette, " 'If You Knew Him Like I Did, You'd Have Shot Him, Too . . .' A Survey of Alaska's Law of Self-Defense," 23 Alaska L. Rev. 171, 176 n.22 (2006).

We thus agree with the Appellate Court that a specific unanimity instruction was not required.[11] Although *Bai-*

[11] Because we conclude that a specific unanimity charge was unnecessary, we need not consider the state's argument that, in any event, the defendant's

ley, *Diggs*, and *Rivera* left open the possibility that a specific unanimity instruction might be required in exceptional cases involving multiple victims, multiple acts of self-defense, or other unusually complex factual scenarios, this is not such a case.[12]

B

The defendant contends, alternatively, that even factually straightforward self-defense claims, such as his, warrant a specific unanimity instruction because, although the case itself may not be complicated, Connecticut's model jury instructions are so convoluted that jurors cannot readily grasp and apply the law of self-defense. Although the state concedes that the model instructions are unnecessarily complex, it takes the position that adding a specific unanimity instruction would merely add to the complexity and compound juror confusion.

We do not think that there is any reasonable possibility that the defendant's conviction resulted from the

claim fails because the trial court did not sanction a nonunanimous verdict. See, e.g., *State* v. *Rivera*, supra, 221 Conn. 76 (because "the trial court did not sanction a nonunanimous verdict, a unanimity instruction on self-defense is not required").

[12] Although one sister state court has likewise left open the possibility that a specific unanimity self-defense instruction might be required in cases involving multiple victims or other complexities; see, e.g., *State* v. *Martinez*, Docket No. A-0655-09T4, 2013 WL 5989278, *15 (N.J. Super. App. Div. November 13, 2013), cert. denied, 217 N.J. 590, 91 A.3d 25 (2014); we are not aware of any case, and the parties have not cited any, in which such an instruction has been deemed necessary. We note as well that, in each of the cases that left open the possibility that a specific unanimity instruction might be necessary in complex self-defense scenarios, the court cited to cases in which a specific unanimity instruction on the *elements of a crime*, rather than a defense, was at issue. See, e.g., *State* v. *Bailey*, supra, 209 Conn. 337, 338, citing *United States* v. *Schiff*, 801 F.2d 108, 114–15 (2d Cir. 1986), cert. denied, 480 U.S. 945, 107 S. Ct. 1603, 94 L. Ed. 2d 789 (1987). As we explained in part II A of this opinion, however, fundamentally different principles apply to the elements of a crime than to the components of a justification, such as self-defense. Having now considered the question from this standpoint, although we still do not categorically preclude the possibility, we are hard-pressed to imagine any scenario in which juror unanimity as to the particular factors of a self-defense claim would be required.

jurors' misunderstanding of the self-defense instructions, which the trial court reiterated several times and in various ways. Indeed, there was more than an adequate basis in the record for the jurors to find that *every* aspect of the defendant's self-defense story was implausible. If the model jury instructions are unnecessarily confusing, then the most reasonable solution is to clarify and simplify those instructions, rather than to impose a novel constitutional requirement. We invite the Criminal Jury Instruction Committee of the Judicial Branch to adopt a more streamlined test for self-defense, consistent with the approach that many of our sister states and the federal courts have taken.[13]

The state also emphasizes that, as currently written, the model instructions actually provided the defendant with more protection than he was entitled to. Although we repeatedly have indicated that, at least in cases that are neither factually nor legally complex, there is no requirement that jurors agree as to the specific basis for rejecting a claim of self-defense, the model instructions nevertheless could be read to require specific unanimity. They provide in relevant part: "To meet [its] burden, the state need not disprove all four of the elements of . . . self-defense . . . . Instead, it can defeat the defense . . . by disproving *any one of the four elements* of self-defense beyond a reasonable doubt *to your unanimous satisfaction. . . . If you unanimously find that the state has disproved beyond a reasonable doubt at least one of the elements of the defense* . . . you must reject that defense and find the defendant guilty." (Emphasis added.) Connecticut Criminal Jury Instructions, supra, 2.8-1. The highlighted language could be read to suggest that jurors must agree

[13] See, e.g., United States Court of Appeals for the Fifth Circuit, Pattern Jury Instructions (Criminal Cases) 1.39 (2019) p. 59, available at https://www.lb5.uscourts.gov/juryinstructions/fifth/crim2019.pdf (last visited September 7, 2022).

that the state has disproved one particular element or component[14] of the defense beyond a reasonable doubt.[15] This is not constitutionally required. Accordingly, the Criminal Jury Instruction Committee also may wish to consider whether the instruction can be framed to more accurately characterize the state's burden of proof and the requirement that jurors agree only as to the ultimate conclusion that the state has disproved the defense of self-defense.

The judgment of the Appellate Court is affirmed.

In this opinion ROBINSON, C. J., and McDONALD, D'AURIA, KAHN and KELLER, Js., concurred.

ECKER, J., concurring in the judgment. I concur in the judgment because I agree that the defendant, Shota Mekoshvili, was not entitled to a specific unanimity instruction materially different from the one used to instruct the jury in the present case. The instruction on self-defense, which spans fifteen pages of trial transcript, repeatedly reminds the jury that its findings must be unanimous, and includes the following directive: "You must remember that the defendant has no burden of proof whatsoever with respect to the defense of self-defense. Instead, it is the state that must prove beyond a reasonable doubt that the defendant did not act in self-defense if it is to prevail on the charge of murder or as to any of the lesser included offenses on which you will be instructed. *To meet this burden, the state need not disprove all four of the elements of self-defense. Instead, the state can defeat the defense of self-defense by disproving any one of the four elements*

[14] See footnote 4 of this opinion.

[15] Indeed, the state contends that, because the trial court gave the jury this instruction, the defendant did, in effect, receive the specific unanimity instruction that he requested.

of self-defense beyond a reasonable doubt to your unanimous satisfaction."[1] (Emphasis added.)

The phrasing of the italicized sentence is not perfect, because it could be construed to mean that the law requires only unanimous agreement that the state has disproved any one (but not necessarily the same one) element of the defense. In my view, however, the far more natural reading of the language is that, although the state need not disprove all four elements of the defense, the defense is not defeated unless the jury unanimously agrees that the state has disproved at least one of the four elements (any one of them, but the same one) beyond a reasonable doubt. This latter understanding provides the defendant with the substance of the specific unanimity charge he requested. See, e.g., *State* v. *Ledbetter*, 263 Conn. 1, 22, 818 A.2d 1 (2003) ("[The] refusal to charge in the exact words of a request . . . will not constitute error if the requested charge is given in substance. . . . Thus, when the substance of the requested instructions is fairly and substantially included in the trial court's jury charge, the trial court may properly refuse to give such instructions." (Internal quotation marks omitted.)).

Because the jury charge fairly and substantially informed the jury that it must unanimously agree that the state had disproved the same element of self-defense in conformance with the specific unanimity

[1] The requirement of jury unanimity was a consistent theme throughout the entire jury charge, and the jury was told by the trial court more than twenty times that it must reach a unanimous verdict with respect to the crimes charged and the defense of self-defense. In addition to the passage quoted in the text of this opinion, the trial court concluded its self-defense charge by again reminding the jury that it must reject the defense of self-defense "[i]f you unanimously find that the state has disproved beyond a reasonable doubt at least one of the elements of the defense . . . . If, on the other hand, you unanimously find that the state has not disproved beyond a reasonable doubt at least one of the elements of the defense . . . then . . . you must find the defendant not guilty . . . ."

instruction requested by the defendant,[2] I see no need to address whether such a unanimity instruction constitutionally was required. I therefore express no opinion on the constitutional analysis set forth in the majority opinion.

I respectfully concur in the judgment for these reasons.

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[2] The defendant requested the following specific unanimity instruction: "The state has the burden of disproving self-defenses, as I have instructed. To meet its burden as to this disproof, the state must persuade you unanimously as to any of the four elements on which I have instructed you. Thus, it is not enough for some of you to find the first element disproved while others find a different element disproved. Unless you unanimously agree that the state has disproven the same element, the state has failed to disprove self-defense." (Internal quotation marks omitted.) *State* v. *Mekoshvili*, 195 Conn. App. 154, 166 n.3, 223 A.3d 834 (2020).