BARRY LEE COHEN *v.* NANCY ROSSI ET AL.
(SC 20737)

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

Syllabus

The plaintiff, the Republican mayoral candidate for the city of West Haven in the November, 2021 election, sought a writ of mandamus compelling the defendants, including H, the West Haven city clerk, and certain other West Haven election officials, to set aside the mayoral election results. The plaintiff appeared to have lost the election by a slim margin, but the closeness of the election triggered an automatic recanvass, and the certified election results following the recanvass showed that the plaintiff had lost by thirty-two votes. The plaintiff claimed, inter alia, that the election officials had failed to adequately comply with various statutes governing the absentee ballot process, including the provision (§ 9-140c (a)) requiring, inter alia, the municipal clerk to endorse over his or her signature, on each outer ballot envelope as the clerk receives it, the date and time it is received, the provision (§ 9-140c (j)) requiring the municipal clerk and the registrars of voters, each time the clerk delivers absentee ballots to the registrars for counting, to execute affidavits of delivery and receipt stating the number of ballots delivered, and the provision (§ 9-140b (a)) governing the manner in which voters or certain designated persons must return absentee ballots to the municipal clerk. The evidence established that the West Haven City Clerk's Office received 720 absentee ballot envelopes either by United States mail, in-person delivery, or through a voter's or designee's depositing the ballot in one of three secure drop boxes that are located throughout West Haven. Typically, upon receipt by the City Clerk's Office, the absentee ballots, sealed in inner and outer envelopes, were time-stamped, endorsed by H using a stamp with a facsimile of her signature, and logged into the electronic state database, from which an absentee ballot report was produced. H testified that she personally retrieved the absentee ballot envelopes from the drop boxes about, or at least, one half of

the time, and that an employee of the City Clerk's Office retrieved them the other one half of the time. Of the 720 absentee ballot envelopes, 711 were counted while 9 were rejected and not counted. Of the 711 counted absentee ballot envelopes, there were 8 outer envelopes for which there was no entry in the election day absentee ballot report. Additionally, 14 of the 711 ballots were received on election day but were not immediately time-stamped and endorsed by H, who testified that she was not present in the City Clerk's Office on election day. The 14 "same day" ballots had been received by the City Clerk's Office before 3 p.m. on election day, but they were held until the count was complete so that they initially could be divided into districts and checked against the official books for each district. When it was discovered that the same day ballots did not contain H's endorsement, and it was confirmed that they had been timely received, the Office of the Secretary of the State advised the election officials to have the assistant city clerk, R, endorse the ballots by hand and to count them, which R did. In addition, there was testimony that no affidavits of delivery and receipt had been executed in connection with the absentee ballots. Following trial, the plaintiff raised the additional claim that H had violated § 9-140b (c) (2), which provides in relevant part that "the municipal clerk shall retrieve [the absentee ballot envelopes] from the secure drop box," insofar as H failed to personally retrieve at least 200 absentee ballots from the drop boxes. In arriving at that figure, the plaintiff relied on evidence that, of the 711 counted outer envelopes, 273 were postmarked and 25 were returned in-person, and inferred that 413 absentee ballots were returned through the drop boxes. On the basis of that inference and H's testimony that she had retrieved the ballots about one half of the time, the plaintiff argued that it was fair to conclude that at least 200 absentee ballots were retrieved by someone other than H. The trial court ultimately concluded that substantial violations of the election statutes had occurred and that 9 absentee ballots had been improperly counted or unaccounted for. In so concluding, the court disagreed with the plaintiff's claim that certain absentee ballots were returned by improperly designated persons, in violation of § 9-140b (a), but agreed that the failure of H and the registrars of voters to execute affidavits of delivery and receipt constituted a clear violation of § 9-140c (j), which was enacted to prevent fraud in the absentee ballot process by establishing chain of custody procedures. The trial court nevertheless determined that the reliability of the election results was not seriously in doubt because, even if the court assumed that the 9 improperly counted or unaccounted for absentee ballots favored the plaintiff, he still would have lost by 23 votes. Accordingly, the court denied the plaintiff's requested relief and rendered judgment for the defendants. Thereafter, the trial court certified certain questions of law to this court for review pursuant to statute (§ 9-325). *Held*:

1. The plaintiff could not prevail on his claim that the plain language of § 9-140b (c) (2) required the municipal clerk to personally retrieve the absentee ballots from the secure drop boxes:

With respect to the plaintiff's claim that H's testimony established that she violated § 9-140b (c) (2) by using designees to retrieve at least 200 ballots from the drop boxes, the plaintiff failed to refer to evidence in the record establishing exactly how many ballots were retrieved by someone other than H, the plaintiff's counsel did not ask H or any other witness how many ballots were retrieved by someone other than H, the trial court made no factual findings in that regard, H's testimony that her employees would retrieve the ballots from the drop boxes one half of the time did not reveal the number of ballots someone else retrieved, insofar as different drop boxes might have contained vastly different numbers of ballots, and this court declined to overturn the election results on the basis of the plaintiff's unsupported inferences and simplistic logic.

With respect to whether § 9-140b (c) (2) required the municipal clerk to personally retrieve the absentee ballots from the secure drop boxes, although the plain language of the statute appeared to require the municipal clerk to personally retrieve the ballots, when § 9-140b was viewed in relationship to related statutes and the entire statutory scheme governing the absentee ballot process, which indicated the legislature's contemplation that the municipal clerk has the authority to and would delegate tasks to his or her designees, this court concluded that § 9-140b (c) (2) merely requires the municipal clerk, or his or her designee, to retrieve the absentee ballots from the secure drop boxes.

Moreover, even if it was appropriate to look to the legislative history of § 9-140b to ascertain the statute's meaning, this court rejected the plaintiff's argument that a 2021 amendment (Spec. Sess. P.A. 21-2, § 102) to § 9-140b (c) (2) indicated a legislative intent to permit only the municipal clerk to retrieve absentee ballots from the drop boxes insofar as that amendment omitted a requirement from § 9-140b (c) (2) that a police officer escort the municipal clerk or the municipal clerk's "designee" when retrieving absentee ballots from drop boxes located outside of the building in which the clerk's office is located, as that argument failed to reconcile § 9-140b (c) (2) with the broader statutory scheme pertaining to the absentee ballot process, which plainly contemplates that the municipal clerk will delegate tasks to his or her designees and is authorized to do so.

Furthermore, a contrary interpretation would lead to the implausible result that the municipal clerk would be required to carry out nearly the entire absentee ballot process without assistance from anyone in his or her office and to complete the virtually impossible task of personally ensuring that all ballots are received before the close of the polls, even when there are multiple drop boxes located throughout the municipality.

Accordingly, in the absence of express statutory language requiring the municipal clerk to personally retrieve the ballots from the secure drop boxes, this court declined to interpret the legislature's 2021 deletion of language in § 9-140b (c) (2) to mean that only the clerk may carry out the statute's directive, and, in the present case, H delegated the responsibility of retrieving the absentee ballots to her subordinates about one half of the time, there was no allegation that someone outside of the City Clerk's Office retrieved the ballots, and, accordingly, the defendants complied with the statute.

2. The plaintiff could not prevail on his claims that the fourteen "same day" absentee ballots were improperly counted because the election officials did not substantially comply with § 9-140c (a), which requires the municipal clerk's endorsement, and because those ballots were treated differently from other, similarly situated absentee ballots:

a. The trial court correctly determined that, although there was not strict compliance with the mandates of § 9-140c (a), insofar as H failed to endorse the fourteen same day absentee ballots when they were received, there was nevertheless substantial compliance with the statute:

Although the provisions of § 9-140c (a) regarding a municipal clerk's endorsement of the absentee ballot envelope when it is received, which were designed to mitigate the risk of fraud in the absentee voting process, are mandatory, this court previously had determined that only substantial, rather than strict, compliance with the requirements of § 9-140c (a) is necessary and that the issue of whether an anomalous endorsement constitutes substantial compliance with § 9-140c (a) must be determined by reference to the purpose of the statutory requirement, the role played by the requirement viewed in the context of the statutory scheme, the degree of adherence to strict compliance shown, and the basic policy against dis–franchisement of voters who are not at fault for any lack of strict compliance by elections officials.

In the present case, it was undisputed that the election officials failed to strictly comply with § 9-140c (a), insofar as H did not endorse the fourteen same day absentee ballots when they were received using the stamp with her signature that she customarily used, but H was not present in the City Clerk's Office on election day and could not have personally endorsed the outer envelopes of the ballots.

Moreover, in the absence of the municipal clerk or the clerk's ability to carry out his or her duties, assistant town clerks, pursuant to statute (§ 7-19), have all the powers and may perform all the duties of the municipal clerk, the assistant city clerk and the highest ranking election official present, namely, R, thus was permitted to endorse the fourteen ballots received on election day, and, in view of the fact that R's initials were written in her own handwriting, it would have been difficult, in the

absence of forgery, for an individual to somehow include an unauthorized absentee ballot.

Furthermore, the slight delay between the receipt and R's endorsement of the ballots was attributable to the time it took to obtain guidance from the Office of the Secretary of the State, the plaintiff did not allege that anyone tampered with the ballots, the possibility of fraudulent activity seemed particularly fanciful in light of evidence from the absentee ballot report, which showed that the fourteen same day ballots were from eligible voters and were properly delivered on election day prior to the close of the polls, and R's testimony, which indicated that the handwritten initials on each ballot were her initials and that she personally wrote them on each outer envelope, and the strong public policy against disenfranchising voters who are not at fault for problems with their ballots, also strongly militated against rejecting the fourteen same day ballots.

b. The plaintiff's claim that the trial court's inclusion of the fourteen same day absentee ballots created disparate treatment among other, similarly situated absentee ballots was unavailing:

Notwithstanding the plaintiff's reliance on the testimony of an absentee ballot counter that, during the initial count, she rejected an unspecified number of absentee ballots that lacked H's endorsement, and the testimony of the head absentee ballot moderator that nine absentee ballots received on election day "could have been rejected" due to the lack of an endorsement by H, this court could not determine, on the basis of the record before it, why each of the foregoing ballots was rejected or could have been rejected, the plaintiff failed to establish that the fourteen same day ballots were similarly situated to the ballots referenced by those individuals, and this court declined to overturn the election without evidence establishing the circumstances surrounding the rejected ballots.

3. The trial court correctly concluded that the failure by H and the registrars of voters to execute affidavits of delivery and receipt, as required by § 9-140c (j), was insufficient to establish that the reliability of the election results was seriously in doubt:

Although H and the registrars of voters failed to comply with § 9-140c (j) by not executing affidavits of delivery and receipt each time absentee ballots were transferred to the Office of the Registrar of Voters, that failure was overcome by the sworn testimony of the various election officials who failed to complete the affidavits, which the trial court credited and which established the chain of custody for the ballots, including H's testimony that the City Clerk's Office and the registrars of voters transferred all of absentee ballots that the City Clerk's Office received to the Office of the Registrar of Voters every day at the close of business and the testimony of multiple election officials regarding the various steps they had taken to maintain the chain of custody.

Moreover, the evidence established that there was no mistake in the vote count and that the chain of custody was properly maintained, as election officials credibly testified that the City Clerk's Office and the Office of the Registrar of Voters reviewed the absentee ballot reports against the ballots themselves and that the number of absentee ballots matched the reports each time, and the plaintiff failed to adduce evidence demonstrating that the chain of custody had been broken.

Nevertheless, the court emphasized that the purpose of the affidavit of delivery and receipt required by § 9-140c (j) is to prevent fraud in the absentee ballot process by establishing the chain of custody of the ballots, that the affidavits of delivery and receipt are statutorily mandated by the legislature, and that statutory compliance is necessary, not only to maintain strong and unwavering public confidence in elections, but also to facilitate the timely, efficient, and proper resolution of election disputes that end up in court.

4. The trial court correctly concluded that the plaintiff failed to satisfy his burden of proving that certain absentee ballots had been returned by persons who were not authorized to do so by § 9-140b (a) and, therefore, did not substantially comply with the requirements of that statutory provision:

In the case of each of the challenged absentee ballots, the plaintiff did not establish the relationships between the absentee voter and the person who delivered the ballot or the circumstances surrounding the return of the challenged ballot by requesting the absentee ballot application for each voter, subpoenaing to testify the voter or the individual who delivered the voter's ballot, or questioning anyone from the City Clerk's Office regarding the process of accepting an absentee ballot from a designee or an immediate family member, and there was no evidence to suggest that the City Clerk's Office failed to perform its duties under § 9-140b (a) of having a designee or family member sign his or her name in the clerk's presence or of checking the identification of the designee or family member.

Moreover, the plaintiff's exclusive reliance on the outer envelopes of the challenged ballots could not serve to establish that the persons who returned the ballots were not qualified designees under § 9-140b (a) because there was no information, for example, regarding whether any of the voters were ill or physically disabled and, therefore, allowed to designate someone to return his or her ballot pursuant to § 9-140b (a) (1) or (3), or whether certain designees were "immediate family" members, as that term is defined by the statute.

5. The plaintiff could not prevail on his claim that the trial court incorrectly had concluded that eight absentee ballot envelopes for which there was no entry logged in the absentee ballot report were returned to the City Clerk's Office in substantial compliance with § 9-140b (a):

Although the evidence demonstrated that there was a discrepancy insofar as eight of the counted absentee ballot envelopes were not included in the absentee ballot report, the plaintiff failed to present any evidence, and did not contend on appeal, that the outer envelopes corresponding to these ballots lacked H's endorsement under § 9-140c (a), the record of the eight ballots that were returned to the City Clerk's Office was H's endorsement on each outer envelope, and, in the absence of evidence that the ballots did not otherwise comply with the requirements of §§ 9-140b and 9-140c (a), this court could not conclude that the counting of these ballots constituted a mistake of an election official and declined to disenfranchise those voters because of a discrepancy in the absentee ballot report.

Nevertheless, the court emphasized that election officials must strive to comply with all statutory requirements pertaining to the absentee ballot process, including the requirement in § 9-140c (a) that the municipal clerk maintain a list of the names of applicants who return absentee ballots, as a failure to comply with the statutory mandates increases the risk of fraud in the absentee voting process and the risk that the municipality could face litigation, along with burdens of establishing the integrity of the electoral process and of demonstrating that the reliability of the election results is not seriously in doubt.

6. This court declined to review the plaintiff's claim that the trial court incorrectly had concluded that the reliability of the election results was not in serious doubt and that there was no mistake in the vote count on the basis of certain additional evidence in the record, as that claim was inadequately briefed:

The plaintiff provided no legal analysis or support with respect to the additional evidence that purportedly supported his claim, his cursory assertions regarding the various alleged discrepancies left this court unable to ascertain exactly what alleged error the plaintiff was claiming with respect to the additional evidence, he raised at least four separate instances of claimed irregularities in less than two pages of briefing, and the trial court did not even address some of the additional evidence on which the plaintiff's appellate claim was based.

(*Three justices concurring in part in two separate opinions*)

Argued September 16, 2022—officially released June 20, 2023

Procedural History

Action seeking a writ of mandamus compelling the defendants, inter alia, to set aside the results of the 2021 election for mayor of the city of West Haven, and for other relief, brought to the Superior Court in the judicial district of New Haven and tried to the court,

Wilson, *J.*; thereafter, the court, *Wilson*, *J.*, denied the defendants' motion to dismiss and rendered judgment for the defendants; subsequently, the plaintiff filed a reservation of questions of law with the trial court, which certified certain questions of law and transferred the reservation to this court. *Affirmed.*

Vincent M. Marino, with whom was *Barbara M. Schellenberg*, for the appellant (plaintiff).

William M. Bloss, with whom were *Karen Baldwin Kravetz* and *Edwin J. Maley, Jr.*, and, on the brief, *Patrick L. Deegan*, for the appellees (defendants).

Opinion

McDONALD, J. This appeal concerns a contested mayoral election in the city of West Haven and requires us to interpret and apply various statutory provisions that govern the absentee ballot process. Following an automatic recanvass, which was triggered by the closeness of the election, the plaintiff, the Republican mayoral candidate, Barry Lee Cohen, brought this action pursuant to General Statutes § 9-328 against the defendants, the Democratic mayoral candidate, Nancy Rossi, and certain West Haven election officials,[1] challenging the results of the election. The plaintiff asserted that the West Haven election officials failed to adequately comply with various statutory requirements regarding absentee ballots. The trial court agreed that the election officials failed to strictly comply with certain statutory requirements but nevertheless concluded that the plaintiff failed to establish that the reliability of the results

[1] The defendants are Rossi; Patricia C. Horvath, in her official capacity as the city clerk of West Haven; Jo Ann Callegari, in her official capacity as the Republican registrar of voters of West Haven; Sherri Lepper, in her official capacity as the Democratic registrar of voters of West Haven; George M. Chambrelli IV, in his official capacity as the head moderator of the election; and Catherine Conniff, in her official capacity as the head absentee ballot moderator of the election.

of the election was seriously in doubt. Accordingly, the trial court denied the plaintiff's requested relief. This appeal followed. Following oral argument, we issued a per curiam ruling on October 4, 2022, affirming the judgment of the trial court. We indicated at that time that a full opinion would follow. This is that opinion.

The following facts and procedural history are relevant to the appeal. At the close of voting on November 2, 2021, the results established that Rossi appeared to have won the election by a margin of twenty-nine votes. Given the closeness of the race, however, an automatic recanvass occurred. See General Statutes § 9-311a. The plaintiff attended the recanvass with his attorney and campaign manager. The certified election results following the recanvass confirmed that Rossi had won the election. Specifically, the results indicated that Rossi had received 4275 votes and the plaintiff had received 4243 votes, expanding Rossi's margin of victory to 32 votes.

On November 15, 2021, the plaintiff brought this action for a writ of mandamus pursuant to § 9-328, asserting that the election officials had failed to adequately comply with the requirements regarding absentee ballots set forth in General Statutes §§ 9-12, 9-140, 9-140a, 9-140b, 9-140c, and 9-150a. In his complaint, the plaintiff alleged that the election officials (1) failed to seal the outer and inner envelopes of absentee ballots in a depository envelope with nonreusable tape, as required by § 9-150a (f), (2) failed to endorse the names, voting district, and time of count on each absentee ballot depository envelope, as required by § 9-150a (f), (3) processed and counted absentee ballots that should have been rejected, (4) failed to process and count absentee ballots in substantial compliance with the requirements outlined in the General Statutes, (5) failed to properly maintain the chain of custody of the absentee ballots in accordance with statutorily mandated pro-

cedures, (6) failed to properly endorse the depository envelopes in accordance with statutorily mandated procedures, (7) failed to properly endorse the absentee ballots' outer envelopes, as required by § 9-140c (a), (8) failed to prepare affidavits reflecting the times that the ballots changed hands, and (9) admitted votes from persons who were not qualified to be electors in the election.

The trial court held a hearing that extended over five months, during which the parties presented evidence over the course of six days. Relevant to this appeal, the evidence established that absentee ballots were received by the West Haven City Clerk's Office in one of three ways: (1) delivery by United States mail, (2) delivery by an elector or designee depositing them in one of three secure drop boxes located throughout West Haven, or (3) in-person delivery. Typically, upon receipt, the absentee ballots, sealed in inner and outer envelopes, would be time-stamped, endorsed by the city clerk, and logged into the electronic state database, before being placed in a city vault. Section 9-140c (a) requires the municipal clerk to execute "an affidavit attesting to the accuracy of all such endorsements . . . ." The absentee ballots would then be delivered to the registrars of voters. See General Statutes § 9-140c (e). Each time the absentee ballots are transferred from the municipal clerk's office to the office of the registrar of voters, the clerk and the registrars are required to "execute an affidavit of delivery and receipt stating the number of ballots delivered." General Statutes § 9-140c (j). The city clerk of West Haven, Patricia C. Horvath, and an absentee ballot counter both testified, however, that they were not aware of any absentee ballot affidavits executed in connection with the election.

There was a total of 720 absentee ballots in the city vault, 9 of which were stored separately as rejected ballot sets and 711 of which represent counted ballots.

The 9 rejected absentee ballots were not counted. Out of the 711 counted ballots, there were 8 electors for whom outer envelopes existed in the vault but who are not reflected in the November 3, 2021 absentee ballot report. These 8 ballots were, however, time-stamped, endorsed and reported to the registrars of voters for recording. Indeed, all 711 outer envelopes of counted ballots contained Horvath's endorsement and time of receipt. Fourteen absentee ballots that were received on election day, however, were not immediately time-stamped and endorsed by Horvath. Hours after these fourteen "same day" absentee ballots were received on election day, at the direction of the Office of the Secretary of the State, the outer envelopes of these ballots were hand initialed, "[r]ec'd SR [denoting Sharon Recchia, the assistant city clerk] 3:00 p.m." The outer envelopes were also stamped, "NOV—2 2021."

After the plaintiff rested his case, the defendants orally moved to dismiss for failure to make out a prima facie case pursuant to Practice Book § 15-8. The trial court issued a memorandum of decision on February 14, 2022, denying the defendants' motion to dismiss. Thereafter, the defendants presented evidence, and the parties submitted posttrial memoranda. In his posttrial memorandum, the plaintiff raised an additional claim, namely, that Horvath had violated § 9-140b (c) (2) by failing to personally retrieve at least 200 absentee ballots from drop boxes, thereby invalidating those ballots.[2] Specifically, Horvath testified that, about "[h]alf

[2] As the trial court noted, the plaintiff raised this argument for the first time in his posttrial memorandum; he did not plead a violation of § 9-140b (c) (2) in his complaint. The court also noted that the plaintiff attempted to file an amended complaint that it denied "due to the urgency of the current action, but that complaint also did not allege a violation of § 9-140b (c) (2)." The defendants, however, did not argue before the trial court that they had been prejudiced by the late introduction of this allegation, and, therefore, the court addressed the argument. Similarly, because the defendants do not argue that we cannot properly review this claim on appeal, we address it on the merits.

the time," she would retrieve the absentee ballots from the drop boxes and the other one half of the time it would be one of her employees.

On June 24, 2022, the trial court issued a memorandum of decision in which it concluded that "the plaintiff [had] met his burden of proving by a preponderance of the evidence that substantial violations of election statutes occurred. Indeed, the evidence presented show[ed] a concerning lack of overall compliance with statutory guidelines by election officials . . . ." In addition, the trial court concluded that six absentee ballots that did not specify the relationship between the absentee voter and the person who delivered the ballot were improperly accepted because they were not in substantial compliance with § 9-140b. The trial court also concluded that an additional absentee ballot was improperly counted because the individual voter was not a bona fide resident of West Haven, as defined by § 9-12 (a). The court also noted that two additional absentee ballots marked as returned were unaccounted for. Nevertheless, the court explained that, "[e]ven if [it] assumed that rejecting all seven of these absentee ballots would favor the plaintiff *and* that the two missing absentee ballots favored the plaintiff, he still would have lost the mayoral election by twenty-three votes. Thus, the court cannot conclude that the reliability of the [election's result] is seriously in doubt." (Emphasis in original.) Accordingly, the trial court denied the plaintiff's requested relief and rendered judgment for the defendants.

Thereafter, the trial court certified questions of law and a finding of facts to the Chief Justice in accordance with General Statutes § 9-325,[3] and this court requested that the parties file briefs and scheduled oral argument.

[3] The Chief Justice subsequently ruled that no action was necessary on the plaintiff's application for certification to appeal pursuant to General Statutes § 52-265a in light of the trial court's certification pursuant to § 9-325.

Following oral argument, we issued a per curiam ruling on October 4, 2022, affirming the judgment of the trial court. Additional facts will be set forth as necessary.

On appeal, the plaintiff raises numerous claims of error relating to the absentee ballot process in the election. Specifically, he claims that (1) the plain language of § 9-140b limits the retrieval of absentee ballots from the secure drop boxes to the municipal clerk, (2) the trial court erroneously concluded that the fourteen "same day" absentee ballots substantially complied with § 9-140c (a), in the absence of any statutory compliance by the municipal clerk, (3) the trial court's inclusion of the fourteen "same day" absentee ballots in the vote count created disparate treatment among similarly situated absentee ballots, (4) the trial court erred in concluding that the affidavit of delivery and receipt required by § 9-140c (j) is secondary to the municipal clerk's endorsement, (5) the trial court erred in concluding that the absentee ballots belonging to Lenora Tomporowski, Terry Rose Carlington, Eric S. Holland, and Carmela A. Arminio substantially complied with § 9-140b (a), (6) the trial court erred in concluding that the eight absentee ballot outer envelopes found in the city vault that were missing from the absentee ballot report were returned to the City Clerk's Office in substantial compliance with § 9-140b (a), and (7) the trial court erred in concluding that the reliability of the results of the election was not in serious doubt and that there was no mistake in the vote count. The defendants disagree with each of the plaintiff's claims and contend that the trial court properly denied the plaintiff's requested relief because the plaintiff failed to satisfy his burden of proving by a preponderance of the evidence that the reliability of the results of the mayoral election was seriously in doubt.[4] We agree with the defendants.

[4] The defendants also contend that, if we disagree with the plaintiff's sixth claim—that the trial court erred in concluding that the eight absentee ballot outer envelopes found in the city vault that were missing from the absentee

Before turning to the plaintiff's claims, we summarize the general principles guiding judicial review of those claims. Section 9-328 provides in relevant part: "Any . . . candidate claiming to have been aggrieved by any ruling of any election official in connection with an election for any municipal office . . . or any . . . candidate claiming that there has been a mistake in the count of votes cast for any such office at such election or primary . . . may bring a complaint to any judge of the Superior Court for relief therefrom. . . . Such judge shall forthwith order a hearing to be had upon such complaint, upon a day not more than five nor less than three days from the making of such order . . . . Such judge shall, on the day fixed for such hearing and without unnecessary delay, proceed to hear the parties. . . . Such judge shall thereupon, if he finds any error in the rulings of the election official or any mistake in the count of the votes, certify the result of his finding or decision to the Secretary of the State . . . ."

We have explained that "[§] 9-328 cannot be read in a vacuum. It must be read against its fundamental governmental background. That background counsels strongly that a court should be very cautious before exercising its power under the statute to vacate the results of an election and to order a new election.

"First, under our democratic form of government, an election is the paradigm of the democratic process designed to ascertain and implement the will of the people. . . . The purpose of the election statutes is to ensure the true and most accurate count possible of

ballot report were returned to the City Clerk's Office in substantial compliance with § 9-140b (a)—then the plaintiff's second, third and fifth claims are moot because only eighteen total votes are at issue with respect to those claims, which would not cast the reliability of the results of the election in serious doubt. Given the number of claims on appeal and the different numbers of ballots related to each claim, we cannot conclude that any claims would be moot as a result of a finding in favor of the defendants on any one claim.

the votes for the candidates in the election. . . . In implementing [the voting] process, moreover, when an individual ballot is questioned, no voter is to be disfranchised on a doubtful construction, and statutes tending to limit the exercise of the ballot should be liberally construed in his [or her] favor. . . . We look . . . first and foremost to the election officials to manage the election process so that the will of the people is carried out.

"Second, § 9-328 authorizes the one unelected branch of government, the judiciary, to dismantle the basic building block of the democratic process, an election. Thus, [t]he delicacy of judicial intrusion into the electoral process . . . strongly suggests caution in undertaking such an intrusion. As we have indicated, therefore, § 9-328 provides for remedies only under narrowly defined circumstances . . . and for limited types of claims . . . .

"Third, § 9-328 requires a court, in determining whether to order a new election, to arrive at a sensitive balance among three powerful interests, all of which are integral to our notion of democracy, but which in a challenged election may pull in different directions. One such interest is that each elector who properly cast his or her vote in the election is entitled to have that vote counted. Correspondingly, the candidate for whom that vote properly was cast has a legitimate and powerful interest in having that vote properly recorded in his or her favor. When an election is challenged on the basis that particular electors' votes for a particular candidate were not properly credited to him, these two interests pull in the direction of ordering a new election. The third such interest, however, is that of the rest of the electorate who voted at a challenged election, and arises from the nature of an election in our democratic society, as we explain in the discussion that follows. That interest

ordinarily will pull in the direction of letting the election results stand.

"An election is essentially—and necessarily—a snapshot. It is preceded by a particular election campaign, for a particular period of time, which culminates on a particular date, namely, the officially designated election day. In that campaign, the various parties and candidates presumably concentrate their resources—financial, political and personal—on producing a victory on that date. When that date comes, the election records the votes of those electors, and only those electors, who were available to and took the opportunity to vote—whether by machine lever, write-in or absentee ballot—on that particular day." (Citations omitted; internal quotation marks omitted.) *Bortner* v. *Woodbridge*, 250 Conn. 241, 253–55, 736 A.2d 104 (1999).

"Moreover, that snapshot can never be duplicated. The campaign, the resources available for it, the totality of the electors who voted in it, and their motivations, inevitably will be different a second time around. Thus, when a court orders a *new* election, it is really ordering a *different* election. It is substituting a different snapshot of the electoral process from that taken by the voting electorate on the officially designated election day.

"Consequently, all of the electors who voted at the first, officially designated election . . . have a powerful interest in the stability of that election because the ordering of a new and different election would result in their election day disfranchisement. The ordering of a new and different election in effect disfranchises all of those who voted at the first election because their validly cast votes no longer count, and the second election can never duplicate the complex combination of conditions under which they cast their ballots.

"All of these reasons strongly suggest that, although a court undoubtedly has the power to order a new election pursuant to § 9-328 and should do so if the statutory requirements have been met, the court should exercise caution and restraint in deciding whether to do so. A proper judicial respect for the electoral process mandates no less." (Emphasis altered.) Id., 256–57.

Most fundamentally, we have explained that, "in order for a court to overturn the results of an election and order a new election pursuant to § 9-328, the court must be persuaded that . . . (1) there were substantial violations of the requirements of the statute . . . and (2) as a result of those violations, the reliability of the result of the election is seriously in doubt." Id., 258. "[A]lthough the underlying facts are to be established by a preponderance of the evidence and are subject on appeal to the clearly erroneous standard; see Practice Book § 60-5; the ultimate determination of whether, based on those underlying facts, a new election is called for—that is, whether there were substantial violations of the statute that render the reliability of the result of the election seriously in doubt—is a mixed question of fact and law that is subject to plenary review on appeal." *Bortner* v. *Woodbridge*, supra, 250 Conn. 258. With these principles in mind, we turn to the dispositive issues of this appeal.

I

ABSENTEE BALLOT RETRIEVAL FROM DROP BOXES

The plaintiff first claims that the plain language of § 9-140b (c) (2), providing that "the municipal clerk shall retrieve [the ballots] from the secure drop box," requires the municipal clerk herself to retrieve absentee ballots from each drop box location. In support of this contention, the plaintiff relies largely on an amendment to subsection (c) of § 9-140b in which the legislature

deleted, among other things, language that allowed a "clerk's designee" to retrieve the ballots from certain drop boxes. See Public Acts, Spec. Sess., June, 2021, No. 21-2, § 102 (Spec. Sess. P.A. 21-2). The plaintiff contends that, because the statutory text provides that the municipal clerk herself must retrieve absentee ballots from drop boxes, Horvath's testimony established that she violated § 9-140b (c) (2) by using designees to retrieve at least 200 ballots from drop boxes. The defendants contend that the trial court correctly determined that a clerk's designee was permitted to retrieve absentee ballots from drop boxes because proscribing the clerk from using a designee would require a statutory interpretation that would lead to an absurd result.

The following additional facts are relevant to this claim. At trial, Horvath testified that the City Clerk's Office placed secure absentee ballot drop boxes throughout West Haven. An employee of the City Clerk's Office would frequently retrieve the absentee ballots placed in the drop boxes, bring them back to that office, and log them in. Horvath initially testified that she had personally retrieved the ballots from the drop boxes about "[h]alf the time . . . ." She went on to clarify that she personally retrieved the ballots "[a]t least [half the time]. Half or more . . . ." The rest of the time, another employee of the City Clerk's Office would retrieve the ballots.

The trial court rejected the plaintiff's reading of the statute, concluding that "the legislature's purpose for amending § 9-140b (c) (2) was to make the drop boxes permanent for future elections and to omit the requirement that a police officer escort the [municipal] clerk or her employees when retrieving absentee ballots from drop boxes around the town or city. There is no indication that the amendment's purpose was to require that only the municipal clerk herself retrieve the absentee ballots from the drop boxes." The court also noted that

there are many tasks assigned to the municipal clerk throughout the absentee ballot statutes, and none of them references the clerk's designee, "but that does not mean the municipal clerk must perform all of these statutory duties personally." The court concluded that Horvath delegated the responsibility to her subordinates and that did not run afoul of § 9-140b (c) (2). Accordingly, the trial court concluded that Horvath's delegation of her retrieval responsibility under the statute was not an error in the ruling of an election official for purposes of § 9-328.

At the outset, we note that the plaintiff has failed to provide this court with any record evidence that establishes how many ballots were retrieved by someone other than Horvath herself. The plaintiff asserts that "[t]he evidence showed that more than 200 absentee ballots were retrieved by someone other than [Horvath]." In support of that assertion, however, the plaintiff relies on numerous assumptions. Namely, the plaintiff reasons that "[t]here [were] 711 absentee outer envelopes, with 273 of these outer envelopes with postmarks. . . . According to the November 3, 2021 absentee ballot report, 25 absentee ballot sets were returned 'in person.' . . . Therefore, it is reasonable to conclude that 413 absentee ballot sets were returned through the drop boxes." (Citations omitted.) The plaintiff reasons that, because Horvath testified that, about "[h]alf the time," she would retrieve the absentee ballots from the drop boxes and the other one half of the time it would be one of her employees, it is fair to conclude that at least 200 absentee ballots were retrieved by someone other than Horvath. We disagree. The trial court made no factual findings regarding how many absentee ballots were retrieved by someone other than Horvath, and the plaintiff never asked Horvath, or any other witness, how many ballots were retrieved by someone other than Horvath herself. Indeed, the plaintiff raised

this issue for the first time in his posttrial brief. That Horvath retrieved the ballots about "[h]alf the time" does not inform the court of the number of ballots someone other than Horvath retrieved because different drop boxes might have contained vastly different numbers of ballots. Retrieving the ballots one half of the time could have amounted to, for example, 2 ballots or 200 ballots, or anything in between. The trial court did not draw any inference regarding the number of ballots at issue, and we decline to do so. We will not lightly overturn election results, especially not on the basis of such simplistic logic and unsupported inferences. See, e.g., *Bortner* v. *Woodbridge*, supra, 250 Conn. 254–55. Nevertheless, because Horvath testified that she did not retrieve all the absentee ballots personally, we consider the merits of the plaintiff's claim to determine whether that was permissible under the statute.

This court previously has held that the requirements of § 9-140b are mandatory. See *Wrinn* v. *Dunleavy*, 186 Conn. 125, 145–46, 440 A.2d 261 (1982) (interpreting predecessor statute). "Accordingly, the return of ballots in a manner not substantially in compliance with § 9-140b will result in their invalidation, regardless of whether there is any proof of fraud. . . . Whether fraud has been committed in the handling of certain absentee ballots is irrelevant to the question of whether there has been substantial compliance with all of the mandatory provisions of the absentee voting law. . . . Had the legislature chosen to do so, it could have enacted a remedial scheme under which ballots would . . . be invalidated [only] upon a showing of fraud or other related irregularity. The legislature has instead enacted a regulatory scheme designed to prevent fraud as far as practicable by mandating the way in which absentee ballots are to be handled. The validity of the ballot, therefore, depends not on whether there has been fraud, but on whether there has been substantial compliance with the

mandatory requirements." (Citation omitted; internal quotation marks omitted.) *Keeley* v. *Ayala*, 328 Conn. 393, 411, 179 A.3d 1249 (2018).

Whether the mandatory nature of § 9-140b requires the municipal clerk personally to retrieve the absentee ballots from the secure drop boxes is a different question, and one of statutory interpretation over which our review is plenary. See, e.g., *LaFrance* v. *Lodmell*, 322 Conn. 828, 833–34, 144 A.3d 373 (2016). We review § 9-140b and the relevant statutory scheme in accordance with General Statutes § 1-2z and our familiar principles of statutory construction. See, e.g., *Sena* v. *American Medical Response of Connecticut, Inc.*, 333 Conn. 30, 45–46, 213 A.3d 1110 (2019). In doing so, we are mindful that the meaning of § 9-140b must, in the first instance, "be ascertained from the text of the statute itself and its relationship to other statutes." General Statutes § 1-2z.

We begin with the text of § 9-140b. Subsection (a) of § 9-140b provides the manner in which an absentee ballot must be returned to the municipal clerk's office, including by United States mail. Subsection (c) (1) defines "mailed" as "(A) sent by the United States Postal Service or any commercial carrier, courier or messenger service recognized and approved by the Secretary of the State, or (B) *deposited in a secure drop box* designated by the municipal clerk for such purpose, in accordance with instructions prescribed by the Secretary." (Emphasis added.) General Statutes § 9-140b (c) (1). Subsection (c) (2) provides that, "[i]n the case of absentee ballots mailed under subparagraph (B) of subdivision (1) of this subsection, beginning on the twenty-ninth day before each election, primary or referendum, and on each weekday thereafter until the close of the polls at such election, primary or referendum, *the municipal clerk shall retrieve* from the secure drop box described in said subparagraph each such ballot deposited in such drop box." (Emphasis added.) General Statutes § 9-140b

(c) (2). "Municipal clerk" is defined in title 9 of the General Statutes simply as "the town clerk in or for the municipality to which reference is made, unless otherwise provided by charter or special act." General Statutes § 9-1a; see also General Statutes § 9-1 (g) (defining "[m]unicipal clerk" as "the clerk of a municipality").

The plain language of § 9-140b appears to require the municipal clerk to personally retrieve the absentee ballots from each secure drop box. We note, however, that, when § 9-140b is viewed in relationship to other related statutes, it is clear that the clerk may designate tasks to his or her designees. There are numerous responsibilities assigned to the "municipal clerk" throughout the absentee ballot statutes, and none of them references the clerk's designee or the clerk's assistants. See, e.g., General Statutes § 9-135a (b) (requiring municipal clerk to prepare modified absentee ballot in situations in which offices are to be voted on without party designation); General Statutes § 9-135a (c) (requiring municipal clerk to prepare and print separate absentee ballots for unaffiliated electors); General Statutes § 9-135b (a) (requiring municipal clerk to prepare absentee ballots and to have them printed); General Statutes § 9-135b (c) (requiring municipal clerk to file printed absentee ballot and affidavit stating number of ballots printed with Secretary of the State); General Statutes § 9-140 (a) (requiring municipal clerk to accept applications for absentee ballots and to maintain log of absentee ballot applications); General Statutes § 9-140 (c) (requiring municipal clerk to check name of each absentee ballot applicant against registry list and to send applicants notice if name does not appear on list); General Statutes § 9-140 (e) (requiring municipal clerk, upon receipt of absentee ballot application, to write serial number of absentee ballot voting set on application form, to issue voting sets to applicants in

consecutive ascending order, and to maintain list of numbers and corresponding applicants); General Statutes § 9-140 (g) (requiring municipal clerk to mail absentee voting sets to applicants in accordance with prescribed timelines); General Statutes § 9-140 (i) (requiring municipal clerk to file executed applications in alphabetical order of applicant); General Statutes § 9-140c (a) (requiring municipal clerk to retain absentee ballot envelopes, to endorse each envelope over his signature with date and precise time of its receipt, to make affidavit attesting to accuracy of all such endorsements, and to deliver such affidavit, at close of polls, to head moderator, who will endorse it and return it for clerk to preserve for 180 days); General Statutes § 9-140c (b) (allowing municipal clerk to sort absentee ballots into voting districts in accordance with prescribed timelines); General Statutes § 9-140c (d) (requiring municipal clerk to seal unopened ballots in package and to retain them in safe place); General Statutes § 9-140c (e) (requiring municipal clerk to receive certain absentee ballots, to deliver certain ballots to registrars of voters, and to provide accompanying duplicate checklist to registrars); General Statutes § 9-140c (f) (requiring municipal clerk to sort certain absentee ballots into voting districts and to retain ballots until they are delivered to registrars of voters); General Statutes § 9-140c (g) (requiring municipal clerk to deliver certain absentee ballots to registrars of voters).

Moreover, other references in the General Statutes indicate that the legislature contemplated that the municipal clerk will delegate tasks to his or her designees and is authorized to do so. For example, General Statutes § 7-19 provides in relevant part that "[e]ach town clerk may, unless otherwise provided by charter or ordinance, appoint assistant town clerks, who, having taken the oath provided for town clerks, shall, in the absence or inability of the town clerk, have all the

powers and perform all the duties of the town clerk. . . .”[5] Section 9-140b itself suggests that someone other than the municipal clerk properly could receive and process absentee ballots. Specifically, subsection (d) of § 9-140b provides in relevant part that “[n]o person shall have in his possession any official absentee ballot or ballot envelope . . . except . . . *any person authorized by a municipal clerk to receive and process official absentee ballot forms on behalf of the municipal clerk*, any authorized primary, election or referendum official or any other person authorized by any provision of the general statutes to possess a ballot or ballot envelope.” (Emphasis added.) Retrieving absentee ballots from the drop boxes certainly constitutes “receiv[ing] and process[ing]” absentee ballots. Accordingly, we conclude that, when read in the context of the entire absentee ballot statutory scheme, § 9-140b (c) (2) requires the municipal clerk, or his or her designee, to retrieve the absentee ballots from each secure drop box.

Although we need not look to the legislative history of the statute given our conclusion that the plain meaning of the statute requires the municipal clerk or his or her designee to retrieve the absentee ballots, we acknowledge that the plaintiff’s primary argument on appeal relies on the fact that General Statutes (Rev. to 2021) § 9-140b (c) (2) was amended by the legislature during a special session in June, 2021. See Spec. Sess. P.A. 21-2, § 102. That subdivision previously provided in relevant part: “In the case of absentee ballots mailed under subparagraph (B) of subdivision (1) of this subsection . . . the municipal clerk shall (A) retrieve from

[5] We note that Horvath was not present in the City Clerk’s Office on election day. As a result, the retrieval of ballots from the drop boxes on election day by an assistant clerk would plainly be permissible under § 7-19 because that statute permits assistant municipal clerks to perform all the duties of the municipal clerk in the absence of the municipal clerk.

the secure drop box described in said subparagraph each such ballot deposited in such drop box, and (B) *if the drop box is located outside a building other than the building where the clerk's office is located, arrange for the clerk or the clerk's designee to be escorted by a police officer during such retrieval.*" (Emphasis added.) General Statutes (Rev. to 2021) § 9-140b (c) (2). The plaintiff contends that the legislature modified the statute to exclusively permit the municipal clerk herself to retrieve absentee ballots from the drop boxes when it deleted the language permitting the clerk's designee to retrieve absentee ballots with the assistance of a police officer. Even if we were to agree with the plaintiff that it is appropriate to look to the legislative history of the statute, we are not persuaded that the plaintiff's reading of the statute is correct.

First, the plaintiff's interpretation of the statute improperly ignores the requirement of § 1-2z that the meaning of the statute shall "be ascertained from the text of the statute itself and *its relationship to other statutes*." (Emphasis added.) General Statutes § 1-2z. The plaintiff fails to reconcile § 9-140b (c) (2) with the broader statutory scheme pertaining to the absentee ballot process, which plainly contemplates that the municipal clerk will delegate tasks to his or her designees and is authorized to do so.

Second, it would be implausible to conclude that the municipal clerk is required to retrieve all absentee ballots from the drop boxes herself simply because there is no mention of a clerk's designee. Such a reading would also require the clerk to carry out nearly the entire absentee ballot process without the help of anyone in her office because the other relevant statutory provisions do not reference a designee. As we explained, there are numerous statutes governing the absentee ballot process, and none of them references the municipal clerk's designee or assistant. Many municipalities

have multiple drop boxes—West Haven had three—and the municipal clerk must ensure that all ballots are accepted before the close of polls. It would be virtually impossible for the municipal clerk to personally ensure all ballots are received before the close of polls when there are multiple drop boxes located throughout the municipality. Requiring a single person to carry out the entire absentee ballot procedure under such circumstances, without any assistance, would grind the administration of an election nearly to a halt. The legislature could not have intended such an implausible result. Cf. *Wilkins* v. *Connecticut Childbirth & Women's Center*, 314 Conn. 709, 723, 104 A.3d 671 (2014) ("[i]t is axiomatic that [w]e must interpret the statute so that it does not lead to absurd or unworkable results" (internal quotation marks omitted)).

The plaintiff would have a stronger argument that the legislature intended to remove the ability of the municipal clerk to designate someone to pick up the ballots if the only change to the statute was that the legislature removed the "or the clerk's designee" language and not the entirety of General Statutes (Rev. to 2021) § 9-140b (c) (2) (B). Subparagraph (B), which was deleted in its entirety, required a police officer to escort the clerk or his or her designee when that person retrieved ballots from certain drop boxes. The bill analysis of Senate Bill No. 1202, the bill that amended General Statutes (Rev. to 2021) § 9-140b (c) (2), provides the following context as to the purpose of the amendment: "The bill eliminates a requirement that applied during the 2020 state election under which a police officer had to escort the [municipal] clerk in retrieving absentee ballots from any drop box located outside of a building other than the clerk's office building. The bill also makes technical and conforming changes." Office of Legislative Research, Bill Analysis for Senate Bill No. 1202, as amended by House "A," House "G," House "H,"

and Senate "A," An Act Concerning Provisions Related to Revenue and Other Items To Implement the State Budget for the Biennium Ending June 30, 2023 (2021) p. 100, available at https://www.cga.ct.gov/2021/BA/PDF/2021SB-01202-R02SS1-BA.PDF (last visited June 9, 2023). "Although the comments of the [O]ffice of [L]egislative [R]esearch are not, in and of themselves, evidence of legislative intent, they properly may bear on the legislature's knowledge of interpretive problems that could arise from a bill." *Harpaz* v. *Laidlaw Transit, Inc.*, 286 Conn. 102, 124 n.15, 942 A.2d 396 (2008). In the absence of express language in the statute requiring the municipal clerk to perform the task herself, we decline to interpret the legislature's deletion of this language to mean that only the clerk may carry out the directive, insofar as the legislature may have removed this language because it was unnecessary in light of the entire absentee ballot statutory scheme. We are unpersuaded that the purpose of the amendment was to remove the language that acknowledged that the municipal clerk may designate someone to retrieve the ballots.

Here, Horvath delegated the responsibility of retrieving the absentee ballots from the secure drop boxes to her subordinates about "[h]alf the time . . . ." There is no allegation that someone outside the City Clerk's Office retrieved the ballots. Therefore, we conclude that the defendants complied with the statute, and there is no error in the ruling of an election official for purposes of § 9-328.

II

FOURTEEN "SAME DAY" ABSENTEE BALLOTS

We next turn to the plaintiff's two claims concerning the fourteen "same day" absentee ballots that he argues were improperly counted because they (1) failed to substantially comply with § 9-140c (a), insofar as they were not endorsed by Horvath, the city clerk, at the

time they were received, and (2) were treated differently from other, similarly situated ballots.

The following additional facts are relevant to these claims. There was testimony throughout the hearing before the trial court that twelve to fifteen absentee ballots that had been retrieved from three drop boxes in West Haven on election day were delivered by the registrars of voters to the central counting room at approximately 5:30 p.m. The parties ultimately agreed that there were actually fourteen such "same day" ballots. The head absentee ballot moderator, Catherine Conniff, asked the registrars to hold these ballots until the count was complete because they needed to be divided into districts and checked against the official books for each district. The ballots were brought back to the central counting room before 8 p.m. for counting, and it was discovered that they did not contain Horvath's endorsement.

Election officials agreed that they should contact the Office of the Secretary of the State to seek guidance on how to handle these ballots. Conniff and the Democratic registrar of voters of West Haven, Sherri Lepper, called the Office of the Secretary of the State and reached Heather Augeri. Once it was confirmed that the ballots had been received by the City Clerk's Office no later than 3 p.m. on election day, the election officials were advised to have the assistant city clerk, Recchia, endorse the ballots by hand and to count them. Recchia did as instructed, and the outer envelopes of these ballots were hand marked, "[r]ec'd SR 3:00 p.m." The outer envelopes were also stamped, "NOV—2 2021." The election officials then returned to the counting room with the ballots, and they were counted. A document titled "Affidavit of Delivery and Receipt of Absentee Ballot" was signed by Recchia and Lepper, and delivered to Conniff.

The trial court reasoned that, although strict compliance with § 9-140c (a) was plainly lacking because Hor-

vath did not endorse these ballots at the time of receipt and the City Clerk's Office did not follow its customary procedure of marking the ballots with a stamp, only substantial compliance with the statute was required. The court concluded that the evidence was undisputed that, after election officials conferred with an employee at the Office of the Secretary of the State, Recchia endorsed the fourteen unendorsed outer envelopes, and those endorsements substantially complied with § 9-140c (a).

A

The plaintiff first claims that the trial court incorrectly concluded that the fourteen "same day" absentee ballots substantially complied with § 9-140c (a), in the absence of any statutory compliance by Horvath. Specifically, the plaintiff contends that the evidence demonstrated that these ballots were not returned to the City Clerk's Office, as required by statute; rather, they were returned to the Office of the Registrar of Voters before going to the City Clerk's Office. As a result, the plaintiff contends, the City Clerk's Office did not endorse the ballots at the time they were received, as required by § 9-140c (a). Instead, those ballots were endorsed hours after they were received. The defendants contend that the trial court correctly determined that the fourteen "same day" ballots substantially complied with § 9-140c (a) because, although they were not initially endorsed, they were ultimately endorsed by Recchia after it was confirmed that they were properly received on election day from eligible absentee ballot voters. We agree with the defendants.

Section 9-140c (a) provides in relevant part: "The municipal clerk shall endorse over his signature, upon each outer envelope as he receives it, the date and precise time of its receipt. . . ." We have previously explained that "[t]he provisions of § 9-140c (a) regard-

ing the date and time of the [municipal] clerk's receipt of an absentee ballot envelope, and the [municipal] clerk's signature, are mandatory because they are designed to mitigate the risk of fraud that is inherent in the absentee voting process. . . . That does not mean, however, that strict, as opposed to substantial, compliance with those provisions is required. Rather, there must be substantial compliance with the statutory requirements." (Citation omitted.) *In re Election of the United States Representative for the Second Congressional District*, 231 Conn. 602, 651, 653 A.2d 79 (1994).

In *In re Election of the United States Representative for the Second Congressional District*, this court addressed irregularities in the handling of absentee ballots in Stonington, Old Saybrook, Ledyard, and Norwich. Id., 648. In each city or town, the clerk's office had a stamp that it typically used on absentee ballot outer envelopes as the ballots arrived. Id., 649–50. The plaintiff challenged 413 absentee ballot outer envelopes that were endorsed as follows. In Stonington, the outer envelope entered into evidence was stamped: "RECEIVED FOR RECORD STONINGTON, CT. 94 NOV—8 AM 9:55 RUTH WALLER TOWN CLERK." (Internal quotation marks omitted.) Id., 649. Three absentee ballot outer envelopes in Old Saybrook were stamped: "RECEIVED OCTOBER 14 1994." (Internal quotation marks omitted.) Id. In Ledyard, although the town clerk had a stamp facsimile of her cursive signature that she customarily affixed to each outer envelope upon receipt, six outer envelopes lacked that cursive facsimile because the ballots arrived when the clerk was recovering from heart surgery and was out of the office. Id., 650. The clerk's assistant failed to affix the clerk's cursive facsimile, and the envelopes were stamped: "RECEIVED FOR RECORD AT LEDYARD, CT. 94 OCT 26 AM 10:31 ATTEST: PATRICIA KARNS TOWN CLERK." (Internal quotation marks omitted.) Id. In Norwich, the clerk

had a stamp facsimile of her cursive signature that she customarily used, but the evidence established that one outer envelope lacked that cursive facsimile and was stamped: "RECEIVED 94 NOV—7 AM 9:03 BEVERLY C. MULDOON TOWN-CITY CLERK NORWICH, CONN." (Internal quotation marks omitted.) Id.

In addressing the plaintiff's claims that the 413 ballots did not comply with § 9-140c (a), this court reasoned that "[t]he purpose of the signature requirement in § 9-140c (a) is to avoid fraud in the voting of absentee ballots. By requiring the [municipal] clerk to sign the outer envelope, the statute seeks to avoid the risk that an unauthorized person will somehow include an unauthorized absentee ballot among those validly sent and delivered." Id., 652. We also noted, however, that this consideration must be weighed against the numerous procedural rigors in the statutory scheme governing absentee ballots that act as a significant safeguard against fraud. Id. This court explained that courts should also consider "the extent of deviation from strict compliance" when deciding whether there has been substantial compliance. Id., 652–53. Finally, we also explained that courts should take into consideration whether the failure of strict compliance was due to the conduct of the voter or of someone not within his or her control. Id., 653. In sum, we concluded that "whether [an anomalous endorsement] constitute[s] substantial compliance with § 9-140c (a) . . . must be determined by reference to the purpose of the statutory requirement, the role played by the requirement viewed in the context of the statutory scheme, the degree of adherence to strict compliance shown, and the basic policy against disfranchisement of voters who are not at fault for any lack of strict compliance" by election officials. Id., 652.

In *In re Election of the United States Representative for the Second Congressional District*, this court determined that, of the 413 absentee ballot outer envelopes

at issue in that case, the 3 absentee ballots from Old Saybrook were the only ballots that did not substantially comply with § 9-140c (a). Id., 651–52. This court explained that "[t]he stamp on the Old Saybrook envelopes is merely a generic date stamp and contains no indication, whether by hand signature, stamp facsimile or printed name and title, that it was received by the town clerk. Furthermore, there is no time of receipt indicated on the stamp, as required by the statute. . . . The minimal adherence to the requirements of § 9-140c (a) evinced by the endorsements on the three Old Saybrook envelopes in question leads us to conclude that they do not substantially comply with the requirements of § 9-140c (a)." (Citation omitted.) Id., 653. We concluded that the remaining ballots did substantially comply with § 9-140c (a), reasoning that, "[a]lthough a stamped facsimile of the town clerks' cursive signature would arguably have been preferable, we cannot ascribe critical significance to the difference between such a cursive facsimile and the printed names and titles of the town clerks that were rendered on the envelopes by the town clerks' time and date stamp machines. Neither of these types of stamps is readily available to the public." Id.

Here, there is no dispute that the election officials failed to strictly comply with the mandates of § 9-140c (a): Horvath did not endorse the fourteen "same day" absentee ballots herself when they were received using the date and time stamp with her signature that the City Clerk's Office customarily used. Nevertheless, as the trial court correctly noted, substantial compliance with § 9-140c (a) is all that was required. Horvath testified that she was not in the City Clerk's Office at all on election day, so she could not have personally endorsed the outer envelopes of those ballots. Section 7-19 provides in relevant part that "assistant town clerks . . . shall, in the absence or inability of the town clerk,

have all the powers and perform all the duties of the town clerk. . . .'' As such, Recchia, as the assistant city clerk, was the highest ranking election official present and was permitted to endorse the absentee ballots received on election day.

With respect to the manner in which Recchia endorsed the ballots, she did not follow the customary practice of marking the ballots with the stamp that included a facsimile of Horvath's signature. Recchia did, however, endorse the ballots with her own handwritten initials, as well as the date and approximate time that the City Clerk's Office received the ballots. Recchia's endorsement of the fourteen ''same day'' absentee ballots is more similar to the 410 endorsements in *In re Election of the United States Representative for the Second Congressional District* that this court concluded substantially complied with § 9-140c (a) than the 3 rejected endorsements that contained only a generic date stamp. See *In re Election of the United States Representative for the Second Congressional District*, supra, 231 Conn. 649–51. In the present case, the information contained on the fourteen ''same day'' ballots—Recchia's initials, the date of receipt, and the approximate time of receipt—is nearly identical to the information required by § 9-140c (a). See General Statutes § 9-140c (a) (''[t]he municipal clerk shall endorse over his signature, upon each outer envelope as he receives it, the date and precise time of its receipt'').

Although the plaintiff does not argue that Recchia's initials do not satisfy the signature requirement of the statute, we note that Recchia's initials were written in her own handwriting, and, as this court reasoned in *In re Election of the United States Representative for the Second Congressional District* with respect to stamps, it would be difficult, in the absence of forgery, for an unauthorized person to somehow include an unautho-

rized absentee ballot.[6] See *In re Election of the United States Representative for the Second Congressional District*, supra, 231 Conn. 652. Moreover, the slight delay between the receipt of the ballots and Recchia's endorsements thereon was attributable to the time it took for election officials to obtain guidance from the Office of the Secretary of the State—Recchia affixed her endorsements after she confirmed with election officials that these ballots were received on election day during a sweep of the absentee ballot drop boxes. The plaintiff does not allege that anyone tampered with the ballots or that they were otherwise invalid, aside from the failure to strictly comply with § 9-140c (a). Indeed, on this record, the possibility of fraudulent activity with respect to the fourteen "same day" absentee ballots seems particularly fanciful in light of (1) the evidence from the absentee ballot report, which showed that these ballots were from eligible voters and were properly delivered on election day prior to the close of polls, and (2) Recchia's sworn testimony that the handwritten initials on each ballot are her initials and that she personally wrote them on each outer envelope. The trial court also concluded that any concern of fraud was further ameliorated by the 11 a.m. barcode scan of each of the fourteen envelopes.

Finally, the strong public policy against disenfranchising voters who are not at fault for problems with

[6] As the trial court noted, the legislature has not defined "signature" in the absentee ballot context. It has, however, addressed signatures in another section of title 9 of the General Statutes. See General Statutes § 9-453m ("[t]he use of titles, *initials* or customary abbreviations of given names by the signer of a nominating petition shall not invalidate such signature if the identity of the signer can be readily established by reference to the signature on the petition and the name of a person as it appears on the last-completed registry list at the address indicated or of a person who has been admitted as an elector since the completion of such list" (emphasis added)). Here, Recchia was readily identifiable from her initials, and she authenticated her initials on these ballots in court.

their ballots also strongly militates against rejecting these ballots. Although we recognize that there was a lack of "punctilious adherence" to certain statutory safeguards relating to these ballots; id.; we conclude that Recchia's endorsements substantially complied with § 9-140c (a).

B

The plaintiff also claims that the trial court's inclusion of the fourteen "same day" absentee ballots in the vote count created disparate treatment among similarly situated ballots. Specifically, he claims that the trial court, in counting these fourteen ballots, "ignored its finding that the absentee ballot counters rejected ballots earlier in the vote count that lacked [Horvath's] endorsement." The defendants contend that the trial court did not disparately treat similarly situated ballots. We conclude that the plaintiff has failed to establish that the fourteen "same day" absentee ballots were similarly situated to other rejected ballots.

The plaintiff points to two sources of support for his contention that the trial court treated the fourteen "same day" absentee ballots differently from other, similarly situated ballots. First, he references a single sentence in the trial court's memorandum of decision in which the court summarized the evidence presented in the plaintiff's case-in-chief. There, the trial court noted that an absentee ballot counter, Linda McDonough, testified that she "rejected absentee ballots in the initial count that lacked [Horvath's] endorsement." Second, the plaintiff cites testimony from Conniff, who testified that the City Clerk's Office rejected nine absentee ballots on election day and that "some of those rejected ballots *could have been* rejected due to the ballots' lacking [Horvath's] endorsement." (Emphasis added.) Without citing any additional evidence in the record, the plaintiff asserts that the fourteen "same day" absentee

ballots were treated differently from the allegedly similarly situated ballots referenced by McDonough and Conniff. We disagree.

The trial court made no factual findings that the ballots referenced by McDonough and Conniff were similarly situated to the fourteen "same day" absentee ballots. We do not know why each of these other ballots was rejected. Conniff's testimony does not even definitively establish that any of the nine rejected ballots she references were in fact rejected for lack of Horvath's endorsement. Rather, Conniff simply testified that they "*could* have been" rejected for that reason. (Emphasis added.) McDonough testified that she rejected an unspecified number of ballots that lacked Horvath's endorsement. We do not know, however, the details surrounding these ballots. As we explained in part II A of this opinion, the "same day" absentee ballots were ultimately endorsed by Recchia after she confirmed with other election officials that the ballots were from eligible voters and were properly delivered on election day prior to the close of polls. We have no such information about the ballots referenced by McDonough. We do not know, for example, whether Recchia was unable to confirm whether the ballots referenced by McDonough were from eligible voters and properly delivered to the City Clerk's Office. It was the plaintiff's burden to establish that, as a result of substantial statutory violations, the reliability of the results of the election is seriously in doubt. See, e.g., *Bortner* v. *Woodbridge*, supra, 250 Conn. 258; see also, e.g., *Lazar* v. *Ganim*, Superior Court, judicial district of Fairfield, Docket No. FBT-CV-19-6090047-S (November 1, 2019) (election case explaining that "factual findings cannot be based on speculation or conjecture"), aff'd, 334 Conn. 73, 220 A.3d 18 (2019). The plaintiff failed to establish the circumstances surrounding the rejection of these other absentee ballots, and, therefore, he cannot establish that the trial court treated the fourteen "same day" ballots

differently from the ballots referenced by McDonough and Conniff. We decline to overturn an election on the basis of theoretical arguments without any evidence regarding the circumstances surrounding these other rejected ballots.

III

AFFIDAVIT OF DELIVERY AND RECEIPT

Next, we turn to the plaintiff's contention that the trial court erred in concluding that the affidavit of delivery and receipt required by § 9-140c (j) is secondary to the municipal clerk's endorsement. Specifically, the plaintiff contends that the purpose of the affidavit of delivery and receipt is to confirm that the chain of custody between the clerk and the registrars of voters was maintained and to verify an accurate absentee ballot count. In the absence of the affidavit required by § 9-140c (j), the plaintiff contends, there is no credible way to determine the number of absentee ballots returned in the election. The defendants disagree and contend that the trial court correctly concluded that the absence of the affidavit of delivery and receipt is not, by itself, sufficient reason to question the election results. The defendants contend that these affidavits serve to memorialize the transfer of custody of the absentee ballots from the municipal clerk to the registrars of voters. As a result, the defendants contend, these affidavits simply memorialize the primary evidence of the chain of custody that is established by the ballots themselves, other internal reports, and endorsements prepared by the municipal clerk. We agree with the defendants.

The following additional facts are relevant to this claim. Deborah Collins, an absentee ballot counter, testified that she was not aware of any affidavits executed with respect to absentee ballots in the election. Horvath testified that the City Clerk's Office did not execute

affidavits of delivery and receipt when it transferred absentee ballots for the election to the Office of the Registrar of Voters.[7] As a result, the trial court concluded that there was a clear violation of § 9-140c (j), which was enacted to prevent fraud in the absentee ballot process by establishing chain of custody procedures. The court noted, however, that it heard testimony from all the election officials who had failed to prepare and execute the statutorily mandated affidavits. The court credited the testimony from these officials and concluded that this testimony established that there was no mistake in the vote count. Accordingly, the court concluded that, because the affidavits are secondary evidence to the city clerk's endorsements, it would not reject these absentee ballots on the basis of Horvath's neglect in failing to execute the affidavits of delivery and receipt.

Section 9-140c (e) directs the municipal clerk to deliver the absentee ballots to the registrars of voters for counting. Section 9-140c (j) provides that, "[e]ach time absentee ballots are delivered by the clerk to the registrars pursuant to this section, the clerk and registrars shall execute an affidavit of delivery and receipt stating the number of ballots delivered. The clerk shall preserve the affidavit for the period prescribed in section 9-150b." General Statutes § 9-150b (i) (2), in turn, requires the municipal clerk to preserve, as a public record, the affidavit of delivery and receipt for 180 days after the election.

Here, there is no question that Horvath and the registrars of voters failed to comply with § 9-140c (j), insofar

[7] Horvath also testified that, as far as she was aware, no one prepared or executed affidavits of endorsement for the election, as required by § 9-140c (a). George M. Chambrelli IV, the head moderator of the election, testified that he did not submit an affidavit to Horvath to certify that her endorsements were accurate. On appeal, however, the plaintiff does not challenge the failure of the City Clerk's Office to execute affidavits of endorsement.

as Horvath testified that the City Clerk's Office never executed affidavits of delivery and receipt when it transferred absentee ballots to the Office of the Registrar of Voters. Election officials are required to comply with the mandates of § 9-140c (j) and all statutory requirements pertaining to the absentee ballot process because this "procedural rigor" was designed to safeguard against fraud. *In re Election of the United States Representative for the Second Congressional District*, supra, 231 Conn. 652–53; see also, e.g., 26 Am. Jur. 2d 129, Elections § 333 (2014) ("[t]he procedures required by the absentee voting laws serve the purposes of enfranchising qualified voters, preserving ballot secrecy, *preventing fraud*, and achieving a reasonably prompt determination of election results" (emphasis added)). This court previously has recognized "that there is considerable room for fraud in absentee [ballot] voting and that a failure to comply with the regulatory provisions governing absentee [ballot] voting increases the opportunity for fraud." (Internal quotation marks omitted.) *Keeley* v. *Ayala*, supra, 328 Conn. 407. As such, it is imperative that election officials comply with the affidavit requirement of § 9-140c (j). We have also explained, however, that, "[i]f there is to be [disen]franchisement, it should be because the legislature has seen fit to require it in the interest of an honest suffrage, and has expressed that requirement in unmistakable language." (Internal quotation marks omitted.) Id.

In this case, the trial court credited the testimony of the various election officials who failed to complete the affidavits of delivery and receipt. This testimony established that there was no mistake in the vote count and that the chain of custody of the ballots was properly maintained. Specifically, the court credited Horvath's testimony, which established that the City Clerk's Office and the registrars of voters transferred all absentee ballots that the City Clerk's Office received to the Office

of the Registrar of Voters every day at the close of business. The court also noted that, throughout the hearing, multiple election officials testified to the various steps they took to maintain the chain of custody, and the plaintiff did not provide any evidence that the chain of custody was broken such that the reliability of the election results was called into question. Election officials also credibly testified that the City Clerk's Office and the Office of the Registrar of Voters reviewed the absentee ballot reports against the ballots themselves, and the number of absentee ballots matched the reports each time. On appeal, the plaintiff does not dispute the trial court's credibility determination of these witnesses or claim that the chain of custody was broken. As a result, the failure of the election officials to comply with § 9-140c (j) is overcome by their sworn testimony, credited by the trial court, which established the chain of custody for these ballots. This court has explained that a voter should not be disenfranchised because of the error or mistake of another when that mistake does not contravene the legislative policy against voting fraud. See, e.g., *Dombkowski* v. *Messier*, 164 Conn. 204, 206–207, 319 A.2d 373 (1972); *Scully* v. *Westport*, 145 Conn. 648, 651–52, 145 A.2d 742 (1958); *Moran* v. *Bens*, 144 Conn. 27, 32, 127 A.2d 42 (1956). We agree with the trial court that the plaintiff has not established that the reliability of the results of the election is seriously in doubt.

We do not reach this conclusion without reservation. We agree with the plaintiff that the trial court's statement—that the affidavit of delivery and receipt required by § 9-140c (j) is "secondary evidence" to the municipal clerk's endorsement—appears to conflate the purpose of the affidavit of delivery and receipt with the purpose of the affidavit of endorsement required by § 9-140c (a). The purpose of the affidavit of delivery and receipt is to prevent fraud in the absentee ballot process by

establishing the chain of custody of the ballots. By contrast, the purpose of the affidavit of endorsement is to verify the endorsements the municipal clerk is required to make on the outer envelopes of absentee ballots pursuant to § 9-140c (a). Additionally, the affidavits are not "secondary evidence" to the endorsements. The affidavits are statutorily mandated by the legislature, and compliance is therefore mandatory, not optional. Indeed, this case highlights the problems that can arise when a municipality does not comply with the mandates of § 9-140c (j); namely, the municipality faces the possibility of litigation and is left to establish the chain of custody through the testimony of election officials. The affidavits of delivery and receipt are intended to avoid the need for such testimony by providing contemporaneous documentation of the chain of custody of the absentee ballots each time the municipal clerk delivers the ballots to the registrars of voters. The need to litigate the proper chain of custody of absentee votes on a ballot-by-ballot basis is clearly untenable at a systemic level, and local election officials must satisfy their statutory obligation to follow the prescribed administrative procedures to avoid the potentially debilitating inefficiencies that would result from noncompliance. As we explained, given the testimony of Horvath and other election officials, we agree with the trial court that, although the plaintiff established that the election officials violated § 9-140c (j) by not completing the affidavits of delivery and receipt, he failed to establish that the reliability of the results of the election is seriously in doubt. But this conclusion should not obscure the vital importance of our message to local election officials, which is the necessity to adhere to the prescribed statutory procedures without deviation. Compliance is necessary, not only to maintain strong and unwavering public confidence in our elections, but also to facilitate the timely, efficient, and proper resolution of election disputes that may end up in court.

IV

RETURN OF ABSENTEE BALLOTS BY IMPROPERLY DESIGNATED PERSON

The plaintiff next contends that the trial court incorrectly concluded that the absentee ballots belonging to Tomporowski, Carlington, Holland, and Arminio substantially complied with § 9-140b (a).[8] The plaintiff argues that each of these absentee ballots was returned by someone who was not statutorily authorized to do so. The defendants contend that the trial court correctly concluded that the plaintiff had failed to satisfy his burden of proving that these four absentee ballots did not substantially comply with § 9-140b (a). We agree with the defendants.

At trial, the plaintiff claimed that eleven absentee ballots were returned by an improperly designated person. The trial court agreed with the plaintiff regarding six of the challenged ballots but found that "five absentee ballot outer envelopes [including those belonging to Tomporowski, Carlington, Holland, and Arminio] contain[ed] the information that § 9-140b (a) requires. . . . The plaintiff has not provided evidence that the designees for these absentee ballot voters are not qualified designees under § 9-140b (a) (3) or (4). Without such proof, the plaintiff has failed to carry his burden of proving that these absentee ballots were submitted in violation of § 9-140b." (Footnote omitted.)

Section 9-140b (a) provides in relevant part: "An absentee ballot shall be cast at a primary, election or referendum only if: (1) It is mailed by (A) the ballot applicant, (B) a designee of a person who applies for an absentee ballot because of illness or physical disability, or (C) a member of the immediate family of an applicant who is a student, so that it is received by the clerk of the municipality in

[8] Additionally, the plaintiff previously challenged the absentee ballot belonging to Lesley Bode. On appeal, however, the plaintiff no longer challenges Bode's ballot.

which the applicant is qualified to vote not later than the close of the polls; (2) it is returned by the applicant in person to the clerk by the day before a regular election, special election or primary or prior to the opening of the polls on the day of a referendum; (3) it is returned by a designee of an ill or physically disabled ballot applicant, in person, to said clerk not later than the close of the polls on the day of the election, primary or referendum; (4) it is returned by a member of the immediate family of the absentee voter, in person, to said clerk not later than the close of the polls on the day of the election, primary or referendum . . . . A person returning an absentee ballot to the municipal clerk pursuant to subdivision (3) or (4) of this subsection shall present identification and, on the outer envelope of the absentee ballot, sign his name in the presence of the municipal clerk, and indicate his address, his relationship to the voter or his position, and the date and time of such return. As used in this section, 'immediate family' means a dependent relative who resides in the individual's household or any spouse, child, parent or sibling of the individual."

As we have previously explained, "the requirements of § 9-140b are mandatory. . . . Accordingly, the return of ballots in a manner not substantially in compliance with § 9-140b will result in their invalidation, regardless of whether there is any proof of fraud." (Citation omitted.) *Keeley* v. *Ayala*, supra, 328 Conn. 410–11. In *Keeley*, this court noted that "[§] 9-140b, read as a whole, reflects a clear legislative intent to maintain distance between partisan individuals and the casting and submission of absentee ballots, undoubtedly in recognition of the potential for undue influence, intimidation or fraud in the use of those ballots." Id., 411. This court further observed that, "[w]ith respect to who may choose a 'designee' for an absentee voter, the language used in § 9-140b manifests [a legislative intention] that a 'designee' be a person whom the absentee voter, himself or herself, selects to return

his or her ballot. Specifically, that statutory provision indicates that 'a *designee of an* ill or physically disabled *ballot applicant*' may return the ballot in person . . . General Statutes § 9-140b (a) (3); and otherwise that '*a designee of a person* who applies for an absentee ballot because of illness or physical disability' may return the ballot by mail. . . . General Statutes § 9-140b (a) (1) (B)." (Emphasis in original.) *Keeley* v. *Ayala*, supra, 412.

Here, the plaintiff failed to subpoena these voters or the individuals who delivered their ballots. The plaintiff also did not question anyone from the City Clerk's Office regarding the process of accepting an absentee ballot from a designee or an immediate family member. There is also no evidence to suggest that the City Clerk's Office failed to perform its duties of having a designee or family member sign his or her name in the clerk's presence and of checking the identification of the designee or family member. Rather, the plaintiff relies exclusively on the outer envelopes to establish his case. This evidence alone cannot establish that the designees who returned the ballots were not qualified designees under § 9-140b (a). For example, there is no information regarding whether any of these voters were ill or physically disabled and, therefore, allowed to designate someone to return their ballot pursuant to § 9-140b (a) (1) or (3). There is also no evidence that certain designees were not "immediate family," as that term is defined. See General Statutes § 9-140b (a) ("[a]s used in this section, 'immediate family' means a dependent relative who resides in the individual's household or any spouse, child, parent or sibling of the individual"). Moreover, the trial court found, as a matter of fact, that these absentee ballot outer envelopes contained the information required by § 9-140b (a). We cannot conclude that this finding was clearly erroneous. See, e.g., *Bortner* v. *Woodbridge*, supra, 250 Conn. 258 ("underlying facts are to be established by a preponderance of the evidence and are subject on appeal to the clearly erroneous stan-

dard"); see also, e.g., Practice Book § 60-5 ("[t]he court may reverse or modify the decision of the trial court if it determines that the factual findings are clearly erroneous"). Had the plaintiff wished to establish the relationships and circumstances surrounding the return of these absentee ballots, he could have requested the absentee ballot applications for each voter or subpoenaed these individuals to testify. He did not. Accordingly, we agree with the trial court that the plaintiff failed to satisfy his burden of proving that these absentee ballots were submitted in violation of § 9-140b (a).

V

ABSENTEE BALLOT REPORT

We next address the plaintiff's contention that the trial court incorrectly concluded that the eight absentee ballot outer envelopes found in the city vault that were missing from the absentee ballot report were returned to the City Clerk's Office in substantial compliance with § 9-140b (a). Specifically, the plaintiff argues that the evidence revealed that a comparison of the outer envelopes against the absentee ballot report dated November 3, 2021, shows that there were 8 absentee ballot outer envelopes included within the 711 outer envelopes of counted absentee ballots that were not logged as returned in the November 3, 2021 absentee ballot report. The plaintiff also notes that a similar comparison against the December 2, 2021 absentee ballot report shows that only 2 of the 8 absentee ballots appear logged. As a result, it is the plaintiff's contention that, as of thirty days following the election, there was no record of 6 counted absentee ballots being returned to the City Clerk's Office. The defendants disagree and contend that the trial court correctly concluded that the plaintiff failed to satisfy his burden of proving that these ballot envelopes found in the city vault were not returned to the City Clerk's Office in substantial compliance with § 9-140b (a).

Relevant to this claim, the trial court explained that the eight absentee ballots found in the city vault that were missing from the absentee ballot report are not evidence of noncompliance with the absentee ballot statutory requirements. The court noted that the primary evidence of returned absentee ballots is the § 9-140c (a) requirement that the municipal clerk mark each outer envelope as the municipal clerk's office receives it with her endorsement and the precise date and time of receipt. The court also noted that the plaintiff did not present any evidence that the outer envelopes of these eight absentee ballots lacked the clerk's § 9-140c (a) certification. Accordingly, the court concluded that it would "not overturn an election on theoretical arguments without any evidentiary basis. The plaintiff bears the burden of proving that there was a mistake in the count of the vote, and he cannot rely on mere conjecture to meet that burden." We agree with the trial court.

Section 9-140c (a) requires, among other things, that the municipal clerk "keep a list of the names of the applicants who return absentee ballots to the clerk under section 9-140b. The list shall be preserved as a public record as required by section 9-150b." In this case, the evidence demonstrated a discrepancy of eight ballots that were not included in the November 3, 2021 absentee ballot report but were in the city vault. The plaintiff failed to present any evidence to the trial court, however, that the outer envelopes of these ballots lacked the clerk's § 9-140c (a) endorsement, and he does not contend otherwise on appeal. "[U]nder our system of government, the plaintiff bears the *heavy burden* of proving by a preponderance of the evidence that any irregularities in the election process *actually*, *and seriously*, *undermined the reliability of the election results* before the courts will overturn an election." (Emphasis altered.) *Caruso* v. *Bridgeport*, 285 Conn. 618, 653, 941 A.2d 266 (2008). As the trial court concluded, the plaintiff failed to meet the heavy burden

of establishing that these eight absentee ballots should be invalidated because they were not entered into the November 3, 2021 absentee ballot report. In the absence of evidence that these ballots did not otherwise comply with the requirements of §§ 9-140b and 9-140c (a), we decline to disenfranchise these voters because of a discrepancy in the absentee ballot report. Contrary to the plaintiff's assertion, there is a record of these ballots being returned to the City Clerk's Office—Horvath's endorsement on each outer envelope. Accordingly, we cannot conclude that the counting of these ballots was a mistake of an election official.

We emphasize, however, that election officials must take care to comply with all statutory requirements pertaining to the absentee ballot process, including maintaining an accurate list of the names of applicants who return absentee ballots, as required by § 9-140c (a). As we explained in part III of this opinion, the requirements of the absentee ballot statutory scheme were designed to safeguard against fraud. See, e.g., *In re Election of the United States Representative for the Second Congressional District*, supra, 231 Conn. 652–53; see also, e.g., 26 Am. Jur. 2d, supra, § 333, p. 129. When election officials fail to comply with the various statutory mandates, the risk of fraud increases, and the municipality faces the risk of litigation and the burdens of establishing the integrity of the electoral process and of demonstrating that the reliability of the results of the election is not seriously in doubt.

VI

MISCELLANEOUS CLAIMS

Finally, the plaintiff contends, in his brief, that the trial court incorrectly concluded that the reliability of the results of the election was not in serious doubt and that there was no mistake in the vote count. In this section of his brief, the plaintiff points to "[a]dditional evidence"

that he asserts further supports his contention that the reliability of the results of the election is in serious doubt. To the extent the plaintiff is raising new claims with respect to this "[a]dditional evidence" that we have not already addressed in parts I through V of this opinion, we conclude that these claims are inadequately briefed. "We repeatedly have stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [When] a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned. . . . For a reviewing court to judiciously and efficiently . . . consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs. . . . In addition, briefing is inadequate when it is not only short, but confusing, repetitive, and disorganized." (Citations omitted; internal quotation marks omitted.) *Burton* v. *Dept. of Environmental Protection*, 337 Conn. 781, 803, 256 A.3d 655 (2021). Here, the plaintiff provides no legal analysis or legal support with respect to the "[a]dditional evidence" he mentions in this section of his brief. The plaintiff's cursory assertions of the various alleged discrepancies leave this court unable to ascertain exactly what alleged error the plaintiff is claiming with respect to some of this "[a]dditional evidence . . . ." In less than two pages of his brief, the plaintiff raises at least four separate instances of claimed irregularities. "Although the number of pages devoted to an argument in a brief is not necessarily determinative, relative sparsity weighs in favor of concluding that the argument has been inadequately briefed." *State* v. *Buhl*, 321 Conn. 688, 726, 138 A.3d 868 (2016). The trial court did not even address some of the "[a]dditional evidence" the plaintiff now points to in sup-

port of his contention that the reliability of the results of the election was in serious doubt. Accordingly, we decline to review this claim.

In sum, we agree with the trial court that, with respect to certain claims of the plaintiff, "the evidence presented show[ed] a concerning lack of overall compliance with statutory guidelines by [West Haven] election officials . . . ." The failure to comply with the statutory procedures increases the risk of fraud and can affect the overall integrity of the electoral process. Election officials should use care and follow the statutory guidelines. Based on our review of the record, we conclude that, despite the lack of compliance by the election officials, the trial court correctly found that the plaintiff failed to satisfy his burden of proving that the reliability of the results of the mayoral election was seriously in doubt.

The judgment is affirmed.

In this opinion ALEXANDER and KELLER, Js., concurred.

D'AURIA, J., with whom ROBINSON, C. J., joins, concurring in part and concurring in the judgment. I agree with and join parts II through VI of the plurality opinion. Respectfully, however, I do not agree with the conclusion in part I of the plurality opinion, that the term "municipal clerk" in General Statutes § 9-140b (c) (2) plainly and unambiguously authorizes the municipal clerk *and* any of the clerk's "designees" to retrieve absentee ballots from secure drop boxes. Rather, I believe that the statute's plain and unambiguous language authorizes only the municipal clerk and, if the requirements of General Statutes § 7-19 are satisfied, any appointed assistant clerks, to retrieve absentee ballots from the drop boxes. Nonetheless, I agree with the plurality that the record before us regarding who retrieved how many absentee ballots does not permit a conclusion that any

error affected the reliability of the result of the November, 2021 election for mayor of the city of West Haven. I therefore respectfully concur in part.

My main disagreement with the plurality concerns its application of General Statutes § 1-2z.[1] Although the plurality recites this statute when undertaking to construe the term "municipal clerk," I do not agree that the plurality has properly considered both the language of § 9-140b (c) (2) and its relationship to other related statutes. Specifically, the plurality holds that the phrase "municipal clerk" means the municipal clerk and any designee of the clerk, despite the fact that the word "designee" does not appear anywhere in the governing statutes to describe anyone whom the clerk may designate to perform any task, let alone to retrieve absentee ballots from drop boxes.[2] The plurality mainly bases its conclusion on its contention that, because so many

[1] General Statutes § 1-2z provides: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

[2] General Statutes § 9-140b (a) (1) (B) does refer to, and § 9-140b (b) does define, "designee," but only in reference to someone whom an absentee ballot applicant may designate to assist an absentee ballot applicant in voting. There is no reference in § 9-140b to a designee of the municipal clerk, although there was prior to the passage of Public Acts, Spec. Sess., June, 2021, No. 21-2, § 102. See General Statutes (Rev. to 2021) § 9-140b (c) (2) ("the municipal clerk shall . . . (B) if the drop box is located outside a building other than the building where the clerk's office is located, arrange for the clerk or the clerk's designee to be escorted by a police officer during such retrieval").

In the absence of ambiguity, however, a proper textual construction of the statute under § 1-2z does not refer to repealed language, and the plurality does not contend that it does. See *Soto* v. *Bushmaster Firearms International, LLC*, 331 Conn. 53, 146, 202 A.3d 262 (vetoed bills and repealed statutes may be considered under § 1-2z to determine meaning of statute only when plain language of statute is ambiguous), cert. denied sub nom. *Remington Arms Co., LLC* v. *Soto*, U.S. , 140 S. Ct. 513, 205 L. Ed. 2d 317 (2019).

other statutes that require the municipal clerk to undertake certain duties regarding the absentee ballot procedure only use the phrase "municipal clerk," without explicitly authorizing others to act on his or her behalf, it would be " 'absurd or unworkable' " to require the clerk to personally "carry out the entire absentee ballot procedure," which "would grind the administration of an election nearly to a halt." The plurality relies on §§ 7-19 and 9-140b (d) to support its conclusion "that the legislature contemplated that the municipal clerk [would] delegate tasks to her designees and is authorized to do so."

In my view, the plurality does not sufficiently consider the plain and unique language of each of these statutes and provisions. I believe that an appropriate § 1-2z analysis should proceed as follows. Section 9-140b (c) (2) requires "the municipal clerk [to] retrieve from the secure drop box . . . each such [absentee] ballot deposited in such drop box." General Statutes § 9-1 (g) defines "[m]unicipal clerk" as "the clerk of a municipality . . . ." General Statutes § 9-1a defines "municipal clerk" or "clerk of the municipality" as "the town clerk in or for the municipality to which reference is made, unless otherwise provided by charter or special act." I agree with the plurality that these definitions "[appear] to require the municipal clerk to personally retrieve the absentee ballots from each secure drop box."

As to the plurality's concern that requiring the municipal clerk personally to carry out nearly the entire absentee ballot procedure might be impossible, I believe that reading the text of those statutes (including § 9-140b (c) (2)) and their "relationship to other statutes" leads to a conclusion different from that of the plurality about how the legislature considered this problem and accommodated it. In my view, two statutes in particular manifest this forethought. First, regarding the clerk's duties generally, § 7-19 allows the town clerk to "*appoint* assis-

tant town clerks, who, having taken the oath provided for town clerks, shall, in the absence or inability of the town clerk, have all the powers and perform all the duties of the town clerk." (Emphasis added.) Second, regarding absentee ballots specifically, § 9-140b (d) provides in relevant part: "No person shall have in his possession any official absentee ballot or ballot envelope for use at any primary, election or referendum *except* . . . any person authorized by a municipal clerk to *receive and process official absentee ballot forms* on behalf of the municipal clerk . . . ." (Emphasis added.)

The plurality cites to the latter provision as support for its contention that "[§] 9-140b itself suggests that someone other than the municipal clerk properly could receive and process absentee ballots." When read in tandem, I draw a different conclusion than does the plurality from the plain language of §§ 7-19 and 9-140b about who may "perform [the duty]" of the town clerk under § 9-140b (c) (2) of "retriev[ing] from the secure the drop box[es] . . . each such ballot deposited in such drop box."

The plurality, without citation, simply asserts that "[r]etrieving absentee ballots from the drop boxes certainly constitutes 'receiv[ing] and process[ing]' absentee ballots." Such effortless equivalence of language is possible, but not necessary or even probable, under our usual rules of interpretation. In fact, conventionally, we presume that the legislature's use of "different terms . . . within the same statute suggests that the legislature acted with complete awareness of their different meanings . . . and that it intended the terms to have different meanings . . . ." (Internal quotation marks omitted.) *Celentano* v. *Oaks Condominium Assn.*, 265 Conn. 579, 609, 830 A.2d 164 (2003).

The words "retrieve" and "receive" are not defined in this statutory scheme. Under their common dictionary

definitions, "retrieve" means "[t]o get back . . . [t]o find and carry back"; American Heritage Dictionary (4th Ed. 2007) p. 1188; whereas "receive" means "[t]o acquire or get something; be a recipient"). Id., p. 1161. I draw from these definitions that the legislature intended for only the municipal clerk or, if the requirements of § 7-19 are satisfied, any "appoint[ed]" and sworn assistant clerks to "retrieve" (i.e., go get) absentee ballots from the drop boxes under § 9-140b (c) (2). In contrast, "any person authorized by [the] municipal clerk" may "receive and process" (i.e., be given and then process) the ballots. General Statutes § 9-140b (d). There would be no absurd or unworkable result by interpreting "municipal clerk" to mean only the municipal clerk herself or himself and the clerk's appointed assistant clerks if the "absence or inability" requirement of § 7-19 is satisfied. As the plurality contends, and it is beyond cavil, the municipal clerk has many competing duties, especially on election day, and, thus, the "absence or inability" standard would appear to be easily met to permit assistant clerks to perform those duties. Where there are particular grants of authority for the clerk to authorize others to perform functions of that office, such as in § 9-140b (d), the clerk of the municipality finds additional relief. See *Marchesi* v. *Board of Selectmen*, 309 Conn. 608, 618, 72 A.3d 394 (2013) ("it is a well settled principle of statutory construction that the legislature knows how to convey its intent expressly . . . or to use broader or limiting terms when it chooses to do so" (citation omitted; internal quotation marks omitted)).

Distinguishing between retrieving absentee ballots and undertaking other functions with those ballots is hardly without its rationality. In many contested elections (including this one), the custody of absentee ballots—from the time they leave the voter's hands to the time there are witnesses to their processing—is often

the center of controversy. See, e.g., *Lazar* v. *Ganim*, 334 Conn. 73, 78, 220 A.3d 18 (2019) (voters contested election results based on claim that defendants improperly handled absentee ballots in violation of § 9-140b); *Keeley* v. *Ayala*, 328 Conn. 393, 407, 179 A.3d 1249 (2018) (contesting election results based on claim involving whether party official or candidate could order police officer to retrieve absentee ballots from electors and to deliver them to town clerk). Because of the proliferation of absentee voting during the recent COVID-19 pandemic; see *Fay* v. *Merrill*, 338 Conn. 1, 8–9, 256 A.3d 622 (2021) (noting " 'a significant increase in the use of absentee ballots' " due to pandemic and broadening of authorization for who may request absentee ballot to include " 'COVID-19' "); and at a time when the legislature has amended legislation regarding absentee voting (that may continue to exist long after the pandemic is over); see Public Acts 2022, No. 22-2, § 1 (effective April 8, 2022), codified at General Statutes § 9-135 (a); it seems to me entirely sensible that the legislature might want the municipal clerk or a sworn assistant clerk—not just "any person authorized" by the clerk—to retrieve those ballots. If this is an undue burden, the legislature can change it.

Thus, although I agree with the plurality that § 9-140b (d) is plain and unambiguous, I believe that the plurality defines the phrase "municipal clerk" too broadly. This phrase is limited to the municipal clerk himself or herself, and, if § 7-19 is satisfied, the clerk's appointed assistant clerks. Therefore, I conclude that there was error in the absentee ballot retrieval procedure used in the election at issue because at least some evidence indicates that someone other than the municipal clerk or, assuming that the requirements of § 7-19 were satisfied, an appointed assistant clerk retrieved absentee ballots from some of the drop boxes. But it is not clear from

the record before this court that this error had any effect on the election's outcome.

Accordingly, I respectfully concur in part.

ECKER, J. concurring in part and concurring in the judgment. Writing for the plurality, my colleague, Justice McDonald, reads the term "municipal clerk" in General Statutes § 9-140b (c) (2) to plainly and unambiguously mean the municipal clerk or the clerk's designees. In his concurrence, my equally learned colleague, Justice D'Auria, reads the same language to plainly and unambiguously mean the municipal clerk or an assistant clerk authorized pursuant to General Statutes § 7-19, and no one else. Reasonable minds will differ on many subjects, and even respected jurists with expertise in statutory construction will sometimes disagree about when a reading of a statute has strayed beyond the limits of plausibility. In the present case, I am convinced that both of my colleagues advance reasonable interpretations of § 9-140b (c) (2). At the end of the day, one interpretation must be wrong and the other right, but neither side is so clearly right or wrong that no room for doubt remains regarding who exactly is authorized to retrieve absentee ballots from drop box locations. "[M]ore than one reasonable interpretation of a statute" is the very definition of ambiguity under our case law. *Ledyard* v. *WMS Gaming, Inc.*, 338 Conn. 687, 698 n.6, 258 A.3d 1268 (2021). Under these circumstances, I see great benefit, and no conceivable harm, in looking at extratextual evidence that would help resolve our interpretive impasse. Indeed, General Statutes § 1-2z[1] contemplates precisely that approach.

[1] General Statutes § 1-2z provides that "[t]he meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

I am ultimately persuaded that the interpretation of § 9-140b (c) (2) adopted by the plurality is correct, only after considering the 2021 amendment of the statute and related legislative history. I therefore agree with and join parts II through VI of the plurality opinion and concur in the result reached in part I.

I

My colleagues and I disagree about whether § 9-140b (c) (2) is ambiguous. Ambiguity matters because § 1-2z prohibits a court from considering legislative history and other extratextual evidence unless the statutory meaning is ambiguous or the unambiguous meaning yields absurd or unworkable results. Section 1-2z prescribes a two step process for statutory interpretation. In the first step, we attempt to ascertain the meaning of the statute as applied to the facts of the case, without the benefit of extratextual sources of legislative intent. To do this, we try to derive "the apparent intent of the legislature" from the text itself, considering the broader legal and practical context. (Internal quotation marks omitted.) *Seramonte Associates, LLC* v. *Hamden*, 345 Conn. 76, 83, 282 A.3d 1253 (2022). If that process reveals a single, clear answer, then our task is complete. If, however, step one produces more than one plausible interpretation, or if the plain and unambiguous meaning yields absurd or unworkable results, then we may move on to step two.

In step two, we are permitted to consider legislative history and similar materials, which we are required to set aside in part one. In this way, § 1-2z limits the role of legislative history in statutory interpretation. By curtailing our use of legislative history, § 1-2z prevents overreliance on remarks by legislators or others that may not be the most reliable guide to what the legislature intended. As the legislature knows better than we do, legislative history is a far from perfect guide to

legislative intent. The best evidence of the purpose of a statute is the language passed into law, not the stray remarks of individual legislators or persons testifying at legislative hearings.

This case is unusual because the court has produced two divergent opinions, each implicitly but necessarily claiming to offer the *only* reasonable interpretation of the same statutory provision. The plurality concludes that the term "municipal clerk" unambiguously means "the clerk or the clerk's designee." I disagree because I think it is at least reasonable to conclude, as the plaintiff, Barry Lee Cohen, argues, and as Justice D'Auria believes, that "municipal clerk" means simply "municipal clerk" and (unless the assistant clerk's role is activated under § 7-19)[2] nothing more. That is how the term is defined in the statutory scheme that governs absentee voting, of which § 9-140b (c) (2) is a part. See General Statutes § 9-1 (g) (defining "municipal clerk" as "the clerk of a municipality"); General Statutes § 9-1a (defining "municipal clerk" as "the town clerk in or for the municipality to which reference is made"). I cannot accept that a literal reading of the statute is not even plausible in these circumstances.

The existence of a plausible alternative interpretation is enough to create ambiguity. "[A]lthough there must be more than one reasonable interpretation of a statute in order for it to be considered ambiguous, those interpretations need not be necessarily strong or have a high probability of success. Put differently, a statute is plain and unambiguous when the meaning . . . is so strongly indicated or suggested by the [statutory] language . . . that

[2] A duly appointed assistant clerk may, under specified circumstances, perform the duties of the municipal clerk pursuant to § 7-19. See footnote 3 of this opinion. Justice D'Auria and I agree that § 7-19 provides authority for a duly appointed assistant clerk to retrieve absentee ballots from a drop box only if the municipal clerk is absent or unable to perform those duties. See footnote 5 of this opinion.

. . . it appears to be *the* meaning and appears to preclude any other likely meaning. . . . [I]f the text of the statute at issue . . . would permit more than one likely or plausible meaning, its meaning cannot be said to be plain and unambiguous." (Emphasis in original; internal quotation marks omitted.) *Ledyard* v. *WMS Gaming, Inc.*, supra, 338 Conn. 698 n.6. For this reason, among others, I believe that § 9-140b (c) (2) is ambiguous and would proceed to consider legislative history before reaching a decision about what the statute means as applied to the facts of this case.

In fairness to the plurality, the statutory language is not as straightforward as it appears. It might seem obvious that "municipal clerk" simply means "municipal clerk," but statutory interpretation is not an abstract exercise in stringing together dictionary definitions. "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature . . . as applied to the facts of [the] case . . . ." (Internal quotation marks omitted.) *Wind Colebrook South, LLC* v. *Colebrook*, 344 Conn. 150, 161, 278 A.3d 442 (2022). The present case illustrates how the literal meaning of a term (the "municipal clerk," as the person) may become so intertwined and even conflated with a different meaning (the "municipal clerk," as the *office* of the municipal clerk, including its employees) that it is difficult to know which of the two different meanings was intended.

"As required by § 1-2z, we must determine whether this statutory language is ambiguous. The test to determine ambiguity is whether the statute, *when read in context*, is susceptible to more than one reasonable interpretation." (Emphasis added; internal quotation marks omitted.) Id., 165; see *King* v. *Burwell*, 576 U.S. 473, 486, 135 S. Ct. 2480, 192 L. Ed. 2d 483 (2015) ("oftentimes the meaning—or ambiguity—of certain words or phrases may . . . become evident [only] when placed in context" (internal quotation marks omitted)). Both the plurality and Justice

D'Auria give substantial weight to commonsense and practical considerations about the operation of a municipal clerk's office, the feasibility of single-handedly retrieving all absentee ballots, and prevailing concerns about the integrity of our elections in connection with absentee voting. The application of practical wisdom in this manner is perfectly appropriate. "[C]ourts should not construe statutes in disregard of their context"; (internal quotation marks omitted) *State* v. *Banks*, 321 Conn. 821, 842, 146 A.3d 1 (2016); and "there is no canon against using common sense . . . ." *Roschen* v. *Ward*, 279 U.S. 337, 339, 49 S. Ct. 336, 73 L. Ed. 722 (1929). This court repeatedly has held that the threshold ambiguity analysis under § 1-2z should and must take into account these commonsense, practical considerations regarding how the statutory scheme will operate in the real world. See, e.g., *Seramonte Associates, LLC* v. *Hamden*, supra, 345 Conn. 91 (relying on practical considerations in determining whether statute was plain and unambiguous); *Casey* v. *Lamont*, 338 Conn. 479, 493, 258 A.3d 647 (2021) (considering commonsense implications of statutory construction before resorting to extratextual sources to glean legislature's intent); *Planning & Zoning Commission* v. *Freedom of Information Commission*, 316 Conn. 1, 18 n.13, 110 A.3d 419 (2015) (considering whether proffered construction of statute "would belie common sense" in assessing ambiguity).

The difference between my view and the views of my colleagues is that these contextual considerations only strengthen my conviction that the term "municipal clerk," as used in § 9-140b (c) (2), is ambiguous. The term might plausibly mean "the clerk or the clerk's designee," but it might also plausibly mean the clerk alone (or the assistant clerk if the requirements of § 7-19 are met). The plurality relies on three arguments to arrive at the conclusion that, despite first appearances, the operative language plainly and unambiguously permits the clerk's authorized desig-

nee to retrieve the absentee ballots. See part I of the plurality opinion. I find these arguments to be, for the most part, persuasive enough to create ambiguity regarding the meaning of § 9-140b (c) (2). I do not agree, however, that they render the alternative reading so unreasonable that there is no need to consult the legislative history.

First, the plurality contends that the reference to the municipal clerk in § 9-140b (c) (2) must include the clerk's designee because § 7-19 allows the municipal clerk to delegate responsibilities.[3] This point achieves only limited traction. Section 7-19, by its express terms, applies only to "assistant town clerks" who have "taken the oath provided for town clerks . . . ." No other persons are authorized by § 7-19 to act for the municipal clerk. The record in the present case reveals that only one of the three individuals who retrieved absentee ballots at the clerk's request was an assistant town clerk and, thus, a permitted designee under § 7-19.[4] Additionally, an assistant town clerk has "all the powers and [may] perform all the duties of the town clerk" only if the town clerk is absent or unable to perform his or her duties. General Statutes § 7-19. With one exception, there is no evidence in the present case to indicate that, on each of the dates that the absentee ballots were collected from drop boxes, the town clerk was absent or otherwise unable to perform her duties.[5]

[3] General Statutes § 7-19 provides in relevant part: "Each town clerk may, unless otherwise provided by charter or ordinance, appoint assistant town clerks, who, having taken the oath provided for town clerks, shall, in the absence or inability of the town clerk, have all the powers and perform all the duties of the town clerk. . . ."

[4] Sharon Recchia was designated as an assistant clerk, and she retrieved some of the absentee ballots cast in the 2022 election. Municipal employees Jasmine Acevedo and Lori Moran also retrieved absentee ballots. There is no evidence that either Acevedo or Moran was an authorized delegee under § 7-19.

[5] The municipal clerk was not present in the clerk's office on election day, and, therefore, I agree with the plurality that "the retrieval of ballots from the drop boxes on election day by an assistant clerk would plainly be permissible under § 7-19 . . . ." Footnote 5 of the plurality opinion.

The fact that § 7-19 expressly authorizes the town clerk to delegate her duties to a duly appointed assistant clerk plainly does not demonstrate that § 9-140b (c) (2) permits an unfettered delegation of duties. Indeed, it could be argued that, by expressly providing for a limited delegation of authority, the statutory scheme prohibits any other delegation of authority except in accordance with the constraints of § 7-19. See, e.g., *DeNunzio* v. *DeNunzio*, 320 Conn. 178, 194, 128 A.3d 901 (2016) ("[u]nder the doctrine of expressio unius est exclusio alterius—the expression of one thing is the exclusion of another—we presume that when the legislature expresses items as a group or series, an item that was not included was deliberately excluded").

Second, the plurality argues that subsection (d) of § 9-140b contemplates that someone other than the town clerk will receive and process absentee ballots. I disagree. Subsection (d) of § 9-140b provides in relevant part that "[n]o person shall have in his possession any official absentee ballot or ballot envelope . . . except . . . *any person authorized by a municipal clerk to receive and process official absentee ballot forms on behalf of the municipal clerk*, any authorized primary, election or referendum official or any other person authorized by any provision of the general statutes to possess a ballot or ballot envelope." (Emphasis added.) This subsection makes possession of an official absentee ballot or ballot envelope unlawful, with an exception for, among others, any persons authorized to "receive and process" the absentee ballots on behalf of the clerk. The provision says nothing about *who* is authorized "to receive and process official absentee ballot forms" but merely states that only persons so authorized may be in possession of the ballots.[6] General Statutes § 9-140b (d).

[6] Even if, for the sake of argument, subsection (d) of § 9-140b were construed as an implied grant of authority, the specific action authorized is "receiv[ing] and process[ing]" absentee ballots, not "retriev[ing]" absentee ballots from a drop box, which is the particular conduct referenced in § 9-140b (c) (2).

Finally, the plurality reasons that the legislature must have intended to permit a municipal clerk to delegate the duty to retrieve absentee ballots from drop boxes because the clerk has many other statutory responsibilities relating to absentee voting, and it is implausible that the legislature intended to impose such manifold and onerous responsibilities on a single public official without the ability to delegate. This is a good and persuasive argument, but in no way does it remove the ambiguity from the statute. Instead, it gives rise to ambiguity or adds to its presence.

It is at least plausible that the language the legislature employed was intended to establish a strict procedure for handling absentee ballots. Section 9-140b (c) (2) is part of chapter 145 of title 9 of the General Statutes, which governs absentee voting procedures. See General Statutes § 9-133f. These statutes establish mandatory procedural requirements to protect against fraud and corruption in the use of absentee voting. See *Keeley* v. *Ayala*, 328 Conn. 393, 411, 179 A.3d 1249 (2018). The procedural requirements are exacting, extensive, and detailed. See generally General Statutes § 9-133f et seq.[7] They cover the entire life cycle of the balloting process, including eligibility and application procedures for absentee voters; printing, form and inspection procedures for absentee ballots; distribu-

[7] See, e.g., General Statutes § 9-135b (form, layout and inspection protocols for absentee ballots); General Statutes § 9-137 (oath and inner envelope for ballot); General Statutes § 9-138 (outer envelope for ballot and inner envelope); General Statutes § 9-139a (Secretary of the State's obligations regarding provision to municipal clerks of ballots, envelopes and instructions); General Statutes § 9-139c (municipal clerk accountability and reporting requirements); General Statutes § 9-140 (application for and issuance of absentee ballots, distribution of absentee ballot applications, mailing unsolicited absentee ballot applications, and summary of absentee ballot voting laws); General Statutes § 9-140a (singing of form and insertion of absentee ballot in envelopes); General Statutes § 9-140b (return of absentee ballots and restrictions on possession of absentee ballots and envelopes); General Statutes § 9-140c (sorting of absentee ballots and checking of names on registry list, rejection of absentee ballots, times for delivery of ballots, and retention of late ballots).

tion, execution, handling, processing, tabulation and accounting procedures for the ballots; and more. Specific statutory provisions include elaborate requirements governing the chain of custody of these ballots to ensure that the absentee voting process, which, by definition, occurs outside of the controlled environment of regular voting locations, is not corrupted—whether accidentally or intentionally—by mishandling, meddling or any other irregularity. "[T]he procedures required by the absentee voting laws serve the purposes of enfranchising qualified voters, preserving ballot secrecy, preventing fraud, and achieving a reasonably prompt determination of election results . . . . This court previously has recognized that there is considerable room for fraud in absentee [ballot] voting and that a failure to comply with the regulatory provisions governing absentee [ballot] voting increases the opportunity for fraud." (Internal quotation marks omitted.) *Keeley* v. *Ayala*, supra, 407. In this context, it strikes me as at least reasonable to construe § 9-140b (c) (2), as the plaintiff and Justice D'Auria do, to mean that the legislature intended the municipal clerk, and no one else,[8] to personally carry out particular duties relating to absentee ballots.[9]

I do not claim that the plurality is wrong about the meaning of § 9-140b (c) (2). The plurality's interpretation is textually plausible and entirely sensible in the context of the facts and the larger statutory scheme. My point simply is that this is not the *only* reasonable reading of

[8] Again, this means no one else except for a duly appointed assistant clerk acting pursuant to § 7-19.

[9] The plaintiff and Justice D'Auria follow different paths to reach the same conclusion. Their positions also differ in that the plaintiff, unlike Justice D'Auria, does not contend that the statutory meaning that he promotes is plain and unambiguous. Although I agree with aspects of Justice D'Auria's concurring opinion, I disagree in two respects: (1) I do not consider the statute to be plain and unambiguous; and (2) I find the plurality's interpretation of the statute marginally more persuasive as it relates to who may retrieve the ballots.

the statute, for the reasons that I have explained. In § 1-2z terms, the statutory meaning that the plurality ascertains from the operative text and statutory context is not plain and unambiguous. As a consequence, I would proceed, as I do in part II of this opinion, to consider extratextual evidence to the extent it illuminates the legislative intention behind the relevant statutes.

II

Section 9-140b (c) (2) was amended during a special session in June, 2021. See Public Acts, Spec. Sess., June, 2021, No. 21-2, § 102 (Spec. Sess. P.A. 21-2).[10] The prior version of the statute provided in relevant part: "In the case of absentee ballots mailed under subparagraph (B) of subdivision (1) of this subsection . . . the municipal clerk shall (A) retrieve from the secure drop box described in said subparagraph each such ballot deposited in such drop box, and (B) *if the drop box is located outside a building other than the building where the clerk's office is located, arrange for the clerk or the clerk's designee to be escorted by a police officer during such retrieval*." (Emphasis added.) General Statutes

[10] The plurality appears to consider the prior version of the statute to be extratextual evidence of legislative intent. See part I of the plurality opinion. Justice D'Auria indicates agreement with that view. See footnote 2 of Justice D'Auria's concurring opinion. That position is open to doubt. Compare *Chestnut Point Realty, LLC* v. *Windsor*, 324 Conn. 528, 537–38, 153 A.3d 636 (2017) (treating statutory genealogy as extratextual evidence), *Donahue* v. *Veridiem, Inc.*, 291 Conn. 537, 546 n.8, 970 A.2d 630 (2009) (§ 1-2z "permits resort to extratextual sources, such as amendments to the statute, [only] after there is a determination that the text is ambiguous"), and *Harpaz* v. *Laidlaw Transit, Inc.*, 286 Conn. 102, 112, 942 A.2d 396 (2008) ("[because] the statute yields no plain meaning . . . we turn to [its] genealogy and legislative history . . . to answer the issue raised in this appeal"), with *Housatonic Railroad Co.* v. *Commissioner of Revenue Services*, 301 Conn. 268, 305, 308, 21 A.3d 759 (2011) (considering "the genealogy of the statute" in determining whether statute was plain and unambiguous under § 1-2z). For present purposes, however, I will assume, for the sake of argument, that both the prior text of the statute and its legislative history should be treated as "extratextual evidence" under § 1-2z.

(Rev. to 2021) § 9-140b (c) (2). Thus, the statute, in its current form, was amended to delete the reference to the "clerk's designee" and a police escort during the retrieval of absentee ballots from certain drop boxes. The deletion of the "clerk's designee" from § 9-140b (c) (2) would seem to support the plaintiff's argument that the legislature intended only for the municipal clerk, and no one else, to retrieve absentee ballots from drop boxes. A closer look at the relevant legislative history, however, is instructive regarding the reason for this statutory amendment and undermines the plaintiff's claim.

As the trial court, *Wilson*, *J.*, observed in her comprehensive memorandum of decision, the purpose of this statutory amendment "was twofold: (1) to make the absentee ballot drop boxes permanent; and (2) to delete the requirement that a police officer accompany the clerk or the clerk's designee when [he or she] retrieve[s] ballots from a drop box other than the one located outside the municipal clerk's office building." As recounted by the trial court, former Secretary of the State Denise W. Merrill testified during a March 10, 2021 hearing of the Government Administration and Elections Committee about the purpose of the proposed amendment:[11] " 'Its purpose is to make the administration of elections easier for local officials and [to] make navigating that administration easier for voters. . . . The secure absentee ballot drop box provision would make these drop box[es] . . . a permanent convenient part of Connecticut elections.' [Conn. Joint Standing Committee Hearings, Government Administration and Elections, 2021 Sess. (March 10, 2021) pp. 18–19,

[11] The public hearing was on Senate Bill No. 1017, which contained the same statutory amendment ultimately enacted in § 102 of Spec. Sess. P.A. 21-2 during the legislature's special session in June, 2021. Like the trial court, I find the legislative history of Senate Bill No. 1017 to be illustrative of the legislative intent animating § 102 of Spec. Sess. P.A. 21-2.

remarks of Secretary of the State Merrill.] Representative [Gale] Mastrofrancesco later asked whether a police escort would need to accompany the town clerk to retrieve absentee ballots from the drop box. Id., [p.] 29. Merrill responded: '[W]e [have] consulted with the town [clerks] and we asked them . . . do you think this is necessary because essentially, this is a job for the town [clerks], it's a way of making their jobs easier frankly. . . . You know there's a vast variety of towns in the state, so they told us they didn't think it was necessary, that they thought they were capable of doing it without the police presence, [that they] had absolutely no problems with the ballot boxes . . . .' Id. [pp. 29–30.]

"Representative Mastrofrancesco then specifically asked Merrill: '[S]o the town clerk will be responsible for picking up the ballots, [does it have] to be the town clerk specifically picking up the ballots out of the box or can [he or] she just send . . . anybody [there] to pick them up.' Id., [p.] 30. Merrill responded: 'I believe the town clerk[s] [have] to do that themselves, I mean . . . either a town clerk or designee of the town clerk, they can designate certainly I'm sure they have assistance and all kinds of people in their office [who] would be available to pick them up.' Id. Representative Mastrofrancesco replied: '[S]o pretty much anybody [who] works for the town [he or] she can really designate anybody to go pick up those ballots.' Id. Merrill responded: 'Yes, well similar to, they could send somebody to the mail room to pick up the ballots from the mail to[o] same idea. Ballot boxes are treated exactly like mailboxes essentially.' Id."

On the basis of the foregoing legislative history and the practical difficulties identified by the plurality, I agree with the trial court that "the legislature's purpose [in] amending § 9-140b (c) (2) was to make the drop boxes permanent for future elections and to omit the

requirement that a police officer escort the town clerk or her employees when retrieving absentee ballots from drop boxes around the town or city. There is no indication that the amendment's purpose was to require that only the municipal clerk herself retrieve the absentee ballots from the drop boxes." The legislative history thus confirms the plurality's construction of the statute and illustrates that the appropriate use of extratextual evidence will serve to effectuate (rather than undermine) the legislative will. Because I agree with the plurality that the municipal clerk was permitted under § 9-140b (c) (2) to designate municipal employees within her office to retrieve absentee ballots from the secure drop boxes on her behalf, I concur in the result reached in part I of the plurality opinion.

CONNEX CREDIT UNION *v.* MICHELLE M. THIBODEAU
(SC 20694)

Robinson, C. J., and McDonald, D'Auria, Mullins and Alexander, Js.

Argued March 30—officially released June 20, 2023

Procedural History

Action to recover damages for breach of contract, and for other relief, brought to the Superior Court in the judicial district of New Britain, where the defendant filed a counterclaim; thereafter, the case was tried to the court, *Aurigemma, J.*; judgment for the plaintiff, from which the defendant appealed to the Appellate Court, *Alvord*, *Cradle* and *DiPentima*, *Js.*, which affirmed the trial court's judgment, and the defendant, on the granting of certification, appealed to this court. *Appeal dismissed.*

Garrett A. Denniston, with whom, on the brief, were *Marisa A. Bellair* and *Joette Katz*, for the appellant (defendant).

Robert C. Lubus, Jr., with whom was *Andrew Marcucci*, for the appellee (plaintiff).

Opinion

PER CURIAM. The defendant, Michelle M. Thibodeau, entered into a retail installment sales contract in 2014, which was secured by an interest in her motor vehicle. After the defendant stopped making loan payments on the sales contract, the plaintiff, Connex Credit Union, repossessed her vehicle. The plaintiff subsequently sent the defendant a notice (presale notice) with the details of the defendant's outstanding debt and instructions on how the defendant could redeem the vehicle. The defendant took no steps to redeem the vehicle. The plaintiff sold the motor vehicle in an arm's-length transaction and sent the defendant a notice informing her of the sale, that the sale price was less than the amount owed, and that the plaintiff may seek a deficiency judgment against her.

The plaintiff then commenced an action for breach of contract. The defendant asserted several special defenses, including that the plaintiff was precluded from seeking a deficiency judgment because it failed to inform her in its presale notice that she was entitled to an accounting in violation of the Uniform Commercial Code (UCC), General Statutes §§ 42a-9-613 (1) (D) and 42a-9-614 (1) (A), and had not credited her with the fair market value of the vehicle after the vehicle's sale, in violation of the Retail Installment Sales Financing Act (RISFA), General Statutes § 36a-785 (g). The trial court rejected the defendant's special defenses, rendered judgment for the plaintiff, and awarded damages in the amount of $5432.29.

The defendant appealed from the trial court's judgment to the Appellate Court. See *Connex Credit Union* v. *Thibodeau*, 208 Conn. App. 861, 863–64, 266 A.3d 930 (2021). The Appellate Court concluded that the plaintiff

had satisfied the requirements of the UCC under §§ 42a-9-613 (1) (D) and 42a-9-614 (1) (A) by providing an actual accounting of the defendant's indebtedness in the presale notice, rather than an express statement that the defendant was entitled to an accounting. Id., 871–72. The Appellate Court further held that the plaintiff had not violated RISFA because, under § 36a-785 (g), the plaintiff was not required to credit the defendant's account with the fair market value, rather than the sale proceeds, after repossession and sale of the vehicle. Id., 877–78. The Appellate Court concluded that the plaintiff had satisfied § 36a-785 (g) by presenting testimony that rebutted the presumed fair market value of the vehicle. Id., 878. Accordingly, the Appellate Court affirmed the trial court's judgment. Id.

We subsequently granted the defendant's petition for certification to appeal from the judgment of the Appellate Court to determine whether (1) "the Appellate Court properly interpret[ed] and appl[ied] the requirement of Connecticut's [UCC] to notify a consumer-debtor that he or she has a right to an accounting of unpaid indebtedness after repossession of secured property," and (2) "[u]nder [RISFA] . . . a retail seller of a motor vehicle, after repossession and sale of the vehicle, [can] credit a retail buyer's alleged deficiency only with the proceeds from the vehicle's sale when the prima facie fair market value of the vehicle exceeded the amount of those proceeds . . . ." *Connex Credit Union* v. *Thibodeau*, 342 Conn. 903, 270 A.3d 690 (2022).

After examining the entire record on appeal and considering the briefs and oral arguments of the parties, we have determined that the appeal should be dismissed on the ground that certification was improvidently granted.

The appeal is dismissed.

CHRISTOPHER A. CLARK *v.* TOWN OF WATERFORD, COHANZIE FIRE DEPARTMENT ET AL. (SC 20630)

Robinson, C. J., and McDonald, D'Auria, Mullins, Ecker and Alexander, Js.*

Syllabus

Pursuant to statute (§ 7-433c (a)), "a uniformed member of a paid municipal fire department," who successfully passed a physical examination that failed to reveal any evidence of hypertension or heart disease before beginning such employment and then subsequently suffered any condition or impairment of health caused by hypertension or heart disease resulting in his disability, is entitled to "receive from his municipal employer compensation and medical care in the same amount and the same manner as that provided under [the Workers' Compensation Act] . . . from the municipal or state retirement system under which he is covered . . . . [These] benefits . . . shall be in lieu of any other benefits which such . . . fireman . . . may be entitled to receive from his municipal employer under the provisions of [the Workers' Compensation Act] or the municipal or state retirement system under which he is covered . . . ."

Pursuant further to statute (§ 7-433c (b)), "those persons who began employment on or after July 1, 1996, shall not be eligible for [heart and hypertension] benefits" under § 7-433c (a).

Pursuant further to statute (§ 7-425 (5)), "except as otherwise provided," the word "member," as used in part II of chapter 113 (title 7) of the General Statutes, "means any regular employee . . . receiving pay from a participating municipality . . . who has been included by such municipality in the pension plan as provided in section 7-427, but shall not include any person who customarily works less than twenty hours a week . . . ."

The named defendant, the town of Waterford, Cohanzie Fire Department, appealed from the decision of the Compensation Review Board, which upheld the workers' compensation commissioner's decision that the plaintiff's claim for heart and hypertension benefits was compensable under § 7-433c (a). The town originally hired the plaintiff as a part-time firefighter in 1992, prior to which he passed a physical examination that revealed no evidence of heart disease or hypertension. In 1997, the town

* This case originally was scheduled to be argued before a panel of this court consisting of Chief Justice Robinson and Justices McDonald, D'Auria, Mullins, Ecker and Alexander. Although Chief Justice Robinson was not present at oral argument, he has read the briefs and appendices, and listened to a recording of the oral argument prior to participating in this decision.

hired the plaintiff as a full-time firefighter, and, in 2017, he suffered a myocardial infarction and underwent quadruple bypass surgery. The plaintiff then filed a claim under § 7-433c seeking compensation for his heart disease, which the town contested as noncompensable on the ground that the plaintiff had not been employed as a full-time firefighter until 1997 and, therefore, did not qualify for benefits in light of § 7-433c (b). At a hearing before the commissioner, the plaintiff testified that, while employed as a part-time firefighter, he worked assigned shifts, and the number of shifts he was assigned to work was irregular, but he did not indicate the number of hours he customarily worked. The town reasoned that benefits under § 7-433c are available only to a "uniformed member of a paid municipal fire department" hired prior to July 1, 1996, the term "member" in § 7-433c is controlled by the definition of that term in § 7-425 (5), which excludes persons who customarily work less than twenty hours per week, and, because the plaintiff failed to establish that he customarily worked twenty hours or more per week when he was employed as a part-time firefighter, he was not eligible for benefits. The commissioner rejected the town's claim and ordered it to accept the plaintiff's myocardial infarction as compensable. In doing so, the commissioner made no finding as to the number of hours the plaintiff worked per week as a part-time firefighter. Instead, the commissioner noted that § 7-433c does not define the phrase "uniformed member of a paid municipal fire department" or distinguish between part-time and full-time employment and applied the common definition of the word "member" to conclude that the plaintiff's date of employment was in 1992 and that he therefore was entitled to benefits. The board upheld the commissioner's award of benefits, and the town appealed to the Appellate Court, which affirmed the board's decision. The Appellate Court observed that, although §§ 7-425 (5) and 7-433c are both contained within part II of chapter 113 of the General Statutes, they do not concern the same subject matter and could not be read together without reaching an absurd result, insofar as § 7-425 (5) defines terms related to the governance of the voluntary public pension plan provided by the state for participating municipalities and their employees and elected officials, including the term "member," which is defined therein as a regular employee who receives pay from a municipality that participates in that state retirement fund, whereas § 7-433c (a) mandates that municipal employers pay heart disease and hypertension benefits to qualified uniformed members of paid municipal fire departments, regardless of whether the municipality participates in the state retirement fund. The Appellate Court also concluded that the town's interpretation would lead to the absurd result that benefits under § 7-433c are available only to uniformed firefighters employed and paid by municipalities that participate in the state retirement fund. On the granting of certification, the town appealed to this court.

Held that the Appellate Court incorrectly determined that the definition of "member" in § 7-425 (5) does not affect eligibility for heart and hypertension benefits under § 7-433c, and, accordingly, this court reversed the judgment of the Appellate Court:

When considered in context, the language of §§ 7-425 (5) and 7-433c compelled the conclusion that the meaning of the word "member" in § 7-433c was controlled by the definition set forth in § 7-425 (5), especially in view of the relationship between § 7-433c and other statutes, the principle of statutory interpretation that the legislature, in amending or enacting statutes, is presumed to have created a harmonious and consistent body of law, and the absence of legislative history squarely supporting the proposition that the legislature did not intend the definition of "member" in § 7-425 (5) to apply to § 7-433c.

Section 7-425 clearly and unambiguously provides that, "except as otherwise provided," it governs the meanings of the statutes in part II of chapter 113 (title 7) of the General Statutes, that is the part of the General Statutes that provides for the establishment of the state retirement fund, tenets of statutory interpretation required this court to presume that the legislature acted consciously when it codified § 7-433c with the governing definitions in that part of the General Statutes, and, in view of the logical and factual relationship between heart and hypertension benefits and retirement benefits, as expressly and repeatedly recognized by the text of § 7-433c (a), this court assumed that the placement of § 7-433c was intentional, particularly when there were other logically suitable places in the General Statutes where that statute could have been codified, such as within the related provisions of the Workers' Compensation Act.

Moreover, because the legislature specifically defined the operative term "member" in § 7-425 (5), this court was bound to accept that definition unless it would create an irrational result that the legislature could not have intended.

Furthermore, insofar as the legislature expressly provided in § 7-433c for an independent definition of a different term, specifically that "municipal employer," as used in § 7-433c, would be defined by another statute (§ 7-467), it was evident that, if the legislature had desired to incorporate a different definition of "member" for purposes of heart and hypertension benefits eligibility, it could have done so, and, similarly, if the legislature had desired to provide more flexibility with respect to the eligibility for such benefits under § 7-433c, it could have done so by using broader terminology, such as "firefighter" instead of "a uniformed member of a paid municipal fire department," or, alternatively, more flexible phrasing in the definitions, as it did when it added the qualifier, "unless the context otherwise provides," in the context of the definitions applicable to the workers' compensation statutes.

Although the plaintiff, as a part-time firefighter, performed the same tasks as full-time firefighters, similarity in job function did not require the town to pay its part-time firefighters benefits under § 7-433c, as the terminology that the legislature used to describe the officials who are eligible for benefits under § 7-433c was controlling, notwithstanding the similarity in the officers' respective job functions, this court disagreed with the plaintiff's claim and the Appellate Court's conclusion that applying the definition of "member" in § 7-425 (5) to § 7-433c necessarily would lead to an absurd result insofar as only those firefighters whose municipal employers have elected to participate in the state retirement fund can qualify for benefits under § 7-433c, and, to the extent that this court's construction of the plain and unambiguous statutory text of §§ 7-425 (5) and 7-433c could lead to results unintended by the legislature, that was not a reason to depart from the plain and unambiguous statutory text, as the legislature was free to clarify the meaning of § 7-433c if it desired to make it plain that any paid firefighter is eligible for benefits under that statute.

Because the commissioner did not apply the correct legal standard in failing to make a finding as to whether the plaintiff had customarily worked twenty hours or more per week before being hired as a full-time firefighter, the plaintiff was entitled to have the commissioner decide that factual issue, and, accordingly, the case was remanded for further proceedings.

(*One justice dissenting*)

Argued November 17, 2022—officially released June 20, 2023

Procedural History

Appeal from the decision of the Workers' Compensation Commissioner for the Second District finding that the plaintiff had sustained a compensable injury and awarding certain disability benefits, brought to the Compensation Review Board, which affirmed the commissioner's decision, and the named defendant appealed to the Appellate Court, *Bright*, *C. J.*, and *Moll* and *Clark*, *Js.*, which affirmed the decision of the Compensation Review Board, and the named defendant, on the granting of certification, appealed to this court. *Reversed*; *judgment directed.*

Kyle J. Zrenda, with whom was *James P. Berryman*, for the appellant (named defendant).

Eric W. Chester, for the appellee (plaintiff).

Opinion

ROBINSON, C. J. The sole issue in this certified appeal is whether a uniformed firefighter must "customarily" work twenty hours or more per week to be eligible for heart and hypertension benefits under General Statutes § 7-433c.[1] The named defendant, the town of Waterford, Cohanzie Fire Department (town),[2] appeals, upon our

[1] General Statutes § 7-433c provides: "(a) Notwithstanding any provision of chapter 568 or any other general statute, charter, special act or ordinance to the contrary, in the event *a uniformed member of a paid municipal fire department* or a regular member of a paid municipal police department who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of hypertension or heart disease, suffers either off duty or on duty any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability, he or his dependents, as the case may be, shall receive from his municipal employer compensation and medical care in the same amount and the same manner as that provided under chapter 568 if such death or disability was caused by a personal injury which arose out of and in the course of his employment and was suffered in the line of duty and within the scope of his employment, and from the municipal or state retirement system under which he is covered, he or his dependents, as the case may be, shall receive the same retirement or survivor benefits which would be paid under said system if such death or disability was caused by a personal injury which arose out of and in the course of his employment, and was suffered in the line of duty and within the scope of his employment. If successful passage of such a physical examination was, at the time of his employment, required as a condition for such employment, no proof or record of such examination shall be required as evidence in the maintenance of a claim under this section or under such municipal or state retirement systems. The benefits provided by this section shall be in lieu of any other benefits which such policeman or fireman or his dependents may be entitled to receive from his municipal employer under the provisions of chapter 568 or the municipal or state retirement system under which he is covered, except as provided by this section, as a result of any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability. As used in this section, 'municipal employer' has the same meaning as provided in section 7-467.

"(b) Notwithstanding the provisions of subsection (a) of this section, those persons who began employment on or after July 1, 1996, shall not be eligible for any benefits pursuant to this section." (Emphasis added.)

[2] As the Appellate Court observed, the "defendant Connecticut Interlocal Risk Management Agency appeared before the commissioner but did not

grant of its petition for certification,[3] from the judgment of the Appellate Court affirming the decision of the Compensation Review Board (board), which upheld the finding and award of the Workers' Compensation Commissioner for the Second District (commissioner),[4] ordering the town to accept as compensable a claim filed by the plaintiff, Christopher A. Clark, for heart disease benefits pursuant to § 7-433c. *Clark* v. *Waterford, Cohanzie Fire Dept.*, 206 Conn. App. 223, 224–25, 243, 261 A.3d 97 (2021). On appeal, the town claims that the Appellate Court incorrectly concluded that the definition of "member" in General Statutes § 7-425 (5),[5] which

appear before the board [or] file a brief in the present appeal." *Clark* v. *Waterford, Cohanzie Fire Dept.*, 206 Conn. App. 223, 224 n.1, 261 A.3d 97 (2021).

[3] We granted the town's petition for certification to appeal, limited to the following issue: "Did the Appellate Court incorrectly determine that the definition of the term 'member' in General Statutes § 7-425 (5) is inapplicable to . . . § 7-433c?" *Clark* v. *Waterford, Cohanzie Fire Dept.*, 338 Conn. 916, 259 A.3d 1181 (2021).

[4] "We note that General Statutes . . . § 31-275d (a) (1), effective as of October 1, 2021, provides in relevant part that '[w]herever the words "workers' compensation commissioner," "compensation commissioner" or "commissioner" are used to denote a workers' compensation commissioner in [several enumerated] sections of the [G]eneral [S]tatutes, [including sections contained in the Workers' Compensation Act, § 31-275 et seq.] the words "administrative law judge" shall be substituted in lieu thereof . . . .'

"As all events underlying this appeal occurred prior to October 1, 2021, we will refer to the workers' compensation commissioner [whose decisions are at issue] in this matter as the commissioner . . . ." *Arrico* v. *Board of Education*, 212 Conn. App. 1, 4 n.4, 274 A.3d 148 (2022).

[5] General Statutes § 7-425 provides in relevant part: "The following words and phrases as used in this part, except as otherwise provided, shall have the following meanings:

* * *

"(5) 'Member' means any regular employee or elective officer receiving pay from a participating municipality . . . who has been included by such municipality in the pension plan as provided in section 7-427, but shall not include any person who customarily works less than twenty hours a week if such person entered employment after September 30, 1969, any police officer or firefighter who will attain the compulsory retirement age after less than five years of continuous service in fund B . . . ."

Although § 7-425 was the subject of a technical amendment in 2021; see Public Acts 2021, No. 21-40, § 4; that amendment has no bearing on the

excludes "any person who customarily works less than twenty hours a week if such person entered employment after September 30, 1969," does not govern whether the plaintiff was "a uniformed *member* of a paid municipal fire department" for purposes of § 7-433c. (Emphasis added.) General Statutes § 7-433c (a). We agree with the town and, accordingly, reverse the judgment of the Appellate Court.

The record reveals the following relevant facts and procedural history, much of which is aptly set forth in the opinion of the Appellate Court.[6] "The town, a municipality organized under the laws of the state, hired the plaintiff as a part-time firefighter on May 24, 1992. Prior to being hired by the town, the plaintiff underwent and passed a physical examination that revealed no evidence of heart disease or hypertension.

"As a part-time firefighter in Waterford, the plaintiff's responsibilities included answering the telephone at the fire station, keeping the fire station clean, responding to medical and fire emergencies, and maintaining fire apparatus. When he was working, the plaintiff wore a uniform shirt, badge, belt, pants, and black shoes, which is what other firefighters also wore. He was issued fire protective gear in the event he had to respond to a fire call. In 1997, the plaintiff was hired by the town as a full-time firefighter.

"On or about June 24, 2017, the plaintiff suffered a myocardial infarction that required him to undergo quadruple bypass surgery. On August 14, 2017, the plaintiff filed a [f]orm 30C, seeking heart disease benefits under § 7-433c. Pursuant to General Statutes § 31-294c

merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

[6] For purposes of brevity, we recite only the most salient facts and procedural history. For a full recitation, including the parties' arguments before the commissioner, the board, and the Appellate Court, see *Clark* v. *Waterford, Cohanzie Fire Dept.*, supra, 206 Conn. App. 226–36.

(b), the town gave notice of its intent to contest the compensability of the plaintiff's claim on the ground that he was not employed as a full-time firefighter until June 18, 1997, and therefore did not qualify for benefits because § 7-433c (b) precludes benefits for persons who began their employment on or after July 1, 1996.

"The commissioner held a formal hearing on the plaintiff's claim on March 7, 2019. The plaintiff testified at the hearing, but he did not testify on direct examination as to the number of hours he customarily worked while he was employed as a part-time firefighter. On cross-examination, however, the plaintiff testified that he worked assigned shifts and that the number of shifts he was assigned varied from week to week. In light of the plaintiff's testimony regarding his other employment and the irregular number of hours he worked per week as a part-time firefighter, the town argued that the plaintiff had failed to establish that he customarily worked twenty hours or more per week prior to July 1, 1996." (Footnote omitted.) *Clark* v. *Waterford, Cohanzie Fire Dept.*, supra, 206 Conn. App. 226–27.

The town claimed before the commissioner that the plaintiff's failure to establish that he customarily worked twenty hours or more per week prior to July 1, 1996, was fatal to his claim for benefits under § 7-433c. See id., 227. Specifically, the town contended that "§ 7-433c benefits are available only to 'a uniformed *member* of a paid municipal fire department' hired . . . before July 1, 1996, and that the term *member*, as used in § 7-433c, is controlled by the definition set forth in § 7-425 (5)." (Emphasis in original.) Id. "Because *member* under § 7-425 (5) 'shall not include any person who customarily works less than twenty hours per week' and the plaintiff was not hired as a full-time firefighter until June 18, 1997, the town contended that the plaintiff was not entitled to § 7-433c benefits, as 'persons who began employment on or after July 1, 1996, shall not

be eligible for any benefits pursuant to this section.' General Statutes § 7-433c (b)." (Emphasis in original.) *Clark* v. *Waterford*, *Cohanzie Fire Dept.*, supra, 206 Conn. App. 227.

In his findings and award, the commissioner did not make a finding as to whether the plaintiff had worked twenty hours or more per week prior to being hired as a full-time firefighter on June 18, 1997.[7] Instead, the "commissioner decreed that § 7-433c does not define the phrase 'uniformed *member* of a paid municipal fire department' or distinguish between part-time and full-time employment status. . . . The commissioner, thus, determined that the plaintiff's date of employment was May 24, 1992, which was prior to July 1, 1996, and that he was entitled to benefits pursuant to § 7-433c. The commissioner ordered the town to accept the plaintiff's June 24, 2017 myocardial infarction as a compensable impairment of his health." (Emphasis in original.) Id., 228.

The town appealed from the decision of the commissioner to the board. Id., 229–30. The board concluded that, although "it [could not] reasonably be inferred from the subordinate facts that the plaintiff worked more than twenty hours per week prior to the time he became a full-time firefighter on June 18, 1997";[8] id.,

[7] "In his findings and award, the commissioner found that, while the plaintiff was a part-time firefighter, the number of hours he worked per week was consistent and was affected by the time of year, as well as the vacation, sick time, and any injuries sustained by the full-time staff. Some weeks he was assigned to work multiple shifts, and other weeks he was not assigned to work. As a part-time employee of the town, the plaintiff did not receive any holiday or vacation pay or benefits toward a pension. In 1997, the town employed the plaintiff as a full-time firefighter and paid him accordingly. Part-time and full-time firefighters were paid by the town, and their duties were the same." *Clark* v. *Waterford*, *Cohanzie Fire Dept.*, supra, 206 Conn. App. 228.

[8] The board determined that the "evidence demonstrated that the plaintiff was assigned shifts on an irregular basis and that his assignments depended on circumstances that varied according to the time of year and the internal staffing requirements of the [town fire] department and did not provide an

230–31; "applying the § 7-425 (5) definition to the plaintiff's claim would produce a result contrary to the letter and spirit of the heart and hypertension legislation, particularly in light of the plaintiff's long career with the town. The board, therefore, [upheld] the commissioner's award of § 7-433c benefits to the plaintiff and rejected the town's contention that the [commissioner incorrectly had applied] the common definition of the word *member*, rather than the statutory definition set forth in § 7-425 (5) . . . ." (Emphasis in original.) Id., 234. Accordingly, in a divided opinion, the board upheld the decision of the commissioner.[9] Id., 224.

The town appealed from the decision of the board to the Appellate Court. Id., 234. On appeal, the town renewed its claim that the definition of "member" set forth in § 7-425 (5) governed whether the plaintiff was eligible for benefits under § 7-433c as "a uniformed member of a paid municipal fire department" while he was employed by the town as a part-time firefighter. (Internal quotation marks omitted.) Id. Observing that this is an issue of first impression; id., 237; the Appellate Court cited *Ciarlelli* v. *Hamden*, 299 Conn. 265, 277–78, 8 A.3d 1093 (2010), for the proposition that § 7-433c is workers' compensation legislation that is remedial in nature and, therefore, subject to a broad construction in favor of disabled employees. See *Clark* v. *Waterford*, *Cohanzie*

adequate basis for determining the number of hours the plaintiff worked. Although the board found the commissioner's use of the word *consistent* to describe the number of hours the plaintiff worked to be 'inartful,' it found that the balance of the commissioner's findings accurately reflected the plaintiff's testimony." (Emphasis in original.) *Clark* v. *Waterford*, *Cohanzie Fire Dept.*, supra, 206 Conn. App. 231.

[9] One member of the board, William J. Watson III, dissented, agreeing with the town's statutory arguments, based on the plain language and codification placement of the provisions at issue, that the definition of "member" in § 7-425 (5) controlled eligibility for benefits under § 7-433c. Given the record before the board, the dissenting member concluded that the plaintiff's claim was not compensable because "the factual circumstances of the [plaintiff's] employment [did not] satisfy the statutory requirements of § 7-433c."

Fire Dept., supra, 206 Conn. App. 238. The Appellate Court then concluded that, although §§ 7-425 (5) and 7-433c "are both contained within part II of chapter 113 of the General Statutes, which is titled Retirement," they do not "concern the same subject matter" and "cannot be read together without reaching an absurd result." Id., 239. Specifically, the Appellate Court relied on the definition of "participating municipality," as set forth in § 7-425 (2) and mentioned in § 7-425 (5), which, it observed, "means a municipality that participates in the retirement fund" that is "governed by § 7-425 [namely] the voluntary public pension plan provided by the state for participating municipalities and their employees and elective officers [retirement fund]." (Internal quotation marks omitted.) Id., 240. Observing that "[n]ot all municipalities or departments participate in the retirement fund," the Appellate Court determined that § 7-433c (a) refers to General Statutes § 7-467[10] to incorporate a broader definition of "municipal employer" to make "clear that heart and hypertension benefits shall be paid . . . to a qualifying uniformed firefighter or regular member of a municipal police department, regardless of whether the municipality participates in the retirement fund." (Internal quotation marks omitted.) Id., 241. The Appellate Court further observed that "the town's interpretation also leads to an absurd result that heart and hypertension benefits are available only to uniformed firefighters employed and paid by municipalities that participate in the retirement fund." Id., 242. To this end, the Appellate Court emphasized that "§ 7-425 explicitly

[10] General Statutes § 7-467 (1) provides: " 'Municipal employer' means any political subdivision of the state, including any town, city, borough, district, district department of health, school board, housing authority or other authority established by law, a private nonprofit corporation which has a valid contract with any town, city, borough or district to extinguish fires and to protect its inhabitants from loss by fire, and any person or persons designated by the municipal employer to act in its interest in dealing with municipal employees . . . ."

provides that the definitions set forth therein shall apply 'except as otherwise provided' " and that "the use of the term *member* in § 7-433c is one of the exceptions expressly contemplated by § 7-425, itself." (Emphasis in original.) Id., 242–43. Accordingly, the Appellate Court rendered judgment affirming the decision of the board. Id., 243. This certified appeal followed. See footnote 3 of this opinion.

On appeal, the town claims that the Appellate Court incorrectly concluded that the definition of "member" in § 7-425 (5) does not govern the plaintiff's eligibility for benefits under § 7-433c. Urging a strict construction of § 7-433c; see footnote 11 of this opinion; the town contends that the Appellate Court's construction of the statutes improperly disregarded the plain language of § 7-425 (5) and discounted the importance of the placement of § 7-433c in the part of the General Statutes that contains the provisions governing the municipal retirement fund. The town argues that the Appellate Court's construction of the statutes renders meaningless, redundant, and superfluous the words "paid" and "member" in § 7-433c. The town emphasizes that applying § 7-425 (5) to § 7-433c does not create an absurd or unworkable result given that it is well settled that § 7-433c is a legislative bonus; see, e.g., *Carriero* v. *Naugatuck*, 243 Conn. 747, 754–55, 760–61, 707 A.2d 706 (1998); *Grover* v. *Manchester*, 168 Conn. 84, 88–89, 357 A.2d 922, appeal dismissed, 423 U.S. 805, 96 S. Ct. 14, 46 L. Ed. 2d 26 (1975); with part-time employees often not being eligible for benefits otherwise given to full-time employees, such as retirement or vacation pay. Citing *Genesky* v. *East Lyme*, 275 Conn. 246, 266–67, 881 A.2d 114 (2005), the town emphasizes its prerogative under the statutory scheme to make staffing choices that would enable it to avoid liability under § 7-433c.

The plaintiff argues in response that the Appellate Court correctly concluded that the definition of "mem-

ber" in § 7-425 (5) is inapplicable to the plain and unambiguous language of § 7-433c. The plaintiff argues that § 7-425 (5) is limited to the retirement fund insofar as its plain language, particularly its numerous exclusions for classifications such as teachers who are in the state retirement system, "repeatedly references retirement and pension systems." The plaintiff posits that § 7-433c benefits are related to but "distinct in purpose and scope from the rest of the retirement [fund] benefits." The plaintiff further argues that the town's construction of the statutes is inconsistent with our recent explication of eligibility for benefits under § 7-433c in *Holston* v. *New Haven Police Dept.*, 323 Conn. 607, 616–17, 149 A.3d 165 (2016). Citing, among other cases, *Grover* v. *Manchester*, supra, 168 Conn. 88, and the Appellate Court's decision in *Bucko* v. *New London*, 13 Conn. App. 566, 569, 537 A.2d 1045 (1988), the plaintiff contends that the only restriction imposed on the word "member" under § 7-433c is that the member be "uniformed," which recognizes the risks associated with firefighting and law enforcement and distinguishes clerical or other employees from those who are eligible for benefits. The plaintiff also cited to *Bucko* in support of his argument that the Appellate Court had correctly determined that incorporating the definition from § 7-425 (5) would complicate the eligibility of police officers for benefits under § 7-433c and "produce an absurd and unworkable result by denying officers the benefits to which they are entitled under § 7-433c because their municipal employer does not participate in the voluntary [retirement fund]," insofar as "the benefits granted under § 7-433c are in no way related to or contingent [on] participation in the retirement [fund]." Finally, the plaintiff argues that the Appellate Court's construction of the statutes is compatible with this court's decision in *Genesky* v. *East Lyme*, supra, 275 Conn. 246, because both cases involved a straightforward interpretation of

the plain language of § 7-433c. We, however, agree with the town and conclude that the definition of "member" in § 7-425 (5) governs eligibility for benefits under § 7-433c.

"The principles that govern our standard of review in workers' compensation appeals are well established. The conclusions drawn by [the commissioner] from the facts found must stand unless they result from an incorrect application of the law to the subordinate facts or from an inference illegally or unreasonably drawn from them. . . . [Moreover, it] is well established that [a]lthough not dispositive, we accord great weight to the construction given to the workers' compensation statutes by the commissioner and [the] board. . . . Cases that present pure questions of law, however, invoke a broader standard of review than is ordinarily involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion. . . . We have determined, therefore, that the traditional deference accorded to an agency's interpretation of a statutory term is unwarranted when the construction of a statute . . . has not previously been subjected to judicial scrutiny [or to] . . . a governmental agency's time-tested interpretation . . . .

"In addition, we are mindful of the proposition that all workers' compensation legislation, because of its remedial nature, should be broadly construed in favor of disabled employees. . . . This proposition applies as well to the provisions of [§] 7-433c . . . because the measurement of the benefits to which a § 7-433c claimant is entitled is identical to the benefits that may be awarded to a [claimant] under" the Workers' Compensation Act, General Statutes § 31-275 et seq.[11] (Cita-

[11] We acknowledge the town's argument that, in providing for heart and hypertension benefits, § 7-433c is special " 'bonus legislation,' " the eligibility for which must be strictly construed under the board's decision in *Gaudett* v. *Bridgeport Police Dept.*, No. 6337, CRB 4-19-7 (September 8, 2021), rev'd, 218 Conn. App. 720, 293 A.3d 351 (2023). In *Gaudett*, the board followed the strict construction approach with respect to eligibility for benefits under

tion omitted; internal quotation marks omitted.) *Coughlin* v. *Stamford Fire Dept.*, 334 Conn. 857, 862–63, 224 A.3d 1161 (2020). It is axiomatic that we follow the plain meaning rule set forth in General Statutes § 1-2z in construing statutes, including § 7-433c. See, e.g., *Holston* v. *New Haven Police Dept.*, supra, 323 Conn. 613–14; *Genesky* v. *East Lyme*, supra, 275 Conn. 253–54.

By way of background, we note that "§ 7-433c simply [provides] special compensation, or even an outright bonus, to qualifying [police officers] and fire[fighters], [and] serves a proper public purpose . . . . [T]he out-

§ 7-433c that it first articulated in *Genesky* v. *East Lyme*, No. 4600, CRB 8-02-12 (December 8, 2003), aff'd, 275 Conn. 246, 881 A.2d 114 (2005). See *Gaudett* v. *Bridgeport*, supra, No. 6337, CRB 4-19-7. The board's decision in *Genesky* relied on the axiom that statutory provisions that are in derogation of the common law must be strictly construed, in support of the proposition that the "original intent of the legislation was to provide a remedy to qualifying persons without the need to prove traditional elements of causation under the Workers' Compensation Act. Thus, the eligibility requirements set out in the statute must be strictly construed." *Genesky* v. *East Lyme*, supra, No. 4600, CRB 8-02-12.

This strict approach to the interpretation of § 7-433c conflicts with three decades of case law from this court, beginning with *Szudora* v. *Fairfield*, 214 Conn. 552, 573 A.2d 1 (1990), which acknowledged its nature as a special bonus for qualified police officers and firefighters but considered § 7-433c to be analogous to "workers' compensation legislation, [which] because of its remedial nature, should be broadly construed in favor of disabled employees." Id., 557–58; see, e.g., *Coughlin* v. *Stamford Fire Dept.*, 334 Conn. 857, 863, 224 A.3d 1161 (2020); *Holston* v. *New Haven Police Dept.*, supra, 323 Conn. 613; *Carriero* v. *Naugatuck*, supra, 243 Conn. 761–62. Indeed, the concurring opinion in this court's decision in *Genesky*, in which the majority affirmed the decision of the board in that case, expressly applied that broader construction in considering whether a constable was "a member of 'a paid municipal police department' " eligible for § 7-433c benefits. *Genesky* v. *East Lyme*, supra, 275 Conn. 268–69 (*Borden*, *J.*, concurring); see id., 278–79 (*Borden*, *J.*, concurring) (concluding that statute was ambiguous for purposes of § 1-2z, in part based on "[the] judicial interpretive maxim regarding § 7-433c [that] supports a broad interpretation of the phrase 'municipal police department' as applied to the facts of [that] case"); cf. id., 253–54 (majority opinion followed § 1-2z without reference to any rules of construction). Because the town does not ask us to overrule or to otherwise limit this body of case law, we continue to follow this rule of broad construction in determining questions of eligibility for benefits under § 7-433c.

right bonus provided by the statute is that the claimant is not required to prove that the heart disease is causally connected to this employment, which he would ordinarily have to establish in order to receive benefits pursuant to the Workers' Compensation Act. . . . Thus, although [the Workers' Compensation Act] is used . . . as a *procedural avenue* for administration of the benefits under § 7-433c . . . an award under § 7-433c is not a workers' compensation award. . . . Therefore, although this court has recognized that the type and amount of benefits available pursuant to § 7-433c are the same as those under the Workers' Compensation Act . . . the *liability* for payment of those benefits is not." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Bergeson* v. *New London*, 269 Conn. 763, 777–78, 850 A.2d 184 (2004); see, e.g., *King* v. *Sultar*, 253 Conn. 429, 438–39, 444, 754 A.2d 782 (2000); *Carriero* v. *Naugatuck*, supra, 243 Conn. 754–55.

We begin with the text of § 7-433c (a), which provides in relevant part: "Notwithstanding any provision of chapter 568 or any other general statute, charter, special act or ordinance to the contrary, in the event *a uniformed member of a paid municipal fire department* or a regular member of a paid municipal police department who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of hypertension or heart disease, suffers either off duty or on duty any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability, he or his dependents, as the case may be, *shall receive from his municipal employer compensation and medical care* in the same amount and the same manner as that provided under chapter 568 if such death or disability was caused by a personal injury which arose out of and in the course

of his employment and was suffered in the line of duty and within the scope of his employment, *and from the municipal or state retirement system under which he is covered*, he or his dependents, as the case may be, shall receive the same retirement or survivor benefits which would be paid under said system if such death or disability was caused by a personal injury which arose out of and in the course of his employment, and was suffered in the line of duty and within the scope of his employment. . . . *The benefits provided by this section shall be in lieu of any other benefits which such policeman or fireman or his dependents may be entitled to receive from his municipal employer under the provisions of chapter 568 or the municipal or state retirement system under which he is covered*, except as provided by this section, as a result of any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability. As used in this section, 'municipal employer' has the same meaning as provided in section 7-467." (Emphasis added.)

The single issue of statutory construction presented in this appeal is whether we must construe the word "member" in the phrase "a uniformed member of a paid municipal fire department," as used in § 7-433c (a), in accordance with its ordinary meaning, pursuant to which the plaintiff would be eligible for benefits under § 7-433c, or in accordance with the definition provided by § 7-425 (5). Section 7-425 provides in relevant part: "The following words and phrases *as used in this part, except as otherwise provided*, shall have the following meanings:

* * *

"(5) 'Member' means any regular employee or elective officer receiving pay from a participating municipality . . . who has been included by such municipality in

the pension plan as provided in section 7-427, *but shall not include any person who customarily works less than twenty hours a week* if such person entered employment after September 30, 1969, any police officer or firefighter who will attain the compulsory retirement age after less than five years of continuous service in fund B . . . ." (Emphasis added.)

Although the Appellate Court's construction of the statutes at issue was reasonable for purposes of the § 1-2z analysis given the broad construction that we extend to § 7-433c; see footnote 11 of this opinion; the issue before us in this appeal is ultimately resolved by the language of the statutes when considered in context, particularly in the absence of legislative history to provide square support for the proposition that the legislature did not intend the definition of "member" in § 7-425 (5) to apply. When statutory language, even if ambiguous for purposes of § 1-2z, provides greater support for an interpretation of the statute than does the legislative history, we must yield to the implications of the statutory language, particularly when the legislative history is more general in nature and does not furnish any evidence of legislative intent with respect to the specific point of law at issue.[12] See *Butts* v. *Bysiewicz*, 298 Conn.

[12] Thus, we emphasize that the legislative history of the statute does not illuminate the meaning of the word "member" or suggest that the definition in the chapter does not apply. Numerous cases provide a detailed review of the "rather tumultuous" history of "Connecticut's statute providing benefits for police and fire personnel who suffer from hypertension or heart disease," including decisions from this court considering the constitutionality of its various iterations. (Internal quotation marks omitted.) *Morgan* v. *East Haven*, 208 Conn. 576, 580, 546 A.2d 243 (1988); see, e.g., *Bergeson* v. *New London*, supra, 269 Conn. 777 n.10; *Morgan* v. *East Haven*, supra, 580–81; *Plainville* v. *Travelers Indemnity Co.*, 178 Conn. 664, 667–69, 425 A.2d 131 (1979); see also *Grover* v. *Manchester*, supra, 168 Conn. 86, 88–89 ("[the] outright bonus" provided by current version of statute to qualifying police and fire personnel was not unconstitutional taking); *Ducharme* v. *Putnam*, 161 Conn. 135, 143, 285 A.2d 318 (1971) (conclusive presumption in 1969 version of statute violated due process clauses of Connecticut and United States constitutions).

To the extent the dissent relies on the legislative history of § 7-433c in support of the proposition that the legislature intended to provide a broad benefit to

665, 687–88, 5 A.3d 932 (2010) ("we see no evidence in the legislative history to undermine the construction to which the text itself is most conducive"); cf. *State* v. *Courchesne*, 262 Conn. 537, 577–78, 816 A.2d 562 (2003) (emphasizing that, even under purposive approach to statutory interpretation that preceded enactment of § 1-2z, language remains "the most important factor to be considered," and that "the more strongly the bare text supports such a meaning, the more persuasive the extratextual sources of meaning will have to be in order to yield a different meaning"). That language compels the conclusion that the meaning of "member," as used in § 7-433c, is controlled by § 7-425 (5), given the relationship between § 7-433c and other statutes and the cardinal principle of interpretation "that the legislature, in amending or enacting statutes, always [is] presumed to have created a harmonious and consistent body of law . . . ." (Internal quotation marks omitted.) *Commission on Human Rights & Opportunities* v. *Edge Fitness, LLC*, 342 Conn. 25, 36, 268 A.3d 630 (2022).

First, § 7-425 clearly and unambiguously provides that, "except as otherwise provided," it governs the meanings of the statutes in part II of chapter 113 (title 7) of the General Statutes, which provides for the establishment of the retirement fund as a voluntary system in which municipalities may elect to participate to provide for their employees' retirement benefits. See General Statutes § 7-427 (a). We must presume that the legislature acted consciously when it codified § 7-433c in that part, with its governing definitions. As one leading authority on statutory interpretation emphasizes, "in the construction of a particular code section, atten-

all paid firefighters and police officers in Connecticut, without qualification, we respectfully disagree. See part III of the dissenting opinion. In our view, the generalized statements of purpose on which the dissent relies are not sufficiently persuasive on this point to counter the weight of the statutory language.

tion should be given to the entire chapter, or even the entire code, to determine the purpose and objective of the legislature in organizing the material. Under some circumstances the placement or rearrangement of code sections may be helpful to determine [the] proper construction of the statute. When sections originally enacted independently are consolidated into a single chapter of a code, they are ordinarily read together as a single act." (Footnotes omitted.) 1A N. Singer & J. Singer, Sutherland Statutes and Statutory Construction (7th Ed. 2009) § 28:11, p. 637; see, e.g., *Unite New Mexico* v. *Oliver*, 438 P.3d 343, 352 (N.M. 2019) (transfer of statute governing straight ticket voting out of chapter giving New Mexico secretary of state authority over form of ballot suggested that secretary was not authorized to decide questions relating to straight ticket voting). The text of § 7-433c expressly recognizes the logical and factual relationship between heart and hypertension benefits and retirement benefits in multiple places. See General Statutes § 7-433c (a) (obligating "[the] municipal employer" of eligible police officer or firefighter, or "the municipal or state retirement system under which [the eligible police officer or firefighter] is covered," to pay death or disability benefits under statute and providing that such "benefits . . . shall be in lieu of any other benefits which such policeman or fireman or his dependents may be entitled to receive from his municipal employer under the provisions of chapter 568 or the municipal or state retirement system under which he is covered"). Given this relationship, we must assume that this placement was intentional, particularly in view of the availability of other logically suitable codification options, such as within the related provisions of the Workers' Compensation Act.[13] Cf. *Genesky* v. *East Lyme*, supra,

[13] We acknowledge that "the codification of a public act of the state is an administrative duty of the legislative commissioners" under General Statutes § 2-56 (g) and that, although it "is within their discretion to arrange and codify public acts . . . they are not lawmakers." *Fava* v. *Arrigoni*, 35 Conn. Supp. 177, 178, 402 A.2d 356 (1979); see id., 179 (defining terms of General Statutes

275 Conn. 252 n.9 ("[a]lthough an award of benefits under § 7-433c is not a workers' compensation award, the Workers' Compensation Act is used as a 'procedural avenue' for the administration of benefits under § 7-433c").

Thus, consistent with § 1-2z, we turn to the precept that, "[when] the legislature has specifically defined an operative term used within a statute, we are bound to accept that definition . . . unless to do so would create an irrational result that could not have been intended by the legislature." (Citation omitted.) *Weinberg* v. *ARA Vending Co.*, 223 Conn. 336, 349, 612 A.2d 1203 (1992); see id., 350 (it was not irrational to apply statutory definition of "compensation" to allow double recovery via both payment of benefits under Workers' Compensation Act and award of federal Veterans Administration benefits because "the legislature rationally could have

(Rev. to 1979) § 52-563a, enacted as § 6 of No. 75-637 of the 1975 Public Acts (P.A. 75-637), "in a manner consistent with other sections of P.A. 75-637," with this "construction . . . made more obvious by the omission of any definitions in chapter 925 of the General Statutes, the chapter in which § 6 of P.A. 75-637 (§ 52-563a) is found"). Nevertheless, we deem the placement of § 7-433c to be instructive in its interpretation given both (1) the presumption that the legislature is aware of the law and decisions construing it, and (2) the long-standing codification of heart and hypertension benefits in chapter 113, governing municipal retirement benefits, both before and after the enactment of § 7-433c as § 1 of No. 524 of the 1971 Public Acts, particularly given the reference therein to the definition of "municipal employer" in § 7-467. See, e.g., *Stone* v. *East Coast Swappers, LLC*, 337 Conn. 589, 606–607, 255 A.3d 851 (2020) (stating presumption); *Plainville* v. *Travelers Indemnity Co.*, 178 Conn. 664, 667–68, 425 A.2d 131 (1979) (emphasizing amendments to make state retirement system applicable to heart and hypertension benefits); *Ducharme* v. *Putnam*, 161 Conn. 135, 143, 285 A.2d 318 (1971) (invalidating conclusive presumption in General Statutes (Rev. to 1969) § 7-433a); cf. *McCoy* v. *Commissioner of Public Safety*, 300 Conn. 144, 159, 12 A.3d 948 (2011) ("The plaintiff seems to assert that a breach of [General Statutes] § 14-227a is a motor vehicle violation simply because of its placement within the motor vehicle chapter. We disagree. At the time § 14-227a was originally enacted in 1963, the Penal Code did not exist. See Public Acts 1963, No. 616, § 1. The Penal Code was not adopted until 1969, approximately six years after the legislature decided to criminalize [operating] under the influence in § 14-227a. Because the Penal Code did not exist at the time the legislature adopted § 14-227a, its placement within the motor vehicle statutes has no impact on determining legislative intent.").

intended to prohibit double recovery under [General Statutes] § 31-349 (a) only to the extent that an employee may not recover twice for the same injury under the . . . Workers' Compensation Act"); see also, e.g., *McCoy* v. *Commissioner of Public Safety*, 300 Conn. 144, 156, 12 A.3d 948 (2011) ("[b]ecause the legislature has not defined motor vehicle violation, but has defined violation, we conclude that it is reasonable to apply the definition of violation to the phrase motor vehicle violation").

We disagree with the plaintiff's argument that § 7-433c functions as an implied exception to § 7-425 (5). This interpretation of § 7-433c as implying a different definition of the word "member" is belied by the fact that the legislature expressly provided therein for an independent definition of a different term, namely, "municipal employer." The legislature specifically stated in § 7-433c (a) that the term "municipal employer," as used therein, would be defined by § 7-467; see footnote 10 of this opinion; which provides the definitions applicable to the statutes governing collective bargaining between municipalities and their employees. The legislature's failure to provide a different definition of "member" in § 7-433c is telling, insofar as the referenced provision, § 7-467, has a subsection that provides its own definition of "employee" that excludes certain part-time employees.[14] Particularly given the codification of § 7-433c in the municipal retirement statutes, it is evident that, had the legislature desired to incorporate a different definition of "member" for purposes of eligibility, it could

[14] See General Statutes § 7-467 (2) (" '[e]mployee' means any employee of a municipal employer, whether or not in the classified service of the municipal employer, except elected officials, administrative officials, board and commission members, certified teachers, *part-time employees who work less than twenty hours per week on a seasonal basis*, department heads and persons in such other positions as may be excluded from coverage under sections 7-467 to 7-477, inclusive, in accordance with subdivision (2) of section 7-471" (emphasis added)).

have done so. See, e.g., *Commission on Human Rights & Opportunities* v. *Edge Fitness, LLC*, supra, 342 Conn. 36 ("the legislature's inclusion of a [bona fide occupational qualification] exception in [General Statutes] § 46a-60 (b) (1) demonstrates that the legislature could have provided such an exception in the public accommodation statute but consciously elected not to do so").

Similarly, had the legislature desired to provide more flexibility with respect to the eligibility of firefighters for benefits under § 7-433c, such as by using the more inclusive word "firefighter" as in the related workers' compensation statutes; see General Statutes § 31-275 (1) (A) (i) (defining, "[f]or a police officer or firefighter, [the phrase] 'in the course of his employment"); it could have done so by using broader terminology. See, e.g., *Stafford* v. *Roadway*, 312 Conn. 184, 194, 93 A.3d 1058 (2014) (noting "[the] well settled principle of statutory construction that the legislature knows how to convey its intent expressly . . . or to use broader or limiting terms when it chooses to do so" (citation omitted; internal quotation marks omitted)). Alternatively, the legislature could have used more flexible phrasing in the definition, as it did when it added the qualifier, "unless the context otherwise provides," with respect to the definitions applicable to the workers' compensation statutes. General Statutes § 31-275; see *Vincent* v. *New Haven*, 285 Conn. 778, 788, 941 A.2d 932 (2008) (under General Statutes § 31-306, specific definition of "the term 'compensation' is expressly limited to payments for burial expenses and weekly payments that represent a percentage of the deceased employee's average weekly earnings").

We recognize that the plaintiff, as a part-time firefighter, performed the same tasks as the full-time firefighters employed by the town. This similarity in job function does not, however, mean that the town was required to pay its part-time firefighters benefits under

§ 7-433c. As this court held in concluding that a full-time constable employed by a town was not "a regular member of a paid municipal police department" eligible for benefits under § 7-433c, "there is a difference between a paid municipal police department and a constabulary, and the town has chosen to ensure public safety by establishing a constabulary." (Internal quotation marks omitted.) *Genesky* v. *East Lyme*, supra, 275 Conn. 252–53. Thus, the legislature's use of certain terminology to describe those officials who are eligible for benefits under § 7-433c is controlling, notwithstanding the similarity in those officers' job functions.

We similarly disagree with the plaintiff's contention that the Appellate Court's decision in *Bucko* v. *New London*, supra, 13 Conn. App. 566, supports his eligibility for benefits under § 7-433c. In that case, the Appellate Court held that the hiring of a police officer in a temporary capacity, with his mild hypertension diagnosis having occurred prior to his promotion to a permanent position, did not render him ineligible for benefits under § 7-433c. See id., 567–69, 571. The Appellate Court rejected the city's argument that the police officer's initial temporary appointment put him "outside the eligibility requirements of § 7-433c," observing that "[n]owhere in § 7-433c is there a requirement that any appointment to the regular police force must be a 'permanent' appointment. The qualifiers 'permanent' or 'temporary' are not mentioned in the statute; the only stated prerequisite to the collection of benefits is that the claimant must be a '*regular* member of a paid municipal police department.' " (Emphasis in original.) Id., 570. The Appellate Court's decision in *Bucko* is inapposite because that case did not involve the construction of the word "member," as used in § 7-433c, and did not consider the effect the number of hours per week the claimant worked had on his eligibility for benefits.[15]

[15] We similarly disagree with the plaintiff's reliance on our recent decision in *Holston* v. *New Haven Police Dept.*, supra, 323 Conn. 607. In *Holston*, we

Finally, we disagree with the plaintiff's argument that incorporating the definition of "member" from § 7-425 (5) means that only those firefighters or police officers whose employers have elected to participate in the retirement fund may qualify for benefits under § 7-433c. Specifically, the plaintiff observes that § 7-425 defines a "member" as one who "receiv[es] pay from a participating municipality"; General Statutes § 7-425 (5); and defines the phrase "participating municipality" separately, as "any municipality that has accepted this part, as provided in section 7-427 . . . ." General Statutes § 7-425 (2). As the Appellate Court observed in determining that this interpretation of the language of §§ 7-425 (5) and 7-433c would lead to an absurd result; see *Clark* v. *Waterford*, *Cohanzie Fire Dept.*, supra, 206 Conn. App. 242; applying the definition to this extent could have significant effects with respect to the eligibility of firefighters or police officers who are employed by some of Connecticut's largest municipalities, some of which—such as New Haven and Stamford—are not participating municipalities. See Office of the State Comptroller, Retiree Resources, "Who Is in CMERS? Participating Municipalities," available at https://www.osc.ct.gov/rbsd/cmers/plandoc/MasterTownListSept132016.pdf (last visited June 14, 2023); see also *Clark* v. *Waterford*, *Cohanzie Fire Department*, supra, 241. We do not, however, agree that this result necessarily follows from our holding that the definition of "member" in § 7-425 (5) controls under § 7-433c with respect to the hourly requirement for eligibility. First, § 7-425 (5) uses punctuation to

held that a police officer's failure to assert a timely claim for hypertension benefits did not bar his separate, otherwise timely, claim for heart disease benefits, notwithstanding the link between his hypertension and heart disease. See id., 615–16. *Holston* is inapposite because that case did not concern the effect of a particular police officer's employment status on his eligibility for benefits under § 7-433c, and we were not called on to construe the term "member" when we stated that the plain language of § 7-433c has five health related requirements and "contains no other requirements to qualify for its benefits." Id., 616–17.

phrase separately its exclusion of "any person who customarily works less than twenty hours a week if such person entered employment after September 30, 1969," from its description of a "member" as one who "receiv[es] pay from a participating municipality . . . ." Second, the language of § 7-433c is—at best—ambiguous with respect to the issue of whether a firefighter or police officer must be employed by a "participating municipality," given the ample references in § 7-433c to the retirement system under which the employee is covered, which is broader in concept than a simple reference to the retirement fund. See General Statutes § 7-433c (a) (referring to "the *municipal* or state retirement system under which [the member] is covered" (emphasis added)). Moreover, the independent definition in § 7-433c (a) of the term "municipal employer" by reference to § 7-467, as the entity liable to pay the benefits, is itself broader than "participating municipality." Accordingly, we conclude that applying the hourly eligibility requirement in the definition of "member" in § 7-425 (5) to § 7-433c will not necessarily lead to an absurd result.

To the extent "our analysis of the plain and unambiguous statutory text of [§§ 7-425 (5) and 7-433c] may lead to a result that might well have been unintended by the legislature . . . this effect is not a reason to depart from the plain and unambiguous statutory text . . . ." (Citation omitted.) *Commission on Human Rights & Opportunities* v. *Edge Fitness, LLC*, supra, 342 Conn. 42–43. Should the legislature desire to clarify the meaning of § 7-433c to make it plain that *any* paid firefighter is eligible for benefits under that statute, it may certainly do so, given its role as "the policy-making branch of our government."[16] Id., 43; see, e.g., *International Business*

[16] Accordingly, we respectfully disagree with the dissent's emphasis on the novelty of the claim in this appeal, relative to the existence of § 7-433c, as counseling in favor of the plaintiff's interpretation of the statute. See parts I and III of the dissenting opinion. The relative novelty of the defendants' claim tells us that this is not a case in which the issue is new to the appellate

Machines Corp. v. *Brown*, 167 Conn. 123, 135–36, 355 A.2d 236 (1974) (The court observed that policy arguments with respect to a use tax on certain tangible personal property "might better be advanced before the General Assembly. Questions of policy are for its consideration. We can . . . take the statutes [only] as they have been enacted." (Internal quotation marks omitted.)).

Because the commissioner did not apply the correct legal standard in failing to make a finding as to whether the plaintiff had customarily worked the requisite twenty hours per week prior to his hiring as a full-time firefighter, the plaintiff is entitled to have the commissioner decide that factual issue.[17] Further proceedings are therefore required to determine his eligibility for benefits under § 7-433c. See, e.g., *Deschenes* v. *Transco, Inc.*, 288 Conn. 303, 323–24, 953 A.2d 13 (2008) (concluding

courts, but one in which the commission has had a time-tested administrative construction of § 7-433c, to which we would customarily defer. See, e.g., *Crandle* v. *Connecticut State Employees Retirement Commission*, 342 Conn. 67, 83–84, 269 A.3d 72 (2022). Thus, to the extent the legislature deems our interpretation of § 7-433c to be inconsistent with the purpose of the statute, it remains free to address that via the adoption of clarifying legislation that "in effect construes and clarifies a prior statute [and that] must be accepted as the legislative declaration of the meaning of the original act. . . . An amendment that is intended to clarify the original intent of an earlier statute necessarily has retroactive effect." (Internal quotation marks omitted.) *Praisner* v. *State*, 336 Conn. 420, 429, 246 A.3d 463 (2020); see id. ("[t]o determine whether the legislature enacted a statutory amendment with the intent to clarify existing legislation, we look to various factors, including, but not limited to (1) the amendatory language . . . (2) the declaration of intent, if any, contained in the public act . . . (3) the legislative history . . . and (4) the circumstances surrounding the enactment of the amendment, such as, whether it was enacted in direct response to a judicial decision that the legislature deemed incorrect . . . or passed to resolve a controversy engendered by statutory ambiguity" (internal quotation marks omitted)).

[17] As was discussed several times during oral argument before this court, the town's claims presented a novel legal issue under § 7-433c with respect to the plaintiff's burden of proof. In light of his interpretation of § 7-433c, and the inconclusive evidence in the record, the commissioner ultimately deemed it unnecessary to decide this factual question in either his memorandum of decision or in acting on the town's motions for articulation and to correct.

that "additional fact-finding proceedings [were] required because the record . . . [did] not permit us to uphold the decision of the board under the correct legal standard, and also [did] not permit us to direct judgment in favor of the defendants because [despite the existence of evidence in the record] the commissioners [did] not [make] any findings with respect to the apportionment or proportional reduction . . . of the plaintiff's benefits" (citation omitted)); cf. *Sullins* v. *United Parcel Service, Inc.*, 315 Conn. 543, 564, 108 A.3d 1110 (2015) (concluding that commissioner's existing findings permitted court to remand case to board with direction to make award in accordance with those findings).

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to reverse the decision of the Compensation Review Board and to remand the case to the board for it to reverse the commissioner's decision and to remand the case to the commissioner for further proceedings according to law.

In this opinion McDONALD, D'AURIA, MULLINS and ALEXANDER, Js., concurred.

ECKER, J., dissenting. The majority today adopts a novel construction of an important and long-standing statute, with severe consequences throughout Connecticut for innumerable municipal firefighters, police officers, and their survivors. General Statutes § 7-433c provides that every "uniformed member" of a municipal fire department and every "regular member" of a municipal police department hired before July 1, 1996, is entitled to receive an array of valuable disability and retirement benefits if they suffer any heath condition or impairment as a result of heart or hypertension disease.[1]

[1] General Statutes § 7-433c provides: "(a) Notwithstanding any provision of chapter 568 or any other general statute, charter, special act or ordinance to the contrary, in the event a uniformed member of a paid municipal fire department or a regular member of a paid municipal police department who successfully passed a physical examination on entry into such service, which

These statutory benefits have existed since the early 1950s, and never once in the past seventy years has this court or, to my knowledge, anyone else suggested that the benefits were not available to *all* uniformed members of *any* municipal fire department and *all* regular members of *any* municipal police department who met the statutory criteria. Indeed, heart and hypertension benefits have been awarded to countless firefighters and police officers under § 7-433c, in contested and uncontested cases alike, without reference to the definition of "member" set forth in General Statutes § 7-425 (5).[2] Until today.

examination failed to reveal any evidence of hypertension or heart disease, suffers either off duty or on duty any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability, he or his dependents, as the case may be, shall receive from his municipal employer compensation and medical care in the same amount and the same manner as that provided under chapter 568 if such death or disability was caused by a personal injury which arose out of and in the course of his employment and was suffered in the line of duty and within the scope of his employment, and from the municipal or state retirement system under which he is covered, he or his dependents, as the case may be, shall receive the same retirement or survivor benefits which would be paid under said system if such death or disability was caused by a personal injury which arose out of and in the course of his employment, and was suffered in the line of duty and within the scope of his employment. If successful passage of such a physical examination was, at the time of his employment, required as a condition for such employment, no proof or record of such examination shall be required as evidence in the maintenance of a claim under this section or under such municipal or state retirement systems. The benefits provided by this section shall be in lieu of any other benefits which such policeman or fireman or his dependents may be entitled to receive from his municipal employer under the provisions of chapter 568 or the municipal or state retirement system under which he is covered, except as provided by this section, as a result of any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability. As used in this section, 'municipal employer' has the same meaning as provided in section 7-467.

"(b) Notwithstanding the provisions of subsection (a) of this section, those persons who began employment on or after July 1, 1996, shall not be eligible for any benefits pursuant to this section."

[2] General Statutes § 7-425 provides in relevant part: "The following words and phrases as used in this part, except as otherwise provided, shall have the following meanings:

The majority now holds that § 7-433c heart and hypertension benefits are available only to those municipal firefighters and police officers who fit the narrow definition of "member" set forth in § 7-425 (5). In my view, the flaw in this conclusion is both unmistakable and decisive: if the majority is correct, then the very same definition of "member" would mean that heart and hypertension benefits are available *only* to those firefighters and police officers who receive pay from a municipality that chooses to participate in the Connecticut Municipal Employees Retirement System (CMERS), General Statutes § 7-425 et seq. The named defendant, the town of Waterford, Cohanzie Fire Department,[3] accepts this consequence as a natural result of applying § 7-425 (5) to § 7-433c and argues that "limiting benefits to those enrolled in [CMERS] is entirely proper." The majority is not so sanguine and resists the logic conceded by the defendant. The majority agrees that the legislature never intended to limit heart and hyperten-

* * *

"(5) 'Member' means any regular employee or elective officer receiving pay from a participating municipality, and any regular employee of a free public library that receives part or all of its income from municipal appropriation, who has been included by such municipality in the pension plan as provided in section 7-427, but shall not include any person who customarily works less than twenty hours a week if such person entered employment after September 30, 1969, any police officer or firefighter who will attain the compulsory retirement age after less than five years of continuous service in fund B, any teacher who is eligible for membership in the state teachers retirement system, any person eligible for membership in any pension system established by or under the authority of any special act or of a charter adopted under the provisions of chapter 99, or any person holding a position funded in whole or in part by the federal government as part of any public service employment program, on-the-job training program or work experience program, provided persons holding such federally funded positions on July 1, 1978, shall not be excluded from membership but may elect to receive a refund of their accumulated contributions without interest . . . ."

[3] The defendant Connecticut Interlocal Risk Management Agency is not a party to this appeal. See footnote 2 of the majority opinion. All references in this opinion to the defendant are to the town of Waterford, Cohanzie Fire Department.

sion benefits to CMERS members and even suggests that such an interpretation would be absurd. But the majority also concludes that it is not necessary to construe § 7-433c to limit these benefits to CMERS members because the sentence defining "member" in § 7-425 (5) can be split in half, the CMERS requirement can be excised, and only the second clause (the exclusion of employees who work less than twenty hours per week) would plainly and unambiguously apply to § 7-433c.

The majority's construction of the relevant statutes is unsound because, simply put, either the entire definition applies to § 7-433c or none of it does. Indeed, guided by General Statutes § 1-2z, I am left with little doubt regarding the correct outcome in this case. The statutes under consideration, far from being plain and unambiguous with respect to the applicability of the term "member" in § 7-425 (5) to "uniformed member" and "regular member" in § 7-433c, are quintessentially ambiguous on that precise question. On the one hand, § 7-425 states that, unless otherwise provided, its definitions apply to the part of the General Statutes in which § 7-433c is codified. On the other hand, virtually every sentence of text in the relevant statutes casts substantial doubt on the meaning that the majority deems obvious. The context provided by the broader statutory schemes adds to that doubt. In the final analysis, the language, legislative history, and remedial purpose of § 7-433c, and its relationship to the retirement system created by § 7-425 et seq. (i.e., CMERS), demonstrates that the definition of "member" does not apply to the terms "uniformed member" and "regular member" in § 7-433c. For that reason, I respectfully dissent.

I

A BRIEF OVERVIEW OF OUR CASE LAW CONSTRUING § 7-433c

Before examining the language of the relevant statutes, it is useful to briefly review what this court pre-

viously has said about the heart and hypertension benefits scheme provided in § 7-433c. Since its enactment in 1951 and subsequent amendment in 1953, the statute now codified at § 7-433c has provided "special compensation to qualifying policemen and firemen who die or become disabled as a result of hypertension or heart disease." (Internal quotation marks omitted.) *Chambers* v. *Electric Boat Corp.*, 283 Conn. 840, 858 n.11, 930 A.2d 653 (2007). Our court repeatedly has observed that "[§] 7-433c was enacted 'for the purpose of placing [municipal firefighters and] policemen who die or are disabled as a result of hypertension or heart disease in the same position vis-à-vis compensation benefits as [municipal firefighters and] policemen who die or are disabled as a result of service related injuries.' " *Lambert* v. *Bridgeport*, 204 Conn. 563, 566–67, 529 A.2d 184 (1987), quoting *Pyne* v. *New Haven*, 177 Conn. 456, 460–61, 418 A.2d 899 (1979); accord *King* v. *Sultar*, 253 Conn. 429, 442, 754 A.2d 782 (2000); *Maciejewski* v. *West Hartford*, 194 Conn. 139, 144, 146, 480 A.2d 519 (1984).

A municipal firefighter or police officer eligible for heart and hypertension benefits "is not required to prove that the [hypertension or] heart disease is causally connected to [his or her] employment . . . ." (Internal quotation marks omitted.) *Ciarlelli* v. *Hamden*, 299 Conn. 265, 276, 8 A.3d 1093 (2010). "The plain language of § 7-433c demonstrates that a uniformed member of a paid municipal fire department or a regular member of a paid municipal police department [whose employment began prior to July 1, 1996] is entitled to benefits under the statute when the officer meets the following requirements: (1) [the officer] has passed a preemployment physical; (2) the preemployment physical failed to reveal any evidence of hypertension or heart disease; (3) [the officer] suffers either off duty or on duty any condition or impairment of health; (4) the condition or impairment of health was caused by hyper-

tension or heart disease; and (5) the condition or impairment results in his death or his temporary or permanent, total or partial disability. *The statute contains no other requirements to qualify for its benefits.*" (Emphasis added.) *Holston* v. *New Haven Police Dept.*, 323 Conn. 607, 616–17, 149 A.3d 165 (2016).

The majority accurately and frankly acknowledges the remedial character of § 7-433c. See footnote 11 of the majority opinion and accompanying text. Indeed, this characteristic has never been in doubt, and it is the reason that case after case decided by this court has observed that the statute "should be broadly construed in favor of disabled employees." (Internal quotation marks omitted.) *Coughlin* v. *Stamford Fire Dept.*, 334 Conn. 857, 863, 224 A.3d 1161 (2020). We also have said that any limitation on the right of recovery must be interpreted narrowly so as "not [to] impose greater constraints on the benefits afforded to disabled police officers and firefighters than the legislature has chosen to adopt." *Szudora* v. *Fairfield*, 214 Conn. 552, 559, 573 A.2d 1 (1990); see *Costello* v. *Fairfield*, 214 Conn. 189, 194, 571 A.2d 93 (1990) ("[b]ecause the Heart and Hypertension Act is remedial legislation, we should not ourselves enlarge [on] the limitations it imposes on recovery").

The foregoing cases are merely representative. As I previously mentioned, entitlement to heart and hypertension benefits has been an area of frequent litigation over the past seventy years. This fact is itself noteworthy because it places the defendant's proposed construction of the statute in historical perspective. Heart and hypertension benefits have been very costly to municipalities over the years, so much so that the legislature adopted a sunset provision putting an eventual end to them,[4] and municipalities always have had a

[4] See Public Acts 1996, No. 96-231, §§ 1 and 2 (amending subsection (b) of § 7-433c to provide that municipal firefighters and police officers whose employment began on or after July 1, 1996, are ineligible for heart and

strong financial incentive to seek to avoid paying these benefits by advancing every plausible argument, including an argument that the statutory language in § 7-433c is limited by the definitional terms in § 7-425. Yet, until now, there never has been any doubt that the benefits conferred by § 7-433c are available to all uniformed firefighters and regular police officers hired before July 1, 1996, regardless of whether the employing municipality chooses to participate in CMERS or the employee works part-time.[5] Indeed, these benefits historically have been awarded to firefighters and police officers who clearly were *not* members of CMERS. See, e.g., *Lambert* v. *Bridgeport*, supra, 204 Conn. 566, 571 (upholding award under § 7-433c to police officer who was beneficiary of pension plan established pursuant to pension agreement "*not* promulgated under [CMERS]" (emphasis added)).

There is no statute of limitations barring originality in statutory construction, and it may be possible that the plain meaning of § 7-433c has been hiding in plain sight for the past seventy years. But the sheer novelty of the defendant's claim, particularly against a background of settled expectations, suggests to me that we should approach its legal theory with great caution.

hypertension benefits); see also 39 S. Proc., Pt. 8, 1996 Sess., p. 2571, remarks of Senator Louis C. DeLuca ("This [amendment] would bring some sort of relief to the municipalities. We've talked about state mandates and unfunded state mandates. This is one of those that has been consistently a problem [for] many of the major cities.").

[5] To be sure, there have been skirmishes over eligibility for heart and hypertension benefits around the margins. See, e.g., *Holston* v. *New Haven Police Dept.*, supra, 323 Conn. 614, 616–17 (police officer was eligible for benefits after passing preemployment physical and suffering from disability caused by heart disease); *Genesky* v. *East Lyme*, 275 Conn. 246, 253–59, 881 A.2d 114 (2005) (constable was not regular member of paid municipal police department); *Bucko* v. *New London*, 13 Conn. App. 566, 569–71, 537 A.2d 1045 (1988) (temporary appointee to police force was regular member of paid municipal police department). I consider it notable that our courts never have looked to § 7-425 (5) for assistance in determining who is eligible to receive these benefits under § 7-433c.

II

SECTION 1-2z ANALYSIS OF THE TEXT AND STATUTORY CONTEXT OF §§ 7-425 (5) AND 7-433c

The defendant claims that the right to recover heart and hypertension benefits under § 7-433c is limited by the definition of "member" in § 7-425 (5). The sole basis for this claim is that § 7-433c is codified in the same part of the General Statutes as § 7-425, which provides in relevant part that "[t]he following words and phrases as used in this part, except as otherwise provided, shall have the following meanings . . . ." Although the plain language of § 7-425 provides that it shall apply to all "words and phrases as used in this part," the principles of statutory construction codified in § 1-2z instruct that we must examine the entire text of the relevant statutes, their relationship to other statutes and, if necessary, the potential absurdity and unworkability of the proffered construction. These steps are not suspended because one of the statutes under review contains a statutorily defined term, especially one that applies "except as otherwise provided . . . ." General Statutes § 7-425.

As a matter of fact, this court has declined to apply statutory definitions on multiple occasions after conducting the appropriate § 1-2z analysis. As we have observed, when the applicability of a statutory definition is at issue, "[t]he [threshold] question . . . is *whether* the statutory definition applies in the first instance." (Emphasis added.) *Commissioner of Environmental Protection* v. *Mellon*, 286 Conn. 687, 693 n.7, 945 A.2d 464 (2008). To resolve this question, we must consider the statutory definition within the context of the statutory scheme as a whole and the purpose it was designed to serve to determine whether its application is plausible, logical, rational, or will yield absurd and unworkable results. See, e.g., *Cohen* v. *Rossi*, 346 Conn.

642, 665–67, A.3d (2023) (declining to apply statutory definition of "municipal clerk" when textual and contextual considerations, including impracticality of literal definition, indicated that different meaning was intended); *418 Meadow Street Associates, LLC* v. *Clean Air Partners, LLC*, 304 Conn. 820, 831 n.11, 43 A.3d 607 (2012) (concluding that statutory definition of term " 'interest' . . . quite simply [did not apply] because such an application would be nonsensical"); *Commissioner of Environmental Protection* v. *Mellon*, supra, 691, 693–95 (concluding that statutory definition of term "person" did not apply to statute in same chapter because application would create redundancy in text and contravene statute's broader purpose and legislative intent); *DaimlerChrysler Services North America, LLC* v. *Commissioner of Revenue Services*, 274 Conn. 196, 205–209, 875 A.2d 28 (2005) (concluding that statutory definition of term "retailer" did not apply to tax credit under statutory scheme); *State* v. *Stephenson*, 207 Conn. App. 154, 181–84, 263 A.3d 101 (2021) (concluding that statutory definition of term "physical evidence" did not apply to crime of tampering or fabricating physical evidence), cert. denied, 342 Conn. 912, 272 A.3d 198 (2022).

In the present case, a proper § 1-2z analysis raises serious doubts about whether the definition of "member" in § 7-425 (5) was intended to apply to § 7-433c. The definitions in § 7-425 are part of the statutory framework governing the administration of CMERS. See *Maturo* v. *State Employees Retirement Commission*, 326 Conn. 160, 172, 162 A.3d 706 (2017). Subdivision (5) of the statute manifestly serves that purpose. It begins by designating a general category of "regular employee[s] or elective officer[s]" who qualify as "member[s]" under CMERS and then excludes certain subsets of those persons from the scope of that definition. General Statutes § 7-425 (5). Under § 7-425 (5), a "member" means, in

relevant part, "any regular employee or elective officer *receiving pay from a participating municipality . . . who has been included by such municipality in the pension plan as provided in section 7-427, but shall not include any person who customarily works less than twenty hours a week if such person entered employment after September 30, 1969 . . . .* " (Emphasis added.)

The meaning of this definition, in my view, is clear. To be a "member," a municipal employee or elective officer must be paid by a "participating municipality." A "participating municipality" is defined in § 7-425 (2) as "any municipality that has accepted this part, as provided in section 7-427 . . . ." Section 7-427, in turn, is the provision at the center of the statutory scheme establishing CMERS; it permits a municipality to opt into CMERS and to designate which of its departments will participate in the retirement fund.[6] Some of the largest municipalities in Connecticut (New Haven and Waterbury, for example) do not participate in CMERS. Other municipalities, such as Hartford and Stamford, participate as to certain of their municipal employees but do not include their fire or police personnel in the fund.[7] As the Appellate Court correctly concluded on

[6] General Statutes § 7-427 (a) provides in relevant part: "Any municipality except a housing authority, which is governed by subsection (b) of this section or a regional workforce development board established under section 31-3k, which is governed by section 7-427a, *may, by resolution passed by its legislative body and subject to such referendum as may be hereinafter provided, accept this part as to any department or departments of such municipality as may be designated therein*, including elective officers if so specified, free public libraries which receive part or all of their income from municipal appropriation, and the redevelopment agency of such municipality whether or not such municipality is a member of the system, as defined in section 7-452, but such acceptance shall not repeal, amend or replace, or affect the continuance of, any pension system established in such municipality by or under the authority of any special act and all such special acts shall remain in full force and effect until repealed or amended by the General Assembly or as provided by chapter 99. . . ." (Emphasis added.)

[7] See Office of the State Comptroller, Retiree Resources, "Who Is in CMERS? Participating Municipalities," available at https://www.osc.ct.gov/

the basis of this statutory scheme, the threshold requirement for any municipal employee to fall within the definition of "member" in § 7-425 (5) is employment by a municipality that participates in CMERS. See *Clark* v. *Waterford, Cohanzie Fire Dept.*, 206 Conn. App. 223, 241, 261 A.3d 97 (2021) ("[a]s a result [of the statutory definitions in § 7-425], and significantly for purposes of our analysis, a *member* within the meaning of [§ 7-425 (2) and (5)] refers only to those regular employees or elective officers who receive pay from a municipality that participates in the retirement fund" (emphasis in original)).

The majority appears to conclude that the relevant portion of the single sentence definition of "member" in § 7-425 (5) can be separated into two independent parts. It proposes that the first clause, which defines "member[s]" as employees of municipalities that participate in CMERS, does not apply to § 7-433c because it conflicts with the portions of § 7-433c that indicate that heart and hypertension benefits are available to municipal firefighters and police officers regardless of the retirement program "under which [the employee] is covered . . . ." General Statutes § 7-433c (a). It then concludes that the second clause of § 7-425 (5), which excludes from the definition of "member" those persons who work less than twenty hours per week, can function independently of the threshold criterion in the first clause, which requires CMERS participation. The majority posits that the second clause, operating independently, excludes part-time, *non*-CMERS firefighters and police officers from receiving § 7-433c heart and hypertension benefits.

These two clauses cannot be disaggregated in the manner suggested by the majority. The exclusion con-

rbsd/cmers/plandoc/MasterTownListSept132016.pdf (last visited June 14, 2023).

tained in the second clause is not independent and freestanding but, rather, operates to limit the general category of persons designated in the first clause; a "member" is a person who is paid by a participating municipality—a participant in CMERS—who customarily works twenty hours or more per week. The majority's contrary view violates basic principles of statutory construction by splitting a unitary definition into two separate parts, discarding the core part of the definition and retaining only the exception. See *Stratford Police Dept.* v. *Board of Firearms Permit Examiners*, 343 Conn. 62, 79, 272 A.3d 639 (2022) (rejecting plaintiff's reliance on latter part of statutory definition at expense of first part of definition and considering entire definition in statutory analysis); *Wiseman* v. *Armstrong*, 269 Conn. 802, 810, 850 A.2d 114 (2004) ("[a] statute is enacted as a whole and must be read as a whole rather than as separate parts or sections").

In support of its construction, the majority contends that "§ 7-425 (5) uses punctuation to phrase separately its exclusion of 'any person who customarily works less than twenty hours a week if such person entered employment after September 30, 1969,' from its description of a 'member' as one who 'receiv[es] pay from a participating municipality . . . .' " I cannot deny that the definition contains two clauses and uses punctuation (a comma), but the *meaning* of those constituent parts is what matters, and it is clear to me from the syntax that the two clauses work together and are not severable. See *United States National Bank of Oregon* v. *Independent Ins. Agents of America, Inc.*, 508 U.S. 439, 454–55, 113 S. Ct. 2173, 124 L. Ed. 2d 402 (1993) ("[A] purported [plain meaning] analysis based only on punctuation is necessarily incomplete and runs the risk of distorting a statute's true meaning. . . . Over and over we have stressed that [i]n expounding a statute, we must not be guided by a single sentence or member

of a sentence, but look to the provisions of the whole law, and to its object and policy. . . . No more than isolated words or sentences is punctuation alone a reliable guide for discovery of a statute's meaning. Statutory construction is a holistic endeavor . . . and, at a minimum, must account for a statute's full text, language as well as punctuation, structure, and subject matter." (Citations omitted; internal quotation marks omitted.)). Construing the definition of "member" in § 7-425 (5) as a whole—as we must—results in the logical and inevitable conclusion that, if the definition applies to § 7-433c, then heart and hypertension benefits are available only to those firefighters and police officers who are employed by a municipality that participates in CMERS *and* who customarily work twenty hours or more per week.

With the unitary nature of this definition in mind, I believe that the majority concedes the match when it acknowledges that "the language of § 7-433c is—at best—ambiguous with respect to the issue of whether a firefighter or police officer must be employed by a 'participating municipality,' given the ample references in § 7-433c to the retirement system under which the employee is covered, which is broader in concept than a simple reference to the [CMERS] retirement fund." The majority, in other words, agrees that the text of § 7-433c demonstrates that heart and hypertension benefits are *not* limited to CMERS members. Because the definition of "member" includes only CMERS participants, the majority's own analysis of § 7-433c compels the conclusion that the statutory scheme is "at best" ambiguous as to whether the definition of "member" in § 7-425 (5) was intended to apply to § 7-433c at all.

I agree with the majority that the statutory scheme, taken as a whole, is at the very least ambiguous as to whether a firefighter or police officer claiming heart and hypertension benefits must be employed by a

municipality that participates in CMERS. Extensive textual evidence indicates that heart and hypertension benefits were intended to be available to all eligible firefighters and police officers, regardless of the retirement system under which they are covered. The sheer volume of this evidence demonstrates why we should be extremely skeptical that the legislature ever intended the definition of "member" in § 7-425 (5) to govern health and hypertension benefits under § 7-433c.

Section 7-433c (a) provides that the eligible employee "shall receive from his municipal employer compensation and medical care in the same amount and the same manner as that provided under chapter 568 . . . *from the municipal or state retirement system under which he is covered* . . . . The benefits provided by this section shall be in lieu of any other benefits which such policeman or fireman or his dependents may be entitled to receive from his municipal employer under the provisions of chapter 568 *or the municipal or state retirement system under which he is covered* . . . ." (Emphasis added.) I agree with the majority that these ample references to "municipal or state retirement system" strongly suggest that the legislature did not intend for heart and hypertension benefits under § 7-433c to be restricted solely to those firefighters and police officers employed by a "participating municipality."

The majority also observes, and I further agree, that "the independent definition in § 7-433c (a) of the term 'municipal employer' by reference to [General Statutes] § 7-467, as the entity liable to pay the benefits, is itself broader than 'participating municipality.' " See General Statutes § 7-467 (1) (defining "municipal employer" as "*any political subdivision of the state, including any town, city, borough, district, district department of health, school board, housing authority or other authority established by law*, a private nonprofit corporation which has a valid contract with any town, city,

borough or district to extinguish fires and to protect its inhabitants from loss by fire, and any person or persons designated by the municipal employer to act in its interest in dealing with municipal employees" (emphasis added)).[8]

There is additional evidence of ambiguity, both in the text of § 7-433c and in other parts of the broader statutory scheme, that raises still more doubt as to whether the definition of "member" in § 7-425 (5) was intended to apply to the terms "uniformed member" and "regular member" in § 7-433c. Section 7-433c, for its part, begins with a robust and unqualified declaration of exclusive dominion over the subject of heart and hypertension benefits: "[n]otwithstanding any provision of chapter 568 *or any other general statute*, charter, special act or ordinance to the contrary . . . ." (Emphasis added.) General Statutes § 7-433c (a). This broad, preemptive language reasonably could be understood to reflect a legislative intention that heart and hypertension benefits should be made available free from *any* statutory limitation that might otherwise apply. See *Velez* v. *Commissioner of Correction*, 250 Conn. 536,

[8] The majority concludes that, by expressly providing that the term "municipal employer," as used in § 7-433c, has a particular meaning defined in § 7-467, the legislature demonstrated that the word "member" must have the meaning ascribed to it in § 7-425 (5) because, otherwise, a different definition likewise would have been provided in § 7-433c. I would conclude instead that, having defined "municipal employer" to clarify that *all* municipalities are obligated to pay heart and hypertension benefits, there was no need to provide additional definitions regarding which firefighters and police officers are entitled to receive those benefits. In other words, because all municipalities cannot mean only "participating municipalities," the terms "uniformed members" and "regular members" cannot mean only those "member[s]," as that term is defined in § 7-425 (5). The statutory scheme is ambiguous because, as the Appellate Court correctly pointed out, the broad definition of "municipal employer" in § 7-467 indicates that heart and hypertension benefits are available under § 7-433c to *all* "uniformed firefighters and regular police officers who are paid by municipalities that do not participate in [CMERS]." *Clark* v. *Waterford*, *Cohanzie Fire Dept.*, supra, 206 Conn. App. 242.

544, 738 A.2d 604 (1999) ("the phrase '[n]otwithstanding any other provision of the [G]eneral [S]tatutes' " overrides contrary statutory provisions (emphasis omitted)); cf. *National Labor Relations Board* v. *SW General, Inc.*, 580 U.S. 288, 302, 137 S. Ct. 929, 197 L. Ed. 2d 263 (2017) ("[a] 'notwithstanding' clause [in a statute] . . . shows which of two or more provisions prevails in the event of a conflict"); *Cisneros* v. *Alpine Ridge Group*, 508 U.S. 10, 18, 113 S. Ct. 1898, 123 L. Ed. 2d 572 (1993) ("As [the court has] noted previously in construing statutes, the use of . . . a 'notwithstanding' clause . . . override[s] conflicting provisions of any other section. . . . [A] clearer statement [of legislative intent] is difficult to imagine." (Citation omitted; internal quotation marks omitted.)).

Ambiguity in the broader statutory scheme is also apparent when § 7-433c is viewed in relation to other statutes relating to heart and hypertension benefits. General Statutes § 5-145a provides heart and hypertension benefits to certain state employees, including "member[s] of the security force or fire department of The University of Connecticut" and "member[s] of the Office of State Capitol Police . . . ." Section 5-145a is not codified in the same part of the General Statutes as § 7-425, and, therefore, the term "member" in the former statute is not restricted by the definition in § 7-425 (5). It would be anomalous for the legislature to provide heart and hypertension benefits to state firefighters and police officers regardless of their part-time status, but to restrict the same benefits for municipal firefighters and police officers on that basis. See, e.g., *LaFrance* v. *Lodmell*, 322 Conn. 828, 838, 144 A.3d 373 (2016) (reading statutes on same subject matter in different part of statutory scheme harmoniously "to ensure the coherency of our construction" (internal quotation marks omitted)). Likewise, volunteer municipal firefighters are entitled to heart and hypertension benefits

under General Statutes § 7-314a, regardless of the municipality's participation in CMERS and the number of hours customarily worked per week.[9] I can perceive no reason why the legislature would choose to extend these benefits to part-time, volunteer firefighters, but not to part-time firefighters and police officers who are paid for their services.

Lastly, and importantly, our case law indicates that the ambiguity analysis under § 1-2z also requires consideration of whether a proposed interpretation is plausible as a matter of common sense within the statute's intended sphere of operation, which, in this case is the provision of heart and hypertension benefits to municipal firefighters and police officers in Connecticut. The traditional principles of statutory construction codified in § 1-2z do not permit us to substitute our own policy preferences for those expressed by the legislature, but we do not ignore practical and commonsensical considerations when we assess the plausibility of competing interpretations. See *Cohen* v. *Rossi*, supra, 346 Conn. 665–67 (concluding that statutory text was unambiguous in light of practical factors involving operation of municipal clerk's office); *Seramonte Associates, LLC* v. *Hamden*, 345 Conn. 76, 91, 282 A.3d 1253 (2022) (rejecting proposed construction of "the word 'submit' " in part because of practical considerations regarding incentive of taxpayers to ensure "that municipal assessors obtain necessary information in a timely fashion"); *Casey* v. *Lamont*, 338 Conn. 479, 493, 258 A.3d 647 (2021) (considering commonsense implications of statutory construction before resorting to extratextual sources to glean legislature's intent); *Board of Educa-*

[9] See General Statutes § 7-314a (d) (conferring heart and hypertension benefits on "an active member of a volunteer fire department or organization certified as a volunteer ambulance service in accordance with section 19a-180 while such member is in training for or engaged in volunteer fire duty or such ambulance service").

tion v. *State Board of Education*, 278 Conn. 326, 337, 898 A.2d 170 (2006) ("[i]n construing a statute, common sense must be used and courts must assume that a reasonable and rational result was intended" (internal quotation marks omitted)).

The majority appears to conclude, as did the Appellate Court, that it defies common sense to construe these statutes to limit heart and hypertension benefits to firefighters and police officers employed by municipalities that participate in CMERS. See *Clark* v. *Waterford, Cohanzie Fire Dept.*, supra, 206 Conn. App. 242. I cannot think of a reason why the legislature would limit heart and hypertension benefits in such a manner, and neither the majority nor the defendant has offered any reason that would explain such a seemingly arbitrary result. The absence of any such explanation is especially troubling in light of the remedial purpose of § 7-433c and the real-world consequences of the majority's holding. The majority's restrictive construction of § 7-425 (5) may prove especially harmful to those firefighters and police officers, hired before July 1, 1996, who have planned their affairs in reasonable reliance on the availability of these important benefits. For example, individuals typically make decisions about the need to purchase life, health or disability insurance and make similar, forward-looking plans in light of the employment benefits that they reasonably believe they already possess. It seems highly unlikely that the firefighters and police officers affected by today's decision—those hired prior to July 1, 1996—will be able to obtain affordable, substitute protection for the lost benefits at this point in their lives. As a result of the majority's decision, the payment of heart and hypertension benefits to future claimants employed by nonparticipating municipalities is thrown into doubt, and there may even be serious question regarding the continua-

tion of past awards payable in the future to non-CMERS firefighters, police officers, and their survivors.[10]

III

EXTRATEXTUAL EVIDENCE OF LEGISLATIVE INTENT

A thorough review of the history, purpose, and legislative intent animating § 7-433c leads me to conclude that the terms "uniformed member" and "regular member" do not incorporate the definition of "member" in § 7-425 (5) but, instead, must be accorded their natural and ordinary meanings without reference to the latter statute. See General Statutes § 1-1 (a) ("[i]n the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language"). There is simply nothing in the legislative history to suggest any intention to restrict the availability of heart and hypertension benefits to firefighters and police officers employed by a limited class of municipalities. To the contrary, the benefits clearly were intended for all eligible firefighters and police officers, regardless of whether they are employed by a municipality that participates in CMERS or work less than twenty hours per week.

As I previously explained, the purpose of § 7-433c was to confer heart and hypertension benefits on municipal firefighters and police officers who meet the statutory requirements set forth in § 7-433c, regardless of whether the heart condition or hypertension was caused by, or even related to, the municipal firefighter's or police officer's employment. The first version of the heart and

[10] At least one court has concluded that heart and hypertension benefits are protected by the due process clause of the fourteenth amendment. See *Smith* v. *East Lyme*, Docket No. 527383, 1994 WL 133379, *5 (Conn. Super. April 5, 1994) (§ 7-433c benefits are identifiable property right for cause of action pursuant to 42 U.S.C. § 1983). The question is not presented in this case, and I express no opinion on its merits.

hypertension benefits statute was enacted in 1951 and originally provided these benefits to "uniformed member[s]" of "paid fire department[s] . . . ."[11] Public Acts 1951, No. 220. The legislative history from 1951 is relatively sparse as it pertains specifically to the word "member," but it is evident that heart and hypertension benefits were intended to apply to all municipalities across the state and that "member" took on a plain meaning. See, e.g., Proposed Senate Bill No. 736, 1951 Sess. ("STATEMENT OF PURPOSE: [t]he purpose of this act is to provide for firemen whose health is impaired by hypertension or heart disease while *members of any city fire department*" (emphasis added)).[12]

The version of the bill that was ultimately enacted in 1951 by the legislature used language that broadly provided that, "[n]otwithstanding the provisions of any general statute or special act to the contrary affecting the noncontributory or contributory retirement systems of *any municipality of the state* as defined by section 680 of the general statutes, any condition of impairment of health caused by hypertension or heart disease resulting in total or partial disability to a uniformed *member* of a paid fire department of *such municipality* who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of such condition, shall be presumed to have been suffered in line of duty." (Emphasis added.)

[11] The definition of "member" in § 7-425 (5) was codified in that same chapter in 1945 and originally provided that " 'member' shall mean any regular employee or elective officer receiving pay from a participating municipality who has been included by such municipality in the pension plan as provided in section 122h . . . ." General Statutes (Supp. 1945) § 121h. The definition did not contain a limit as to the number of hours until 1969. See Public Acts 1969, No. 408.

[12] This proposed version of the bill contained the word "member" and began with the following language: "Notwithstanding the provisions of any general or special law to the contrary affecting the non-contributory or contributory retirement systems of any city of the state of Connecticut . . . ." Proposed Senate Bill No. 736, 1951 Sess.

Public Acts 1951, No. 220. General Statutes (1949 Rev.) § 680 defined "municipality" in relevant part as "each town, consolidated town and city, consolidated town and borough, city, [or] borough . . . upon which is placed by law the duty of, or which has itself assumed the duty of, protecting its inhabitants from loss of fire. . . ." As the statute was amended to include police and to strengthen the presumption that these conditions were sustained in the line of duty, this expansive language carried through.[13]

In 1971, when the statute was renumbered § 7-433c, the language changed slightly from these earlier versions, but, as is still the case today, the statute incorporated the broad definition of "municipal employer" from § 7-467 in its scheme and the broad phrase "municipal or state retirement system under which he is covered" when discussing the administration of benefits. See Public Acts 1971, No. 524, § 1.[14] The legislature in 1971 also discussed the purpose behind the provision of heart and hypertension benefits: to address "the unusual risk attendant to police and fire work and to provide these benefits for the men who risk their lives for us each and every day." 14 H.R. Proc., Pt. 8, 1971 Sess., p. 3525,

[13] The 1961, 1967, and 1969 statutes all contained the following language: "For the purpose of the adjudication of claims for the payment of benefits under the provisions of chapter [568] of the general statutes and the contributory or non-contributory retirement systems of *any municipality* . . . ." (Emphasis added.) Public Acts 1961, No. 330, § 1; accord Public Acts 1969, No. 380, § 1; Public Acts 1967, No. 770, § 1. They defined " 'municipality' " as "*any town*, *city*, borough, fire district or other municipal corporation or taxing district *which provides police or fire protection to its inhabitants*." (Emphasis added.) Public Acts 1961, No. 330, § 1; accord Public Acts 1969, No. 380, § 1; Public Acts 1967, No. 770, § 1.

[14] The legislative history indicates that the reenactment came in response not to the meaning of "member" changing but, rather, to this court's striking down the conclusive presumption added in 1969 as unconstitutional in *Ducharme* v. *Putnam*, 161 Conn. 135, 143, 285 A.2d 318 (1971). See 14 S. Proc., Pt. 6, 1971 Sess., pp. 2803–2804, remarks of Senator Wilber G. Smith. The history indicates that § 7-433c was enacted to carry out the clear and consistent intent of the legislature as to the nature of these benefits. See id.

remarks of Representative Gerald F. Stevens; see 14 S. Proc., Pt. 6, 1971 Sess., p. 2804, remarks of Senator Wilber G. Smith ("[W]e're always talking about the hazardous conditions of our policemen and our firemen. [We're] always talking about pouring in more moneys for them to do a better job and to be more effective. . . . [W]e also have to recognize that we're also adding and egging them on really, to move into and take care of these hazardous positions. . . . [I]t ought to be recognized that . . . throughout their careers, [these] policemen and firemen are indeed confronted more seriously with hazardous conditions. And I move for passage of . . . a vital piece of legislation, in support of our local police and our local fire departments.").[15]

The legislature again took up the subject in the 1990s and eventually restricted the benefits to make them unavailable to firefighters and police officers employed on or after July 1, 1996; see Public Acts 1996, No. 96-231, § 2; it continued to express the importance of giving the benefits to firefighters and police officers across the state. See, e.g., 35 H.R. Proc., Pt. 5, 1992 Sess., p. 1675, remarks of Representative Joseph A. Adamo ("Connecticut's [h]eart and [h]ypertension [l]aws . . . pertain to firefighters and police officers who serve in

[15] Later, there was also discussion that these benefits were intended to place firefighters and police officers on equal footing with those seeking workers' compensation. See *King* v. *Sultar*, supra, 253 Conn. 442 ("[the] history of . . . the bill eventually enacted as P.A. 77-520, § 1, which amended § 7-433c, demonstrates that it was intended to place those policemen [or firemen] who die or are disabled as a result of heart disease or hypertension in the same position vis-à-vis compensation benefits as policemen [or firemen] who die or are disabled as a result of service related injuries" (internal quotation marks omitted)). I find this latter point significant because nowhere in the workers' compensation realm are the benefits to firefighters and police officers restricted only to those persons employed by municipalities that participate in CMERS or persons who work a minimum number of hours per week. See General Statutes § 31-275 (9) (A) (iv) ("employee," for purposes of Workers' Compensation Act, includes "[a] paid member of any police department or fire department").

our municipalities in the [s]tate of Connecticut" (internal quotation marks omitted)); id., pp. 1700–1701, remarks of Representative Dale W. Radcliffe ("[e]very individual who is subject to the special benefit of [§] 7-433c today, will remain subject to the special benefits . . . for the balance of the time that that individual is *employed by a police department or by a municipal fire department in the* [*s*]*tate of Connecticut*" (emphasis added)); see also, e.g., 39 S. Proc., Pt. 8, 1996 Sess., p. 2570, remarks of Senator Louis C. DeLuca ("[t]his is the so-called grandfather bill on heart and hypertension whereby all new hires [on or] after July 1, 1996 would not be under the heart and hypertension law, but all those now currently employed as *paid firemen*, *police in the* [*s*]*tate of Connecticut in municipal departments*, would still be under the heart and hypertension law" (emphasis added)).

The foregoing legislative history reflects that the legislature's purpose behind the statute has always been expansive and remedial, and the available evidence indicates that the benefits were intended to extend to firefighters and police officers in all municipalities. There is no suggestion anywhere in the legislative history that the legislature intended to limit the benefits only to firefighters and police officers employed by municipalities that participate in CMERS. It is implausible and unrealistic to believe that the legislature would enact such an important (not to mention seemingly arbitrary and inexplicable) restriction without so much as a mention anywhere in the legislative materials spanning decades. See *King* v. *Sultar*, supra, 253 Conn. 442–43 (giving weight to silence in legislative history when determining whether city employer could intervene in case involving § 7-433c benefits).

Heart and hypertension benefits have been around since 1951, and there has been extensive debate within the General Assembly since then as to the many aspects

of the statutory scheme. The history reflects significant discussion among supporters and dissenters alike from major cities across Connecticut, including those not participating in CMERS, such as Bridgeport and New Haven, about exactly how costly these benefits are to municipalities for eligible firefighters and police officers. See 35 H.R. Proc., supra, pp. 1688–89, remarks of Representative Radcliffe ("[W]e have to look very hard at what this special benefit has cost to our municipalities. . . . We're talking in [f]iscal [y]ear[s] 1989, and 1990, for example, in the [c]ity of Bridgeport, combined benefits [were] $1,700,000. New Haven, $1,100,000. West Haven, a distressed municipality, $204,000. And these numbers . . . represent [a] cost to each and every municipal taxpayer in the [s]tate of Connecticut."); Conn. Joint Standing Committee Hearings, Labor and Public Employees, Pt. 3, 1996 Sess., p. 824, testimony of Dennis Murphy, chief administrative officer of the city of Bridgeport ("I would like to say in . . . Bridgeport . . . heart and hypertension [benefits are] a burden that we continue to bear. . . . I would just, on behalf of those taxpayers, request this body to find the extraordinary responsibility to fund this benefit should you choose to continue it.").

Notwithstanding this extensive historical record documenting the numerous occasions of legislative consideration and reconsideration of the statutory scheme over many years, not a single person once said or suggested that these benefits are available only to some firefighters and police officers, namely, those employed by municipalities participating in CMERS or those who work a certain number of hours per week. There is not even a single reference, anywhere in the legislative history, to the definition of "member" in § 7-425 (5). In my estimation, it is virtually inconceivable that the legislature would enact a law of this prominence with-

out any reference whatsoever to a fundamental feature that so dramatically affects its scope.

In sum, the text and context of the relevant statutes, the broad remedial purpose of § 7-433c, and the legislative history convince me that the definition of "member" in § 7-425 (5) does not apply to the heart and hypertension statute. The terms "uniformed member" and "regular member" in § 7-433c instead mean what everyone has understood them to mean for the past seventy years, and do not restrict the availability of heart and hypertension benefits to firefighters and police officers paid by municipalities that participate in CMERS or to those who customarily work twenty hours or more per week. See *Board of Education* v. *State Board of Labor Relations*, 217 Conn. 110, 126–27, 584 A.2d 1172 (1991) ("[a] statute . . . should not be interpreted to thwart its purpose" (internal quotation marks omitted)). There is no indication in the statutory scheme that the legislature intended to limit heart and hypertension benefits to "member[s]," as defined by § 7-425 (5), and "[this court] should not [itself] enlarge [on] the limitations [§ 7-433c] imposes on recovery." *Costello* v. *Fairfield*, supra, 214 Conn. 194.

Accordingly, I respectfully dissent.