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"[T]here are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." (Internal quotation marks omitted.) *Meletrich* v. *Commissioner of Correction*, 332 Conn. 615, 637, 212 A.3d 678 (2019).

The crux of the petitioner's argument on appeal is that Gemeiner failed in a number of ways to undermine Z's version of events by relying on the undisputed fact that Z did not disclose the alleged sexual abuse until at least three weeks after it allegedly occurred. The petitioner concludes that, had Gemeiner put more emphasis on this delay, the jury would have concluded that the delay in disclosure was an indication that the incident never occurred. As we consider the petitioner's arguments, we recognize that our courts have permitted expert testimony to be admitted in sexual assault cases to explain why delayed disclosure does not necessarily and inexorably lead to the conclusion that a sexual assault did not occur. "Because it is only natural for a jury to discount the credibility of a victim who did not immediately report alleged incidents . . . testimony that explains to the jury why a minor victim of sexual abuse might delay in reporting the incidents of abuse should be allowed as part of the state's case-in-chief." (Internal quotation marks omitted.) *State* v. *Francis D.*, 75 Conn. App. 1, 16, 815 A.2d 191, cert. denied, 263 Conn. 909, 819 A.2d 842 (2003).

The petitioner argues that the court erred in finding that Gemeiner's performance was based on sound trial strategy because there was no evidence in the record to demonstrate that he had a legitimate strategic reason for (1) failing to familiarize himself with the issue of delayed disclosure, (2) failing to consult with or to present an expert witness on the issue of delayed disclosure, or (3) failing to cross-examine the state's expert witness, Montelli, adequately on the issue of delayed

disclosure and that his cross-examination of her was "unfocused, disorganized, and rambling . . . ." He contends that Gemeiner testified at the habeas trial that he did not believe that the issue of delayed disclosure mattered in the petitioner's case, despite the fact that the state considered the issue to be so central that it presented expert testimony from Montelli on the subject of delayed disclosure of sexual abuse by children and, particularly, the fact that delayed disclosure was not necessarily evidence of untruthful disclosure. We are not persuaded.

We begin by setting forth our standard of review. "It is well settled that in reviewing the denial of a habeas petition alleging the ineffective assistance of counsel, [t]his court cannot disturb the underlying facts found by the habeas court unless they are clearly erroneous, but our review of whether the facts as found by the habeas court constitutes a violation of the petitioner's constitutional right to effective assistance of counsel is plenary." (Internal quotation marks omitted.) *Brewer* v. *Commissioner of Correction*, 189 Conn. App. 556, 562, 208 A.3d 314, cert. denied, 332 Conn. 903, 208 A.3d 659 (2019).

In the present case, the court rejected the petitioner's argument that Gemeiner failed to familiarize himself with the issue of delayed disclosure. It found that the petitioner failed to present credible evidence to demonstrate that Gemeiner had failed to achieve a reasonable degree of familiarity with materials relevant to child forensic interview protocol, disclosure literature, and validation criteria in preparation for the petitioner's criminal trial. The court noted that Gemeiner testified that he had significant experience with child sexual assault cases and that he "tried to read all materials on testing the veracity of children—beyond newspapers and magazines." (Internal quotation marks omitted.) Gemeiner also testified that he was "fairly consumed"

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CASES ARGUED AND DETERMINED

IN THE

SUPREME COURT

OF THE

STATE OF CONNECTICUT

THE STRAND/BRC GROUP, LLC, ET AL. *v.* BOARD OF REPRESENTATIVES OF THE CITY OF STAMFORD (SC 20578)

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

Syllabus

Pursuant to the Stamford Charter (§ C6-30-7), "[i]f [20] percent or more of the owners of the privately-owned land in the area included in any proposed amendment to the Master Plan, or the owners of [20] percent or more of the privately-owned land located within [500] feet of the borders of such area, file a signed petition with the Planning Board . . . objecting to the proposed amendment, then said decision shall have no force or effect but the matter shall be referred by the Planning Board to the Board of Representatives . . . . The Board of Representatives shall approve or reject such proposed amendment at or before its second regularly-scheduled meeting following such referral."

The plaintiffs, owners of certain real property in the city of Stamford, appealed to the trial court from the decision of the defendant board of representatives, which had rejected the decision of the city's planning board to approve the plaintiffs' application to amend the city's master plan. In their application filed with the planning board, the plaintiffs sought an amendment to the master plan in order to modify the land use categories of their properties, which previously had been the site of a recycling center, to allow for high density residential development. The planning board then submitted its own application, seeking to modify the land use categories of adjacent properties to allow for similar

* 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, Kahn, Ecker and Keller. Although Justice Ecker was not present when the case was argued before the court, he has read the briefs and appendices, and has listened to a recording of oral argument prior to participating in this decision.

development. The planning board conducted separate hearings on the two applications and approved the amendments proposed therein by separate motions, reclassifying the relevant properties to allow for high density, multifamily residential development. Thereafter, an individual affiliated with a local neighborhood organization filed a single protest petition, signed by owners of property adjacent to the plaintiffs' properties, with the planning board pursuant to § C6-30-7, challenging the two amendments to the master plan approved by the planning board. The planning board referred the protest petition to the board of representatives pursuant to § C6-30-7, and a legislative officer for the board of representatives determined that the petition was valid as to the amendment pertaining to the adjacent properties because it met the signature requirement set forth in § C6-30-7 but that it was invalid as to the amendment pertaining to the plaintiffs' properties because it did not meet the signature requirements for the subject area. Nonetheless, the board of representatives subsequently voted to verify the validity of the protest petition. The board of representatives then voted on the merits of the protest petition and rejected the planning board's approval of the amendments to the master plan pertaining both to the plaintiffs' properties and the adjacent properties. On appeal from the decision of the board of representatives, the trial court concluded that the board of representatives did not have the authority to determine the validity of the protest petition because, once the petition was filed with the planning board, the charter charged the board of representatives only with determining the substantive issue of whether the proposed amendments should be approved or rejected. The court rendered judgment sustaining the plaintiffs' administrative appeal, from which the board of representatives appealed. *Held*:

1. The trial court correctly concluded that the board of representatives lacked authority to assess the validity of a protest petition that had been referred to it by the planning board: although the charter allows opponents of an amendment to the master plan to challenge the proposed amendment by filing a valid protest petition with the planning board, once the protest petition is referred to the board of representatives, the language of § C6-30-7 of the charter authorizes the board of representatives only to "approve or reject [the] proposed amendment" and not the protest petition itself, which is merely the procedural vehicle to put the amendment before the board of representatives for review; moreover, the charter provisions require the planning board to verify the procedural validity of a protest petition before referring that petition to the board of representatives; accordingly, the board of representatives acted outside of the powers granted to it by the charter and overstepped its authority by purporting to verify the validity of the protest petition referred to it by the planning board, and its vote on the validity of the protest petition was improper.

2. The board of representatives could not prevail on its claim that, even if it did not have authority to decide the validity of the protest petition, it nonetheless properly exercised its authority under the charter to decide the merits of the plaintiffs' application by rejecting the planning board's amendment to the city's master plan under the plaintiffs' application, and, accordingly, the trial court properly sustained the plaintiffs' appeal: under § C6-30-7 of the charter, a protest petition is valid and subject to referral by the planning board only if it is timely filed and signed by either 20 percent or more of the owners of the privately owned land in the area that is the subject of the proposed amendment to the master plan or signed by the owners of 20 percent or more of the privately owned land located within 500 feet of the borders of such area, and, because a valid protest petition is a condition precedent to the authority of the board of representatives to vote on the merits of an amendment, that board's vote on the merits of an amendment contained in an invalid petition is void; moreover, the signature requirements in § C6-30-7 are not a mere formality but serve an important substantive purpose, namely, limiting the authority conferred on the board of representatives by ensuring that review of an amendment to the master plan by that board is triggered only if there is a sufficient number of owners of private property within a defined geographical area with interests directly affected by the proposed amendment, and, because those requirements were intended to be mandatory rather than directory, the board of representatives did not have discretion to act on the proposed amendment notwithstanding the legal invalidity of the protest petition; furthermore, this court previously had held that the signatures in a single protest petition challenging two distinct amendments cannot be aggregated to meet the threshold signature requirements set forth in § C6-30-7, and, in the present case, it was undisputed that, insofar as the protest petition challenged the amendment approved in the plaintiffs' application, the petition did not contain the threshold number of signatures required to permit the planning board to refer the petition to the board of representatives.

(*One justice dissenting*)

Argued September 10, 2021—officially released March 15, 2022

Procedural History

Appeal from the decision of the defendant rejecting a decision by the Planning Board of the City of Stamford to amend the city's master plan to permit certain residential development, brought to the Superior Court in the judicial district of Stamford-Norwalk and transferred to the judicial district of Hartford, Land Use Litigation Docket, where the case was tried to the court,

Hon. Marshall K. Berger, Jr., judge trial referee, who, exercising the powers of the Superior Court, rendered judgment sustaining the appeal, from which the defendant, on the granting of certification, appealed. *Affirmed.*

Patricia C. Sullivan, for the appellant (defendant).

David T. Martin, for the appellees (plaintiffs).

Opinion

ECKER, J. The dispositive issue in this appeal is whether the defendant, the Board of Representatives of the City of Stamford (board of representatives), had the authority to approve a protest petition that objected to master plan amendments approved by the Planning Board of the City of Stamford (planning board). The plaintiffs, The Strand/BRC Group, LLC, 5-9 Woodland, LLC, Woodland Pacific, LLC, and Walter Wheeler Drive SPE, LLC, filed an application with the planning board to amend the master plan of the city of Stamford (city). Shortly afterward, the planning board filed its own application to amend the city's master plan. After the planning board approved both applications with some modifications, local property owners filed a protest petition under § C6-30-7 of the Stamford Charter (charter). The board of representatives determined that the protest petition was valid and rejected the planning board's approval of the amendments. The plaintiffs appealed from the decision of the board of representatives to the trial court, which sustained the plaintiffs' appeal. We affirm the judgment of the trial court.

The underlying facts are undisputed. The plaintiffs own parcels of real property in the city located at 707 Pacific Street; 5, 9, 17, 21, 23, 25, 29, 39 and 41 Woodland Avenue; and 796 Atlantic Street. In October, 2018, the plaintiffs proposed an amendment to the city's master plan to modify their properties' land use categories (Application MP-432) to allow high density residential

development on the site, which previously had been used as a recycling collection and disposal center. Specifically, the plaintiffs sought to modify their properties' land use categories from category 4 (residential—medium density multifamily), category 6 (commercial—neighborhood), and category 9 (urban mixed-use), to category 5 (residential—high density multifamily) and category 9, which would allow for more dense development. The planning board thereafter submitted its own application to modify the land use categories of adjacent properties from categories 4 and 6 to category 9 (Application MP-433).[1] The proposals contained in the respective applications, though plainly related, were two different amendments contained in two different applications from two different applicants. Application MP-432 was filed separately from Application MP-433 and advertised to the public independently. The planning board conducted public hearings on both applications, after which it approved them by separate motions insofar as they each sought a change to land use category 5.[2] The planning board published separate legal notices of the approval of each amendment.

Shortly thereafter, Susan Halpern, vice president of the South End Neighborhood Revitalization Zone Initiative, filed a single protest petition signed by adjacent property owners, challenging the planning board's approval of Applications MP-432 and MP-433 pursuant to § C6-30-7 of the charter, which provides in relevant part that, "[i]f twenty (20) percent or more of the owners of the privately-owned land in the area included in any proposed amendment to the Master Plan, or the owners

[1] The adjacent properties are located at 701 and 705 Pacific Street; 13 and 43 Woodland Avenue; 0, 784 and 804 Atlantic Street; and 12, 18 and 20 Walter Wheeler Drive.

[2] The planning board concluded that category 9 was "too intense for this area . . . ." Accordingly, "instead of . . . categor[ies] 5 and 9 for the parcels requested, the [planning] board adopted . . . category 5 for all of the parcels and rejected the request . . . [for] category 9."

of twenty (20) percent or more of the privately-owned land located within five hundred (500) feet of the borders of such area, file a signed petition with the Planning Board within ten days after the official publication of the decision thereon, objecting to the proposed amendment, then said decision shall have no force or effect but the matter shall be referred by the Planning Board to the Board of Representatives within twenty days after such official publication, together with written findings, recommendations and reasons. The Board of Representatives shall approve or reject such proposed amendment at or before its second regularly-scheduled meeting following such referral. . . ." Pursuant to § C6-30-21 of the charter, the decision must be made by an "affirmative vote of a majority of the entire membership of said Board . . . ." See generally *Benenson* v. *Board of Representatives*, 223 Conn. 777, 781, 612 A.2d 50 (1992) (describing protest petition process).

Pursuant to § C6-30-7, the planning board referred the protest petition to the forty member board of representatives on the same day it was received. The legislative officer, Valerie T. Rosenson, for the board of representatives reviewed the validity of the protest petition and determined that it was valid as to Application MP-433 because it had been signed by 33 percent of the property owners in the subject area relevant to Application MP-433 but invalid as to Application MP-432 because it had not been signed by 20 percent of the property owners in the 500 foot border of the area or 20 percent of the property owners in the subject area relevant to Application MP-432.[3]

Approximately ten days later, the city's special counsel, James Minor, submitted a memorandum, recom-

[3] According to Rosenson, only 6.77 percent of the property owners in the 500 foot border area, and none of the property owners in the subject area of Application MP-432, signed the petition.

mending that the board of representatives separately address each of the two applications referenced in the protest petition because the applications "involved separate applicants, application numbers, property boundaries, amendments, legal notices and decisions." Additionally, Attorney Minor pointed out that, pursuant to *Stamford Ridgeway Associates* v. *Board of Representatives*, 214 Conn. 407, 572 A.2d 951 (1990), and *Hanover Hall* v. *Planning Board*, 2 Conn. App. 49, 475 A.2d 1114, cert. granted, 194 Conn. 805, 482 A.2d 710 (1984) (appeal dismissed March 5, 1985), the board of representatives must determine if it has authority to consider the protest petition by ascertaining whether it contains a sufficient number of signatures on the basis of "the area where the specific amendment is located," as opposed to the area that may be affected by the change.

The issue concerning the validity of the protest petition was referred to the board of representative's land use-urban redevelopment committee (committee), which voted unanimously to reject the protest petition with respect to Application MP-432 and to accept the protest petition with respect to Application MP-433. Following a public hearing, at which various property owners expressed their disapproval of both amendments, the board of representatives voted to send Application MP-432 back to the committee for reconsideration. The committee reconsidered its decision to reject Application MP-432 and ultimately approved the protest petition as it applied to Application MP-432. On the same day, the board of representatives convened a special meeting to determine the validity of the protest petition, at which it voted to verify its validity by a vote of seventeen to twelve. The board of representatives later voted on the merits of the protest petition and rejected the planning board's approval of Application MP-432 by a

vote of twenty-one to eleven and Application MP-433 by a vote of twenty-three to twelve.

The plaintiffs appealed to the trial court from the rejection of Application MP-432 by the board of representatives.[4] The plaintiffs challenged the authority of the board of representatives to review the planning board's decision on numerous grounds, and the parties agreed to address that issue as a threshold matter before reaching the merits. Pursuant to *Benenson* v. *Board of Representatives*, supra, 223 Conn. 777, the trial court determined that "the board [of representatives] had no authority to determine the validity of the petition and [that] its action was improper" because, "[o]nce the petition was filed with the planning board, the only charge for the board [of representatives] was to determine the substantive issue, i.e., the proposed amendments." The court then determined that, even if the board of representatives had the authority to vote on the validity of the protest petition, "[t]he vote was not sufficient [because] it failed to garner a majority of the entire forty person board or twenty-one votes."[5] See Stamford Charter § C6-30-21 (requiring majority vote of entire board of representatives "in deciding all matters"). Accordingly, the trial court sustained the plaintiffs' appeal. This appeal followed.[6]

[4] Neither the plaintiffs nor the planning board appealed from the decision of the board of representatives rejecting Application MP-433. Therefore, that board's decision on Application MP-433 was not before the trial court and is not at issue in the present appeal.

[5] Accordingly, the trial court determined that it was "unnecessary . . . to reach the issue of whether the protest petition, as applied to the plaintiffs' application, was invalid because it did not have the required signatures." Nonetheless, the trial court observed that "the record clearly indicates that . . . the board [of representatives] ignored the advice of its able counsel . . . and improperly counted the signatures [on] the protest petition and applied them to the plaintiffs' and the planning board's applications in combination instead of to each application separately." (Citations omitted.)

[6] The board of representatives appealed from the judgment of the trial court to the Appellate Court, which granted that board's petition for certification to appeal pursuant to General Statute § 8-8 (o). We transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

On appeal, the board of representatives claims that, regardless of whether it lacked authority to decide the validity of the protest petition, it nonetheless had authority to rule on the merits of Application MP-432, which was duly rejected by a majority of that board, i.e., twenty-one members. The plaintiffs respond that the board of representatives lacked authority to rule on the merits of Application MP-432 because the charter does not authorize that board to vote on the validity of a protest petition, and, in the absence of a valid petition, the board of representatives lacked the authority to reach the merits of the application. Relatedly, the plaintiffs argue that the protest petition was invalid because it lacked the requisite number of signatures to trigger referral by the planning board under the charter and, accordingly, that there was "no procedural vehicle to put the amendment before the board [of representatives] for review." Alternatively, if the board of representatives had the authority to vote on the validity of the protest petition, the plaintiffs contend that its approval of the protest petition by a vote of seventeen to twelve was invalid because the petition required an affirmative vote of twenty-one board members.

The board of representatives, in considering the proposed amendment, was "called [on] to perform a legislative function." (Internal quotation marks omitted.) *Benenson* v. *Board of Representatives*, supra, 223 Conn. 783; accord *Stamford Ridgeway Associates* v. *Board of Representatives*, supra, 214 Conn. 421–22; *Burke* v. *Board of Representatives*, 148 Conn. 33, 39, 166 A.2d 849 (1961). Because the board of representatives was acting in a legislative capacity, the decision of the board "must not be disturbed by the courts unless the party aggrieved by that decision establishes that the [board] acted arbitrarily or illegally." (Internal quotation marks omitted.) *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning*

Commission, 220 Conn. 527, 543, 600 A.2d 757 (1991); see *Campion* v. *Board of Aldermen*, 278 Conn. 500, 527, 899 A.2d 542 (2006) ("[c]ourts will not interfere with . . . local legislative decisions unless the action taken is clearly contrary to law or in abuse of discretion" (internal quotation marks omitted)). If the board of representatives exceeded the scope of its permissible authority to act under the charter, then its decision was contrary to law and an abuse of discretion. See *Stamford Ridgeway Associates* v. *Board of Representatives*, supra, 422 n.7.[7]

"[A city] charter . . . constitutes the organic law of the municipality." (Citation omitted.) *West Hartford Taxpayers Assn., Inc.* v. *Streeter*, 190 Conn. 736, 742, 462 A.2d 379 (1983). "[A] city's charter is the fountainhead of municipal powers . . . . The charter serves as an enabling act, both creating power and prescribing the form in which it must be exercised. . . . Agents of a city, including [the board of representatives], have no source of authority beyond the charter." (Citations omitted; internal quotation marks omitted.) *Stamford Ridgeway Associates* v. *Board of Representatives*, supra, 214 Conn. 423. "[T]heir powers are measured and limited by the express language in which authority is given or by the implication necessary to enable them to perform some duty cast upon them by express lan-

[7] The dissent contends that we do "not engage with or follow [the] reasoning" of the case law governing judicial review of legislative action, citing *LaTorre* v. *Hartford*, 167 Conn. 1, 355 A.2d 101 (1974), and *Mills* v. *Town Plan & Zoning Commission*, 145 Conn. 237, 140 A.2d 871 (1958), overruled in part on other grounds by *Mott's Realty Corp.* v. *Town Plan & Zoning Commission*, 152 Conn. 535, 209 A.2d 179 (1965). Neither *LaTorre* nor *Mills* required this court to examine the scope of a municipal body's authority to act under an applicable charter provision. The pertinent cases, cited in the body of this opinion, establish that (1) the proper inquiry in the present context is whether the board of representatives acted arbitrarily or illegally, and (2) under that standard, an action of the board of representatives is "illegal" if undertaken in violation of the requirements of the municipal charter.

guage." (Internal quotation marks omitted.) *Perretta* v. *New Britain*, 185 Conn. 88, 92–93, 440 A.2d 823 (1981); see *Thomson* v. *New Haven*, 100 Conn. 604, 606, 124 A. 247 (1924) ("[m]unicipal corporations created by charter derive all their powers from the charter under which they act").

The proper construction of the charter presents a question of law, over which our review is plenary. E.g., *Kiewlen* v. *Meriden*, 317 Conn. 139, 149, 115 A.3d 1095 (2015). "In construing a city charter, the rules of statutory construction generally apply. . . . In arriving at the intention of the framers of the charter the whole and every part of the instrument must be taken and compared together. In other words, effect should be given, if possible, to every section, paragraph, sentence, clause and word in the instrument and related laws." (Internal quotation marks omitted.) *Fennell* v. *Hartford*, 238 Conn. 809, 826, 681 A.2d 934 (1996); see General Statutes § 1-2z.

I

We first address whether, pursuant to the charter, the board of representatives has the authority to assess the validity of a protest petition that has been referred by the planning board. "[I]n interpreting [charter] language . . . we do not write on a clean slate, but are bound by our previous judicial interpretations of this language and the purpose of the [charter provisions]." (Internal quotation marks omitted.) *Commissioner of Public Safety* v. *Freedom of Information Commission*, 312 Conn. 513, 527, 93 A.3d 1142 (2014). In *Benenson* v. *Board of Representatives*, supra, 223 Conn. 777, this court addressed the board of representatives' authority to review a protest petition under a former provision, § C-552.2,[8] of the charter. Section C-552.2 provided in

[8] "Section C-552.2 of the . . . charter provide[d]: 'After the effective date of the master plan, if the owners of twenty per cent or more of the privately-owned land in the area included in any proposed amendment to the zoning map, or if the owners of twenty per cent or more of the privately-owned

relevant part that, if a valid petition is filed "with the zoning board . . . objecting to the proposed amendment, said decision shall have no force or effect but the matter shall be referred by the zoning board to the board of representatives . . . together with written findings, recommendations and reasons. The board of representatives shall approve or reject such proposed amendment at or before its second regularly scheduled meeting following such referral." (Internal quotation marks omitted.) Id., 780 n.3. On the basis of the plain language of § C-552.2, we concluded that "[t]he question before the board [of representatives] was not the petition, which indicated the property owners' objection to the zone change, but whether the zone change should be approved. The petition was merely the vehicle that brought the issue before [said] board. This is made clear in § C-552.2, which provides that after the petition is referred to the board [of representatives, it] shall approve or reject such proposed amendment . . . . *The charter does not provide for the approval or rejection of the petition itself.*" (Emphasis altered; internal quotation marks omitted.) Id., 783; see *Burke* v. *Board of Representatives*, supra, 148 Conn. 39 ("The manifest legislative intent expressed in the . . . charter is that the board of representatives, in considering an amendment to the zoning map, shall review the legislative

land located within five hundred feet of the borders of such area, file a signed petition with the zoning board, within ten days after the official publication of the decision thereon, objecting to the proposed amendment, said decision shall have no force or effect but the matter shall be referred by the zoning board to the board of representatives within twenty days after such official publication, together with written findings, recommendations and reasons. The board of representatives shall approve or reject such proposed amendment at or before its second regularly scheduled meeting following such referral. When acting upon such matters the board of representatives shall be guided by the same standards as are prescribed for the zoning board in section 550 of this act. The failure of the board of representatives either to approve or reject said amendment within the above time limit shall be deemed as approval of the zoning board's decision.' " *Benenson* v. *Board of Representatives*, supra, 223 Conn. 780 n.3.

action of the zoning board on [its] written findings, recommendations and reasons. The question before the board of representatives is whether to approve or to reject the amendment.").

The relevant charter provision at issue in this appeal is essentially the same as the charter provision that we interpreted in *Benenson*. Both § C-552.2 and § C6-30-7 allow opponents of an amendment to the zoning plan or the master plan of the city, respectively, to challenge the proposed amendment by filing a valid protest petition with the zoning board or the planning board, as the case may be. Once the protest petition has been referred to the board of representatives, the language of § C6-30-7, like the language of § C-552.2, authorizes only that the board of representatives approve or reject the *amendment*, *not* "*the 'petition' itself*." (Emphasis added.) *Benenson* v. *Board of Representatives*, supra, 223 Conn. 783; see Stamford Charter § C6-30-7 ("[The protest petition] shall be referred by the Planning Board to the Board of Representatives within twenty days after . . . official publication, together with written findings, recommendations and reasons. The Board of Representatives shall approve or reject such proposed amendment at or before its second regularly-scheduled meeting following such referral."). Thus, the board of representatives lacks the authority to assess the validity of a protest petition after it has been duly referred by the planning board.

As the trial court pointed out, "this leaves the question of who had authority to determine the validity of the petition . . . ." Our review of the charter leads us to conclude that its provisions require the planning board to verify the procedural validity of a protest petition *before* it refers the petition to the board of representatives. Section C6-30-7 provides that the planning board "shall" refer a protest petition to the board of representatives only if two requirements are met: (1) the

petition is signed by the requisite number of property owners in the subject area, and (2) the petition is filed with the planning board within ten days after the official publication of the planning board's decision.[9] Once a protest petition has been referred, the authority of the board of representatives is limited to either "approv-[ing] or reject[ing]" the proposed amendment. Stamford Charter § C6-30-7. Thus, the board of representatives overstepped its authority by purporting to verify the validity of the protest petition.

It is well established that municipal authorities are "confined to the circumference of those [powers] granted and may not travel beyond the scope of [the] charter or in excess of the granted authority." (Internal quotation marks omitted.) *Highgate Condominium Assn.* v. *Watertown Fire District*, 210 Conn. 6, 16–17, 553 A.2d 1126 (1989). "[When] the town charter prescribes a particular procedure by which a specific act is to be done or a power is to be performed, that procedure must be followed for the act to be lawful . . . ." *Miller* v. *Eighth Utilities District*, 179 Conn. 589, 594, 427 A.2d 425 (1980); see *Burke* v. *Board of Representatives*, supra, 148 Conn. 42 ("[when] the charter of a municipality provides that action of the legislative body shall be by ordinance or resolution, it must act in the manner prescribed"); *Food, Beverage & Express Drivers Local Union No. 145* v. *Shelton*, 147 Conn. 401, 405, 161 A.2d 587 (1960) (charter is city's enabling act, and, "[when] the charter points out a particular way in which any act is to be done, the prescribed form must be pursued for the act to be lawful"). Because the board of representatives was acting outside of the powers granted by

[9] Because the planning board referred the protest petition to the board of representatives, we need not address the rules and procedures that would govern any appeal from the planning board's refusal to refer a protest petition to the board of representatives.

the charter, we conclude that its vote on the validity of the protest petition was improper.[10]

II

The board of representatives contends that, regardless of whether it had the authority to decide the validity of the protest petition, it plainly had the authority to decide the merits of Application MP-432, which is exactly what it did when a majority voted to reject the planning board's amendment to the city's master plan under Application MP-432. It argues that its vote on the validity of the protest petition was at worst "a nullity" that must be "ignored" and, therefore, that the trial court improperly failed to address the substantive issue of whether the board of representatives properly rejected Application MP-432 on the merits. The claim, in essence, is "no harm, no foul"—the board of representatives had authority under the charter to approve the protest petition, and it did so by majority vote.

This argument might well be persuasive *if* the protest petition at issue, as it relates to Application MP-432, had been a legally valid petition pursuant to the charter. But, for reasons we discuss next, the petition protesting the amendment approved under Application MP-432 was invalid as a matter of law, and the board of representatives' approval of that invalid petition cannot be sustained as a result.

Section C6-30-7 of the charter authorizes the planning board to refer a protest petition to the board of representatives only if it is timely filed and signed by (1) "twenty (20) percent or more of the owners of the privately-owned land in the area included in any proposed amendment to the Master Plan," or (2) "the own-

[10] In light of our conclusion, we need not address whether the board of representatives' approval of the validity of the petition by a vote of seventeen to twelve was an "affirmative vote of a majority of the entire membership of [that] [b]oard" under § C6-30-21 of the charter.

ers of twenty (20) percent or more of the privately-owned land located within five hundred (500) feet of the borders of such area . . . .'' The planning board has twenty days to refer the protest petition to the board of representatives, which then must either ''approve or reject such proposed amendment . . . .'' Stamford Charter § C6-30-7; see *Benenson* v. *Board of Representatives*, supra, 223 Conn. 783. The failure of the board of representatives to timely approve or reject the proposed amendment is ''deemed as approval of the Planning Board's decision.'' Stamford Charter § C6-30-7.

The signature requirement set forth in the charter serves an obvious and important purpose. The board of representatives cannot exercise its authority to accept or reject a proposed amendment to the master plan at will. See *Stamford Ridgeway Associates* v. *Board of Representatives*, supra, 214 Conn. 424 (noting that petition requirements of analogous charter provision governing protest petition for zoning map amendments determines ''authority of the board of representatives'' to accept or reject proposed change). Instead, § C6-30-7 confers a limited authority on the board of representatives, which may be exercised *only* if a sufficient percentage of the owners of private property within a defined geographical area—an area in or proximate to the affected area—sign and timely file a protest petition with the planning board.[11] See id., 413. The language of

[11] The dissent criticizes our reliance on *Stamford Ridgeway Associates*, contending that ''[i]t was not this court that said that [sufficient signatures in a protest petition are required to trigger review by the board of representatives]. Rather, that came from an opinion by Attorney Robert A. Fuller . . . . '' Footnote 6 of the dissenting opinion. The dissent ignores that we expressly *relied* on Fuller's analysis to reach our conclusion that the ''charter permits the board of representatives to vote on separate zone changes contained in one zoning application'' if there are sufficient signatures with respect to each separate zone. *Stamford Ridgeway Associates* v. *Board of Representatives*, supra, 214 Conn. 409. We quoted Fuller at length and stated that ''we agree with the parties that Fuller's analysis . . . presents the most reasonable and rational interpretation'' of the charter and ''strikes a balance between the common good and public interest in zoning, and the legitimate

the charter seeks "to provide *affected* landowners a right to appeal a proposed [amendment]" by requesting reconsideration by the board of representatives after a threshold requirement has been met. (Emphasis added.) Id., 432; see *Steiner, Inc.* v. *Town Plan & Zoning Commission*, 149 Conn. 74, 76, 175 A.2d 559 (1961) (protest petitions are designed "to afford protection to [nearby] property owners against changes to which they object"); *Warren* v. *Borawski*, 130 Conn. 676, 681, 37 A.2d 364 (1944) (observing that "[t]he purpose of [a New Britain ordinance permitting the town council to vote on a proposed zoning amendment] *if a protest is filed by owners of 20* [*percent*] *of the property affected* is to give some protection *to those owners* against changes to which they object" (emphasis added)). The signature requirement is not a mere formality but a substantive provision of the charter intended to ensure that review by the board of representatives is triggered if, and only if, there is a sufficient number of owners of private land with interests directly affected by the proposed amendment. See *Stamford Ridgeway Associates* v. *Board of Representatives*, supra, 426 (construing analogous charter provision governing protest petitions for zoning amendments to prevent improper procedures from frustrating purpose of provision to serve interests of owners of private land most affected by amendments).[12]

private interest of property owners adversely affected by a proposed change." (Internal quotation marks omitted.) Id., 436–37. In light of this explicit adoption of Fuller's analysis, we reject the dissent's suggestion that we have misinterpreted *Stamford Ridgeway Associates*.

[12] The dissent observes, and we agree, that an amendment to the master plan may affect "the interests of innumerable Stamford residents on issues of economics, environment, and population density, to name but a few." Footnote 5 of the dissenting opinion. But this court does not get to determine which Stamford residents are sufficiently affected by a proposed amendment to be eligible to sign the protest petition that would authorize the board of representatives to accept or reject the amendment. The *charter* makes that determination, and the relevant charter provision very clearly does not provide all Stamford residents with a right to protest the decision of the planning board to the board of representatives. Under the plain language

To give § C6-30-7 its intended and obvious meaning, it is clear that a protest petition is valid and subject to referral by the planning board only if it contains the required number of signatures. See id., 413 (explaining that sufficient signatures are needed for board of representatives to reconsider amendment);[13] *Burke* v. *Board*

of § C6-30-7, that right is limited to a specific percentage of owners of privately owned land within a defined geographic proximity of the "the area included in any proposed amendment" or "within five hundred (500) feet of the borders of such area . . . ."

[13] The dissent contends that "*Stamford Ridgeway Associates* makes clear that the signature provision is not an aggrievement, condition precedent, or limitation provision. Rather, it protects affected nearby landowners by empowering them to obtain greater review by the [b]oard of [r]epresentatives, not less," and that "[i]t cannot, therefore, be said that the signature provision is a matter of substance or that the full legislative scheme evinces an intent to impose a mandatory requirement." (Footnotes omitted.) The basis for this contention eludes us. *Stamford Ridgeway Associates* involved valid protest petitions signed by the requisite number of "owners of property . . . who were adversely affected by the proposed rezoning." *Stamford Ridgeway Associates* v. *Board of Representatives*, supra, 214 Conn. 410. The problem was that multiple zone changes had been combined into a single zoning application, and, even though the protest petitions were valid as to each individual zone change, they were invalid as to the application as a whole. The issue on appeal was whether the signature requirement pertained to each individual zone change or to the whole application. See id., 409. To resolve that issue, we analyzed the purpose of the signature requirement and the function that it was intended to serve. We concluded that the signature provision serves an important substantive purpose and that construing it in such a manner as to apply to the application as a whole "would, as a practical matter . . . completely [frustrate]" that purpose. Id., 426. We relied on the opinion rendered by the board's independent counsel, Attorney Robert A. Fuller, to conclude that, "[i]f a large percentage of the area included in the application was not proposed for a zone change (for example, the entire city of Stamford) . . . it would be impossible to obtain enough signatures to meet the [20] percent requirement within the ten day limitation [period] set by the charter to petition the board. Moreover, the property owners who were not affected by any of the zone changes or amendments or those who are comfortable with their zone change will be very reluctant [to sign] a petition." (Internal quotation marks omitted.) Id.; see footnote 11 of this opinion.

Inherent in our holding in *Stamford Ridgeway Associates* was our conclusion that a protest petition must contain "enough signatures to meet the [20] percent requirement" and that, if there were an insufficient number of signatures, the signatories would have no "right to appeal to the [b]oard" of

of Representatives, supra, 148 Conn. 35 (explaining that referral is made "[i]n th[e] event" that protest petition meets signature requirements); see also *Blaker* v. *Planning & Zoning Commission*, 219 Conn. 139, 148, 592 A.2d 155 (1991) ("[a] protest petition is not presumptively valid").[14] In the absence of the required number of signatures, a protest petition cannot properly be referred to the board of representatives, and, therefore, that board cannot properly reach the merits of the amendment challenged by the protest petition. See *Woldan* v. *Stamford*, 22 Conn. Supp. 164, 167, 164 A.2d 306 (1960) (concluding that "the petition did not contain the signatures of owners of 20 [percent] of the land within 500 feet," as required by charter, and, therefore, "the matter was not properly before the board of repre-

[r]epresentatives. (Internal quotation marks omitted.) *Stamford Ridgeway Associates* v. *Board of Representatives*, supra, 214 Conn. 426. The dissent is correct, of course, that the signature provision protects affected, nearby owners of land by "empowering them to obtain greater review by the board of representatives," but this is true only if the requisite number of those owners sign the petition. Any other reading of the charter renders those requirements meaningless.

[14] Contrary to the dissent's assertion, our holding in *Burke* does not support its thesis. In *Burke*, we addressed whether "the board of representatives act[ed] arbitrarily and illegally in failing to give notice and to provide a hearing before taking action to reject [a zoning] amendment . . . ." *Burke* v. *Board of Representatives*, supra, 148 Conn. 37. We answered that question in the negative because there were "no specific provisions for notice and hearing by the board of representatives, and we cannot write such provisions into the charter by judicial fiat." Id., 40. In contrast, in the present case, there *is* a specific provision in the charter, providing for referral to the board *if* "twenty (20) percent or more of the owners of the privately-owned land in the area included in any proposed amendment to the Master Plan, or the owners of twenty (20) percent or more of the privately-owned land located within five hundred (500) feet of the borders of such area, file a signed petition with the Planning Board within ten days after the official publication of the decision thereon, objecting to the proposed amendment . . . ." Stamford Charter § C6-30-7. We cannot erase this explicit provision from the charter by judicial fiat any more than we can write some other provision into the charter. See *Burke* v. *Board of Representatives*, supra, 40; see also *Kiewlen* v. *Meriden*, supra, 317 Conn. 151 n.11 ("we are not at liberty to ignore the plain language of" municipal charter).

sentatives"). Because a valid protest petition is a condition precedent to the authority of the board of representatives to vote on the merits of an amendment, that board's vote on the merits of an amendment contained in an invalid petition is void.

The dissent contends that the board of representatives, as a legislative body comprised of elected officials, has discretion to act on the proposed amendment notwithstanding the legal invalidity of the protest petition. This is so, the dissent argues, because the petition requirements set forth in the charter are merely "directory" and nonsubstantive. We disagree. The board of representatives is entitled to discretion when acting in its legislative capacity, but it is not at liberty to act in contravention of charter provisions expressly limiting that authority to specified conditions. Nor are that board's legislative actions insulated from judicial review when it has exceeded its authority under the express provisions of the charter. See *Parks* v. *Planning & Zoning Commission*, 178 Conn. 657, 661, 425 A.2d 100 (1979) ("[t]he broad discretion of local [municipal] authorities acting in their legislative capacity is not . . . unlimited"); see also Stamford Charter § C2-10-1 ("The legislative power of the City shall be vested in the Board of Representatives. No enumeration of powers contained in this Charter shall be deemed to limit the legislative power of the Board *except as specifically provided in this Charter*." (Emphasis added.)).

The distinction that our case law makes between "directory" and "mandatory" provisions in statutes or charters cannot avoid or render benign the charter violation that occurred when the board of representatives acted on a proposed amendment that was not properly before it due to the legal defect in the protest petition. We have held that "[t]he test to be applied in determining whether a statute is mandatory or directory is whether the prescribed mode of action is the essence of the

thing to be accomplished, or in other words, whether it relates to a matter of substance or a matter of convenience. . . . If it is a matter of substance, the statutory provision is mandatory. If, however, the legislative provision is designed to secure order, system and dispatch in the proceedings, it is generally held to be directory, especially [when] the requirement is stated in affirmative terms unaccompanied by negative words." (Internal quotation marks omitted.) *Lauer* v. *Zoning Commission*, 246 Conn. 251, 262, 716 A.2d 840 (1998).[15] "Stated another way, language is deemed to be mandatory if the mode of action is of the essence of the purpose to be accomplished by the statute . . . but will be considered directory if the failure to comply with the requirement does not compromise the purpose of the statute." (Citation omitted.) *Angelsea Productions, Inc.* v. *Commission on Human Rights & Opportunities*, 236 Conn. 681, 690, 674 A.2d 1300 (1996).

The express signature requirements in § C6-30-7 are elaborate in detail and crafted to achieve a manifestly substantive purpose. The charter specifies the precise numerical and geographical requirements that must be satisfied by the signatories before the protest petition

[15] Our prior case law has looked at a number of factors to determine whether the provision can be deemed mandatory or directory. "These include: (1) whether the statute expressly invalidates actions that fail to comply with its requirements or, in the alternative, whether the statute by its terms imposes a different penalty; (2) whether the requirement is stated in affirmative terms, unaccompanied by negative language; (3) whether *the requirement at issue relates to a matter of substance or one of convenience*; (4) whether the legislative history, the circumstances surrounding the statute's enactment and amendment, and *the full legislative scheme evince an intent to impose a mandatory requirement*; (5) whether holding the requirement to be mandatory would result in an unjust windfall for the party seeking to enforce the duty or, in the alternative, whether holding it to be directory would deprive that party of any legal recourse; and (6) whether compliance is reasonably within the control of the party that bears the obligation, or whether the opposing party can stymie such compliance." (Emphasis added.) *Electrical Contractors, Inc.* v. *Ins. Co. of the State of Pennsylvania*, 314 Conn. 749, 758–59, 104 A.3d 713 (2014).

can trigger referral of the proposed amendment to the board of representatives. These charter requirements are not imposed for "convenience and dispatch" or "to ensure the orderly review of amendments by the board of representatives," as the dissent suggests. Instead, as we previously discussed, the purpose of the signature requirement is to limit the authority of the board of representatives to reject an amendment to the master plan, once approved by the planning board, *to situations in which a protest petition is signed by a significant percentage of the persons most affected by the amendment* (i.e., 20 percent of the owners of privately owned land in the area included in the proposed amendment or located within 500 feet of the borders of such area).[16]

[16] In this respect, the petition requirements in § C6-30-7 stand in stark contrast to those provisions deemed directory by courts, which often involve time limitations set forth in specific statutory provisions designed to ensure order and convenience. See, e.g., *United Illuminating Co.* v. *New Haven*, 240 Conn. 422, 463, 692 A.2d 742 (1997) (requirement that assessor provide notice of assessment within thirty days of hearing is directory); *Katz* v. *Commissioner of Revenue Services*, 234 Conn. 614, 617, 662 A.2d 762 (1995) (requirement that Commissioner of Revenue Services act on tax refund claim within ninety days is directory); *State* v. *Tedesco*, 175 Conn. 279, 284, 397 A.2d 1352 (1978) (requirement imposing time limitation on agency's regulations "are designed to secure order, system and dispatch, and are directory, not mandatory"); *Broadriver, Inc.* v. *Stamford*, 158 Conn. 522, 530, 265 A.2d 75 (1969) (statutory requirement that return of notice be filed within ninety days is directory), cert. denied, 398 U.S. 938, 90 S. Ct. 1841, 26 L. Ed. 2d 270 (1970); *Donohue* v. *Zoning Board of Appeals*, 155 Conn. 550, 554, 235 A.2d 643 (1967) (requirement that zoning board of appeals decide appeal within sixty days after hearing is directory). See generally *Electrical Contractors, Inc.* v. *Ins. Co. of the State of Pennsylvania*, 314 Conn. 749, 761, 104 A.3d 713 (2014) (observing that, "in a number of cases, both this court and the Appellate Court have concluded that such statutory deadlines are directory [when] there is no express legislative guidance to the contrary and no indication that the legislature intended the deadline to be jurisdictional"). But see *Vartuli* v. *Sotire*, 192 Conn. 353, 359, 472 A.2d 336 (1984) (requirement to issue decision within sixty-five day limit is mandatory), overruled by *Leo Fedus & Sons Construction Co.* v. *Zoning Board of Appeals*, 225 Conn. 432, 623 A.2d 1007; *Viking Construction Co.* v. *Town Planning Commission*, 181 Conn. 243, 246, 435 A.2d 29 (1980) (requirement that planning and zoning commission act on subdivision application within time limits is mandatory).

The dissent is correct that the detailed requirements in § C6-30-7 governing protest petitions are not accompanied by an explicit statement containing negative or prohibitory language, but negative or prohibitory language of this sort is not dispositive of our analysis, particularly when, as here, the substantive nature of the requirement is clear. See *Blake* v. *Meyer*, 145 Conn. 612, 616, 145 A.2d 584 (1958) ("[i]t is clear that the provision under consideration is mandatory, not merely directory, even in the absence of prohibitory or negative language"). The absence of negative or prohibitory language, in short, does nothing to alter our conclusion that the signature requirements in § C6-30-7 of the charter serve an important substantive purpose and were intended to be mandatory rather than directory.

This brings us to the merits of the plaintiffs' core challenge to the validity of the protest petition, namely,

The dissent incorrectly relies on these cases to support the notion that the relevant charter provision is directory. These cases, however, all involve time limitations, which often (although not always) are deemed directory in nature because the deadlines imposed do not implicate "the essence of the thing to be accomplished" but, rather, are "designed to secure order, system and dispatch in the proceedings . . . ." (Internal quotation marks omitted.) *Meadowbrook Center, Inc.* v. *Buchman*, 169 Conn. App. 527, 537, 151 A.3d 404 (2016), aff'd, 328 Conn. 586, 181 A.3d 550 (2018); see, e.g., id. ("[W]e are persuaded that the thirty day time provision set forth in Practice Book § 11-21 is intended to secure order and dispatch in the timely disposition of a pending issue. Therefore, the time limitation contained in the rule is directory and not mandatory."); see also 3 S. Singer, Sutherland Statutes and Statutory Construction (8th Ed. 2020) § 57:17, pp. 101–102 ("The question about whether time provisions are mandatory or directory . . . is a bit unique, as interpretation may be informed less by a search for legislative intent alone, and more by policy and equitable considerations aimed at avoiding harsh, unfair, or absurd consequences. . . . [F]or reasons founded in justice and fairness, and to avert injury to faultless parties, courts often find that such provisions are directory merely." (Footnotes omitted.)).

The signature requirements set forth in the charter, which define by geographical proximity those owners eligible to sign the protest petition and establish the minimum percentage of signatories needed to qualify for review, are not comparable to time limitations, which are intended to ensure order, efficiency and dispatch. Indeed, the dissent has not articulated any purpose for the signature requirements that could be considered nonsubstantive in nature.

that the petition challenging the amendment approved in Application MP-432 is legally invalid because it lacks the requisite number of signatures.[17] The issue, properly framed, is easily resolved under our case law because it is undisputed that, insofar as the protest petition challenged Application MP-432, in particular, it did not contain the threshold number of signatures required to permit referral to the board of representatives.[18] As the trial court noted, the record indicates that the protest petition was valid and subject to referral only if the two different amendments contained in the respective applications, Applications MP-432 and MP-433, are considered collectively instead of separately. See footnote 5 of this opinion.

Our precedent has spoken on the board of representatives' authority to simultaneously vote on multiple zoning amendments, whether contained in one or multiple applications, as challenged in a protest petition. In *Stamford Ridgeway Associates* v. *Board of Representatives*, supra, 214 Conn. 409, we addressed whether, pursuant to a former provision of the charter, § C-552.2, the board of representatives has authority "to vote on separate zone changes [involving multiple amend-

[17] During oral argument before this court, counsel for the board of representatives argued for the first time that the validity of the petition is not properly before us because the planning board is not a party to the present action and "the decision of the planning board [to refer a protest petition] would need to be appealed as any other land use appeal." It is well established that we may decline to address "newly raised argument[s]" and that "a claim cannot be raised for the first time at oral argument." (Internal quotation marks omitted.) *Burton* v. *Dept. of Environmental Protection*, 337 Conn. 781, 797 n.12, 256 A.3d 655 (2021). To the extent that the board of representatives claims, for the first time on appeal, that the plaintiffs had an obligation to appeal from the decision of the planning board referring the protest petition to the board of representatives or that the planning board is an indispensable party to the present action, we deem these claims abandoned.

[18] We disagree with the dissent that we have appointed ourselves "as a municipal signature counter . . . ." The number of signatures is undisputed on appeal, and we resolve no questions of fact in our adjudication of the legal issue presented.

ments] contained in one zoning application or whether the board of representatives must act on the entire application," even though the single application contained several distinct amendments. Section C-552.2, which included essentially the same relevant text as § C6-30-7, and was the same provision at issue in *Benenson*; see footnote 8 of this opinion; provided that, "if twenty percent or more of the owners of the privately-owned land in the area included in *any proposed amendment*" or "owners of twenty percent or more of the privately-owned land located within five hundred feet of the borders of such area" timely file a signed petition objecting to the proposed amendment, the petition shall be referred to the board of representatives. (Emphasis added; internal quotation marks omitted.) *Stamford Ridgeway Associates* v. *Board of Representatives*, supra, 409 n.1; cf. Stamford Charter § C6-30-7 (requiring, among other things, signatures from "twenty (20) percent or more of the owners of the privately-owned land in the area included *in any proposed amendment*" (emphasis added)). Because the word "amendment" has been "interpreted . . . as effecting a change in existing law," we reasoned in *Stamford Ridgeway Associates* "that the [20] percent requirement in § C-552.2 is to be measured by the areas that were changed or rezoned" in connection with each individual amendment, rather than all the areas contained in the entire application. (Internal quotation marks omitted.) *Stamford Ridgeway Associates* v. *Board of Representatives*, supra, 425–26. We concluded that the board of representatives properly voted on "each separate zone change [amendment] within one application for which a valid protest petition has been filed." Id., 436.

Stamford Ridgeway Associates makes it clear that the relevant charter language *requires* the board of representatives considering a protest petition to treat each amendment individually instead of aggregating multiple amendments and voting on them collectively.

"If we were to construe 'amendment' in § C-552.2 to mean . . . [all amendments in] the entire application . . . it would lead to bizarre and irrational results and frustrate the purpose of the charter provision" by enabling "a municipal agency to [e]nsure passage of a highly objectionable zoning amendment by simply combining it with another large, unobjectionable amendment. A statute must not be construed in a manner that would permit its purpose to be defeated." (Internal quotation marks omitted.) Id., 426. Furthermore, "the use of the singular form of the word 'amendment' shows an intent to refer to only one amendment or one single zone change." Id., 430. In light of the plain language and purpose of the charter, we held that the board of representatives properly "vote[d] on each separate zone change encompassed in [one single] application . . . ." Id., 433.

Pursuant to *Stamford Ridgeway Associates*, the signatures on a protest petition challenging two distinct amendments, contained, respectively, in Applications MP-432 and MP-433, cannot be aggregated to meet the threshold 20 percent requirements under § C6-30-7 of the charter. Because it is undisputed that Application MP-432, standing alone, lacked sufficient signatures to warrant referral to the board of representatives under the charter, we conclude that the protest petition was invalid as to Application MP-432. Accordingly, the board of representatives lacked the authority to vote on the merits of Application MP-432, and the trial court properly sustained the plaintiffs' appeal from that board's decision.

The judgment is affirmed.

In this opinion ROBINSON, C. J., and McDONALD, MULLINS, KAHN and KELLER, Js., concurred.

D'AURIA, J., dissenting. In a state with 169 municipalities, each legislatively created and with its own form

of governance, it should not be surprising that this court often counsels against judicial interference in local legislative decisions. See, e.g., *Benenson* v. *Board of Representatives*, 223 Conn. 777, 784, 612 A.2d 50 (1992) ("[c]ourts will interfere with legislative decisions made by municipalities only where the party seeking review can characterize the legislative act as illegal, fraudulent, or corrupt" (internal quotation marks omitted)). This case illustrates well the importance of heeding our own advice, which the court today does not. I respectfully dissent.

The Planning Board of the City of Stamford is made up of five mayoral appointees, nominated by the mayor and approved by the Stamford Board of Representatives. Stamford Charter §§ C6-00-2 and C6-00-3. In the present case, the Planning Board approved amendments to Stamford's master plan of development, "the general land use Plan for the physical development of the City." Stamford Charter § C6-30-3. The plaintiffs, The Strand/BRC Group, LLC, 5-9 Woodland, LLC, Woodland Pacific, LLC, and Walter Wheeler Drive SPE, LLC, owners of land in the city, proposed an amendment "to modify their properties' land use categories to allow high-density residential development on the site of a former recycling collection and disposal center." The Planning Board also submitted a proposed amendment pertaining to nearby properties. The Planning Board then conducted public hearings on both amendments and approved them. Pursuant to § C6-30-7 of the Stamford Charter (charter), a Stamford resident filed a protest petition with the Planning Board, signed by adjacent property owners, objecting to the proposed amendments. The Planning Board referred the petition to the defendant, the Board of Representatives of the City of Stamford. See Stamford Charter § C6-30-7.

The Board of Representatives is made up of forty members elected by the city's residents, two from each

of the city's twenty voting districts. Stamford Charter §§ C1-80-1 and C1-80-4. The charter provides that "[t]he legislative power of the City [is] vested in the Board of Representatives. No enumeration of powers contained in this Charter shall be deemed to limit the legislative power of the Board except as specifically provided in this Charter." Stamford Charter § C2-10-1. In the present case, upon the Planning Board's referral of the petition, the Board of Representatives voted to reject the amendments. To get their amendment reinstated, pursuant to § C6-30-20, the plaintiffs appealed to the trial court. The plaintiffs claimed, among other things, that the Planning Board never should have referred the petition to the Board of Representatives without first determining whether the petition was timely filed and contained enough signatures for referral. The plaintiffs contend that there were an insufficient number of signatures because the Board of Representatives improperly combined petition signatures for the two separate applications. The trial court sustained the appeal, nullifying the Board of Representatives' rejection of the plaintiff developers' proposed amendment to the master plan.

In affirming the judgment of the trial court, the majority today strikes down the action of Stamford's most representative and authoritative legislative body: the rejection of an amendment to the master plan proposed by the plaintiff developers. The majority instead affirms amendments approved by five Planning Board members, passed to facilitate the development of a high density residential development. The majority is able to upend the political process in this way only by labeling as substantive that which is procedural and imposing judicial standards on that which is legislative.

It is undisputed that, when approving or rejecting proposed amendments to the city's master plan, both the Planning Board and the Board of Representatives exercise legislative authority. This court has recognized

that, "in the planning and zoning context, [a] zoning amendment is a change in the ordinance, enacted by the legislative authority of a municipality." (Emphasis omitted; internal quotation marks omitted.) *Stamford Ridgeway Associates* v. *Board of Representatives*, 214 Conn. 407, 425, 572 A.2d 951 (1990). Similarly, in a case also involving Stamford's charter, we indicated that, "[the] [B]oard [of Representatives], in reviewing the action of the [city's] zoning board, is called upon to perform a legislative function." *Burke* v. *Board of Representatives*, 148 Conn. 33, 39, 166 A.2d 849 (1961). No one contends that the Planning Board's action is other than legislative. "The plain language of [the charter provision] leaves no room for any other construction." *Benenson* v. *Board of Representatives*, supra, 223 Conn. 783. In exercising their respective authority related to amending the master plan for the city, both the Planning Board and the Board of Representatives are directed to apply the same legislative standards. See Stamford Charter §§ C6-30-3 and C6-30-7;[1] see also *Stamford*

[1] Section C6-30-3 of the charter guides the Planning Board when it acts on the master plan. Section C6-30-3 provides: "The Master Plan shall be the general land use Plan for the physical development of the City. The Plan shall show the division of Stamford into land use categories such as, but not restricted to, the following:

"1. Residential—single family plots one acre or more.

"2. Residential—single family plots less than one acre.

"3. Residential—multi-family—low density.

"4. Residential—multi-family—medium density.

"5. Commercial—local or neighborhood business.

"6. Commercial—general business.

"7. Industrial.

"The land use categories indicated on the Master Plan shall be defined by the Planning Board and made a part of such Plan. The Plan shall also show the Board's recommendation for the following: streets, sewers, bridges, parkways, and other public ways; airports, parks, playgrounds and other public grounds; the general location, relocation and improvement of schools and other public buildings; the general location and extent of public utilities and terminals, whether publicly or privately-owned, for water, light, power, transit, and other purposes; the extent and location of public housing and neighborhood development projects. Such other recommendations may be made by the said Board and included in the Plan as will, in its judgment,

Ridgeway Associates v. *Board of Representatives*, supra, 432 (referring to standards guiding Board of Representatives as "typical legislative standards; viz., promotion of health and the general welfare, provision for adequate light and air, prevention of overcrowding, and avoidance of undue population concentration" (internal quotation marks omitted)).

I fully agree with the majority's well reasoned analysis and conclusion that, consistent with the charter's language, it is the Planning Board's responsibility to determine whether a protest petition meets the provisions for a referral to the Board of Representatives, namely, whether the petition is signed by the prescribed number of property owners in the subject area and filed with the Planning Board within ten days after the official publication of the Planning Board's decision. See Stamford Charter § C6-30-7. More particularly, I agree with the majority that "the Board of Representatives lacks the authority to assess the validity of a protest petition after it has been duly referred by the Planning Board."

Also, like the majority, I find support for this conclusion in our case law, most of it concerning the charter. In *Benenson*, we interpreted an almost identical provision of the charter to hold that a protest petition brings a matter before the Board of Representatives because the plain language of the charter "does not provide for the approval or rejection of the 'petition' itself." *Benenson* v. *Board of Representatives*, supra, 223 Conn. 783. As the majority correctly acknowledges, the peti-

be beneficial to the City. Such Plan shall be based on studies of physical, social, economic, and governmental conditions and trends and shall be designed to promote with the greatest efficiency and economy, the coordinated development of the City and the general welfare, health and safety of its people."

Section C6-30-7 of the charter provides in relevant part that, when acting on a proposal to approve or reject an amendment to the master plan, "the Board of Representatives shall be guided by the same standards as are prescribed for the Planning Board in Section C6-30-3 of this Charter. . . ."

tion is "merely the vehicle" that brings the issue to the Board of Representatives. (Internal quotation marks omitted.) We have reiterated that the "question before the [B]oard [of Representatives is] not the petition, which indicate[s] the property owners' objection to the [master plan amendment], but whether the [master plan amendment] should be approved." *Benenson* v. *Board of Representatives*, supra, 783. Decades before that case, we explained that "[t]he manifest legislative intent expressed in the Stamford charter is that the [B]oard of [R]epresentatives, in considering an amendment to the zoning map, shall review the legislative action of the [city's] zoning board on that board's written findings, recommendations and reasons. The question before the [B]oard of [R]epresentatives is whether to approve or to reject the amendment." *Burke* v. *Board of Representatives*, supra, 148 Conn. 39.

Thus, the majority and I agree that, when a petition is filed with the Planning Board, that board must review it and determine if it warrants referral to the Board of Representatives. Upon referral of the petition by the Planning Board, the Board of Representatives may act only on the merits of the proposed amendment, applying the same legislative standards as the Planning Board. In fact, the Planning Board did refer the petition to the Board of Representatives, albeit with no record of having reviewed and determined whether the petition was timely or contained the number of signatures contemplated by the charter for referral. The Board of Representatives voted on the merits of the amendments and rejected them, which the charter authorized it to do upon referral from the Planning Board.

The majority's reasoning focuses on the Board of Representatives' lack of authority to pass on the petition's validity, not on the Planning Board's failure to pass on the petition's validity and its resulting referral of the petition. The majority repeats several times that

the Board of Representatives had no authority to determine the petition's validity, including whether it contained sufficient signatures. We know this even if the Planning Board did not. Both the charter's language and our case law make this clear. See Stamford Charter § C6-30-7; see also *Benenson* v. *Board of Representatives*, supra, 223 Conn. 783; *Burke* v. *Board of Representatives*, supra, 148 Conn. 35–36. But this does not necessarily address what happens when the Planning Board erroneously refers a petition to the Board of Representatives. Does the Board of Representatives then lack the authority to pass on the proposed amendment? If the Board of Representatives has no authority to review or pass on the petition's validity, is it for a court to go back and scrutinize whether the referral from one legislative body to another was proper and, if not, to void any subsequent legislative action?

The majority's answers to these questions are "yes" and "yes." The majority claims that the Board of Representatives lacks authority to pass on these amendments because the charter's signature provision "confers a limited authority on the Board of Representatives, which may be exercised only if a sufficient percentage of the owners of private property within a defined geographic area . . . sign and timely file a protest petition with the Planning Board." (Emphasis omitted.) I part company with the majority here because, in my view, it is acting like a court reviewing executive action or a ruling of a lower court rather than a court reviewing legislative action, over which its appropriate scrutiny is much more limited. See, e.g., *Benenson* v. *Board of Representatives*, supra, 223 Conn. 784. And, in voiding the Board of Representatives' subsequent action, the majority appoints itself as a municipal signature counter, which, the majority claims, correctly in my view, the charter delegates to the Planning Board.

The majority is careful not to employ terms such as "jurisdiction" or "aggrievement" in its analysis. These concepts have no obvious place in a court's review of such layers of legislative action. But the majority's use of terms such as "substantive," "condition precedent," "void," and "invalid," is a dead giveaway: the majority cannot disengage from its reflexive judicial role, a role in which, before acting, a body must examine its own jurisdiction and the jurisdiction of the body that came before it. In this world, the majority is constrained to find the exercise of legislative authority by the Board of Representatives on the merits of the amendment tainted by the earlier, improper exercise of authority of the Planning Board, as determined by a court *after* the Board of Representatives has acted. An examination of forums in which these jurisdictional concepts are appropriately applied, and scrutiny of the scant authority the majority cites for its conclusion, exposes the majority's jurisdictional reasoning as faulty.

For example, with the exception of actions challenging an unconstitutional statute or a state officer's actions in excess of statutory authority; *Horton* v. *Meskill*, 172 Conn. 615, 624, 376 A.2d 359 (1977); a court reviews action by state executive officials only pursuant to legislative authorization, which—because it implicates the state's sovereign immunity from suit—is strictly construed. See, e.g., *Envirotest Systems Corp.* v. *Commissioner of Motor Vehicles*, 293 Conn. 382, 388, 978 A.2d 49 (2009) (statutes in derogation of sovereign immunity should be strictly construed). In a direct action against an executive official, the plaintiff must identify a statute that explicitly or by necessary implication compels a conclusion that the legislature intended to waive the state's sovereign immunity from suit. Id. Similarly, under the Uniform Administrative Procedure Act, General Statutes § 4-166 et seq., "aggrieved" persons who have "exhausted all administrative remedies available

within the agency" may appeal from a "final decision" within forty-five days to the Superior Court. General Statutes § 4-183 (a) and (c). Given that § 4-183 constitutes a waiver of sovereign immunity; *Republican Party of Connecticut* v. *Merrill*, 307 Conn. 470, 488 n.20, 55 A.3d 251 (2012); these requirements are considered jurisdictional, and, without strict compliance with each, the Superior Court lacks jurisdiction over the case. See, e.g., *Summit Hydropower Partnership* v. *Commissioner of Environmental Protection*, 226 Conn. 792, 812, 629 A.2d 367 (1993) (no jurisdiction for lack of contested case and final decision); *Fletcher* v. *Planning & Zoning Commission*, 158 Conn. 497, 502, 508, 264 A.2d 566 (1969) (no jurisdiction for lack of aggrievement); see also *Piteau* v. *Board of Education*, 300 Conn. 667, 690, 15 A.3d 1067 (2011) (no jurisdiction for failure to exhaust administrative remedies). If a trial court rules on the merits of such an action and orders relief against a state agency or official without examining its jurisdiction, and this court or the Appellate Court determines that the trial court lacked jurisdiction, the appellate court will reverse the judgment of the lower court and the relief ordered. See, e.g., *Stepney, LLC* v. *Fairfield*, 263 Conn. 558, 571, 821 A.2d 725 (2003) (remanding case with direction to dismiss for lack of jurisdiction because of failure to exhaust administrative remedies); *Summit Hydropower Partnership* v. *Commissioner of Environmental Protection*, supra, 812 (remanding case with direction to dismiss appeal for lack of jurisdiction when there was no contested case and therefore no final decision); *Fletcher* v. *Planning & Zoning Commission*, supra, 508 (remanding case with direction to dismiss appeal for lack of jurisdiction when plaintiff failed to establish aggrievement).

Similarly, with some common-law exceptions, an appellate court may review trial court rulings only by legislative delegation and authority. "Under General Statutes

§§ 52-263 and 51-197a, the 'statutory right to appeal is limited to appeals by aggrieved parties from final judgments.' " *Halladay* v. *Commissioner of Correction*, 340 Conn. 52, 57, 262 A.3d 823 (2021); see also id. ("[b]ecause our jurisdiction over appeals . . . is prescribed by statute, we must always determine the threshold question of whether the appeal is taken from a final judgment before considering the merits of the claim" (internal quotation marks omitted)); cf. *State* v. *Skipwith*, 326 Conn. 512, 521, 165 A.3d 1211 (2017) (explaining that writ of error is common-law remedy that "exists independent[ly] of [any] statutory authorization" (internal quotation marks omitted)). As was the case in the previously discussed example concerning a trial court's review of state executive action, this court will reverse the judgment of the Appellate Court if we determine that the Appellate Court lacked jurisdiction; see, e.g., *Redding Life Care, LLC* v. *Redding*, 331 Conn. 711, 744, 207 A.3d 493 (2019) (remanding case to Appellate Court to dismiss writ of error for lack of jurisdiction because discovery order was not final judgment); and we will dismiss appeals before our own court if we determine that we do not have jurisdiction. See, e.g., *Ambroise* v. *William Raveis Real Estate, Inc.*, 226 Conn. 757, 767, 628 A.2d 1303 (1993) (dismissing appeal for lack of jurisdiction because of failure to timely appeal pursuant to General Statutes § 52-278*l*).

These jurisdictional concepts are foreign to the legislative process and to a court's review of that process. "[C]ourts cannot pass upon the regularity of legislative proceedings, at least in the absence of a violation of some constitutional restriction." *State* v. *Sitka*, 11 Conn. App. 342, 346, 527 A.2d 265 (1987), citing *State* v. *Savings Bank of New London*, 79 Conn. 141, 152, 64 A. 5 (1906). We have since the nineteenth century held that "[c]ourts will interfere with legislative decisions made by municipalities only where the party seeking review

can characterize the legislative act as illegal, fraudulent, or corrupt. . . . When such bodies are acting within the limits of the powers conferred upon them, and in due form of law, the right of courts to supervise, review or restrain is exceedingly limited." (Internal quotation marks omitted.) *Benenson* v. *Board of Representatives*, supra, 223 Conn. 784; *Whitney* v. *New Haven*, 58 Conn. 450, 457, 20 A. 666 (1890). "Difference in opinion or judgment is never a sufficient ground for interference." *Whitney* v. *New Haven*, supra, 457. This includes a difference in opinion about how the petition signatures should or should not be counted. The majority cites this line of cases—which limits judicial review of legislative action and distinguishes legislative action from administrative or quasi-judicial action of municipal actors—as well as our precedents distinguishing mandatory statutory provisions from directory provisions, but does not engage with or follow their reasoning. These cases make this point clearly.

For example, in *LaTorre* v. *Hartford*, 167 Conn. 1, 3–6, 355 A.2d 101 (1974), two city councilmen were financially associated with an insurance company that sought to widen a road to build an office building. Pursuant to Hartford's city charter, the Court of Common Council was authorized to "lay out, construct, reconstruct, alter . . . streets" and to "open and widen streets . . . ." (Citation omitted; internal quotation marks omitted.) Id., 4. Notwithstanding the trial court's own determination that the councilmen should have been disqualified, this court held that the council's vote to pass the ordinance widening the street was not invalid. See id., 9. The court noted that, when, as in that case, "the municipal authorities act in accordance with formal requirements, courts will interfere only where fraud, corruption, improper motives or influences, plain disregard of duty, gross abuse of power, or violation of law, enter into or characterize the action

taken." (Internal quotation marks omitted.) Id., 9, quoting *Whitney* v. *New Haven*, supra, 58 Conn. 457. We reasoned that, because "the [C]ourt of [C]ommon [C]ouncil was acting in a proper legislative capacity in adopting the ordinance to widen [the road]; that the ordinance was enacted for a public purpose; that none of the councilmen acted out of improper motives or permitted any consideration to intrude into the deliberations and actions other than what in [their] sound judgment was in the best interest of the city; and that there was no bad faith, clear abuse of power or plain disregard of duty by the [C]ourt of [C]ommon [C]ouncil in enacting the [road] widening ordinance," the trial court erred in vacating the council's enactment based on the councilmen's connection to the company. *LaTorre* v. *Hartford*, supra, 9. We so concluded based on "due regard for the legislative magistracy and . . . a reluctance to involve the courts in political controversies, and in the review and revision of many, if not all, major controversial decisions of the legislative or executive authorities of a municipality . . . ." Id., 8.

In contrast, in *Mills* v. *Town Plan & Zoning Commission*, 145 Conn. 237, 140 A.2d 871 (1958), overruled in part on other grounds by *Mott's Realty Corp.* v. *Town Plan & Zoning Commission*, 152 Conn. 535, 209 A.2d 179 (1965), we sustained an appeal challenging a plan and zoning commission's change in both the town's comprehensive plan and a zoning designation. In that case, the commission unanimously denied an application to rezone land from agricultural to a more commercial designation to allow the construction of a shopping center, reasoning that the land was subject to flooding and that there already was adequate land in the area already zoned for business. Id., 239. The applicants reapplied for a change in the comprehensive plan and a zone change several weeks later, and the commission granted the application by a split vote. Id., 239–40. As

the court explained, "[a]fter the denial of the first application and prior to the filing of the second, the members of the commission and the applicants met privately and agreed upon conditions under which a new application would be considered." Id., 241. The court held that this opened to judicial scrutiny the propriety of the commission's decision to approve the change in the comprehensive plan and the zone change, despite the reluctance of courts to interfere with the actions of legislative bodies, because "a court can grant relief where the local authority has acted illegally or arbitrarily and has clearly abused the discretion vested in it." Id., 242. In the present case, the Board of Representatives' vote on the merits of the amendments cannot reasonably be considered "illegal" conduct that will overcome our high threshold for judicial review of legislative actions, just because the Planning Board failed to validate the petition before referring it. Nor is it the same kind of administrative or quasi-judicial action that warrants judicial scrutiny in accordance with these principles. See, e.g., *Low* v. *Madison*, 135 Conn. 1, 9, 60 A.2d 774 (1948) (invalidating zoning commission's approval of zone change for commission member's wife due to conflict of interest because "administration of power of that nature, whether it be denominated legislative or quasi-judicial, demands the highest public confidence," despite courts' reluctance to inquire into motives of enacting body); see also *LaTorre* v. *Hartford*, supra, 167 Conn. 8 ("[t]his court has consistently applied the standards enunciated in *Low* . . . to zoning boards and commissions, and to public officials acting in administrative or quasi-judicial capacities"). In determining whether the Board of Representatives' action is illegal or arbitrary, the pertinent question is whether the signature provision is mandatory or directory. Unless and until the signature provision is deemed mandatory, which, as I will discuss, is not, any exercise

of authority by the Board of Representatives without sufficient signatures is not illegal, arbitrary, or without due form of law in the way our case law has articulated.

"In construing a [municipal] charter, the rules of statutory construction generally apply. . . . In arriving at the intention of the framers of the charter the whole and every part of the instrument must be taken and compared together. In other words, effect should be given, if possible, to every section, paragraph, sentence, clause and word in the instrument and related laws." (Internal quotation marks omitted.) *Cook-Littman* v. *Board of Selectmen*, 328 Conn. 758, 768, 184 A.3d 253 (2018). "The test to be applied in determining whether a statute is mandatory or directory is whether the prescribed mode of action is the essence of the thing to be accomplished, or in other words, whether it relates to a matter of substance or a matter of convenience. . . . If it is a matter of substance, the statutory provision is mandatory. If, however, the legislative provision is designed to secure order, system and dispatch in the proceedings, it is generally held to be directory, especially where the requirement is stated in affirmative terms unaccompanied by negative words." (Internal quotation marks omitted.) *Lostritto* v. *Community Action Agency of New Haven, Inc.*, 269 Conn. 10, 19, 848 A.2d 418 (2004); see also *Winslow* v. *Zoning Board*, 143 Conn. 381, 387–88, 122 A.2d 789 (1956) (Board of Representatives was able to amend ordinance despite failure to comply with sixty day requirement in charter).

In particular, we have followed "applicable tenets of statutory construction . . . to ascribe significance to the absence" of legislative consequences in concluding that procedural requirements are directory and not mandatory. *Leo Fedus & Sons Construction Co.* v. *Zoning Board of Appeals*, 225 Conn. 432, 441, 623 A.2d 1007 (1993). "In *Koepke* v. *Zoning Board of Appeals*, 223 Conn. 171, 177, 610 A.2d 1301 (1992), we determined

that because the Coventry [Z]oning [B]oard of [A]ppeals had failed to publish adequate notice of a hearing, the hearing and subsequent revocation of the plaintiff's permit were invalid. We then addressed the consequences that flow from a zoning board's invalid hearing and subsequent ruling on an appeal from a decision of a zoning enforcement officer. Id. On that issue we stated: While the board's failure to give proper notice of its public hearing nullified its subsequent actions, that default had no further automatic consequences. *Even if a failure to give proper notice were deemed the equivalent of a failure to take timely action within the time constraints of* [*General Statutes*] *§ 8-7, that statute, contrary to General Statutes §§ 8-3 (g) or 8-26, does not make inaction tantamount to approval either of the challenged zoning permit or of the challenged appeal. . . .* Id., 178–79." (Citation omitted; emphasis in original; internal quotation marks omitted.) *Leo Fedus & Sons Construction Co.* v. *Zoning Board of Appeals*, supra, 442–43.

In so concluding, we relied on *Donohue* v. *Zoning Board of Appeals*, 155 Conn. 550, 235 A.2d 643 (1967), in which we held that a statute providing that "[the zoning] board shall decide such appeal within sixty days after the hearing" was directory, and not mandatory, and, therefore, the board's decision, rendered after more than sixty days, was not void. (Internal quotation marks omitted.) Id., 554. "In determining whether a statute is mandatory or merely directory, the most satisfactory and conclusive test is whether the prescribed mode of action is of the essence of the thing to be accomplished or, in other words, whether it relates to matter of substance or matter of convenience." Id. We concluded that the provision was directory, and, therefore, the board's decision was not void because (1) the provision related to procedure, (2) the language was affirmative in character and intended to encourage

timely decisions by the board, (3) the statute contained nothing that "expressly invalidate[d] a belated decision or [that] inferentially [made] compliance therewith a condition precedent," (4) the provision was "not of the essence of the thing to be accomplished," and (5) there was no time limitation, "the nonobservance of which render[ed] the board's decision voidable." Id., 554–55.

Likewise, in the present case, the better reading of § C6-30-7 of the charter, more consistent with our case law, is that it is directory and procedural, not mandatory, substantive, or containing a "condition precedent" to the Board of Representatives' lawful exercise of legislative power. Section C6-30-7 provides in relevant part that, "[i]f twenty (20) percent or more of the owners of the privately-owned land in the area included in any proposed amendment to the Master Plan, or the owners of twenty (20) percent or more of the privately-owned land located within five hundred (500) feet of the borders of such area, file a signed petition with the Planning Board within ten days after the official publication of the decision thereon, objecting to the proposed amendment, then said decision shall have no force or effect but the *matter* shall be referred by the Planning Board to the Board of Representatives within twenty days after such official publication, together with written findings, recommendations and reasons. The Board of Representatives shall approve or reject such proposed *amendment* . . . . When acting upon such *matters* the Board of Representatives shall be guided by the same standards as are prescribed for the Planning Board in Section C6-30-3 of this Charter. *The failure of the Board of Representatives either to approve or reject said amendment within the above time limit shall be deemed as approval of the Planning Board's decision.*" (Emphasis added.) This provision "is stated in affirmative terms unaccompanied by negative words." (Internal quotation marks omitted.) *Lostritto* v. *Community*

Action Agency of New Haven, Inc., supra, 269 Conn. 19. With its time period (ten days) and signature provision (20 percent or more), § C6-30-7 provides for convenience and dispatch. The provision relates to procedure; it begins the process by which an amendment can be referred to the Board of Representatives by preventing the decision from going into "force or effect" and directing the Planning Board to refer the matter with "written findings, recommendations and reasons." Stamford Charter § C6-30-7. The language is affirmative and intended to encourage and facilitate timely review by the Board of Representatives of "matters" about which affected residents feel strongly because it signals to the Board of Representatives that there is a matter affecting enough residents to warrant review. The charter then gives the Board of Representatives the power to vote down or to approve the amendment when referred. The signature provision, therefore, is not one of substance but one of convenience to ensure the orderly review of amendments by the Board of Representatives.

The best evidence that this provision is directory is that the charter prescribes no consequence for the Planning Board's referral of a petition that contains an insufficient number of signatures and does not expressly, or even impliedly, invalidate a decision by the Board of Representatives for the same insufficiency. See Stamford Charter § C6-30-7. " 'A reliable guide in determining whether a statutory provision is . . . mandatory is whether the provision is accompanied by language that expressly invalidates any action taken after noncompliance with the provision.' . . . By contrast, where a statute by its terms imposes some other specific penalty, it is reasonable to assume that the legislature contemplated that there would be instances of noncompliance and did not intend to invalidate such actions. . . . [The] 'lack of a penalty provision or invalidation of an action as a consequence for failure to comply with the

statutory directive is a significant indication that the statute is directory.' " (Citations omitted.) *Electrical Contractors, Inc.* v. *Ins. Co. of the State of Pennsylvania*, 314 Conn. 749, 759–60, 104 A.3d 713 (2014). If the drafters had intended to bar the Board of Representatives from reviewing an amendment on account of an insufficient number of signatures on the petition, it could have included a consequence in the provision, as it did in § C6-30-7. See *Leo Fedus & Sons Construction Co.* v. *Zoning Board of Appeals*, supra, 225 Conn. 442 (because other statutory provisions expressly provide for automatic approval, "it can be inferred that had the legislature intended that the failure of a zoning board of appeals to hold a hearing within sixty-five days results in automatic approval, the legislature would have so provided"). Indeed, the very same provision contains a mandated outcome for the Board of Representatives' failure either to approve or reject an amendment within a certain time, namely, it "shall be deemed as approval of the Planning Board's decision." Stamford Charter § C6-30-7. Had the drafters used similar, outcome determinative language in § C6-30-7, the majority's assertion that sufficient signatures are a "condition precedent" to the Board of Representatives' exercise of authority, and that any exercise of authority is "void" without those signatures, might hold some weight.[2]

The majority makes my point for me with its discussion of cases in which we have determined that a time limitation is mandatory, as contrasted with its catalog

[2] For example, the charter contains much clearer language in another provision denying the Board of Representatives authority over highways without Planning Board approval. See Stamford Charter § 214-40 ("[T]he Board of Representatives is empowered, whenever in its opinion public health, safety, welfare, convenience or necessity require[s], to lay out, alter, extend, enlarge, exchange or discontinue any highway or the grade of any highway," but "[s]aid powers granted to the Board of Representatives shall not be exercised without the approval of the Planning Board, the Board of Finance and the Mayor").

of cases in which we have held such provisions to be directory. In the cases cited in which we have held that a time limitation is mandatory, there has been an accompanying approval clause, attaching a consequence to a legislative body's failure to act on a decision within a certain time period. See, e.g., *Vartuli* v. *Sotire*, 192 Conn. 353, 362, 472 A.2d 336 (1984) (legislature "expressly made approval of a coastal development plan mandatory upon failure to disapprove an application within the specified time period," in part, because of automatic approval clause in accompanying statute), overruled by *Leo Fedus & Sons Construction Co.* v. *Zoning Board of Appeals*, 225 Conn. 432, 623 A.2d 1007 (1993); *Viking Construction Co.* v. *Planning Commission*, 181 Conn. 243, 246, 435 A.2d 29 (1980) (requirement to act on subdivision application within time limits was mandatory because "[f]ailure [of] the commission to act within this time frame results in the approval of the subdivision application by operation of law"). Section C6-30-7 is an example of such a provision: the Board of Representatives' failure either to approve or reject the amendment after two regularly scheduled meetings shall be deemed an approval of the Planning Board's decision. In contrast, as I indicated previously, and as in the line of cases the majority cites in which a time limitation is directory, the charter imposes no consequence on the Board of Representatives for taking action on a proposed amendment that arrived pursuant to a petition containing an insufficient number of signatures because the Board of Representatives has no authority or responsibility to scrutinize the petition but has authority to rule on the proposed amendment. See *United Illuminating Co.* v. *New Haven*, 240 Conn. 422, 466, 692 A.2d 742 (1997) (requirement to provide notice of assessment within thirty days of hearing was held to be directory, in part because "there is no language expressly invalidating a defective notice"); *Katz* v. *Com-*

missioner of Revenue Services, 234 Conn. 614, 617, 662 A.2d 762 (1995) ("[a] reliable guide in determining whether a statutory provision is directory or mandatory is whether the provision is accompanied by language that expressly invalidates any action taken after noncompliance with the provision"); *State* v. *Tedesco*, 175 Conn. 279, 285, 397 A.2d 1352 (1978) (Compliance with a time limitation in an agency's regulations was held to be directory because it is "always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it. The action of either in such a case is not reviewable except upon a showing of substantial prejudice to the complaining party." (Internal quotation marks omitted.)); *Broadriver*, *Inc.* v. *Stamford*, 158 Conn. 522, 530, 265 A.2d 75 (1969) (ninety day requirement to file return of notice was held to be directory because, in part, "[t]he statute contains nothing to invalidate a belated title transfer or which inferentially makes compliance with the time requirement a condition precedent"), cert. denied, 398 U.S. 938, 90 S. Ct. 1841, 26 L. Ed. 2d 270 (1970); see also *Meadowbrook Center*, *Inc.* v. *Buchman*, 328 Conn. 586, 597, 181 A.3d 550 (2018) ("[T]he language of Practice Book § 11-21 does not specifically invalidate or otherwise penalize motions filed beyond the thirty day deadline. 'This lack of a penalty provision or invalidation of an action as a consequence for failure to comply with the statutory directive is a significant indication that the statute is directory.' "); *Electrical Contractors*, *Inc.* v. *Ins. Co. of the State of Pennsylvania*, supra, 314 Conn. 761–62 (observing that our appellate courts have concluded that "statutory deadlines are directory where there is no express legislative guidance to the contrary and no indication that the legislature intended the deadline to be jurisdictional" by distinguishing cases in

which statute provided consequence for failure to act within certain time and cases in which statute did not).

Nonetheless, the majority insists that "a *valid* protest petition is a *condition precedent* to the authority of the [B]oard of [R]epresentatives to vote on the merits of an amendment," and only by voiding the Board of Representatives' action on the amendment is the charter given its "intended and obvious meaning . . . ." (Emphasis added.) In an exercise of circular self-definition, the majority opines that the Board of Representatives "acted on a proposed amendment that was not properly before it due to the legal defect in the protest petition" and that the signature threshold is a "condition precedent to the Board of Representatives' authority to vote on the merits of an amendment" that is the " 'essence' " of the provision. The majority contends that the provision was "crafted to achieve a manifestly substantive purpose," which, it asserts without citation, is to limit the Board of Representatives' authority "to situations in which a protest petition is signed by a significant percentage of the persons most affected by the amendment . . . ." (Emphasis omitted.) In particular, the majority cites no cases and provides no legal analysis as to how a court determines that a provision prescribing a legislative process is "substantive" or a "condition precedent . . . ."[3]

[3] Usually, a court assesses whether a legislative act is "substantive," as opposed to "procedural," when determining whether the act applies prospectively or retroactively. See, e.g., *D'Eramo* v. *Smith*, 273 Conn. 610, 620–21, 872 A.2d 408 (2005) ("Whether to apply a statute retroactively or prospectively depends upon the intent of the legislature in enacting the statute. . . . While there is no precise definition of either [substantive or procedural law], it is generally agreed that a substantive law creates, defines and regulates rights while a procedural law prescribes the methods of enforcing such rights or obtaining redress." (Citations omitted; footnote omitted; internal quotation marks omitted.)). Whether a provision constitutes a " 'condition precedent' " implicates the same "mandatory" or "directory" analysis this dissenting opinion undertakes in the text. *Leo Fedus & Sons Construction Co.* v. *Zoning Board of Appeals*, supra, 225 Conn. 440, quoting *Donohue* v. *Zoning Board of Appeals*, supra, 155 Conn. 554; see also *Leo Fedus & Sons Construction*

The best the majority can muster for support is *Stamford Ridgeway Associates*, which the majority claims stands for the proposition that the signature provision is a "substantive provision of the charter intended to ensure that review by the Board of Representatives is triggered if, and only if, there is a sufficient number of owners of private land with interests directly affected by the proposed amendment." The case says no such thing, and simply calling that proposition "[i]nherent" in the holding of *Stamford Ridgeway Associates* does not strengthen the majority's conclusion. To understand why the majority is mistaken about this precedent requires an understanding of the precise proposal under consideration at the local level in that case.

In *Stamford Ridgeway Associates*, the Zoning Board of the City of Stamford approved a comprehensive zoning plan for the city, consisting of eight separate applications that covered "large sections of the city of Stamford and included areas for which various zone changes were proposed, as well as other areas that were to remain unchanged." *Stamford Ridgeway Associates* v. *Board of Representatives*, supra, 214 Conn. 409. The plaintiffs, local property owners adversely affected by some of the zone changes proposed in the eighth application, filed protest petitions requesting referral to the Board of Representatives to challenge the zone changes. Id., 409–10. Pursuant to the charter, the Zoning Board referred "its findings, recommendations and reasons in connection with its action in approving" the application to the Board of Representatives. Id., 411. The Board of Representatives took no action on the plaintiffs' petitions, which constituted an affirmance of the Zoning Board's decision. Id. The plaintiffs appealed to the Supe-

Co. v. *Zoning Board of Appeals*, supra, 440 ("in support of our conclusion . . . the 'statute contains nothing which expressly invalidates a belated decision or which inferentially makes compliance therewith a condition precedent' ").

rior Court, which, after a trial, sustained the appeal and reversed the action of the Board of Representatives, holding that, under the charter, the Board of Representatives could act only on the entire application as a whole, and not piecemeal, because the Zoning Board had adopted the changes as a " 'single package.' " Id., 419. The trial court further held that its decision was without prejudice to the Board of Representatives' determination whether there was "a sufficient number of petitioners [seeking] a hearing treating the matter as a whole." (Internal quotation marks omitted.) Id., 420.

This court rejected the trial court's conclusion that the Board of Representatives could not act on separate amendments. See id., 422. Looking to the charter, we determined that the language, "[20] percent or more of the owners of the privately-owned land in the area included in any proposed amendment to the [z]oning [m]ap," meant that the 20 percent threshold is measured by the areas to be changed or rezoned, and not the entire application. (Emphasis omitted; internal quotation marks omitted.) Id., 424; see also id., 424–26. To hold otherwise could make it impossible to obtain enough signatures to meet the 20 percent threshold because unaffected property owners, or those happy with the amendment as it pertains to them, might be reluctant to sign the petition, thereby enabling a municipality "to [e]nsure passage of a highly objectionable zoning amendment by simply combining it with another large, unobjectionable amendment. A statute must not be construed in a manner that would permit its purpose to be defeated." (Internal quotation marks omitted.) Id., 426. This court then rejected a broad reading of the phrase "any proposed amendment" to mean all amendments contained in an application because doing so "would limit the right of property owners to petition the [B]oard of [R]epresentatives and *would be in contravention of the legislative intent and purpose of* [*a*

former provision of the charter] *§ C-552.2* [*which is essentially the same as § C6-30-7*] *to provide landowners a right to appeal to the board*. It would require a petitioner to obtain signatures of 20 percent of the property owners included in all of the amendments or zone changes encompassed in one application." (Emphasis added.) Id., 428. "A narrow interpretation of 'any' in the phrase 'in any proposed amendment' of § C-552.2 would not only effectuate the ultimate charter purpose giving the right to landowners to protest proposed zone changes but it is the only reasonable and rational construction of § C-552.2." Id., 430.

Thus, the discussion in *Stamford Ridgeway Associates* makes clear that the signature provision is not an aggrievement, condition precedent, or limitation provision.[4] Rather, it protects affected nearby landowners[5]

[4] Although *Stamford Ridgeway Associates* refers to a landowner's "right to appeal" to the Board of Representatives, the charter provision at issue before us, § C6-30-7, does not use this language, and the language it does use is not similar to that used when an aggrieved party has a "right to appeal" to a higher tribunal. The charter instead provides that a protest petition leads to a "referr[al] by the Planning Board to the Board of Representatives," with the Planning Board's decision having no force and effect. Stamford Charter § C6-30-7. Where the charter's drafters sought to provide a "right to appeal" in the sense we in the judiciary understand it, they did so. See Stamford Charter § C6-30-20.

[5] The flaw in the majority's syllogism is demonstrated by the illogical suggestion that those landowners within the area described by the charter are "most affected," or are the only ones "directly affected," by the passage or defeat of an amendment to the master plan or the zoning regulation. Many such proposals are just as likely to affect directly the interests of innumerable Stamford residents on issues of economics, environment, and population density, to name a few. But *Stamford Ridgeway Associates* concludes that the ability to *petition* the Board of Representatives is not thwarted by the inclusion of additional area, not affected by a proposed amendment, in an application. See *Stamford Ridgeway Associates* v. *Board of Representatives*, supra, 214 Conn. 426. So, although the charter "very clearly does not provide all Stamford residents with a right to *protest*"; (emphasis added); as the majority states, the charter is similarly very clear that, once an amendment has been referred, erroneously or not, the Board of Representatives' authority to approve or reject an *amendment* is not limited to consideration of only the interests of the residents who protested.

by empowering them to obtain greater review by the Board of Representatives, not less, and nothing in our discussion in that case suggested that the purpose of the provision was to place a jurisdictional condition ("if, and only if," to use the majority's language) on the Board of Representatives' authority. See id., 426. It cannot, therefore, be said that the signature provision is a matter of substance or that the full legislative scheme evinces an intent to impose a mandatory requirement.[6] The more faithful reading of the holding in *Stamford Ridgeway Associates* is that the purpose of the charter provision is to facilitate referral to the Board of Representatives.

Although I agree that the Board of Representatives cannot "act in contravention of charter provisions expressly limiting that authority to specified conditions," the only express limits that the charter provides for the Board of Representatives is that it act on an amendment within a certain time period and that it be guided by typical zoning standards. The signature

[6] The majority's reliance on *Stamford Ridgeway Associates* continues with its suggestion that we have previously held that "sufficient signatures are needed for [the] Board of Representatives to reconsider" an amendment. It was not this court that said that, however. Rather, that came from an opinion by Attorney Robert A. Fuller, whom the president of the Board of Representatives hired to review the matter. See *Stamford Ridgeway Associates* v. *Board of Representatives*, supra, 214 Conn. 412–13. And, although the majority may contend that this court relied on Fuller's opinion to hold that the Board of Representatives could vote on separate zone changes contained in one application, nowhere in *Stamford Ridgeway Associates* did this court conclude that the Board of Representatives' authority to vote on amendments is circumscribed by insufficient signatures. Indeed, the words, "if there are sufficient signatures," do not follow the *Stamford Ridgeway Associates* quotation, as the majority suggests in footnote 11 of its opinion. If such a phrase did appear, that would provide the majority some traction for its assertion that a valid petition is a "condition precedent" to the exercise of the Board of Representatives' authority. Instead, the words "sufficient" or "enough" appear only in quotations of Fuller's written advice or the trial court's memorandum of decision in *Stamford Ridgeway Associates*, not in this court's analysis or conclusion. See *Stamford Ridgeway Associates* v. *Board of Representatives*, supra, 414, 417 n.5, 420, 426, 429.

provision may be an express limit on the Planning Board, but that does not mean that the subsequent exercise of legislative authority by the Board of Representatives is likewise constrained.[7] The majority's attempt to make it so falters on the same grounds as its endeavor to imbue the signature provision as a "substantive" provision or "condition precedent . . . ."

Further, although the majority relies heavily on *Burke* v. *Board of Representatives*, supra, 148 Conn. 33, that case supports my thesis precisely.[8] In that case, the Board of Representatives "failed to follow the charter requirements for the adoption of either an ordinance or a resolution." Id., 41. Although we explained that, when "the charter . . . provides that action of the legislative body shall be by ordinance or resolution, it must act in the manner prescribed"; in that case, the charter did "not require that the [B]oard of [R]epresentatives shall act only by ordinance or resolution. [The charter] empowers the board to adopt and amend its own rules of order. . . . This the board could do in the area where the charter does not specifically provide otherwise. . . . The claim that the action of the [B]oard of [R]epre-

[7] The majority's citation to *Woldan* v. *Stamford*, 22 Conn. Supp. 164, 167, 164 A.2d 306 (1960), to support the proposition that a "matter was not properly before the [B]oard of [R]epresentatives" because the petition in that case did not contain enough signatures as required by the charter is unpersuasive, as this court has never so held. As I demonstrated, the purported invalidity of the petition has no bearing on the subsequent exercise of legislative authority by the Board of Representatives.

[8] Also, the majority cites *Burke* to indicate that a referral occurs only " '[i]n th[e] event' " that a petition meets the signature provision. First, *Burke* only restates the charter provisions at issue, and does so incorrectly and without further analysis, as the relevant charter provision does not contain the phrase, "in the event." See generally Stamford Charter § C6-30-7. Second, *Burke* pertained to whether the Board of Representatives had failed to give notice and to provide a hearing, and could relegate review of the amendment at issue to a committee; the suggestion that *Burke* stands for the proposition that a referral occurs only " '[i]n th[e] event' " that the petition contains sufficient signatures is dictum at best. See *Burke* v. *Board of Representatives*, supra, 148 Conn. 35.

sentatives was invalid because of its failure to follow the rules prescribed by the charter for the adoption of ordinances or resolutions therefore [fails]." (Citations omitted.) Id., 42–43. We then rejected the claim that the zoning board's work was thwarted if the Board of Representatives could act without notice and a hearing, holding that "[a]ny claimed defect in the zoning law and procedures adopted for the city of Stamford is a matter for legislative consideration. Courts cannot read into statutes, by the process of interpretation, provisions for notice and a full hearing which are not expressed in them. . . . Courts must apply statutes as they find them, whether or not they think that the statutes might be improved by the inclusion of other or additional provisions." (Citations omitted.) Id., 43. Likewise, the majority may not read into the charter a limitation on the Board of Representatives' exercise of authority that is not present.

Trained as lawyers and operating as we do in a judicial forum, it is understandably difficult for judicial officers to keep our hands off the legislative process and to try not to make regular that which is irregular. As a court, we are drawn to consider a signature provision like the one in the present case to be akin to an "aggrievement" requirement. That is familiar to us. Without explicitly saying so, that is how the majority treats it. But measured against our cases, and particularly as applied to the legislative arena, it is not.

For example, if the protest petition had been filed one day late and the Planning Board still referred it to the Board of Representatives, there is no doubt that, under our previously discussed cases, we would conclude that the timeliness provision is not a condition precedent or a mandatory requirement. The Planning Board's referral would not be void; nor would the Board

of Representatives' action upon referral.[9] Similarly, there is no evidence that the drafters of the charter intended the signature provision, found only words away from the ten day provision, to be a strict jurisdictional or aggrievement requirement, let alone a condition precedent, and we should resist the temptation to impose judicial order on a process that is not orderly. Not all legislative errors warrant judicial intervention and management. "Absent a clear showing of fraud, illegality, or corruption, courts will not intervene in the legislative process." *Northeast Electronics Corp.* v. *Royal Associates*, 184 Conn. 589, 593, 440 A.2d 239 (1981). The discretion of a legislative body, because of its constituted role as formulator of public policy, is much broader than that of an administrative board, which serves a quasi-judicial function. *Tillman* v. *Planning & Zoning Commission*, 341 Conn. 117, 128, 266 A.3d 792 (2021). Any dissatisfaction with the Board of Representatives' exercise of authority in rejecting the amendment is remedied by engaging in the political process. See, e.g., *Schieffelin & Co.* v. *Dept. of Liquor Control*, 194 Conn. 165, 185, 479 A.2d 1191 (1984); *Northeast Electronics Corp.* v. *Royal Associates*, supra, 593.

The judiciary, unlike the elected representatives of Stamford, is uniquely unequipped to delve into the local legislative arena. In fact, we very recently stated that, "[i]n traditional zoning appeals, the scope of judicial review depends on whether the zoning commission has acted in its legislative or administrative capacity. . . . Zoning must be sufficiently flexible to meet the demands

[9] The same would be true if the Planning Board had *rejected* the plaintiffs' application, the plaintiffs petitioned for referral to the Board of Representatives pursuant to § C6-30-8, the Planning Board erroneously referred the petition before validating the signatures, and the Board of Representatives approved the plaintiffs' proposed amendment. In my view, the Board of Representatives' action could not be undone by a court because of a supposed erroneous referral.

of increased population and evolutionary changes in such fields as architecture, transportation, and redevelopment. . . . The responsibility for meeting these demands rests, under our law, with the reasoned discretion of each municipality acting through its duly authorized zoning commission." (Internal quotation marks omitted.) *Tillman* v. *Planning & Zoning Commission*, supra, 341 Conn. 127–28. Courts afford "zoning authorities this discretion in determining the public need and the means of meeting it, because the local authority lives close to the circumstances and conditions which create the problem and shape the solution. . . . Courts, therefore, must not disturb the decision of a zoning commission unless the party aggrieved by that decision establishes that the commission acted arbitrarily or illegally." (Citation omitted; internal quotation marks omitted.) *First Hartford Realty Corp.* v. *Plan & Zoning Commission*, 165 Conn. 533, 540–41, 338 A.2d 490 (1973). Inasmuch as the Board of Representatives, under the charter, undertakes the same legislative function and applies the same standards as a zoning board or a planning board, we should afford the same deference in this matter.

Because of the majority's determination to supervise the regularity of local legislative processes, I am concerned that this court will necessarily inject itself into local legislative disputes in innumerable municipalities. In the present case, for example, what is at stake is whether there should be an amendment to the master plan for the city of Stamford. This is a classic political matter for the city and its duly elected local representatives to consider. Although the framers might have determined, for reasons of convenience or dispatch, to put the onus to protest an amendment on those who own land nearby through the signature provision, as I have established, this provision cannot be understood as a jurisdictional barrier. After all, amending the master

plan impacts all aspects of city governance and city life: traffic, tax base, schools, residential and commercial development, changes in population density, and environmental concerns.

Of course, the court's reservations—and my own—about wading into local legislative matters would be completely misplaced if vested rights were at stake in this dispute. But they are not. No one argues that they are. "To be vested, a right must have become [for example] a title, legal or equitable, to the present or future enjoyment of property, or to the present or future . . . enforcement of a demand, or a legal exemption from a demand made by another. . . . A right is not vested unless it amounts to something more than a mere expectation of future benefit or interest founded upon an anticipated continuance of the existing general laws." (Citation omitted; internal quotation marks omitted.) *Hayes Family Ltd. Partnership* v. *Planning & Zoning Commission*, 98 Conn. App. 213, 233, 907 A.2d 1235 (2006), cert. denied, 281 Conn. 903, 916 A.2d 44 (2007); see also *Aspetuck Valley Country Club, Inc.* v. *Weston*, 292 Conn. 817, 834, 975 A.2d 1241 (2009). For example, we have rejected a claim that a validating act was unconstitutional because the plaintiffs had no vested right to sue on the basis of procedural defects in the state environmental protection commissioner's preparation of an environmental impact statement. See *Manchester Environmental Coalition* v. *Stockton*, 184 Conn. 51, 71–72, 441 A.2d 68 (1981), overruled in part on other grounds by *Waterbury* v. *Washington*, 260 Conn. 506, 800 A.2d 1102 (2002). We explained that the plaintiffs did not "allege that the commissioner lacked authority, but rather that he attempted to exercise his authority in an unauthorized fashion. 'The law is well established in this state that invalidity which comes about in this manner may be cured retrospectively by appropriate

legislation.' " *Manchester Environmental Coalition* v. *Stockton*, supra, 71–72.

In the zoning context, "[a] landowner does not have a vested right in the existing classification of his land. On the contrary, the enabling acts which authorize the enactment of zoning ordinances provide for the amendment of such ordinances. A landowner's right to establish a particular use can be summarily terminated by an amendment which reclassifies his land and outlaws the use in question. . . . A landowner does not obtain a vested right in what has subsequently become a nonconforming use by filing a plan or by applying for a construction permit. . . . Even the issuance of a building permit does not necessarily create a vested right unless the building is substantially under construction before zoning regulations are amended." (Citations omitted; internal quotation marks omitted.) *Marmah, Inc.* v. *Greenwich*, 176 Conn. 116, 120–21, 405 A.2d 63 (1978). The Appellate Court has held that, although a plaintiff may have vested rights in a property, generally, a plaintiff does not have "vested rights in the configuration of that property as it sought to reconfigure it, nor could it have acquired such vested rights without seeking approval of its proposed reconfiguration in accordance with established protocol and procedures." *Stones Trail, LLC* v. *Weston*, 174 Conn. App. 715, 742, 166 A.3d 832, cert. dismissed, 327 Conn. 926, 171 A.3d 59 (2017), and cert. denied, 327 Conn. 926, 171 A.3d 60 (2017).

Further, "[n]o one has a vested right in any given mode of procedure . . . and so long as a substantial and efficient remedy remains or is provided due process of law is not denied by a legislative change." (Citations omitted.) *Crane* v. *Hahlo*, 258 U.S. 142, 147, 42 S. Ct. 214, 66 L. Ed. 514 (1922); see also *Vernon* v. *Cassadaga Valley Central School District*, 49 F.3d 886, 890 (2d Cir. 1995). The failure of the petition to contain sufficient signatures does not therefore vest in the plaintiffs any

rights in the successful passage of their amendment. It cannot be said that the plaintiffs have no remedy available to them if they cannot void the Board of Representatives' vote due to an insufficient number of signatures. There are at least two potential avenues, one of which the plaintiffs pursued: (1) challenging the Board of Representatives' vote on the merits as not applying the appropriate legislative standard provided by the charter, or (2) engaging in the legislative process, such as reapplying for an amendment, gathering additional political support, or asking the Board of Representatives to reconsider. I am unaware of anything that prevented the plaintiffs from pursuing this latter remedy in the years since this litigation began or anything preventing them from pursuing it now. I submit that that is a far superior remedy than a court undoing the action of the city's representative body.

I recognize that the majority is *not* taking the action it is today based on a theory of vested rights. It is doing so based on far less justification. To the majority, because the five person Planning Board adopted the plaintiffs' amendment and, based on our count and no one else's, the petition contained an insufficient number of signatures, the Board of Representatives had no business taking action on that amendment. And the majority is here to correct that. I simply disagree that that is—or should be—a court's role, and I believe our precedents agree.

My disagreement is further supported by the fact that the United States Court of Appeals for the Second Circuit has rejected a remarkably similar challenge to a town planning board's enactment of zoning ordinances. In *Orange Lake Associates, Inc.* v. *Kirkpatrick*, 21 F.3d 1214, 1224 (2d Cir. 1994), the Second Circuit held that a developer's due process rights were not violated when the town board of Newburgh, New York, enacted zoning ordinances to implement a new master

plan for Newburgh. The Second Circuit agreed that the developer had "no vested right to approval of its plans for the project" and that there was nothing to indicate that the developer's claimed procedural defects affected the decisions of the town board or Newburgh's planning board. Id. Likewise, here, the plaintiffs have no vested right in the approval of their proposed amendment, as nothing currently before this court suggests that the insufficient signatures affected the Board of Representatives' decisions on the merits of the amendment, given that the trial court bifurcated the trial to address the jurisdictional issue first. If the law were otherwise, the judiciary would be invited regularly to intervene in routine legislative proceedings, in contravention of our settled role. Vested rights provide a clear delineation so that courts do not get involved in the kind of policymaking that is better left to more representative bodies elected to conduct the work of local lawmaking.

Because I would conclude that any erroneous referral of the petition by the Planning Board does not vitiate the action of the Board of Representatives, I would reverse the trial court's judgment and remand the case to that court for additional proceedings on whether the Board of Representatives acted arbitrarily, illegally, or in a manner that was inconsistent with the guiding zoning standards when voting on the merits of the proposed amendment. I therefore respectfully dissent.

HIGH RIDGE REAL ESTATE OWNER, LLC *v.* BOARD OF REPRESENTATIVES OF THE CITY OF STAMFORD (SC 20595)

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

Syllabus

Pursuant to the Stamford Charter (§ C6-40-9), after the Zoning Board of the City of Stamford issues a decision concerning an amendment to the Stamford zoning regulations, a protest petition may be filed with the zoning board opposing such amendment, which the zoning board shall refer to the Stamford Board of Representatives, and the board of representatives shall thereafter approve or reject such amendment. If the amendment applies to two or more zones, the petition must include "the signatures of at least [300 Stamford] landowners . . . ."

The plaintiff, an owner of real property in the city of Stamford, appealed to the trial court from the decision of the defendant, the Board of Representatives of the City of Stamford, which had rejected a decision by the Stamford Zoning Board to approve the plaintiff's application to amend certain Stamford zoning regulations. The plaintiff had sought to have the zoning regulations amended to permit the development of a family health and fitness facility in a commercial district. After the zoning board approved the plaintiff's application with modifications, which affected more than one zone, a local homeowners association filed a protest petition, pursuant to § C6-40-9 of the charter, opposing the approved zoning amendment. The petition contained the signatures of 120 individuals who were sole owners of a total of 120 parcels of land in Stamford, 240 individuals who were joint owners of a total of another 120 parcels of land in Stamford, and another 110 individuals who were joint owners of yet another 110 parcels of land in Stamford but under circumstances in which one or more individuals with joint ownership in one of those 110 parcels did not sign the petition. Without determining whether the petition contained the requisite number of signatures required by § C6-40-9, the zoning board referred the petition to the board of representatives. Subsequently, a subcommittee of the board of representatives determined that the protest petition contained

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

the requisite number of signatures and that it was therefore valid. The subcommittee also voted to recommend that the board of representatives accept the petition and reject the zoning board's approval of the plaintiff's application seeking an amendment to the zoning regulations. The board of representatives implemented both of those recommendations. On appeal to the trial court, the plaintiff claimed that the board of representatives lacked authority to determine the validity of the protest petition under the charter and that the petition was invalid insofar as it did not contain the number of signatures required by § C6-40-9. The trial court rendered judgment sustaining the plaintiff's appeal, concluding that the board of representatives did not have authority to determine the validity of the protest petition and that, even if it did, the petition was invalid because it did not contain the 300 signatures required under § C6-40-9. In so concluding, the trial court relied in part on precedent concerning joint tenancy in the context of protest petitions, which, the court explained, requires all of the owners of a parcel of property to sign a protest petition in order for the protest to be considered valid. On the basis of that precedent, the trial court determined that the petition contained only 240 signatures: 120 signatures from the 120 sole owners of property, 120 signatures from the 240 individuals who jointly owned another 120 properties, and 0 signatures from the 110 individuals who were joint owners of an additional 110 properties whose additional joint owners did not sign the petition. The court thus determined that the board of representatives did not have jurisdiction to reject the zoning board's decision approving the plaintiff's application to amend the zoning regulations. The board of representatives thereafter appealed from the trial court's judgment. *Held*:

1. Consistent with its decision in *Strand/BRC Group, LLC* v. *Board of Representatives* (342 Conn. 365), which construed the Stamford charter and concluded that the board of representatives did not have authority to consider whether a protest petition was valid under a provision (§ C6-30-7) of the charter that was similar to § C6-40-9, this court concluded that the board of representatives did not have authority to consider the validity of the protest petition in the present case and that, under § C6-40-9 of the charter, the zoning board, rather than the board of representatives, has authority to determine the validity of a protest petition and must do so before referring such a petition to the board of representatives.
2. Even though the board of representatives did not have authority to determine the validity of the protest petition, it nevertheless was presented with a valid petition with more than 300 signatures, contrary to the conclusion of the trial court, and, accordingly, it had authority to consider the merits of the zoning board's amendment to the zoning regulations: although prior decisions have interpreted the term "owner" of land for purposes of protest petitions and have indicated that all joint owners must participate for the protest related to their jointly owned

property to be valid, the protest provisions at issue in those cases dealt with a percentage of owners of land or the owners of a percentage of land, not, as in the present case, a strict number of signatures of landowners, and, therefore, those cases did not resolve, for purposes of the present case, how the actual signatures of landowners should be counted once all joint owners have added their signatures to a protest petition; moreover, the term "signature," for purposes of § C6-40-9, means a landowner's writing of his or her name on a protest petition, and, under this definition, even if all owners of jointly held property must sign the petition, each landowner's name included in the petition must count toward the total number of signatures; accordingly, for purposes of § C6-40-9, the petition contained the valid signatures of at least 360 landowners, that is, 120 sole landowners and 240 joint landowners, the trial court thus incorrectly determined that there were only 240 valid signatures, because the petition contained the requisite number of signatures, the petition was valid, and, therefore, the case was remanded to the trial court for consideration of the plaintiff's remaining claim regarding the decision of the board of representatives on the merits of the zoning board's amendment to the zoning regulations.

(*One justice concurring separately*)

Argued September 10, 2021—officially released March 15, 2022

Procedural History

Appeal from the decision of the defendant rejecting a decision by the Zoning Board of the City of Stamford approving certain text changes to the city's zoning regulations to permit the development of a family health and fitness facility, brought to the Superior Court in the judicial district of Stamford-Norwalk and transferred to the judicial district of Hartford, Land Use Litigation Docket; thereafter, the case was tried to the court, *Hon. Marshall K. Berger, Jr.*, judge trial referee, who, exercising the powers of the Superior Court, rendered judgment sustaining the appeal, from which the defendant, on the granting of certification, appealed. *Reversed; further proceedings.*

Patricia C. Sullivan, for the appellant (defendant).

David T. Martin, for the appellee (plaintiff).

Opinion

MULLINS, J. The dispositive issue in this appeal is whether the defendant, the Board of Representatives of the City of Stamford (board of representatives), properly considered a protest petition that opposed zoning amendments approved by the Zoning Board of the City of Stamford (zoning board). The plaintiff, High Ridge Real Estate Owner, LLC, filed an application with the zoning board to amend the zoning regulations of the city of Stamford (city). The zoning board approved the zoning amendment. Thereafter, local property owners filed a protest petition pursuant to § C6-40-9 of the Stamford Charter (charter),[1] which opposed the amendment. The board of representatives determined that the protest petition was valid and, thereafter, considered and rejected the amendment. The plaintiff appealed from the decision of the board of representatives to the trial

[1] Section C6-40-9 of the charter provides: "After the effective date of the Master Plan, if following a public hearing at which a proposed amendment to the Zoning Regulations, other than the Zoning Map was considered, a petition is filed with the Zoning Board within ten days after the official publication of the [Zoning] Board's decision thereon opposing such decision, such decision with respect to such amendment shall have no force or effect, but the matter shall be referred by the Zoning Board to the Board of Representatives within twenty days after such official publication, together with written findings, recommendations, and reasons. The Board of Representatives shall approve or reject any such proposed amendment at or before its second regularly scheduled meeting following such referral. When acting upon such matters, the Board of Representatives shall be guided by the same standards as are prescribed for the Zoning Board in Section C6-40-1 of this Charter. The failure by the Board of Representatives either to approve or reject said amendment within the above time limit shall be deemed as approval of the Zoning Board's decision. The number of signatures required on any such written petition shall be one hundred, or twenty percent of the owners of privately-owned land within five hundred feet of the area so zoned, whichever is least, if the proposed amendment applies to only one zone. All signers must be landowners in any areas so zoned, or in areas located within five hundred feet of any areas so zoned. If any such amendment applies to two or more zones, or the entire City, the signatures of at least three hundred landowners shall be required, and such signers may be landowners anywhere in the City."

court, claiming that the board of representatives did not have the authority to consider whether the protest petition was valid, and asserting that the petition was not valid because it did not contain the signatures of "at least [300] landowners" anywhere in the city, as required by § C6-40-9. The trial court sustained the plaintiff's appeal. Although we conclude that the board of representatives did not have the authority to determine the validity of the protest petition, we conclude that it was a valid petition because it contained the requisite number of signatures. Accordingly, we reverse the judgment of the trial court sustaining the plaintiff's appeal and remand the case to that court to determine whether the board of representatives properly rejected the amendment.

The following facts are undisputed. In February, 2017, the plaintiff submitted an application to the zoning board seeking to amend the zoning regulations. Specifically, the plaintiff sought a change that would allow the development of a "Gymnasium or Physical Culture Establishment" in a commercial district designated as a "C-D Designed Commercial District." This change would affect more than one zone in the city. The zoning board approved the plaintiff's application, as modified.

Following the approval of the plaintiff's application, the president of the Sterling Lake Homeowners Association filed a protest petition with the zoning board, pursuant to § C6-40-9 of the charter. The petition contained 696 signatures.[2] Then, without expressly determining

[2] With respect to the 696 signatures, the parties stipulated to the following: (1) "120 signers were the sole owners of privately owned land in [the city]," (2) "240 signers were the owners of privately owned property in [the city] where there were other owners with an interest in the property who also signed," (3) "110 signers were the owners of privately owned property in [the city] where one or more owners with an interest in the property did not sign," (4) "164 signers were the owners of condominium units," and (5) "62 signers were individuals whose status was questioned." With respect to the fifth group of signers, the parties further stipulated to the following: "Letters were sent to these 62 owners. [Eleven] responded that they were

whether the protest petition was valid in that it contained the requisite number of signatures, i.e., of at least 300 landowners, the zoning board referred the petition to the board of representatives.

Thereafter, the Land Use/Urban Redevelopment Committee (land use committee), a subcommittee of the board of representatives, held a hearing to consider whether the petition contained the requisite number of signatures and was, therefore, valid. The land use committee voted to recommend that the board of representatives accept the petition, which the board of representatives subsequently did. The land use committee then held a public hearing on the plaintiff's application for an amendment. After the hearing, the land use committee voted to recommend that the board of representatives reject the zoning board's approval of the plaintiff's application for an amendment, which the board of representatives subsequently did.

The plaintiff then appealed to the trial court.[3] In its appeal, the plaintiff contended, inter alia, that (1) the board of representatives lacked the authority to determine the validity of the protest petition under the char-

not owners of land in [the city]. [One] responded that he did not want to be involved. [Twenty-four] responded that they were owners of privately owned property in [the city]; 26 have not yet responded."

As we explain subsequently in this opinion, because we conclude that the signatures of the 120 sole owners of privately held land and the signatures of the 240 joint owners of privately held land where the other owners with an interest in the property also signed constitute 360 landowners' signatures, which exceeds the minimum threshold of 300 landowners necessary under § C6-40-9 of the charter, we need not consider whether the other 336 signatures were valid.

[3] Section C6-40-17 of the charter provides in relevant part: "Any person aggrieved by a decision of the Board of Representatives or by a failure of that Board to decide a matter referred to it within the prescribed time pursuant to Section C6-40-5, C6-40-6 or C6-40-9 of this Charter may appeal therefrom within fifteen days of such decision or such expiration of prescribed time, whichever first occurs, to the Superior Court, Judicial District of Stamford/Norwalk at Stamford."

ter, and (2) the petition was invalid because it did not include the requisite number of signatures. The plaintiff also claimed that the board of representatives erred in rejecting the amendment.

The trial court sustained the plaintiff's appeal. Specifically, the trial court concluded that the board of representatives did not have the authority to determine the validity of the protest petition because the charter did not give the board such authority. The trial court also concluded that, even if the board of representatives had the authority to determine the validity of the petition, the petition was not valid because it did not contain the 300 signatures of landowners required by § C6-40-9 of the charter. The trial court reasoned that it was "bound by precedent as to joint tenancies and as to condominium owners in the context of protest petitions." According to that precedent, the court explained, all of the owners of a parcel of land must sign a petition for the protest to be considered valid.

The trial court further explained that, "[i]n the present case, petition signers who held their property in a joint tenancy or as fractional owners of a condominium should not have been counted toward the required 300 signatures because all of the owners of the property had not signed the petition." The trial court then determined that, "[w]ith only 240 valid signatures, the protest petition was invalid, and the board [of representatives] did not have jurisdiction to reject the decision of the zoning board approving the text amendments."[4] (Footnote

[4] The trial court did not explain precisely how it determined that there were 240 valid signatures. It seems, however, that the trial court adopted the view espoused by Valerie T. Rosenson, the legislative officer of the board of representatives, that "240 signers were determined to be the joint landowners of 120 parcels of land in the [city], constituting 120 landowners . . . ." (Citation omitted.) The court then added this figure to the 120 sole landowners to arrive at a total of 240 valid signatures.

omitted.) Accordingly, the trial court sustained the plaintiff's appeal. This appeal followed.[5]

On appeal, the board of representatives claims that the trial court incorrectly concluded that the board did not have the authority to determine the validity of the protest petition. The board of representatives also claims that the trial court incorrectly determined that the petition did not have the signatures of at least 300 landowners, as required by § C6-40-9 of the charter.

As we explained in *Strand/BRC Group, LLC* v. *Board of Representatives*, 342 Conn. 365, A.3d (2022) (*Strand*), "[t]he board of representatives, in considering the proposed amendment, was called [on] to perform a legislative function. . . . Because the board of representatives was acting in a legislative capacity, the decision of the board must not be disturbed by the courts unless the party aggrieved by that decision establishes that the [board] acted arbitrarily or illegally. . . . If the board of representatives exceeded the scope of its permissible authority to act under the charter, then its decision was contrary to law and an abuse of discretion. . . .

"[A city] charter . . . constitutes the organic law of the municipality. . . . [A] city's . . . charter is the fountainhead of municipal powers . . . . The charter serves as an enabling act, both creating power and prescribing the form in which it must be exercised. . . . Agents of a city, including [the board of representatives], have no source of authority beyond the charter. . . . Their powers are measured and limited by the express language in which authority is given or by the implication necessary to enable them to perform some duty cast upon them by express language. . . .

[5] The board of representatives appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-2.

"The proper construction of the charter presents a question of law, over which our review is plenary. . . . In construing a city charter, the rules of statutory construction generally apply. . . . In arriving at the intention of the framers of the charter the whole and every part of the instrument must be taken and compared together. In other words, effect should be given, if possible, to every section, paragraph, sentence, clause and word in the instrument and related laws." (Citations omitted; footnote omitted; internal quotation marks omitted.) Id., 373–75.

I

We first consider whether the board of representatives had the authority, under the charter, to determine the validity of the protest petition in the present case. In *Strand/BRC Group, LLC* v. *Board of Representatives*, supra, 342 Conn. 378–79, which was also released today, we also construed the Stamford charter and concluded that the board of representatives does not have the authority to consider whether a protest petition was valid under § C6-30-7,[6] a provision of the charter similar to the one at issue in the present case.

[6] Section C6-30-7 provides: "If twenty (20) percent or more of the owners of the privately-owned land in the area included in any proposed amendment to the Master Plan, or the owners of twenty (20) percent or more of the privately-owned land located within five hundred (500) feet of the borders of such area, file a signed petition with the Planning Board within ten days after the official publication of the decision thereon, objecting to the proposed amendment, then said decision shall have no force or effect but the matter shall be referred by the Planning Board to the Board of Representatives within twenty days after such official publication, together with written findings, recommendations and reasons. The Board of Representatives shall approve or reject such proposed amendment at or before its second regularly-scheduled meeting following such referral. When acting upon such matters the Board of Representatives shall be guided by the same standards as are prescribed for the Planning Board in Section C6-30-3 of this Charter. The failure of the Board of Representatives either to approve or reject said amendment within the above time limit shall be deemed as approval of the Planning Board's decision."

In *Strand*, the Planning Board of the City of Stamford—which is functionally the equivalent of the zoning board—referred a protest petition to the board of representatives without determining the petition's validity. See id., 370. Instead, the board of representatives determined the validity. Id., 371. After the referral, the board of representatives voted to accept the petition and then ruled on the amendment. See id. In arriving at our conclusion that the board of representatives lacked the authority to address the validity of the petition, we relied on *Benenson* v. *Board of Representatives*, 223 Conn. 777, 783, 612 A.2d 50 (1992), in which this court held that the language of a former provision of the charter, § C-552.2—which is substantially similar to § C6-30-7—permitted the board of representatives only to accept or reject the amendment, not to determine the validity of the protest petition itself. See *Strand/BRC Group, LLC* v. *Board of Representatives*, supra, 342 Conn. 377. Thus, in accordance with *Benenson*, we concluded in *Strand* that the ruling of the board of representatives on the validity of the petition was unauthorized and invalid. Id., 377–78. We also determined that, because the protest petition challenging the amendment did not contain the requisite number of signatures, the petition was not valid, and, therefore, we concluded that the trial court properly sustained the plaintiffs' appeal from the board of representatives' rejection of the amendment. Id., 390.

Similarly, the charter provisions in *Strand*, *Benenson* and the present case authorize the board of representatives only to approve or reject the amendment, not the protest petition. Accordingly, we conclude here, as we did in *Strand*, that the board of representatives did not have the authority to consider the validity of the petition. More specifically, we conclude that, under § C6-40-9 of the charter, the zoning board has the authority to determine the validity of a protest petition

and must do so before referring it to the board of representatives. See id., 377–78.

II

As it did in *Strand*, the board of representatives in the present appeal contends that, regardless of whether it had the authority to decide the validity of the protest petition, it plainly had authority to accept or reject the plaintiff's proposed zoning amendment. Therefore, the board of representatives argues, notwithstanding the validity determination on the petition, its vote on the amendment was proper. In other words, it argues that its vote on the validity of the protest petition was "harmless, superfluous and irrelevant." Conversely, the plaintiff asserts that, if the board of representatives lacked the authority to determine the validity of the petition, it had no basis to review the amendment, and the question of whether the petition contained the necessary number of signatures is irrelevant.

In *Strand*, we recognized that the argument of the board of representatives' might well be persuasive if, notwithstanding the board's erroneous vote on the validity of the protest petition, the petition at issue nevertheless was "a legally valid petition pursuant to the charter." *Strand/BRC Group, LLC* v. *Board of Representatives*, supra, 342 Conn. 379. The petition protesting the amendment in *Strand*, however, was invalid, as a matter of law, because it did not have the requisite number of signatures. See id., 390. Consequently, without a valid petition, the board of representatives lacked the authority to vote on the merits of the amendment. Id. The scenario in the present case is different.

Here, we address the circumstance left open in *Strand*, that is, what happens when the board of representatives erroneously rules on the validity of a protest petition, but the petition is actually a valid petition, in that it contains the requisite number of signatures. For

reasons we discuss next, because the petition protesting the amendment in the present case was valid, in that it contained the signatures of more than 300 landowners, the board of representatives properly considered the merits of the amendment, notwithstanding its erroneous ruling on the validity of the petition.

The starting point in our analysis is to consider the meaning of the term "landowner," as it is used in the charter provision at issue. The plaintiff asserts, and the trial court found, that the interpretation of the term "landowner" is controlled by the cases interpreting "owner" in other protest provisions. Specifically, the plaintiff claims that our interpretation of "landowner" should require that a cotenant is not a landowner unless all cotenants of the jointly held land have signed the petition. In response, the board of representatives asserts that these cases requiring the signatures of cotenants are inapplicable because they address a different type of requirement than that involved here. That is, the protest provisions at issue in those cases were meant to count land, whereas the protest provision in § C6-40-9 that is at issue in this case counts people through their signatures. See, e.g., *Marks* v. *Bettendorf's*, *Inc.*, 337 S.W.2d 585, 594 (Mo. App. 1960) (noting distinction).

Section C6-40-9 of the charter provides in relevant part: "[I]f following a public hearing at which a proposed amendment to the Zoning Regulations . . . a petition is filed with the Zoning Board within ten days after the official publication of the [Zoning] Board's decision thereon opposing such decision, such decision with respect to such amendment shall have no force or effect, but the matter shall be referred by the Zoning Board to the Board of Representatives within twenty days after such official publication, together with written findings, recommendations, and reasons. . . . If any such amendment applies to two or more zones, or

the entire City, the signatures of at least three hundred landowners shall be required, and such signers may be landowners anywhere in the City." The parties agree that the amendment at issue in the present case applied to two or more zones; therefore, it is undisputed that "the signatures of at least [300] landowners . . . anywhere in the [c]ity" were required.

It is important, at the outset, to note that the provision at issue is worded and structured differently from other protest provisions that this court has previously considered. The salient difference is that, unlike other charter provisions, this charter provision envisions satisfaction of protest petition requirements by *signatures of a specific number of landowners*, not the owners of a percentage of the land, or a percentage of the owners of land. Thus, to resolve this appeal, we must assess both what constitutes a landowner under this provision and what the city intended with respect to the counting of signatures of landowners.

Neither the term "landowners" nor "signatures" is defined in § C6-40-9 or anywhere else in the charter. This court has repeatedly explained that, "in the absence of statutory definitions, we look to the contemporaneous dictionary definitions of words to ascertain their commonly approved usage." *Ledyard* v. *WMS Gaming, Inc.*, 338 Conn. 687, 697, 258 A.3d 1268 (2021). "Dictionaries in print at the time the statute was enacted can be most instructive." *Wilton Campus 1691, LLC* v. *Wilton*, 339 Conn. 157, 171, 260 A.3d 464 (2021). "In construing a [municipal] charter, the rules of statutory construction generally apply." (Internal quotation marks omitted.) *Cook-Littman* v. *Board of Selectmen*, 328 Conn. 758, 768, 184 A.3d 253 (2018).

The term "landowner" has been consistently defined in dictionaries in print both shortly before and since 1953, when this charter provision was promulgated. See

Stamford Charter (1954 Rev.) § 553.2 (now § C6-40-9). For instance, the second edition of Webster's New International Dictionary defines "landowner" as "[a]n owner of land." 3 Webster's New International Dictionary (2d Ed. 1957) p. 1389; see, e.g., Funk & Wagnalls New Standard Dictionary of the English Language (1946) p. 1384 (defining "landowner" as "[o]ne who owns land").

In the context of protest petitions, we recognize that, in certain situations, the term "owner" has acquired a specific meaning. Indeed, this court and other courts of this state have addressed the requirements for protest petitions as they relate to ownership of a percentage of land or ownership of a percentage of area under General Statutes § 8-3 (b)[7] and under the Stamford charter. In arriving at the meaning of the term "owner," we have recognized that the purpose of protest provisions is to protect owners who object to a change that will affect their property, and that purpose must be balanced against the public interest. See, e.g., *Steiner, Inc.* v. *Town Plan & Zoning Commission*, 149 Conn. 74, 76, 175 A.2d 559 (1961). Thus, although our cases do not address the term "landowner" specifically or a protest provision that requires only a specified number of landowner signatures, we nevertheless find these cases instructive in effectuating the purpose of protest peti-

[7] General Statutes § 8-3 (b) provides: "Such regulations and boundaries shall be established, changed or repealed only by a majority vote of all the members of the zoning commission, except as otherwise provided in this chapter. In making its decision the commission shall take into consideration the plan of conservation and development, prepared pursuant to section 8-23, and shall state on the record its findings on consistency of the proposed establishment, change or repeal of such regulations and boundaries with such plan. If a protest against a proposed change is filed at or before a hearing with the zoning commission, signed by the owners of twenty per cent or more of the area of the lots included in such proposed change or of the lots within five hundred feet in all directions of the property included in the proposed change, such change shall not be adopted except by a vote of two-thirds of all the members of the commission."

tions and understanding what is required to be an owner of land for purposes of filing a protest petition.

For instance, in *Warren* v. *Borawski*, 130 Conn. 676, 37 A.2d 364 (1944), this court considered protest petitions filed under a zoning ordinance of the city of New Britain. That ordinance required a vote of not less than three-fourths of New Britain's Common Council (council) to pass an amendment "if a protest against such action be filed with the [c]ity [c]lerk by *the owners of 20* [*percent*] *or more, either of the areas of the lots involved in the proposed action, or of areas immediately contiguous thereto and within 500 feet therefrom*: not including [publicly owned] areas in any case." (Emphasis added.) Id., 678 n.1. In *Warren*, protest petitions were filed with the New Britain city clerk, but "[t]he trial court did not give effect to the protests because it concluded that the owners of 20 [percent] of the affected territory had not signed." Id., 679.

On appeal, this court considered whether the trial court had correctly determined that a protest petition signed by one tenant in common, but not by her cotenant, was not valid. See id. This court explained that "[t]he word 'owner' has no fixed meaning but must be interpreted in its context and according to the circumstances in which it is used." Id. Ultimately, this court relied on the purpose of protest petitions and concluded that "[t]he purpose of the [ordinance] in requiring a three-fourths vote of the council if a protest is filed by owners of 20 [percent] of the property affected is to give some protection to those owners against changes to which they object. . . . [T]he cases are nearly unanimous in holding that a cotenant is not an 'owner' when a petition for improvement is involved, and we hold that, as well, within the meaning of the ordinance in question those owning the entire interest in the property must join in order to make a valid protest." Id., 681.

In *Woldan* v. *Stamford*, 22 Conn. Supp. 164, 164 A.2d 306 (1960), the court considered a provision in the Stamford charter that provided for a protest mechanism. The ordinance at issue provided that, "if *the owners of* [*20 percent*] *or more of the privately-owned land located within five hundred feet of the borders of such area*, file a signed petition with the zoning board, the decision would have no force or effect but would be referred to the board of representatives for approval or rejection." (Emphasis added; internal quotation marks omitted.) Id., 165. Relying on *Warren*, the court explained that, "[w]ithin the meaning of the ordinance involved in this case, those owning the entire interest in the property must join to make a valid protest." Id., 166. This interpretation was cited favorably by this court in *Stamford Ridgeway Associates* v. *Board of Representatives*, 214 Conn. 407, 418 n.5, 572 A.2d 951 (1990).

In *Stamford Ridgeway Associates*, this court quoted from a letter written by Attorney Robert A. Fuller. Attorney Fuller explained that "[i]t is also clear from [*Woldan* v. *Stamford*, supra, 22 Conn. Supp. 164], which interpreted [§ C-552.2] of the [c]harter, that all of the property owners of a specific piece of property must sign the [protest] petition for their land to be counted . . . ." (Internal quotation marks omitted.) *Stamford Ridgeway Associates* v. *Board of Representatives*, supra, 214 Conn. 418 n.5. Section C-552.2 of the charter required that, to be valid, a protest petition must be filed by either "[20] percent or more of the owners of the privately-owned land in the area included in any proposed amendment to the Zoning Map, or . . . the owners of [20] percent or more of the privately-owned land located within five hundred feet of the borders of such area . . . ." (Internal quotation marks omitted.) Id., 412–13.

Those cases are consistent with our treatment of § 8-3. In discussing the protest provision in § 8-3, this court explained that, "[b]ecause zoning legislation is in dero-

gation of private rights, the legislature in this state has made provision for advertised public hearings, the filing of petitions of protest and other safeguards to guarantee a full and fair consideration of any original enactment or subsequent change of zone boundaries or regulations . . . and to afford protection to property owners against changes to which they object. . . . Strict compliance with the statute is a prerequisite to zoning action. . . . The provisions of the statute must be construed in a way to afford just protection to threatened rights of individual property owners as well as to further the public interest." (Citations omitted.) *Steiner*, *Inc.* v. *Town Plan & Zoning Commission*, supra, 149 Conn. 76.

Section 8-3 "allows two different groups of objectors to trigger the two-thirds vote provision. Protests can be filed either by (1) owners of 20 [percent] or more of the area of the land included in the proposed zone change or (2) owners of 20 [percent] of the lots within 500 feet in all directions of the property included in the proposed change. The two-thirds vote can be required if the petition satisfies either category, and the two computations are not added together." (Emphasis omitted.) R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 4:2, p. 61; see General Statutes § 8-3 (b). "With either type of protest petition, what is required is a protest filed by the owners (whether one owner or many owners) of at least 20 [percent] of certain areas. It is not the owners of 20 percent of the lots with whom we are concerned but the owners of 20 percent of the area of lots. [When] there is more than one owner of a lot, such as a husband and wife jointly owning a lot, those owning the entire interest in the property must jointly object to the change." (Footnote omitted; internal quotation marks omitted.) 9 R. Fuller, supra, p. 62.

Again, the aforementioned protest provisions dealt with a percentage of owners of the land or the owners

of a percentage of the land, not a strict number of signatures of landowners. In that respect, § C6-40-9 of the charter is unique. See, e.g., *Marks* v. *Bettendorf's, Inc.*, supra, 337 S.W.2d 594 (noting distinction between types of protest petitions in which "the sufficiency of the protest is . . . measured by the area represented" and those in which sufficiency is measured "by the number of the owners that signed"). Section C6-40-9 therefore requires us to also address the signature requirement and, more specifically, how the signatures of landowners are counted under this particular charter provision. To be sure, although our case law is helpful in understanding how we have interpreted the term "owner" of land for protest petition purposes and indicates that all joint owners must participate for the protest related to their jointly owned property to be valid, it does not resolve how the actual signatures of landowners should be counted once all joint owners have produced their signatures on a protest petition. We turn now to that question.

As we explained, the protest provisions that have been interpreted by the courts of this state are different from the provision at issue in § C6-40-9 of the charter. Indeed, the Connecticut cases that have previously interpreted protest provisions defined "owner," rather than "landowner." See, e.g., *Warren* v. *Borawski*, supra, 130 Conn. 681. Whether the term "owner," as described in our case law, has the same meaning as "landowner" in the charter provision at issue here is not a question we must answer in the present case. This is so because, even if we assume, without deciding, that the case law on "owner," related to percentage or area requirements, controls our interpretation of "landowner," as that term relates to the distinct signature requirement, the remaining question is what it means when all owners of land sign a petition, especially given that the protest provision in § C6-40-9 is focused solely on the number

of signatures. In other words, the question is whether the signature of each of the owners counts toward the signature requirement.

The term "signature" is defined as "[t]he name of any person, written with his own hand to signify that the writing which precedes accords with his wishes or intentions . . . ." 4 Webster's New International Dictionary, supra, p. 2335; see, e.g., Funk & Wagnalls New Standard Dictionary of the English Language, supra, p. 2273 (defining "signature" as "[a] person's name, or something representing it, written, stamped, or inscribed by himself, or by one properly deputized, as a sign of agreement or acknowledgment"). The plain meaning of this term, as applied to § C6-40-9 of the charter, is that, so long as a person is a landowner, i.e., an owner of land, and that landowner writes his or her name on a protest petition, that is a signature. Indeed, when the protest petition is based on the number of signatures, rather than the percentage of land, the signature of each joint owner counts toward the total number of signatures required. See, e.g., *Rhodes* v. *Koch*, 195 Mo. App. 182, 186, 187, 189 S.W. 641 (1916) (holding "that those signing [the] remonstrance as husband and wife were each owners of the land and were *each to be counted as such*" for purposes of protest petition that required "a majority of the resident owners of lands" but did "not require a majority of the estates abutting the street" (emphasis altered)), cert. quashed sub nom. *State ex rel. Koch* v. *Farrington*, 195 S.W. 1044 (Mo. 1917).

Applying that definition of "signature" to § C6-40-9 of the charter, we conclude that, even if it is assumed that all owners of jointly held property must sign a petition in order to be deemed landowners, when the signature of each joint owner is affixed to the protest petition, a plain reading of § C6-40-9, which simply requires the signatures of at least 300 landowners, dic-

tates that each landowner's name written on the petition must count toward the total number of signatures. See, e.g., id. Stated succinctly, if all joint owners sign, all of their signatures are counted.

We find no support for the idea implicitly adopted by the trial court that a joint landowner should not have his or her individual signature counted toward satisfying the signature requirement for purposes of § C6-40-9, even when all the other owners of the jointly held land have also signed the protest petition.[8] As we explained, we assume, without deciding, that, when one owner of jointly held land signs and the other owners do not, the law does not consider the one signature valid because it does not represent the full ownership in land for purposes of a protest petition. It does not follow, however, that, when all joint owners *do* sign, their signatures morph into one name written on the petition merely because they own a parcel of land together. Section C6-40-9 requires a certain number of signatures of landowners, not a certain number of parcels of land. Consistent therewith, each name written on the petition is a signature. Thus, even if we accept the premise that all joint owners must sign, when that requirement is met, each owner's name written on the petition counts as a signature of a landowner. By requiring all joint tenants to sign, but counting each of the signatures separately, we conclude that our interpretation aligns with the policy behind protest petitions, which affords "just protection to threatened rights of individual property owners as well as to further the public interest." *Steiner, Inc.* v. *Town Plan & Zoning Commission*, supra, 149 Conn. 76.

In the present case, the parties stipulated, in relevant part, that "120 signers were the sole owners of privately owned land in [the city]," "240 signers were the owners

[8] See footnote 4 of this opinion.

of privately owned property in [the city] where there were other owners with an interest in the property who also signed," and "110 signers were the owners of privately owned property in [the city] where one or more owners with an interest in the property did not sign . . . ."[9] On the basis of that stipulation, we conclude that, for the purposes of § C6-40-9 of the charter, there were valid signatures of at least 360 landowners—the signatures of 120 sole landowners and the signatures of 240 joint landowners. Put differently, the names of 360 landowners were written on the protest petition. The trial court therefore incorrectly found that there were "only 240 valid signatures . . . ." (Footnote omitted.)

Accordingly, we conclude that, despite the fact that the board of representatives did not have the authority to determine the validity of the protest petition, it nevertheless was presented with a valid petition, and, therefore, could reach the merits of the zoning amendment. Because the trial court concluded that the petition was not valid, it did not address the plaintiff's claim that the board of representatives erred in rejecting the amendment. Because we now conclude that the petition was valid, we remand the case back to the trial court for consideration of the plaintiff's claim regarding the decision by the board of representatives on the merits of the amendment.

The judgment is reversed and the case is remanded for consideration of the plaintiff's remaining claim concerning the decision of the board of representatives on the merits of the zoning amendment.

[9] Although this stipulation is not a model of clarity, we understand the stipulation to mean that 240 signers were the owners of privately owned property in Stamford where all joint landowners also signed the protest petition, which is consistent with the representation of Valerie T. Rosenson, the legislative officer of the board of representatives, who determined that "240 signers were determined to be the joint landowners of 120 parcels of land in the [city] . . . ." (Citation omitted.) See footnote 4 of this opinion.

In this opinion ROBINSON, C. J., and KAHN, ECKER and KELLER, Js., concurred.

D'AURIA, J., concurring. I concur in the result because I agree with the majority that the Board of Representatives properly reached the merits of the zoning amendment, and, thus, the matter should be remanded to the trial court to consider the plaintiff's claims regarding that decision. I also agree with the majority that the Stamford Charter delegates authority to the Zoning Board of the City of Stamford to validate a protest petition before referring it to the Board of Representatives. However, as in my dissenting opinion in the companion case we also decide today; see *Strand/BRC Group, LLC* v. *Board of Representatives*, 342 Conn. 365, 390, A.3d (2022) (*D'Auria, J.*, dissenting); which I incorporate by reference, I do not agree that the Board of Representatives' proper exercise of authority hinges on whether it was presented with what the majority declares to be a "valid" protest petition. The majority concludes that, unlike the situation in *Strand/BRC Group, LLC*, the protest petition in this case contained the requisite number of signatures, and, therefore, the Board of Representatives properly considered the merits of the amendment. As I discussed in detail in *Strand/BRC Group, LLC*, I take issue with the majority's holding for two reasons. First, I believe that the Board of Representatives' exercise of authority on the merits of an amendment does not depend on the validity of the protest petition because the signature provision is directory, not mandatory. Second, I believe that, because the plaintiff has no vested right in a particular legislative outcome, the court should refrain from intervening in the local legislative process undertaken by the Board of Representatives, such as by examining how signatures in the petition were counted. Accordingly, I respectfully concur.

ORDERS

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ORDERS

STATE OF CONNECTICUT *v.* CHARLES MARSHALL

The defendant's petition for certification to appeal from the Appellate Court, 206 Conn. App. 209 (AC 43866), is denied.

Charles Marshall, self-represented, in support of the petition.

Decided March 1, 2022

STATE OF CONNECTICUT *v.* ANDRES C.

The defendant's petition for certification to appeal from the Appellate Court, 208 Conn. App. 825 (AC 43081), is granted, limited to the following issues:

"1. Did the Appellate Court incorrectly conclude that the defendant had waived his claim that he was entitled to disclosure of the contents of the complainant's journals as the discoverable statements of a witness?

"2. Did the Appellate Court incorrectly conclude that the *Brady* review; see *Brady* v. *Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963); of the complainant's journals by a nonlawyer member of the state's attorney's office was constitutionally adequate?"

Richard Emanuel, in support of the petition.

Matthew A. Weiner, assistant state's attorney, in opposition.

Decided March 1, 2022

STATE OF CONNECTICUT *v.* SIGFREDO ROSARIO

The defendant's petition for certification to appeal from the Appellate Court, 209 Conn. App. 550 (AC 42827), is denied.

Raymond L. Durelli, assigned counsel, in support of the petition.

James M. Ralls, assistant state's attorney, in opposition.

Decided March 1, 2022

GEORGE BERKA *v.* CITY OF WATERBURY

The plaintiff's petition for certification to appeal from the Appellate Court, 210 Conn. App. 901 (AC 44395), is denied.

George Berka, self-represented, in support of the petition.

Daniel J. Foster, in opposition.

Decided March 1, 2022

JAMES K. GOODWIN *v.* JOHN F. FEDUS ET AL.

The named defendant's petition for certification to appeal from the Appellate Court (AC 42977) is denied.

John L. Bonee III, in support of the petition.

Decided March 1, 2022

CHRISTIANA TRUST, TRUSTEE *v.* HEATHER BLISS ET AL.

The defendant Janal, LLC's petition for certification to appeal from the Appellate Court (AC 44967) is denied.

Mark M. Kratter, in support of the petition.

Jeffrey M. Knickerbocker, in opposition.

Decided March 1, 2022

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CONNECTICUT APPELLATE REPORTS

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CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

LAUREN T. SEDER *v.* ROBERT M. ERRATO
(AC 43379)

Cradle, Alexander and Eveleigh, Js.

Syllabus

The defendant appealed from the judgment of the trial court dissolving his marriage to the plaintiff. During the dissolution proceedings, the defendant claimed that the parties had entered into a prenuptial agreement but that the agreement was missing. The court held an evidentiary hearing to permit the defendant to attempt to prove the existence and terms of that agreement by offering collateral evidence as to its contents. The defendant attempted to introduce as a proposed exhibit a boilerplate prenuptial agreement that had been downloaded from an online publisher of legal documents in order to prove the content of the parties' alleged agreement. The document had several areas that were not populated and there were no financial disclosures attached. The plaintiff testified that she had signed a prenuptial agreement but that the defendant had not signed it, and she had no clear recollection as to what the terms might have been or what the defendant's financial disclosures may have included. The court found that, although there was a premarital agreement that was signed prior to the date of the marriage, there was a lack of evidence as to the terms of the agreement, and concluded that the proposed exhibit would not be allowed into evidence. Following a trial, the court ordered the defendant to contribute to the plaintiff's legal fees and costs. On the defendant's appeal to this court, *held*:

1. The trial court did not err in failing to enforce the alleged prenuptial agreement, the evidence having amply supported the court's finding that the defendant did not sufficiently establish the contents of the agreement: although the defendant presented some evidence to prove the contents of the alleged missing agreement, including the proposed exhibit, the court found that no specific date of the agreement had been proven and there was a conflict with the nature and depth of the financial

disclosures; moreover, contrary to the defendant's claim, the court did not impermissibly favor the plaintiff's lack of memory of the terms of the alleged agreement or completely overlook the evidence the defendant proffered, the defendant having failed to appreciate that it was within the province of the court, when sitting as the fact finder, to weigh the evidence presented and determine its credibility and effect, and the court found the plaintiff's testimony generally credible throughout the trial and significant portions of the defendant's testimony to be not credible; accordingly, this court, deferring to the trial court's assessments concerning credibility, determined that the trial court did not abuse its discretion in excluding the defendant's proposed exhibit.

2. There was no merit to the defendant's claim that the trial court erred in awarding attorney's fees to the plaintiff: the court methodically analyzed the plaintiff's purported justifications for entitlement to attorney's fees and determined that an award of attorney's fees was warranted pursuant to the applicable statute (§ 46b-62 (a)) for payment of attorney's fees in dissolution proceedings; moreover, there was no support in the record for the defendant's claim that the court abused its discretion in awarding attorney's fees in the amount of $280,000.

Argued January 5—officially released March 15, 2022

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Hartford where the defendant filed a counterclaim; thereafter, the matter was tried to the court, *Hon. Gerard I. Adelman*, judge trial referee; judgment dissolving the marriage and granting certain other relief, from which the defendant appealed to this court; subsequently, the court, *Hon. Gerard I. Adelman*, judge trial referee, granted the plaintiff's motion for attorney's fees, and the defendant filed an amended appeal. *Affirmed.*

Daniel J. Krisch, for the appellant (defendant).

Michael S. Taylor, with whom were *Brendon P. Levesque*, and, on the brief, *Scott T. Garosshen*, for the appellee (plaintiff).

Opinion

EVELEIGH, J. In this dissolution of marriage action, the defendant, Robert M. Errato, appeals from the judgment of the trial court dissolving his marriage to the plaintiff, Lauren T. Seder, and challenges the trial court's financial orders and award of attorney's fees. On appeal, the defendant claims that the court improperly (1) refused to enforce the parties' prenuptial agreement and (2) ordered the defendant to pay $280,000 in attorney's fees. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to this appeal. The parties first met in October, 1998, at the Oakdale Theater in Wallingford, which was operated by the defendant. On October 10, 2003, the parties were married in Fort Meyers, Florida. This was each party's third marriage. Their marriage was good for the first few years, but a breakdown of the relationship began around 2007 or 2008. By the spring of 2014, the plaintiff came to believe that the marriage was beyond saving. The parties discussed and negotiated their separation in 2014, but that process was not successful. Collaboration eventually gave way to litigation.

The present dissolution action was filed by the plaintiff on May 12, 2015. The parties continued to discuss amicable terms to resolve the divorce and took no action to further their respective cases until the fall of 2015. On October 2, 2015, the plaintiff filed a motion for alimony pendente lite, which was later granted by the court. The dissolution trial was then held over nineteen days between May 1, 2017, and June 26, 2019. There was also a multiday hearing on the defendant's motion to modify alimony pendente lite in the middle of trial, which resulted in testimony and other legal proceedings covering a total of twenty-three days.

In a memorandum of decision dated August 29, 2019, the court dissolved the parties' marriage and ordered the defendant, among other things, to pay the plaintiff periodic monthly alimony in the amount of $2500 and a lump sum alimony payment in the amount of $450,000. The court also ordered the defendant to contribute to the plaintiff's legal fees and costs in the amount of $250,000. This appeal followed.

The plaintiff subsequently moved for an award of appellate attorney's fees. On December 4, 2019, the defendant filed his opposition thereto. On December 16, 2019, the trial court ordered the defendant to contribute an additional $30,000 to the plaintiff's legal fees for her defense of this appeal, finding that the plaintiff lacked access to liquid funds to pay for her own legal fees. Thereafter, the defendant filed an amended appeal. Additional facts and procedural history will be set forth as necessary.

I

The defendant first claims that the trial court improperly refused to enforce the parties' prenuptial agreement and argues that undisputed testimony and documents established the terms of that agreement. The plaintiff, on the other hand, takes exception to the characterization of the defendant's claim. She argues that although the defendant suggests that the trial court erred in refusing to enforce the alleged prenuptial agreement, the court never reached enforcement because the court properly concluded that there were no terms of an agreement or any associated financial disclosures that it could construe, much less enforce. We agree with the plaintiff.[1]

[1] The plaintiff also argues that the appeal is moot with respect to the alleged prenuptial agreement because the defendant fails to challenge the trial court's striking of count one of his counterclaim, which pleaded the existence of a prenuptial agreement, and that his briefing on appeal is inadequate. We disagree. Although the defendant does not explicitly state that he is challenging the court's motion to strike, it is clear that in challenging

In its memorandum of decision, the court set forth the following factual background: "The parties both testified that they agreed to have a prenuptial agreement. The defendant testified that the couple started discussing a prenuptial agreement as early as August of 2003. He claims that it was the plaintiff's idea to have such an agreement and that they both agreed that they would not marry without one. The defendant testified that at the time of the marriage, in the fall of 2003, he had assets in excess of ten million dollars . . . . Surprisingly, despite the defendant's wealth and dealings with many lawyers through his different business ventures, he testified that he downloaded a generic prenuptial agreement from the Internet and filled it out himself. The evidence is somewhat contradictory on this issue. At one point, the defendant claimed that the plaintiff did the first draft of the agreement, but now testified that he did it as a proactive move. Regardless, by early October of 2003, there was an agreement in draft.

"The plaintiff testified that she prepared a financial disclosure as part of the process and gave the one . . . page form to the defendant. She agreed that the defendant did some type of financial disclosure as well, and it might have been on the same one . . . page form that she had used. When questioned by the plaintiff's counsel about the nature of the defendant's financial

the judgment of dissolution and financial orders generally, he specifically takes exception to the court's finding that a valid prenuptial agreement did not exist. That is precisely the basis on which the motion to strike was granted, and the defendant briefs all three independent bases on which the court's decision is predicated. See *Leonova* v. *Leonov*, 201 Conn. App. 285, 314–15, 242 A.3d 713 (2000) ("although precedent establishes that an appeal or claim of error can be rendered moot if the appellant neglects to challenge every independent ground on which the challenged ruling may be sustained, the defendant here has challenged both findings on which the finding of contempt was predicated"), cert. denied, 336 Conn. 906, 244 A.3d 146 (2021). The defendant provides adequate analysis, legal support, and relevant citations to the record for our review of his claim on the merits. Accordingly, we conclude that the defendant's claim is neither moot nor inadequately briefed.

disclosures to the plaintiff, the defendant was rather unsure of what was specifically included in his disclosure. He did admit that he had not updated the value of those assets prior to the agreement being finalized. The defendant did state that his ten million dollars . . . was more like ten million, four hundred thousand, to ten million, five hundred thousand dollars . . . by the first few days of October of 2003. He could not, with any assurance, recall if he had disclosed all of his various bank accounts and their balances, or if he had disclosed his capital gains income or not. The defendant likewise could not offer an opinion as to whether or not such a disclosure was of value and should have been included on his financial disclosure to the plaintiff.

"The defendant did show a draft prenuptial agreement to Attorney Thomas Benneche who had done work for the defendant on some of the Oakdale Theater issues and other business matters throughout the 1990s. Attorney Benneche, who practiced primarily real estate law, testified that he had met with his client on another matter, and at the end of the meeting, the defendant asked him to look over the agreement. Benneche obliged his client. He made a copy of the draft to use for the discussion. He told the defendant that there were no disclosures attached to the draft and that was a problem. He also suggested to him that he should make some other changes. Benneche testified that he never saw an executed agreement, never saw a revised draft of the agreement, never saw any of the financial disclosures and never spoke to the plaintiff about the agreement again until this litigation commenced. The attorney also admitted that he had no knowledge of the financial disclosure that had been made by the defendant including any of the defendant's pending lawsuits and any estimated value of any recovery as a result of such lawsuits. Benneche also testified that he did not take anyone's acknowledgement on the prenuptial

agreement and that he cannot find the copy he made when the defendant was in his office in 2003 some sixteen . . . years earlier.

"The plaintiff testified that she signed the agreement, but at that time the defendant had not signed it. She claims that she gave duplicate originals to the defendant, but after that, she never saw an executed copy, nor did she ever receive an executed agreement or copy. It was only years later, once marital difficulties had arisen, that she asked the defendant for a copy of the agreement. She testified that she has no clear recollection as to what the terms might have been or what the defendant's financial disclosures might have included. It was her testimony that although they were living together informally prior to the marriage and she had some idea of the defendant's business ventures from general conversation, he was a very private person about his affairs. She knew he had a lot of money, more than she had, and that they were living well. The defendant also testified that he did not have a copy of a signed agreement." Therefore, no signed agreement was ever presented to the court.

The court explained that "[t]he defendant attempted to offer collateral evidence as to the content of the prenuptial agreement by way of a proposed defendant's exhibit 'C.' The plaintiff filed a motion in limine to preclude such an exhibit . . . . The court ruled that it would hold an evidentiary hearing on the issue. That hearing took place on January 16, 2019. After the hearing, the court granted the plaintiff's motion in limine and precluded the defendant's proposed exhibit. The same was marked as the defendant's exhibit 'C,' for identification only."[2]

[2] The court explained: "As with other issues in this case, the matter of the alleged prenuptial agreement had been litigated more than once prior to the court's ruling as to defendant's exhibit 'C,' for identification only. Judge Albis granted a motion to strike regarding the alleged agreement on March 31, 2016 . . . . This court ordered the defendant not to ask questions

The plaintiff's motion in limine to preclude the defendant's proposed exhibit, which was referenced by the court in its memorandum of decision, was filed on July 17, 2018. The plaintiff argued that the defendant's proposed exhibit K (later marked as exhibit C)[3] was not an executed or enforceable prenuptial agreement, but rather appeared to be an attempt to "populate" a boilerplate prenuptial agreement document. She argued that proposed exhibit K—an unfinished, unsigned and undated document—should not be introduced into the trial as evidence because it was not relevant. At the preliminary hearing on the plaintiff's motion on July 19, 2018, the plaintiff's counsel argued that the defendant could not proceed on his claim for enforcement of a prenuptial agreement because no written, signed agreement existed. In an attempt to provide the defendant with "the fairest possible trial of all the issues," the court held an evidentiary hearing based on the defendant's claim that he could prove the existence and terms of the alleged missing premarital agreement with other collateral evidence.

At the conclusion of the evidentiary hearing on the motion to preclude the defendant's proposed exhibit, the court observed that "it's clear that the Connecticut law, both statutory and common law, allows a party to

about the alleged agreement in a deposition on September 8, 2016 . . . . Judge Simon refused to allow the defendant to plead the alleged agreement on October 12, 2016 . . . and Judge Nastri's orders regarding the plaintiff's motion to strike the defendant's special defenses regarding the prenuptial agreement issued on August 29, 2017 . . . . All the above referenced rulings prohibited the pleading of the prenuptial agreement except for the last ruling which allowed its pleading as a defense only to allegations of fraudulent conveyances by the defendant to his adult sons."

[3] For clarification purposes, during the evidentiary hearing that was held regarding the alleged lost prenuptial agreement, defendant's proposed exhibit K was marked as exhibit C and admitted as a full exhibit for purposes of that hearing only. Following that hearing, the court reclassified and referred to that exhibit as exhibit C for identification only. Thus, proposed exhibit K and exhibit C are the same document.

prove the existence and terms of a contract by parol evidence if that contract is lost, stolen or destroyed. Our Uniform Commercial Code provides for such a procedure. As has been introduced, our Connecticut Code of Evidence § 10-3 provides for it as well." The court then found that, although "[t]here was a premarital agreement" that "was signed prior to the date of the marriage," there was "a lack of evidence as to the terms of the agreement." The court stated: "The defendant has offered several forms, which he testified he used, and the plaintiff agrees that she signed an agreement, but the court has heard no testimony from the plaintiff as to what those terms were." The court then stated that "[t]he credibility of each parties' testimony has been found wanting by the court. For two such people, one a very successful businessman and the other an attorney, to rely on an online form for such an important matter is really quite incredible. It appears to the court that neither party gave this agreement any serious consideration or thought. This is not the first marriage for either party. The defendant, by all accounts, was a wealthy person with children from a previous marriage to protect. The plaintiff also is a mother of children from a previous marriage. And yet neither sought any professional advice from an experienced matrimonial attorney. The plaintiff sought none at all, and the defendant asked a commercial and real estate lawyer for a quick look-see, done as a favor without a fee for their client." The court found that "even addressing the facts in the best light to support the defendant, [*the court*] *cannot find by a preponderance of the evidence that it knows the terms of the agreement* . . . ." (Emphasis added.)

In addition to concluding that the defendant failed sufficiently to prove the terms of the allegedly lost prenuptial agreement and, thus, that a valid prenuptial agreement did not exist, the court also found that a

valid agreement did not exist because no specific date of the alleged agreement had been proven and because there was a "conflict as to the nature and depth of [financial] disclosures." Accordingly, the court concluded that "[e]xhibit C, formerly known as K, will not be allowed into evidence. The defendant's exhibits previously allowed in during the evidentiary hearing will now be reclassified as ID only to preserve the record."

In the present appeal, the parties disagree as to the standard of review applicable to the defendant's claim. The defendant argues that our standard of review in this case is plenary because the enforceability of a prenuptial agreement presents a mixed question of fact and law. The plaintiff disagrees and argues that an abuse of discretion standard of review is applicable here because a trial court's ruling as to whether evidence is relevant and probative is subject to review for abuse of discretion. We agree with the plaintiff.

In reviewing the court's findings and conclusions with respect to the alleged prenuptial agreement, the trial court never reached the question of, or conducted a hearing on, the enforceability of the purported agreement. This is because the trial court made clear that there existed no valid prenuptial agreement for which it knew the terms. To be sure, in addressing one of the defendant's claims regarding the allocation of marital property, the court stated: "The court, ruling that there is no valid prenuptial agreement, eliminates such a claim by the defendant . . . ." As previously set forth, the court's conclusion rested on three separate grounds: (1) there was "a lack of evidence as to the terms of the agreement," (2) the defendant failed to prove a specific date of the alleged agreement, and (3) the defendant failed to prove the nature and depth of the financial disclosures. On those bases, the court precluded the defendant from introducing exhibit C (formerly exhibit K) into the dissolution proceedings.

Because the court did not reach the question of enforcement, we interpret the defendant as challenging the bases for the court's decision to exclude exhibit C—the unsigned, undated, and unfinished boilerplate prenuptial agreement document—from the dissolution proceedings. As is well known, "[t]he trial court's ruling on the admissibility of evidence is entitled to great deference. . . . [T]he trial court has broad discretion in ruling on the admissibility . . . of evidence . . . [and its] ruling on evidentiary matters will be overturned only upon a showing of a clear abuse of the court's discretion." (Internal quotation marks omitted.) *Brown* v. *Brown*, 130 Conn. App. 522, 531, 24 A.3d 1261 (2011).

With this standard in mind, we turn our attention to the court's principal basis for excluding exhibit C from the general dissolution proceedings—namely, that the document presented was not relevant because the defendant failed to sufficiently prove the terms of the allegedly lost or missing prenuptial agreement. The defendant assigns error to this finding because, in his view, there was undisputed testimony and documents to establish the terms of the agreement. The defendant is arguing essentially that the court abused its discretion in excluding the proposed exhibit because the court's finding that he did not sufficiently prove the contents of the alleged missing prenuptial agreement through secondary evidence is clearly erroneous. See, e.g., *Host America Corp.* v. *Ramsey*, 107 Conn. App. 849, 855, 947 A.2d 957 ("[t]he plaintiff first claims that the court abused its discretion in denying its application for injunctive relief because the court's finding that the defendants proved the former existence, present unavailability and contents of the defendants' employment agreements through secondary evidence is clearly erroneous"), cert. denied, 289 Conn. 904, 957 A.2d 870 (2008).

"The factual findings of a trial court must stand . . . unless they are clearly erroneous or involve an abuse of discretion." (Internal quotation marks omitted.) *Hammel* v. *Hammel*, 158 Conn. App. 827, 832, 120 A.3d 1259 (2015). "A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . . Because it is the trial court's function to weigh the evidence and determine credibility, we give great deference to its findings. . . . In reviewing factual findings, [w]e do not examine the record to determine whether the [court] could have reached a conclusion other than the one reached. . . . Instead, we make every reasonable presumption . . . in favor of the trial court's ruling." (Internal quotation marks omitted.) Id., 832–33.

Section 10-3 of the Connecticut Code of Evidence provides four instances in which secondary evidence may be introduced to establish the contents of a document: (1) when the originals are lost or destroyed, (2) when the originals are not obtainable by any reasonably available judicial process or procedure, (3) when the originals are in the possession or control of the opponent, or (4) when the contents relate to a collateral matter. Conn. Code Evid. § 10-3. "The cases and the commentaries are . . . in substantial agreement that a party must undertake a twofold burden in order to recover on a document that he cannot produce. Such a party must demonstrate both (a) the former existence and the present unavailability of the missing document, and (b) the contents of the missing document." *Connecticut Bank & Trust Co.* v. *Wilcox*, 201 Conn. 570, 573, 518 A.2d 928 (1986).

Our careful review of the record reveals that the court did not err in finding that the defendant failed to prove

the contents of the alleged missing prenuptial agreement. The defendant did, as he claims, present some testimony from himself and Benneche about the alleged prenuptial agreement and its terms. In particular, he introduced certain form prenuptial agreements, such as exhibit C, which he downloaded from U.S. Legal Forms, an online publisher of legal documents, in an attempt to prove the contents of the alleged agreement. He testified that he made only minor changes to the document prior to giving it to the plaintiff. He acknowledged, however, that the form had certain areas that were not populated. He thus testified to the areas he populated prior to giving the document to the plaintiff. He further acknowledged that exhibit C did not have financial disclosures attached to it but testified that the final agreement did have some type of asset distribution with the last version.[4]

Benneche also testified that he did review a draft of a prenuptial agreement with the defendant and had a recollection of some but not all of the pages of the presented form document. He testified, however, that he never saw the financial disclosures that allegedly accompanied the document or a copy of an executed prenuptial agreement between the parties. Benneche also indicated that he never witnessed the parties sign the document.

Although the defendant did present some evidence to prove the contents of the alleged missing agreement, we disagree with the defendant's contention that the court impermissibly favored the plaintiff's lack of memory of the terms of the alleged prenuptial agreement and completely overlooked the evidence he proffered of the contents of the alleged prenuptial agreement.

[4] When asked whether the last version contained an asset distribution, the defendant responded in the affirmative but stated: "Well, not necessarily attached."

The defendant fails to appreciate "that [i]t is within the province of the trial court, when sitting as the fact finder, to weigh the evidence presented and determine the credibility and effect to be given the evidence." (Internal quotation marks omitted.) *Ravetto* v. *Triton Thalassic Technologies, Inc.*, 285 Conn. 716, 728, 941 A.2d 309 (2008). In the court's memorandum of decision, it found that the plaintiff's testimony was "generally credible throughout the trial," and explicitly stated that "[t]he court finds significant portions of the defendant's testimony not to be credible, including but not limited to his description of the plaintiff's behavior during his period of depression and his allegations of fraud raised against the plaintiff . . . ."

The court also explicitly stated at the conclusion of the evidentiary hearing on the motion in limine regarding the proposed exhibit that "[t]he credibility of each parties' testimony [had] been found wanting by the court." This includes the testimony of the defendant. The court further found incredible that the defendant, "a very successful businessman," and the plaintiff, an attorney, would "rely on an online form for such an important matter . . . ." The court was permitted, in its role as fact finder, to determine what weight, if any, to give the testimony presented by the defendant. It is clear little weight was given. Deferring, as we must, to the trial court's assessments concerning credibility, we have little difficulty concluding that the evidence amply supported the trial court's finding that the defendant did not sufficiently establish the terms of the alleged missing prenuptial agreement. See *D. S.* v. *R. S.*, 199 Conn. App. 11, 18, 234 A.3d 1150 (2020) ("[a]n appellate court must defer to the trier of fact's assessment of credibility because [i]t is the [fact finder] . . . [who has] an opportunity to observe the demeanor of the witnesses and the parties; thus [the fact finder] is best able to judge the credibility of the witnesses and to

draw necessary inferences therefrom" (internal quotation marks omitted)). We therefore cannot conclude that the court abused its discretion in excluding the defendant's proposed exhibit, and, consequently, did not err in failing to enforce the alleged prenuptial agreement.[5]

II

We turn next to the decision of the court ordering the defendant to contribute $280,000 toward the plaintiff's attorney's fees. The American rule, followed by Connecticut, generally requires that each party compensate his or her own lawyers. See, e.g., *Mangiante* v. *Niemiec*, 98 Conn. App. 567, 570, 910 A.2d 235 (2006). This rule, like almost every general rule, admits of various exceptions. See, e.g., *Lederle* v. *Spivey*, 332 Conn. 837, 843–44, 213 A.3d 481 (2019); *Ramin* v. *Ramin*, 281 Conn. 324, 351, 915 A.2d 790 (2007).

One such exception to the American rule is when the imposition of attorney's fees is permitted by statute. For example, General Statutes § 46b-62 (a) authorizes a trial court to award attorney's fees in a dissolution proceeding when appropriate in light of the "respective financial abilities" of the parties and the equitable factors listed in General Statutes § 46b-82. Our Supreme Court has set forth "three broad principles by which these statutory criteria are to be applied. First, such awards should not be made merely because the obligor has demonstrated an ability to pay. Second, where both parties are financially able to pay their own fees and expenses, they should be permitted to do so. Third, where, because of other orders, the potential obligee has ample liquid funds, an allowance of [attorney's] fees is not justified." (Internal quotation marks omitted.)

[5] Because we conclude that exclusion of the defendant's proposed exhibit was proper on this basis, we need not reach the other two independent bases the court set forth for exclusion of the document.

Hornung v. *Hornung*, 323 Conn. 144, 169–70, 146 A.3d 912 (2016).

"A determination of what constitutes ample liquid funds . . . requires . . . an examination of the total assets of the parties at the time the award is made. . . . *Anderson* v. *Anderson*, 191 Conn. 46, 59, 463 A.2d 578 (1983). We have recognized, however, that [t]he availability of sufficient cash to pay one's attorney's fees is not an absolute litmus test . . . . [A] trial court's discretion should be guided so that its decision regarding attorney's fees does not undermine its purpose in making any other financial award. *Devino* v. *Devino*, 190 Conn. 36, 38–39, 458 A.2d 692 (1983); see also, e.g., *Grimm* v. *Grimm*, 276 Conn. 377, 398, 886 A.2d 391 (2005) (not awarding $100,000 in attorney's fees to wife would have necessarily eviscerate[d] any benefit she would have received from $100,000 lump sum alimony award), cert. denied, 547 U.S. 1148, 126 S. Ct. 2296, 164 L. Ed. 2d 815 (2006)." (Internal quotation marks omitted.) *Hornung* v. *Hornung*, supra, 323 Conn. 170.

"Whether to allow counsel fees . . . and if so in what amount, calls for the exercise of judicial discretion. . . . An abuse of discretion in granting counsel fees will be found only if [an appellate court] determines that the trial court could not reasonably have concluded as it did." (Internal quotation marks omitted.) *Giordano* v. *Giordano*, 203 Conn. App. 652, 661, 249 A.3d 363 (2021).

In the present appeal, the defendant argues that the court improperly ordered him to pay the plaintiff $280,000 toward her attorney's fees. He claims that the court (1) abused its discretion in awarding the fees under § 46b-62 because the plaintiff has sufficient funds from which to pay her attorneys, (2) improperly ordered the attorney's fees because the court awarded the fees for two acts of litigation misconduct despite finding

that one of the two had a "colorable theory," and (3) improperly "awarded $250,000 for the plaintiff's trial counsel fees despite it being certainly beyond the court's ability to fully understand the amount of the preparation time expended by the plaintiff's counsel in defending against the litigation misconduct." (Internal quotation marks omitted.) We disagree with the defendant. Because we conclude that the court's award of attorney's fees was proper in accordance with § 46b-62, we need not reach the defendant's additional two claims that relate to the court's second independent basis for awarding attorney's fees, to wit, that the defendant engaged in litigation misconduct.

The following additional facts help inform our discussion. The plaintiff incurred nearly $560,000 in legal fees related to all aspects of the trial court case. The retainer fee for the appeal added another $40,000, bringing her total legal fees to nearly $600,000. The plaintiff's most recent financial affidavit dated May 2, 2019, showed total assets of $552,110, of which more than 50 percent of those assets are in deferred income retirement funds. Only approximately $151,732 is held in liquid assets. The defendant's most recent financial affidavit discloses that he owns assets totaling $973,258. The court found, however, that many of those assets are undervalued by the defendant. Nevertheless, the court stated that "looking only at his liquid, noncontroversial holdings, they total almost . . . $850,000."

In the court's memorandum of decision, the court methodically went through the plaintiff's purported justifications for entitlement to attorney's fees, addressing the plaintiff's arguments that counsel fees were appropriate pursuant to § 46b-62 (a), *Ramin* v. *Ramin*, supra, 281 Conn. 324, and *Maris* v. *McGrath*, 269 Conn. 834, 835, 850 A.2d 133 (2004). After a thorough analysis, the court concluded that an award of counsel fees based on discovery misconduct, as discussed in *Ramin*, was

not appropriate. The court, however, determined that an award of legal fees was warranted under two separate, independent bases—pursuant to § 46b-62 (a) and because of the defendant's litigation misconduct. Accordingly, the court ordered the defendant to contribute $250,000 toward the plaintiff's legal fees. After considering the plaintiff's motion for appellate fees and the defendant's opposition thereto, the court ordered the defendant to contribute an additional $30,000 to the plaintiff's legal fees for her defense of this appeal.

In the present case, we find no support in the record for the defendant's claim that the court abused its discretion in making the award of counsel fees that it did. The defendant argues in a rather conclusory manner that "the plaintiff has the resources to pay her attorneys" and cites to various cases that are easily distinguishable from the present case. One such case is *Hornung* v. *Hornung*, supra, 323 Conn. 144. As this court observed: "In *Hornung*, the court awarded the plaintiff $100,000 in trial attorney's fees and $40,000 in appellate attorney's fees. . . . The defendant claimed on appeal that 'the plaintiff received ample liquid funds from the trial court's judgment with which to pay her attorney's fees, and that the trial court's conclusion that not awarding her attorney's fees would undermine its other awards to her was unreasonable.' . . . Our Supreme Court agreed with the defendant. It first considered that the trial attorney's fees award 'represent[ed] a very small portion of the liquid assets awarded to the plaintiff in the trial court's judgment.' . . . Specifically, [the] court noted that 'the plaintiff [was to] receive liquid assets totaling $2,577,000 within three months of the judgment' and that the fee award 'represent[ed] only 4 percent of this amount.' . . . The plaintiff was to receive '$2,082,000, the amount owed to her under the [parties' prenuptial] agreement, within sixty days of the judgment; $40,000 per month in periodic alimony and

child support, starting twelve days from the judgment; and $7.5 million in lump sum alimony, payable in biannual installments of $375,000, starting two and one-half months from the judgment.' . . . [Our] Supreme Court concluded that, 'given the vast liquid assets awarded to the plaintiff, and the modest nature of the attorney's fees when compared with those assets, the equitable factors in § 46b-82, as incorporated into § 46b-62, do not justify the award.' " (Citations omitted.) *Anketell* v. *Kulldorff*, 207 Conn. App. 807, 840–41, 263 A.3d 972, cert. denied, 340 Conn. 905, 263 A.3d 821 (2021).

This is not such a case. As the plaintiff correctly notes, $280,000 is 185 percent of the plaintiff's liquid assets. The defendant does not challenge the court's liquid asset finding as clearly erroneous, but instead resorts to generalized arguments that "the plaintiff has sufficient assets to pay her attorneys." Even if one were to add the $450,000 lump sum alimony award (which the plaintiff did not have access to because the trial court denied her motion to lift the automatic stay) to the amount of the plaintiff's liquid assets, the counsel fee award is still 47 percent of that total. See *Hornung* v. *Hornung*, supra, 323 Conn. 176 ("attorney's fees awards reflecting a more significant portion of the payee's lump sum alimony award, thereby potentially undermining that award, have been held proper, especially when equitable factors support the award"); see also *Costa* v. *Costa*, 11 Conn. App. 74, 75–78, 526 A.2d 4 (1987) (attorney's fees award of $6000, amounting to 30 percent of $20,000 lump sum alimony award, not including periodic alimony award, was not abuse of discretion where husband had $280,000 in assets, wife had $170,000 in assets, and husband earned $58,400 per year).

The claim of error raised by the defendant, that the trial court erred in awarding the plaintiff $280,000 in attorney's fees, is without merit. "An abuse of discretion

in granting [attorney's] fees will be found only if [an appellate court] determines that the trial court could not reasonably have concluded as it did." (Internal quotation marks omitted.) *Misthopoulos* v. *Misthopoulos*, 297 Conn. 358, 386, 999 A.2d 721 (2010). Having thoroughly examined the record, we cannot so hold.[6]

The judgment is affirmed.

In this opinion the other judges concurred.

TOWN OF NEWTOWN ET AL. *v.* GARY GAYDOSH ET AL.
(AC 43209)

Elgo, Alexander and Suarez, Js.

Syllabus

The defendants appealed to this court from the judgment of the trial court granting the plaintiffs' motion for contempt. The defendants owned property that was located in the plaintiff town. In 2009, the plaintiffs commenced the underlying action seeking injunctive relief to compel the defendants to comply with certain zoning regulations. The parties entered into a joint stipulation, which, inter alia, prohibited the defendants from selling or having taken from the property by truck, or in any way removing from the property any soil, sand, gravel, clay, rock, or other earth material, and the trial court rendered judgment in accordance with the stipulation. Thereafter, the plaintiffs filed several postjudgment motions for contempt alleging that the defendants had violated the terms of the stipulated judgment. The trial court granted the plaintiffs' first motion, filed in 2011, and entered certain orders. Following the plaintiffs' second motion for contempt, filed in 2013, the trial court ordered the

[6] We note that, even if the plaintiff did have ample liquid funds to pay for her own counsel fees, the court's award of counsel fees would still be justified because the record supports the conclusion that the failure to make such an award would undermine the court's previous orders. See *Grimm* v. *Grimm*, supra, 276 Conn. 397 ("[A]n award of attorney's fees is justified even where both parties are financially able to pay their own fees if the failure to make an award would undermine its prior financial orders . . . . The trial court need not make an express finding with respect to whether the fee award is necessary to avoid undermining the other financial orders, so long as the record supports that conclusion." (Citations omitted; internal quotation marks omitted.)).

parties to conduct periodic meetings at the property to monitor the defendants' compliance with the judgment. When the town was satisfied that the defendants were in compliance with the judgment, the plaintiffs withdrew their motion. In 2018, the plaintiffs received several complaints about noise and excess truck traffic on the property. In response, the plaintiffs took aerial photographs of the property in January, 2019, which depicted construction equipment and stockpiles of construction materials on the property. The plaintiffs filed their third motion for contempt, the resolution of which served as the basis for the present appeal. The court found that the defendants had wilfully violated the judgment by using the property for commercial rock mining and construction related operations and they had concealed their noncompliance with the judgment. The court granted the motion and imposed sanctions against the defendants, including a $13,800 fine, a conditional fine of $100 per day until the defendants purged their contempt by restoring the property to its prior condition, and injunctive relief ordering, inter alia, that the defendants remove any improperly buried materials from the site. *Held*:

1. Contrary to the defendants' claim, the trial court's finding that the defendants had violated the terms of the stipulated judgment by engaging in commercial mining and construction related operations on the property was not clearly erroneous: the court's finding was supported by the evidence presented at the hearing on the motion for contempt, specifically, the photographs of the property that showed the use of certain construction equipment and stockpiles of construction materials, and testimony from the town's land use enforcement officer about the condition of the property; moreover, it was apparent from the court's decision that it doubted the defendants' credibility and, instead, chose to credit the evidence presented by the plaintiffs, which it was entitled to do as the trier of fact.

2. This court concluded that the trial court did not abuse its discretion in imposing sanctions related to its finding of contempt, this court having considered the defendants' wilful and continued violation of the judgment, the defendants' efforts to conceal their noncompliance with the judgment, and the purpose of the sanctions, which was to ensure the defendants' future compliance with the judgment.

Argued October 18, 2021—officially released March 15, 2022

Procedural History

Action seeking temporary and permanent injunctions ordering the defendants to comply with certain zoning regulations, and for other relief, brought to the Superior Court in the judicial district of Danbury, where the court, *Maronich, J.*, rendered judgment in accordance

with the parties' stipulation; thereafter, the court, *Krumeich, J.*, granted the plaintiffs' motion for contempt, and the defendants appealed to this court. *Affirmed.*

David V. DeRosa, for the appellants (defendants).

Alexander Copp, with whom, on the brief, was *Joseph G. Walsh*, for the appellees (plaintiffs).

Opinion

SUAREZ, J. The defendants, Gary Gaydosh, Barbara Gaydosh, and Justin Gaydosh, appeal from the judgment of the trial court granting the motion for contempt filed by the plaintiffs, the town of Newtown (town) and its zoning enforcement officer, Gary Frenette,[1] for the defendants' alleged violation of a stipulated judgment entered into by the plaintiffs and the defendants and rendered by the court to remedy zoning violations on the defendants' property. On appeal, the defendants claim that (1) the court's finding that they had violated the terms of the judgment was not supported by the evidence and (2) the court abused its discretion with respect to the sanctions imposed as a result of its finding of contempt. We affirm the judgment of the trial court.

The following facts, which are ascertained from the record and the trial court's memorandum of decision, and procedural history are relevant to this appeal. At all relevant times, the defendants owned real property known as 90A Huntington Road in Newtown (property). In July, 2009, the plaintiffs brought a zoning enforcement action against the defendants, alleging that the defendants were committing various zoning violations on the property. The plaintiffs alleged that the defendants had violated §§ 8.08.210, 8.03.722, and 1.06.1000

[1] For clarity, in this opinion we refer to the town of Newtown and Frenette collectively as the plaintiffs and individually by name. We also refer to Gary Gaydosh, Barbara Gaydosh, and Justin Gaydosh collectively as the defendants and, when necessary, individually by name.

of the Newtown Zoning Regulations (regulations). Specifically, the plaintiffs alleged that the defendants had (1) "conducted, or allowed to [be] conducted, the excavation, processing, addition and removal of soil, rock, or other earth material on the property," in violation of § 8.08.210;[2] (2) "caused or allowed dump trucks and other vehicles not permitted in the residential zone to be parked or stored on the property," in violation of § 8.03.722;[3] and (3) "caused or allowed the dissemination of noise or vibration beyond the property lot," in violation of § 1.06.1000.[4] The plaintiffs sought temporary and permanent injunctive relief to compel the defendants to comply with the relevant provisions of the regulations, as well as fines and attorney's fees pursuant to General Statutes § 8-12.[5]

[2] Section 8.08.210 provides: "No excavation, removal, grading, or addition of soil, loam, sand, gravel, clay, rock, or any other earth material upon land or premises not in public use in the Town of Newtown shall be commenced or conducted, except in accordance with and subject to the provisions of these regulations." Newtown Zoning Regs., § 8.08.210.

[3] Section 8.03.722 provides: "Outside storage of any piece of construction equipment, dump truck, garbage truck or other heavy truck of a type not ordinarily used as a means of transportation for people is prohibited in all zones." Newtown Zoning Regs., § 8.03.722.

[4] Section 1.06 provides: "The following uses, buildings or structures are specifically prohibited throughout all zones, even if only an accessory use . . . ." Newtown Zoning Regs., § 1.06.

Section 1.06.1000 describes the prohibited uses under § 1.06 to include the following: "Dissemination of smoke, dust, observable gas or fumes, noise, odor, vibration, or light beyond the lot on which the use is being conducted. Violation of the specific performance standards established by Article VIII, Section 10 of these regulations for the Industrial Zones in which they apply shall automatically be considered a violation of this section. This section may also be found to be violated in any zone where the Zoning Enforcement Officer finds the existence of the items listed in the first sentence of this section without regard to said performance standards." Newtown Zoning Regs., § 1.06.1000.

[5] General Statutes § 8-12 provides in relevant part: "If any . . . land has been used, in violation of any provision . . . of any bylaw, ordinance, rule or regulation made under the authority conferred hereby, any official having jurisdiction, in addition to other remedies, may institute an action or proceeding to prevent such unlawful . . . use or to restrain, correct or abate such violation . . . . The owner or agent of any building or premises where a

To resolve the complaint, the parties entered into a joint stipulation. The written stipulation prohibited the defendants from "bring[ing] onto [the] property from other locations, or hav[ing] or allow[ing] others to bring onto [the property] any soil, sand, gravel, clay, rock, or earth material . . . ." (Citation omitted.) It also prohibited the defendants from "bring[ing] or hav[ing] delivered any type of manure to [the] property unless used as fertilizer for new greenhouses or for growing crops." Under the stipulation, the defendants also were not permitted to "sell or have taken from [the] property by truck, or in any way remove from [the property] any soil, sand, gravel, clay, rock, or other earth material . . . ." (Citation omitted.)

The stipulation, however, did permit the defendants to compost and sell material in accordance with a Department of Environmental Protection Comprehensive Nutrient Management Plan. Such a plan subsequently was prepared in April, 2011, for the Department of Environmental Protection by Joseph E. Polulech.[6] The stipulation also permitted the defendants to conduct farming activities, but it specifically prohibited "the processing, stockpiling, or sale of any materials not associated with farming other than composted waste produced directly as a byproduct of the housing of horses and livestock" on the property. The stipulation further prohibited "the mixing, screening, crushing,

violation of any provision of such regulations has been committed or exists . . . shall be fined not less than ten dollars or more than one hundred dollars for each day that such violation continues; but, if the offense is wilful, the person convicted thereof shall be fined not less than one hundred dollars or more than two hundred fifty dollars for each day that such violation continues . . . . If the court renders judgment for such municipality and finds that the violation was wilful, the court shall allow such municipality its costs, together with reasonable attorney's fees to be taxed by the court. . . ."

[6] Polulech is an engineer and the president of JEP Engineering Company, a private company that was hired to prepare the Comprehensive Nutrient Management Plan for the Department of Environmental Protection, now the Department of Energy and Environmental Protection.

blending, or combining of materials other than those allowed for composting operations in an approved Comprehensive Nutrient Management Plan . . . .'' Finally, with respect to vehicles and machinery, the stipulation provided that ''[t]he storage or parking of any piece of construction equipment, dump truck and other heavy truck of a type not ordinarily used as a means of transportation for people is not permitted on . . . this property, in this residential zone . . . . The use of operable motor vehicles normally used on farms for farming activities is permitted . . . . The defendants will not store or park any piece of construction equipment, dump truck and other heavy truck of a type not ordinarily used as a means of transportation for people on . . . this property unless used on the farm for farming activities after April 15, 2011.'' (Citations omitted.) On March 4, 2011, the court, *Maronich*, *J.*, rendered judgment in accordance with the parties' stipulation.

On June 8, 2011, the plaintiffs filed a motion for contempt against the defendants, alleging that the defendants had violated the terms of the stipulated judgment. On March 2, 2012, following several days of hearings, the trial court, *Wenzel*, *J.*, issued a memorandum of decision granting the motion for contempt, in which it found that the defendants wilfully had violated the judgment. To remedy the violation, the court ordered the defendants to maintain a written record of the entry and departure of trucks from the property and to present the record to the town on a monthly basis. The court also awarded costs and attorney's fees to the plaintiffs.

On December 3, 2013, the plaintiffs filed another motion for contempt, alleging that the defendants had continued to violate the judgment. Following a hearing, the trial court, *Roraback*, *J.*, ordered that the parties conduct periodic meetings at the property to monitor

the defendants' compliance with the judgment. The parties held these meetings for eighteen months, during which time the town was satisfied that the defendants were in compliance with the judgment. On October 5, 2016, the plaintiffs withdrew the contempt motion.

In 2018, the plaintiffs became concerned that the defendants had resumed conducting prohibited activities on the property. In response to several neighbors' complaints about noise and excess truck traffic on the property, the plaintiffs flew a drone over the property to take aerial photographs on January 4, 2019. According to the plaintiffs, the photographs suggested that the defendants were once again using the property for commercial mining and construction operations in violation of the judgment.

Relying on the photographs, the plaintiffs filed another motion for contempt against the defendants on January 15, 2019, the resolution of which is the subject of the present appeal. In the motion, the plaintiffs specifically alleged that the defendants had violated the judgment by (1) conducting "[e]xtensive screening and processing of various materials"; (2) conducting "[e]xtensive stockpiling of wood, stumps, asphalt pieces and millings"; (3) engaging in "[n]umerous and extensive excavation creating ponds"; (4) stockpiling various materials associated with mining; (5) using the property as a landfill; and (6) storing construction equipment and heavy trucks on the property. The plaintiffs sought an order to correct the violations, as well as fines and attorney's fees.

On February 11, 2019, a hearing on the motion for contempt was held before the trial court, *Krumeich*, *J.* Although notice of the hearing was duly provided to the defendants, they did not appear at the hearing. During the hearing, the plaintiffs presented the testimony of Steve Maguire, a land use enforcement officer for the town. Maguire testified that, during the months that

preceded the hearing, he had received multiple complaints concerning the property. Maguire further testified that, after receiving several complaints, he used a drone that was borrowed from the Newtown Police Department to take aerial photographs of the property to determine the nature of the activities that were being conducted on the property. The photographs were entered into evidence at the hearing.

On the basis of the photographs, Maguire determined that a large portion of the property was being used for a commercial mining operation. During his testimony, Maguire described the operation to include material processing, the sale and transport of gravel, sand, and soil, and the dumping and burying of material. Maguire explained that the photographs depict "large earth excavations" as well as areas where stumps and debris have been buried. He also noted that the photographs show "extensive sorting machines which process out stone, sand, [and] soil" and multiple excavators. He characterized the property as a "large scale commercial operation which is in no way a farming operation including composting of manure." Maguire testified that the farming operation that he observed in previous inspections was too small to necessitate the equipment that was being used on the property in January, 2019, as depicted in the drone photographs. With respect to composting, Maguire testified that the windrows[7] that were previously on the property had been replaced with the excavation and sorting area. The plaintiffs asked the court to find the defendants in contempt and to impose daily fines and issue an order requiring the defendants to submit to a physical inspection of the property.

Following the hearing, but before the court reached a decision, the defendants moved to reargue and open

[7] Maguire defined windrows as "basically long rows of material to be turned over throughout the year . . . to decompose and turn into essentially soil and compost."

the evidence on the ground that their counsel had mistakenly thought that the hearing was scheduled for a different date. On February 20, 2019, the court granted the motion and opened the evidence to permit the defendants to cross-examine Maguire and to present evidence. Accordingly, the court scheduled an additional hearing to occur on April 8, 2019.

Prior to that hearing, on February 28, 2019, the plaintiffs filed a motion to inspect the defendants' property. The court granted the motion on that same day, finding that there was probable cause to believe that there may be a zoning violation on the property. The defendants objected to the plaintiffs' request to inspect the property and asked the court to continue the hearing that was scheduled for April 8, 2019, but the court denied their requests. On Friday, April 5, 2019, Maguire was permitted to inspect the property.

At the hearing on April 8, 2019, the court permitted both the plaintiffs and the defendants to present evidence. Maguire testified on behalf of the plaintiffs concerning his April 5, 2019 inspection of the property. The plaintiffs also entered into evidence photographs of the property that were taken during the April 5, 2019 inspection. Maguire described the January 4, 2019 aerial photographs to show large piles of asphalt, concrete, and stumps, which are not consistent with composting. Maguire testified that it appeared that the property was being used as a construction and materials processing site. During his testimony, he also compared photographs taken in 2014, when the defendants' compliance with the judgment was being monitored, to the January 4, 2019 and the April 5, 2019 photographs. Maguire opined that the 2014 photographs depicted a legitimate composting operation, while the January 4, 2019 photographs depicted an excavation business and the April 5, 2019 photographs depicted only "some" composting

operations with a couple of windrows that were "freshly . . . turned over."

Gary Gaydosh also testified at the hearing. He testified that he was conducting only farming and composting operations on the property. He explained that the heavy machinery on the property was used to mix the windrows as part of the composting process. He further explained that the stone that Maguire observed "comes from when you scrape . . . the manure off the fields . . . ." When manure is scraped off the fields, "stones get mixed up with the hay . . . the compost, the shavings, the chips." He testified that, because he is not permitted to sell the stones, he stockpiles the stones that get pulled up from the ground when manure is scraped off the fields.

On May 30, 2019, the court, in a detailed memorandum of decision, granted the plaintiffs' January 15, 2019 motion for contempt. The court found in relevant part: "The aerial photographs taken on January 4, 2019, show a large scale nonfarming operation in violation of zoning laws and the judgment. These photographs confirmed the citizen complaints to the town that there was excessive noise and truck traffic to and from the site because of commercial operations not permitted under the judgment and contrary to the zoning law. The defendants offered no evidence to back their assertion the heavy truck traffic was from normal farming operations. The photographs show use of construction equipment on the site, including six different excavators, large sorting equipment, several dump trucks and payloaders, that are placed consistent with use of the site for commercial mining and construction related operations. The photographs and credible testimony show the property has been used for commercial rock mining, with a pool dug for cleaning rock quarried from the property. The credible evidence also indicates the site has been used in connection with defendant Justin Gaydosh's JMB

construction business for sorting, screening, and cleaning of materials from off-site and storage in stockpiles of construction materials including fill, wood, stumps, sand and gravel, storage of asphalt millings, including large pieces of asphalt, beyond the amount of asphalt millings that could be anticipated for patching and filling the farm roads. There is also credible evidence that there has been burial of materials imported into the site, including large logs, stumps and asphalt, which is consistent with use of the site as a transfer station. The January photographs do not show a large composting operation; the composting windrows . . . Maguire had observed on previous site visits in 2014–2015 were missing. The January, 2019 photographs show excavation of the site for commercial mining and construction, not a composting operation.

"The April 5, 2019 photographs produced by the town and April 7, 2019 photographs produced by the defendants show that the site has been materially changed by covering over the previous conditions with soil, wood chips, and composting materials. Subsurface holes shown on the January photo[graphs] have been filled in. Mounds of rock and other material dug from the earth that were shown in the January photographs have been flattened and covered with dirt. Logs and stumps that were stockpiled in January have been removed and covered over with soil. Other piles of asphalt in excess of that needed to maintain farm roads and stumps remained on-site. Windrows have been constructed where none were shown in January. Equipment that was there in January was moved off-site and other pieces of equipment were repositioned and placed to make it appear they were used for composting. The defendants' clean-up efforts were obviously to recreate conditions that existed in 2014, when the town has last inspected the premises and the defendants' composting operation. The cover-up activities were not good faith

efforts to comply with the judgment or to purge contempt but were rather short-term measures designed to thwart the inspection ordered by the court and to deceive the court that the defendants' contumacious conduct had ceased.

"The credible evidence reveals that the defendants used the delay occasioned by their failure to appear at the February 11, 2019 [hearing] to cover over evidence of their violation of the zoning laws and judgment. The defendants' violation of the judgment and their conduct to cover up the violations were wilful violations of the judgment for which they are held in contempt. The court is convinced [that the] defendants will continue their violation of the judgment unless cited for contempt and compelled to purge their contempt by discontinuing nonpermitted operations and removal of construction materials and excess asphalt and wood piles from the site. In addition, the site shall be subject to periodic inspections to monitor compliance with zoning laws. Unless there is continued monitoring and consequences from noncompliance with the judgment the court is convinced the defendants will resume their pattern of noncompliance and dissembling. Further, the court is mindful that the town should not bear the financial burden of continued monitoring of the defendants' activities.

"The defendants' wilful violation of the judgment and their circumvention of prior inspection orders requires periodic inspections to ensure compliance with the zoning laws and judgment. The judgment had provided for the defendants to provide notice to [the town] when more than three trucks were expected to enter or exit the property and allowed [the town] to visually inspect any truck entering or exiting the property at any time. This judgment remains in effect. Judge Roraback's order for periodic inspections was entered in response

to a motion for contempt and, although it held for eighteen months, was inadequate to ensure continued compliance after the inspections were discontinued." (Footnotes omitted.)

After setting forth its findings, the court noted that, "[i]n light of the contumacious conduct described above, and the defendants' resistance to reasonable inspection by zoning officials, a more rigorous inspection plan is required to ensure compliance with zoning laws and the judgment." The court ordered the following measures: "The town is permitted to take aerial photographs of the portion of the property where the violations occurred, without prior notice to the defendants. Periodically, municipal agents are entitled to enter the property on any weekday during regular business hours to inspect for compliance with the above, without prior notice to the defendants. The defendants shall resume providing notice of truck activity as provided in the judgment and the monthly recording and reporting truck activity to the town as ordered by Judge Wenzel.

"The defendants are fined $150 per day for the period [of] January 4, 2019, to April 5, 2019 . . . for a total fine of $13,800 related to their wilful violation and cover-up of violations of the judgment. The defendants are fined $100 per day from April 6, 2019, until they purge their contempt by removal of the excess asphalt, stumps and construction materials stored or buried on the site and the removal of equipment not used in permitted farming or composting activities. The defendants shall inform the town which vehicles on-site are used in such permitted operations on or before June 15, 2019. The defendants shall designate initially the piles of wood and asphalt the defendants assert is for farm use, and the parties shall confer as to any vehicles or excess material that shall be removed from the site. If the parties are unable to agree as to the vehicles and excess material to be removed, the court will decide the issue

after a hearing. The defendants will dig test holes at their expense in the areas where the town suspects they have buried materials not permitted under the judgment and shall remove any improperly buried materials from the site. The town's agents shall be present when test holes are dug and for the removal of any prohibited material.

"On or before July 15, 2019, the defendants shall deposit $10,000 in an account to be held in escrow by an agent designated by the town, which shall be used to defray the town's cost of continued inspections and enforcement of this order." This appeal followed.

I

The defendants first claim that the evidence did not support the court's finding that they had "engaged in mining, commercial sales of materials, or anything other than the sale of composted material . . . ." We do not agree.

We begin by setting forth the legal principles and standard of review relevant to this claim. "The court has an array of tools available to it to enforce its orders, the most prominent being its contempt power. . . . Our law recognizes two broad types of contempt: criminal and civil. . . . Civil contempt . . . is not punitive in nature but intended to coerce future compliance with a court order, and the contemnor should be able to obtain release from the sanction imposed by the court by compliance with the judicial decree. . . . A civil contempt finding thus permits the court to coerce compliance by imposing a conditional penalty, often in the form of a fine or period of imprisonment, to be lifted if the noncompliant party chooses to obey the court. . . .

"To impose contempt penalties . . . the trial court must make a contempt finding, and this requires the court to find that the offending party wilfully violated

the court's order; failure to comply with an order, alone, will not support a finding of contempt. . . .

"We review the court's factual findings in the context of a motion for contempt to determine whether they are clearly erroneous. . . . A factual finding is clearly erroneous when it is not supported by any evidence in the record or when there is evidence to support it, but the reviewing court is left with the definite and firm conviction that a mistake has been made." (Citations omitted; internal quotation marks omitted.) *Wethersfield* v. *PR Arrow, LLC*, 187 Conn. App. 604, 652–53, 203 A.3d 645, cert. denied, 331 Conn. 907, 202 A.3d 1022 (2019).

The defendants argue that the evidence did not support a finding that they "engaged in mining, commercial sales of materials, or anything other than the sale of composted material . . . ." We disagree and conclude that the court's findings with respect to the defendants' activities on their property were not clearly erroneous.

At the hearing, Maguire testified about the conditions of the property on January 4, 2019, on the basis of the aerial drone photographs, and April 5, 2019, on the basis of his physical inspection. In concluding that the defendants had violated the judgment, the court found the observations and conclusions made by Maguire to be credible and reliable. The court began by finding that "the aerial photographs taken on January 4, 2019, show a large scale nonfarming operation in violation of zoning laws and the judgment." The court explained that the photographs show the "use of construction equipment on the site, including six different excavators, large sorting equipment, several dump trucks and payloaders . . . ." The court noted that the use of this type of machinery is "consistent with use of the site for commercial mining and construction related operations."

The court referred explicitly to the credibility of the evidence presented by the plaintiffs. The court found that the "photographs and credible testimony show the property has been used for commercial rock mining . . . ." Further, the court found that the "credible evidence also indicates the site has been used in connection with defendant Justin Gaydosh's . . . construction business for sorting, screening and cleaning of materials from off-site and storage in stockpiles of construction materials . . . ." There was also "credible evidence that there has been burial of materials imported into the site, including large logs, stumps and asphalt, which is consistent with the use of the site as a transfer station." The court further found that the compost windrows that were previously observed during the property visits in 2014 and 2015 were gone, which indicated that the defendants were not engaged in a large composting operation.

Finally, on the basis of the April 5, 2019 photographs presented by the plaintiffs and the April 7, 2019 photographs presented by the defendants, the court found that the "credible evidence reveals that the defendants used the delay occasioned by their failure to appear at the February 11, 2019 [hearing] to cover over evidence of their violation of the zoning laws and judgment." It is apparent from the court's decision that the court doubted the defendants' credibility and instead chose to credit the evidence presented by the plaintiffs, which it was entitled to do as the trier of fact.

Our review of the record supports the court's conclusion that the defendants engaged in commercial mining and construction related operations. The defendants do not dispute that activities of this nature were prohibited by the judgment. The record also supports the court's conclusion that the defendants were not engaged in a permitted composting operation as they claimed to be. Because we determine that the evidence supports the

court's findings, we conclude that the court's findings with respect to the defendants' activities on the property were not clearly erroneous.

II

The defendants next claim that the court abused its discretion with respect to the sanctions imposed as a result of its finding of contempt. That claim relates to the monetary sanction imposed for the defendants' contemptuous conduct occurring prior to April 6, 2019, the conditional sanction imposed upon them beginning on April 6, 2019, and the award of injunctive relief. We disagree that the court abused its discretion.

We first address the fine of $13,800, equal to $150 per day for the period of January 4, 2019, through April 5, 2019. With respect to this fine, the defendants appear to argue that the court abused its discretion in imposing the fine because the amount of the fine was excessive. The court explained that it imposed the sanction for the defendants' "wilful violation and cover-up of violations of the judgment." "The court has the power to fine one who has been found in contempt." *Friedlander* v. *Friedlander*, 191 Conn. 81, 86, 463 A.2d 587 (1983); see also *Tufano* v. *Tufano*, 18 Conn. App. 119, 125, 556 A.2d 1036 (1989). On appeal, orders imposing fines or sanctions related to a finding of contempt are reviewed under an abuse of discretion standard. See *Tufano* v. *Tufano*, supra, 125.

We note that, in *Friedlander*, the plaintiff filed five separate contempt motions in order to rectify the defendant's continued violation of a postdissolution order. *Friedlander* v. *Friedlander*, supra, 191 Conn. 86. Despite the court's imposition of fines and other relief in connection with prior contempt motions, the defendant continued to violate the order. Id., 86–87. After granting the motion for contempt underlying the appeal in *Friedlander*, the trial court imposed a $1000 fine on the

defendant as a sanction for his continued violation of the court's order. Id., 87. On appeal, the defendant argued that the fine was "arbitrary and capricious and excessive." Id., 86. Our Supreme Court, noting the defendant's history of noncompliance, concluded that the sanction did not reflect an abuse of discretion. Id., 86–87.

The rationale in *Friedlander* applies to the present claim. Here, when we consider the history of contempt motions filed by the plaintiffs and the history of violations found by the court, we are unable to conclude that the $13,800 fine imposed on the defendants reflected an abuse of discretion. The court found not only that the defendants had wilfully violated the judgment but also that the defendants had attempted to cover up the violations in an attempt to circumvent the court's order. The court found that the defendants' "cover-up activities were not good faith efforts to comply with the judgment or to purge contempt but were rather short-term measures designed to thwart the inspection ordered by the court and to deceive the court that the defendants' contumacious conduct had ceased." In an effort to achieve the defendants' compliance with the judgment rendered in the plaintiffs' favor, the plaintiffs filed three separate motions for contempt over the course of several years. These efforts were the direct result of the defendants' wilful and continued violation of the judgment. Given these facts, and especially the defendants' purposeful circumvention of the judgment, we are not persuaded that the court abused its discretion in issuing the fine.

The court also imposed on the defendants a conditional fine of $100 per day beginning on April 6, 2019, until they purged their contempt by restoring the property to its prior condition. "A civil contempt finding . . . permits the court to coerce compliance by imposing a conditional penalty, often in the form of a fine or period

of imprisonment, to be lifted if the noncompliant party chooses to obey the court." (Internal quotation marks omitted.) *Wethersfield* v. *PR Arrow, LLC*, supra, 187 Conn. App. 652. As previously noted, on appeal, we review the propriety of the fines imposed for civil contempt pursuant to an abuse of discretion standard. See *Medeiros* v. *Medeiros*, 175 Conn. App. 174, 202, 167 A.3d 967 (2017). "The evaluation of civil contempt penalties depends to a great extent on whether the penalties are considered at the time they are first conditionally imposed for the purpose of coercing compliance or are considered after the contempt has been purged and the penalties are finalized. When the penalties are first imposed, the propriety of the court's exercise of its discretion turns on the reasonableness of the amount of the coercion that the court deems necessary, keeping in mind the court's ultimate power to reduce the penalties once the contempt has been purged." *Papa* v. *New Haven Federation of Teachers*, 186 Conn. 725, 738, 444 A.2d 196 (1982).

Contrary to the defendants' contentions, this fine was clearly within the court's discretion. At the time that the conditional penalties were imposed, the contempt had not yet been purged. The purpose of the fine was to coerce compliance with the judgment. Considering the court's finding concerning the defendants' long history of noncompliance with the judgment and the defendants' continued efforts to hide their noncompliance, we are unable to conclude that the fines imposed on the defendants constitute an unreasonable amount of coercion. Thus, the defendants have not demonstrated that an abuse of discretion occurred.

We next address the defendants' challenge to the court's order of injunctive relief. "[T]he trial court's continuing jurisdiction to effectuate prior judgments . . . is not separate from, but, rather, derives from, its equitable authority to vindicate judgments. . . . [S]uch

equitable authority does not derive from the trial court's contempt power, but, rather, from its inherent powers." (Emphasis omitted; internal quotation marks omitted.) *Wethersfield* v. *PR Arrow, LLC*, supra, 187 Conn. App. 653–54. "The issuance of an injunction and the scope and quantum of injunctive relief rests in the sound discretion of the trier. . . . [T]he court's ruling can be reviewed only for the purpose of determining whether the decision was based on an erroneous statement of law or an abuse of discretion." (Citation omitted; internal quotation marks omitted.) *FirstLight Hydro Generating Co.* v. *Stewart*, 328 Conn. 668, 685, 182 A.3d 67 (2018). "In determining whether there has been an abuse of discretion, every reasonable presumption should be given in favor of the correctness of the court's ruling. . . . Reversal is required only [when] an abuse of discretion is manifest or [when] injustice appears to have been done." (Internal quotation marks omitted.) *Wethersfield* v. *PR Arrow, LLC*, supra, 645.

In the present case, the court ordered injunctive relief requiring, inter alia, that the town be permitted to "dig test holes at [the defendants'] expense in the areas where the town suspects they have buried materials not permitted under the judgment and [ordered the defendants to] remove any improperly buried materials from the site." It is clear from the memorandum of decision that the purpose of the order was to determine whether the defendants were complying with the judgment and to ensure their future compliance. Considering the defendants' history of noncompliance, their prior efforts to conceal their noncompliance, and the clear purpose of the order to ensure compliance with and to effectuate the court's judgment, we conclude that the court did not abuse its discretion in imposing sanctions in the present case.

The judgment is affirmed.

In this opinion the other judges concurred.

AMY B. GOTTESMAN *v.* MARK M. KRATTER
(AC 44297)

AMY B. GOTTESMAN *v.* MARK M. KRATTER ET AL.
(AC 44388)

Elgo, Alexander and Harper, Js.

Syllabus

In two separate actions, the plaintiff sought to recover damages from the defendant attorney, K, in the first action for, inter alia, legal malpractice and breach of contract, and from the defendant law firms K Co. and M Co. in the second action for, inter alia, legal malpractice and transferee liability, in connection with an underlying marital dissolution proceeding. In the first action, the trial court granted K's motion to strike the count of the complaint sounding in breach of contract and granted K's motion for summary judgment on, inter alia, the count sounding in legal malpractice. In the second action, the court granted K Co. and M Co.'s motions for summary judgment on, inter alia, the counts of the complaint sounding in legal malpractice and transferee liability. On the plaintiff's appeal to this court, *held*:

1. The trial court properly rendered summary judgment in favor of K, K Co. and M Co. as to the plaintiff's legal malpractice claims against them: the plaintiff, who did not dispute that an expert witness was required in order for her to prove her legal malpractice claims, failed to meet the deadline set place in the scheduling order in each action for the disclosure of an expert in support of her claims; moreover, even after the deadline had passed, the court never indicated that it would not consider the opinion of an expert submitted by the plaintiff in opposition to the defendants' motions for summary judgment; furthermore, although the plaintiff filed motions for permission for late disclosure of an expert witness, the motions did not identify any expert or the substance of opinions to be provided and the plaintiff never disclosed an expert before the court rendered judgment.
2. The trial court properly granted K's motion to strike the count of the plaintiff's complaint sounding in breach of contract; the count alleged a claim for legal malpractice rather than for breach of contract, as it was not a claim that K breached the retainer agreement with the plaintiff but rather a claim that K negligently performed professional services.
3. The trial court properly rendered summary judgment in favor of K Co. and M Co. as to the plaintiff's transferee liability claim against them; because the court found no liability on the part of K Co., the predecessor

law firm to M Co., there was no successor liability that could attach to M Co.

Argued November 8, 2021—officially released March 15, 2022

Procedural History

Action, in two cases, for, inter alia, legal malpractice, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the court, *Hon. Kenneth B. Povodator*, judge trial referee, granted the defendant's motions to strike and for summary judgment in the first case and rendered judgment thereon, from which the plaintiff appealed to this court; thereafter, in the second case, the action was withdrawn as to the named defendant; subsequently, in the second case, the court, *Hon. Kenneth B. Povodator*, judge trial referee, granted the motions for summary judgment filed by the defendant Law Offices of Mark M. Kratter, LLC, et al. and rendered judgment thereon, from which the plaintiff appealed to this court. *Affirmed.*

Kenneth A. Votre, for the appellant in Docket Nos. AC 44297 and AC 44388 (plaintiff).

Raymond J. Plouffe, for the appellee in Docket No. AC 44297 (defendant).

Raymond J. Plouffe, for the appellees in Docket No. AC 44388 (defendant Law Offices of Mark M. Kratter, LLC, et al.).

Opinion

HARPER, J. These two appeals arise from actions brought by the plaintiff, Amy B. Gottesman, concerning an underlying marital dissolution action. In Docket No. AC 44297, the plaintiff appeals from the judgment of the trial court granting (1) the motion for summary judgment filed by the defendant, Mark M. Kratter, on the plaintiff's claim for legal malpractice against Kratter and (2) the motion to strike count two of the revised

complaint alleging breach of contract. Specifically, she claims that the court erred in granting summary judgment for failure to disclose an expert witness when she had not been precluded from disclosing an expert and because the time in which she was required to disclose had not yet expired. With respect to the motion to strike, she claims that the court erred in concluding that the allegations in the revised complaint failed to allege that the defendant breached an agreement to reach a specified result. In Docket No. AC 44388, the plaintiff appeals from the judgment of the trial court granting the motion for summary judgment filed by the defendant law firms, the Law Offices of Mark M. Kratter, LLC, and Kratter & Gustafson, LLC,[1] as to counts one and thirteen of the third revised complaint, which alleged claims against the law firms for legal malpractice and transferee liability, respectively. Specifically, she claims that the court improperly rendered summary judgment because the law firms failed to demonstrate the absence of a genuine issue of material fact and because the time in which she had to disclose an expert witness in support of her claim of legal malpractice against the law firms had not yet expired. Although the appeals have not been consolidated,[2] we write one opinion for purposes of judicial economy in which we assess the claims raised in both appeals. We affirm the judgments of the trial court.

The following facts, viewed in the light most favorable to the plaintiff, and procedural history are relevant to our resolution of these appeals. The plaintiff had retained Kratter,[3] acting through his law firm Kratter & Gustafson, LLC,[4] to represent her in a divorce action

[1] In this opinion, we refer to the defendant law firms individually by name where necessary and collectively as the law firms.

[2] The two appeals, although not consolidated, were heard together at oral argument before this court, pursuant to an order from this court.

[3] Kratter, at all times relevant to this appeal, was an attorney employed by and acting through the law firms.

[4] The plaintiff initially engaged the law firm of Kratter & Gustafson, LLC, to represent her in the underlying divorce action. Sometime after the plaintiff

against her former husband, Amir Sibboni. During the representation, Kratter prepared a settlement agreement that he recommended the plaintiff sign. The agreement provided for the division of assets, alimony, parental responsibilities, titles to vehicles and real estate, and interests in real and personal property. The four real properties that were subject to the agreement were located in Norwalk. The properties were subject to mortgages that the plaintiff argues were created, "by virtue of a scheme established by [Sibboni] and his business counsel to borrow [money] against the property and leave her with the debt." The plaintiff alleges that Kratter, as her counsel in the marital dissolution matter, committed legal malpractice when he failed to address the issue of the fraudulent loans. The crux of her claim is that Kratter, acting on behalf of the law firms, negligently advised her to accept the settlement agreement.

The plaintiff claims that the settlement agreement had several shortcomings, including leaving her without sufficient funds to carry the mortgages on the four real properties subject to the agreement. In addition, the plaintiff claims that Kratter failed to put forth an adequate effort to secure for her other items of marital property, failed to obtain a fair division of personal property, and negligently advised her to take possession of the property located at 20 Woodbury Avenue despite the fact that the mortgages were secured fraudulently with her forged signature.

On April 10, 2017, the plaintiff commenced the first underlying action, which concerns the appeal in AC 44388, against five defendants: Kratter; the law firms; Sibboni; and Anthony E. Schwartz, doing business as the Law Offices of Anthony E. Schwartz, who had represented Sibboni in certain real estate transactions related

retained Kratter & Gustafson, LLC, that firm dissolved and became the Law Offices of Mark M. Kratter, LLC.

to the plaintiff's actions. On May 2, 2017, the action was withdrawn as against Kratter after Kratter had filed a bankruptcy action. The operative complaint, a third revised complaint dated February 9, 2018, alleges six counts as to the law firms, including count one sounding in legal malpractice, count two sounding in breach of contract, count six sounding in equitable tolling, count nine sounding in intentional misrepresentation, count ten sounding in negligent misrepresentation, and count thirteen sounding in transferee liability.[5]

After the court struck count two, the law firms filed a motion for summary judgment on December 17, 2019, as to the remaining counts against them, which was granted on July 20, 2020, as to counts one, six, nine and ten but denied as to count thirteen. On August 12, 2020, the law firms again filed a motion for summary judgment as to count thirteen, the final remaining count, which was granted on November 2, 2020. The appeal in AC 44388 concerns the summary judgment rendered in favor of the law firms as to counts one and thirteen of the third revised complaint.

The plaintiff commenced the second underlying action, which concerns the appeal in AC 44287, on June 6, 2017, against Kratter in his individual capacity. The operative complaint, dated February 9, 2018, alleges five counts sounding in legal malpractice, breach of contract, equitable tolling, intentional misrepresentation, and negligent misrepresentation, respectively. On May 7, 2018, Kratter moved to strike the second count of the operative complaint—the claim for breach of contract. On August 10, 2020, the court granted the motion to strike the second count of the revised complaint.

[5] The complaint also alleges seven counts against Sibboni and four counts against Schwartz. None of the plaintiff's claims on appeal concerns Sibboni or Schwartz.

On January 30, 2019, the court ordered that the "scheduling order filed and accepted in docket number FST-CV-17-6031889-S [the first underlying action] is hereby adopted as the scheduling order for this case (the parties have agreed to such adoption in a telephonic status conference on January 30, 2019.)" The scheduling order states that the plaintiff's deadline to disclose an expert witness was April 15, 2019.

Kratter filed a motion for summary judgment on December 17, 2019, as to counts one, three, four, and five of the revised complaint, arguing that there were no issues of material fact as to the claims alleged in those counts. The court granted the motion for summary judgment on July 20, 2020.[6] Thereafter, the court, having previously granted Kratter's motion to strike count two, granted Kratter's motion for judgment as to count two and rendered judgment in his favor on that count. These appeals followed. Additional facts will be set forth as necessary.

I

AC 44297

In AC 44297, the plaintiff challenges the court's granting of Kratter's motion for summary judgment as to count one of the revised complaint due to the plaintiff's failure to disclose an expert witness to support her claim for legal malpractice, as well as the court's granting of the motion to strike count two of the revised complaint, which sounded in breach of contract. With regard to the motion for summary judgment, specifically, the plaintiff argues that the time within which to disclose an expert witness had, in fact, not expired, and as such, the court violated Practice Book § 13-4 (h) when it rendered summary judgment in favor of

[6] Although both memoranda of decision are dated July 20, 2020, the court addressed each of the underlying cases in a separate memorandum of decision.

Kratter. With regard to the motion to strike count two of the revised complaint, the plaintiff argues that the complaint alleged a legally sufficient cause of action for breach of contract against Kratter. In response, Kratter contends that the judgment rendered was proper, as the plaintiff failed to introduce an expert witness to support her legal malpractice claim, and count two was properly stricken, as it set forth a claim for a breach of the professional standard of care rather than a breach of contract. We agree with Kratter.

A

We first review the plaintiff's claim that the court erred in granting the motion for summary judgment in favor of Kratter as to count one of the revised complaint.[7] We begin by setting forth the applicable standard of review and relevant legal principles.

"Practice Book § [17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law. . . . Once the moving party has met its burden [of production] . . . the opposing party must present evidence that demonstrates the existence of some disputed factual issue. . . . [I]t [is] incumbent [on] the party opposing summary judgment to establish a factual predicate from which it can be determined, as a matter of law, that a genuine issue of material fact exists. . . . The presence . . . of an alleged adverse claim is not sufficient to defeat a motion for summary judgment.

[7] The plaintiff has not challenged the summary judgment rendered in favor of Kratter as to counts three, four and five of the revised complaint.

. . . Our review of the decision to grant a motion for summary judgment is plenary. . . . We therefore must decide whether the court's conclusions were legally and logically correct and find support in the record." (Internal quotation marks omitted.) *Rousseau* v. *Weinstein*, 204 Conn. App. 833, 839–40, 254 A.3d 984 (2021).

"Generally, a plaintiff alleging legal malpractice must prove all of the following elements: (1) the existence of an attorney-client relationship; (2) the attorney's wrongful act or omission; (3) causation; and (4) damages. . . . To prevail, a plaintiff generally is obligated to furnish expert testimony to establish both (1) the standard of care against which the attorney's conduct should be evaluated and (2) the element of causation. . . . Our decisional law is replete with cases in which motions for summary judgment have been granted on legal malpractice claims when the defendant failed to offer such testimony." (Citations omitted; footnote omitted; internal quotation marks omitted.) *Costello & McCormack, P.C.* v. *Manero*, 194 Conn. App. 417, 431, 221 A.3d 471 (2019).

In *Manero*, this court concluded that the trial court properly granted a motion for summary judgment when the cross claim plaintiff failed to disclose an expert witness. Id., 432. "Absent such testimony, the finder of fact could not properly evaluate" the cross claim plaintiff's claims. Id. "Because [the cross claim plaintiff] could not establish a prima facie case of legal malpractice without the introduction of expert testimony . . . [this court] conclude[d] that the trial court properly rendered judgment in favor of . . . [the cross claim] defendants." Id.

In the present case, it is undisputed that the plaintiff did not disclose an expert in support of her legal malpractice claim, and the plaintiff does not dispute that

an expert witness is required in order for her to prove her legal malpractice claim. Nevertheless, the plaintiff claims that the court acted prematurely in granting summary judgment due to such nondisclosure because there was no scheduling order established by the court that set the time within which an expert witness had to be disclosed. She claims that she "did not violate a court order and the trial court acknowledged this" and that she "was still permitted to disclose an expert and no time limitation was in effect limiting disclosure." Although the plaintiff claims that there was no scheduling order in place, our review of the record reveals that there was, in fact, a scheduling order in place that set a date—April 15, 2019—by which the plaintiff was required to disclose an expert witness.[8] The order that was filed and appears in the electronic docket states that "[t]he scheduling order filed and accepted in FST-CV-17-6031889-S [the first underlying action] is hereby adopted as the scheduling order for this case (the parties having agreed to such adoption in a telephonic status conference on January 30, 2019."

The scheduling order set a clear deadline by which the plaintiff had to disclose an expert witness, which the plaintiff did not meet. Despite the scheduling order, however, the plaintiff argues that she was not required to disclose an expert witness until reasonably close to trial. The plaintiff relies on *Girard* v. *Weiss*, 43 Conn. App. 397, 682 A.2d 1078, cert. denied, 239 Conn. 946, 686 A.2d 121 (1996), to support her claim. In *Girard*,

[8] The court in its July 20, 2020 memorandum of decision found that there was no scheduling order for this matter. The plaintiff relies on that finding to support her repeated assertions that no deadline existed to disclose an expert witness. Our thorough review of the record demonstrates that the court, by order dated January 30, 2019, and with agreement from both parties, adopted the scheduling order of the companion case for the present case. Notwithstanding that misstatement, the record clearly and undisputedly shows that there *was* such a scheduling order in place that set a deadline of April 15, 2019, by which the plaintiff had failed to abide.

the plaintiff claimed that the trial court improperly precluded him from offering expert testimony because the summary judgment rendered in favor of the defendant was predicated on the trial court's improper order precluding the plaintiff from offering expert testimony at trial. Id., 408. At the time that *Girard* was decided, the applicable rule of practice was § 220 (D), which set the time to disclose expert witnesses as sixty days before trial. See Practice Book (1978-97) § 220 (D). The current applicable rule of practice is § 13-4 (g), which provides in relevant part: "Unless otherwise ordered by the judicial authority, or otherwise agreed by the parties, the following schedule shall govern the expert discovery required under subsections (b), (c), (d) and (e) of this section. (1) Within 120 days after the return date of any civil action, or at such other time as the parties may agree or as the court may order, the parties shall submit to the court for its approval a proposed Schedule for Expert Discovery, which, upon approval by the court, shall govern the timing of expert discovery in the case. . . . If the parties are unable to agree on discovery deadlines, they shall so indicate on the proposed Schedule for Expert Discovery, in which event the court shall convene a scheduling conference to set those deadlines. . . ." Practice Book § 13-4 (g).

In the present case, the plaintiff argues that the court effectively precluded her from disclosing an expert in violation of Practice Book § 13-4 (h),[9] which applies to orders precluding the testimony of an expert witness. Section 13-4 (h) of the Practice Book, however, clearly

[9] Practice Book § 13-4 (h) provides: "A judicial authority may, after a hearing, impose sanctions on a party for failure to comply with the requirements of this section. An order precluding the testimony of an expert witness may be entered only upon a finding that: (1) the sanction of preclusion, including any consequence thereof on the sanctioned party's ability to prosecute or to defend the case, is proportional to the noncompliance at issue, and (2) the noncompliance at issue cannot adequately be addressed by a less severe sanction or combination of sanctions."

does not apply to the present case, as the court never sanctioned the plaintiff or issued an order that precluded the testimony of an expert witness. The plaintiff, nevertheless, attempts to draw an analogy between the court's granting of Kratter's motion for summary judgment as to count one and a hypothetical sanction order precluding expert witnesses, by arguing that the court's granting of the motion for summary judgment in favor of Kratter, in effect, acted as an order precluding the plaintiff from disclosing an expert witness. This analogy fails because the granting of a motion for summary judgment is not equivalent to ordering sanctions against a party simply because a summary judgment order is a final judgment that ends the case before a party disclosed an expert witness. Although the court in *Girard* prematurely cut short the plaintiff's time to disclose an expert witness, the court in the present case did not cut short the plaintiff's time to disclose an expert witness, as the April 15, 2019 deadline already had passed. Furthermore, even after the deadline passed, the court never indicated that it would not consider the opinion of an expert submitted by the plaintiff in opposition to the defendant's motion for summary judgment. The fact is that the plaintiff just never submitted to the court such an opinion.

Here, the deadline for disclosure of an expert witness was April 15, 2019. The defendant's motion for summary judgment was filed on December 17, 2019, more than seven months after the deadline had passed. The plaintiff filed an opposition to the motion for summary judgment on February 3, 2020, as well as a motion for permission for a late disclosure of an expert witness. The motion did not identify any expert or any substance of opinions to be provided, and, although it was filed, it was not pursued by the plaintiff. The plaintiff was clearly on notice that her disclosure of an expert witness was overdue. The court did not grant the defendant's motion for summary judgment until July 20, 2020,

more than one year after the disclosure deadline and more than five months after the plaintiff filed her motion for late disclosure of an expert. Still, the plaintiff never disclosed an expert opinion before the court rendered judgment. Thus, the judgment in this case was not the result of the court's preclusion of the plaintiff's expert's opinion but, rather, it was the result of the plaintiff's failure to produce an expert notwithstanding her acknowledgment that her claim requires one. The law is clear that, in the absence of an expert, she cannot prevail. See *Costello & McCormack, P.C.* v. *Manero*, supra, 194 Conn. App. 431.

As discussed previously in this opinion, a plaintiff alleging a claim of legal malpractice is generally required to offer expert testimony in order to prove both the standard of care and causation. See id. Following adequate time for discovery, "a plaintiff may properly be called upon at the summary judgment stage to demonstrate that he possesses sufficient counterevidence to raise a genuine issue of material fact as to any, or even all, of the essential elements of his cause of action." *Stuart* v. *Freiberg*, 316 Conn. 809, 823, 116 A.3d 1195 (2015). "The exception to the need for expert testimony is limited to situations in which the defendant attorney essentially has done nothing whatsoever to represent his or her client's interests, resulting in such an obvious and gross want of care and skill that the neglect would be clear even to a layperson." (Internal quotation marks omitted.) *Byrne* v. *Grasso*, 118 Conn. App. 444, 449, 985 A.2d 1064 (2009), cert. denied, 294 Conn. 934, 987 A.2d 1028 (2010).

In *Dixon* v. *Bromson & Reiner*, 95 Conn. App. 294, 296, 898 A.2d 193 (2006), the plaintiff did not offer any expert testimony to support her claim for legal malpractice. This court concluded that the trial court "properly determined that the testimony of an expert witness on the legal standard of care and causation was

needed . . . . Accordingly, the court properly granted the defendant's motion for summary judgment." Id., 300. As in *Dixon*, it is clear that the plaintiff in the present case was required to proffer testimony of an expert witness to establish her claim for legal malpractice. The plaintiff had ample time to do so and was on notice that an expert disclosure was required. Although she states in her principal brief that she is "prepared" to offer expert testimony, she has never identified any such expert or any proposed opinion.

After the moving party has established the absence of a genuine issue of material fact, the burden shifts to the opposing party to demonstrate the existence of "sufficient counterevidence to raise a genuine issue of material fact as to any, or even all, of the essential elements of his [or her] cause of action." *Stuart* v. *Freiberg*, supra, 316 Conn. 823. In the present case, the plaintiff does not dispute that expert testimony was required, but she simply failed to disclose any despite the fact that it was pivotal to the court's determination on the motion.[10] Therefore, we conclude that the trial court properly granted Kratter's motion for summary judgment as to the legal malpractice claim against him.

B

We next consider the plaintiff's claim that the court erred in granting Kratter's motion to strike count two of the operative complaint. We begin by setting forth the standard of review and applicable legal principles. "[A]ppellate review of a trial court's decision to grant a motion to strike is plenary. . . . This is because a motion to strike challenges the legal sufficiency of a pleading . . . and, consequently, requires no factual

[10] As noted previously in this opinion, the plaintiff's counsel filed a motion for permission to permit disclosure of an expert witness but failed to disclose an expert, did not specify a time frame for disclosure, and failed to seek adjudication of the motion.

findings by the trial court . . . .'' (Internal quotation marks omitted.) *HSBC Bank USA, National Assn.* v. *Nathan*, 195 Conn. App. 179, 193, 224 A.3d 1173 (2020). ''When a defendant's liability to a plaintiff is premised . . . on principles of tort law . . . the plaintiff may not convert that liability into one sounding in contract merely by talismanically invoking contract language in his complaint . . . and consequently a reviewing court may pierce the pleading veil to ensure that such is not the case. . . . Thus, in doing so, we look beyond the language used in the complaint to determine the true basis of the claim.'' (Citations omitted; internal quotation marks omitted.) *Pelletier* v. *Galske*, 105 Conn. App. 77, 81, 936 A.2d 689 (2007), cert. denied, 285 Conn. 921, 943 A.2d 1100 (2008).

''Whether [a] plaintiff's cause of action is one for malpractice [or contract] depends upon the definition of [those terms] and the allegations of the complaint. . . . Malpractice is commonly defined as the failure of one rendering professional services to exercise that degree of skill and learning commonly applied under all the circumstances in the community by the average prudent reputable member of the profession with the result of injury, loss, or damage to the recipient of those services. . . . The elements of a breach of contract claim are the formation of an agreement, performance by one party, breach of the agreement by the other party, and damages.'' (Citations omitted; internal quotation marks omitted.) *Meyers* v. *Livingston, Adler, Pulda, Meiklejohn & Kelly, P.C.*, 311 Conn. 282, 291, 87 A.3d 534 (2014).

The plaintiff argues that count two alleges a legally sufficient breach of contract claim. Kratter responds that the second count, instead, alleges a breach of the professional standard of care. In the present case, paragraphs 21 through 24 of the revised complaint assert the following allegations: ''The legal relationship and

agreement between the plaintiff and [Kratter] constituted a contract. . . . Part of that contract was to achieve a specific result, namely, pursuing the fraudulent loans so that the plaintiff would not be liable under them. . . . The plaintiff paid for [Kratter's] legal representation and agreed to provide any information or documentation necessary . . . . [Kratter's] failure to pursue the fraudulent loans in any meaningful fashion constituted a breach of the contract in existence between the plaintiff and [Kratter]." The court, in striking count two, concluded that the plaintiff's claim that Kratter failed to pursue the fraudulent loans "is a qualitative assessment implicating negligence/legal malpractice—adequacy of performance—rather than a breach of contract predicated on a failure to obtain a specific result (and pursuing a course of action more accurately seems to be characterized as a process, not a promised result), or a failure to perform a contractual obligation at all." We agree.

In *Pelletier* v. *Galske*, supra, 105 Conn. App. 82, this court agreed with the trial court's conclusion that the plaintiff's complaint in that case sounded in tort only and did not state a legally sufficient claim for breach of contract. This court explained that, "[w]here the plaintiff alleges that the defendant negligently performed legal services . . . the complaint sounds in negligence, even though he also alleges that he retained him or engaged his services." (Internal quotation marks omitted.) Id., 83. Likewise, in the present case, the second count of the plaintiff's revised complaint alleges a claim for legal malpractice rather than for breach of contract. The plaintiff's claim, which is based on the allegation that Kratter did not pursue the alleged fraudulent loans in any "meaningful fashion," is not a claim that Kratter breached the retainer agreement between the parties; rather, it is for "the failure of one rendering professional services . . . ." (Internal quotation marks

omitted.) *Pelletier* v. *Galske*, supra, 81. Accordingly, we conclude that the court properly granted Kratter's motion to strike count two of the revised complaint.

II

AC 44388

In AC 44388, the plaintiff challenges the court's rendering of summary judgment in favor of the law firms with respect to the plaintiff's claims for legal malpractice in count one and transferee liability in count thirteen of the third revised complaint. On appeal, the plaintiff claims that the court erred because (1) she still had time to disclose an expert witness to support her claim for legal malpractice at the time the motion for summary judgment was granted and (2) because the court's judgment as to count one was erroneous, the judgment as to count thirteen, sounding in transferee liability, also has to be reversed. The law firms contend that (1) the motion for summary judgment properly was granted as to count one because the plaintiff did not offer expert testimony in support of her claim for legal malpractice and (2) the court properly granted their motion for summary judgment as to count thirteen.[11] We agree with the law firms.

A

With respect to AC 44388, the plaintiff first claims that the court erred in rendering summary judgment in favor of the law firms with respect to the plaintiff's claims for legal malpractice in count one because she still had time to disclose an expert witness to support her claim for legal malpractice at the time the motion for summary judgment was granted. We disagree.

[11] Because we conclude that the plaintiff failed to disclose an expert witness, which is fatal to her claim, and that, consequently, the court properly granted judgment in favor of the defendants on count thirteen, we need not address the plaintiff's claim that the law firms failed to satisfy their burden on the motion for summary judgment.

We previously set forth in this opinion the standard of review applicable when reviewing a trial court's decision to grant a motion for summary judgment. "Our review of the decision to grant a motion for summary judgment is plenary. . . . We therefore must decide whether the court's conclusions were legally and logically correct and find support in the record." (Internal quotation marks omitted). *Rousseau* v. *Weinstein*, supra, 204 Conn. App. 840.

The plaintiff's claim relating to count one in this appeal is identical to the one she raised in her appeal in AC 44297, namely, that the court erred in granting the law firms' motion for summary judgment because she still had time to disclose an expert witness. We thoroughly addressed this issue in part I A of this opinion relating to Kratter's motion for summary judgment. For the reasons set forth therein, we conclude that the court properly granted the law firms' motion for summary judgment as to the plaintiff's legal malpractice claim in count one against the law firms.

B

Finally, the plaintiff challenges the court's granting of the law firms' motion for summary judgment as to count thirteen of the third revised complaint, which sounded in transferee liability. The law firms contend that the court properly granted their motion for summary judgment as to count thirteen. We agree.

The following additional facts are pertinent to this claim. On August 12, 2020, the law firms moved for summary judgment as to the remaining thirteenth count, on the grounds that transferee liability is not a viable claim, or in the alternative, is moot, in light of the court's determination of no liability on the part of the predecessor law firm, Kratter & Gustafson, LLC. The court granted their motion for summary judgment on November 2, 2020.

Count thirteen seeks to impose liability on the Law Offices of Mark M. Kratter, LLC, for the alleged liability of the predecessor law firm, Kratter & Gustafson, LLC. Because the court found no liability on the part of Kratter & Gustafson, LLC, there is no possible successor liability that could attach to the Law Offices of Mark M. Kratter, LLC. "[T]he liability of a successor . . . is derivative in nature and the successor may be held liable for the conduct of its predecessor only to the same extent as the predecessor. . . . [S]uccessor liability does not create a new cause of action against the purchaser so much as it transfers the liability of the predecessor to the purchaser." (Emphasis omitted; internal quotation marks omitted.) *Robbins* v. *Physicians for Women's Health, LLC*, 311 Conn. 707, 715–16, 90 A.3d 925 (2014). Accordingly, we conclude that the court properly rendered summary judgment as to count thirteen.

The judgments are affirmed.

In this opinion the other judges concurred.

DEPARTMENT OF PUBLIC HEALTH *v.* JUANITA ESTRADA ET AL.
(AC 43891)

Alexander, Suarez and DiPentima, Js.

Syllabus

The defendant E filed a complaint with the defendant Commission on Human Rights and Opportunities, alleging that her employer, the plaintiff Department of Public Health, had retaliated against her for a protected whistleblower disclosure that she made pursuant to statute (§ 4-61dd). As part of her job duties, E was assigned to review an appointment letter submitted to the department by the then director of health for the city of Hartford, requesting approval of W as the acting director of health for the city. Both the letter and W's resume indicated that W held a master's degree in public health. Although she did not independently verify that W had actually received a master's degree in public health, E drafted a letter approving W's appointment, which the commissioner

of the department signed. E later learned that W did not possess a master's degree in public health, and she reported that information to her supervisor. Following this disclosure, E received multiple written reprimands and negative and unsatisfactory performance appraisals, and she was demoted, all of which she claimed were the result of retaliation for her disclosure. A hearing was held before a human rights referee from the commission's Office of Public Hearings, who concluded that E had made a protected whistleblower disclosure under § 4-61dd and that the department had retaliated against her for such disclosure. The department appealed to the trial court, which sustained the appeal, concluding that E's disclosure did not qualify as a whistleblower disclosure under § 4-61dd, that E failed to establish a causal connection between any alleged whistleblower disclosure and the complained of personnel actions, and that the commission lacked subject matter jurisdiction to adjudicate E's complaint because she had brought the same adverse personnel actions at issue through the grievance procedures in her collective bargaining agreement. On appeal to this court, *held*:

1. The trial court erred in concluding that the commission lacked subject matter jurisdiction to adjudicate E's complaint: it was undisputed that § 4-61dd contains a statutory waiver of sovereign immunity and confers on the Office of Public Hearings the authority to adjudicate whistleblower retaliation claims; moreover, the fact that § 4-61dd provides an alternative avenue for a complainant to seek redress for adverse personnel actions taken in retaliation for a whistleblower disclosure, namely, through the procedures provided in an applicable collective bargaining contract, did not deprive the Office of Public Hearings of subject matter jurisdiction over E's claim, as the issue concerned her election of remedies rather than subject matter jurisdiction; accordingly, pursuant to § 4-61dd, the Office of Public Hearings had subject matter jurisdiction to adjudicate E's whistleblower retaliation claim.
2. The trial court properly concluded that E did not make a protected whistleblower disclosure pursuant to § 4-61dd: the educational qualifications required by statute ((Rev. to 2015) § 19a-200) did not apply to W, an acting director of health, because the statute distinguishes between directors of public health, who must, inter alia, possess a degree in public health, and acting directors of health, who must only be deemed suitable to serve as acting director during the period in which the director of public health is absent or unable to serve or in which a vacancy exists; accordingly, because W's appointment did not result in a violation of (Rev. to 2015) § 19a-200, E did not disclose a violation of state law, and she was not entitled to protection under § 4-61dd.

Argued October 14, 2021—officially released March 15, 2022

Procedural History

Appeal from the decision of a human rights referee for the defendant Commission on Human Rights and

Opportunities concluding that the named defendant made a protected whistleblower disclosure for which the plaintiff had retaliated, brought to the Superior Court in the judicial district of New Britain, where the court, *Cordani*, *J.*, rendered judgment sustaining the appeal, from which the defendants appealed to this court. *Affirmed.*

Anna-Marie Puryear, human rights attorney, with whom, on the brief, were *Michael E. Roberts*, human rights attorney, and *Eric C. Krupa*, former human rights attorney, for the appellant (defendant Commission on Human Rights and Opportunities).

Jennifer P. Bennett, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, *Clare E. Kindall*, solicitor general, and *Matthew Larock*, assistant attorney general, for the appellee (plaintiff).

Opinion

ALEXANDER, J. This appeal arises out of an alleged whistleblower retaliation action filed by the defendant Juanita Estrada in which a human rights referee (referee) from the Office of Public Hearings (office of public hearings) of the defendant Commission on Human Rights and Opportunities (commission) concluded that Estrada made a protected whistleblower disclosure pursuant to General Statutes § 4-61dd. Thereafter, the Superior Court sustained the appeal of the plaintiff, the Department of Public Health (department), concluding that Estrada's disclosure to her supervisor was not a whistleblower disclosure under § 4-61dd, that Estrada failed to establish a causal connection between any alleged whistleblower disclosure and the complained of personnel actions, and that the commission lacked subject matter jurisdiction to adjudicate Estrada's complaint because she had brought the same adverse personnel actions at issue through the grievance procedures in her collective bargaining agreement. On appeal,

the commission claims that the court erred (1) in concluding that the commission lacked subject matter jurisdiction to adjudicate Estrada's complaint, (2) in concluding that Estrada did not make a protected whistleblower disclosure pursuant to § 4-61dd, (3) in concluding that Estrada failed to establish a causal connection between the alleged disclosure and the adverse personnel actions, and (4) by failing to apply the proper standard of review in its analysis of the administrative decision. We agree with the commission that the court improperly determined that the commission lacked subject matter jurisdiction to adjudicate Estrada's whistleblower retaliation complaint. We determine, however, that the court properly concluded that Estrada did not make a protected whistleblower disclosure pursuant to § 4-61dd and that the court applied the proper standard of review in making this determination. Accordingly, we affirm the judgment of the court.

The following facts, as found by the referee, and procedural history are relevant to our resolution of the defendants' appeal. Estrada began working for the department in 1995 as an epidemiologist. By 2010, she had been promoted to the position of epidemiologist 4 within the department's division of the Office of Local Health Administration (OLHA). The OLHA is responsible for coordinating with and ensuring delivery of public health services to local health departments. These local health departments are made up of municipal health departments and regional health districts. Pursuant to General Statutes (Rev. to 2015) § 19a-200 (a),[1] the director of each local health department is nominated at the local level.[2]

[1] Hereinafter, unless otherwise indicated, all references to § 19a-200 in this opinion are to the 2015 revision of the statute.

[2] General Statutes (Rev. to 2015) § 19a-200 (a) sets forth the process for nominating a director of a municipal health department and provides in relevant part: "The mayor of each city, the warden of each borough, and the chief executive officer of each town shall . . . nominate some person to be director of health for such city, town or borough . . . ."

Section 19a-200 also prescribes the minimum qualifications that a director of health must possess. Pursuant to § 19a-200 (a), the director of health for a municipality must "(1) be a licensed physician and hold a degree in public health from an accredited school, college, university, or institution, or (2) hold a graduate degree in public health from an accredited school, college or institution. . . ." General Statutes (Rev. to 2015) § 19a-200 (a). Additionally, § 19a-200 (a) provides in relevant part: "In case of the absence or inability to act of a city, town or borough director of health or if a vacancy exists in the office of such director, the appointing authority of such city, town or borough may, with the approval of the [commissioner of the department], designate in writing a suitable person to serve as acting director of health during the period of such absence or inability or vacancy, provided the commissioner [of the department] may appoint such acting director if the city, town or borough fails to do so. The person so designated, when sworn, shall have all the powers and be subject to all the duties of such director. . . ." General Statutes (Rev. to 2015) § 19a-200 (a).

As part of Estrada's job duties as an epidemiologist 4 within the OLHA, she was assigned to review an applicant's qualifications to serve as a director or acting director of health. "[T]he customary process within the OLHA was to review a letter from a municipality or a district board of health appointing an individual to a permanent or acting director of health. Once the OLHA received the appointment letter from a municipality or the district board of health, [Estrada] would review the appointed individual's resume to ensure that it stated that the individual had a graduate degree from an accredited school." "Once [Estrada] reviewed the appointment letter and resume, she would then draft a letter for [Ellen] Blaschinski's[3] review stating that the [depart-

[3] At the time of the hearing in front of the referee, Blaschinski held the position of chief operating officer of the department. She supervised Estrada beginning in 2011.

ment] approved the appointment. After Blaschinski reviewed the letter she would send it [to] the commissioner of [the department] for [the commissioner's] review. Between 2011 and July, 2015, [Estrada] and Blaschinski undertook this process approximately ten times."

"On May 8, 2015, [Raul] Pino, then director of health for the city of Hartford, submitted a letter requesting approval of Ruonan Wang as acting director of health for the city of Hartford." Both Pino's letter and Wang's resume stated that Wang held a master's degree in public health from the University of Connecticut. After receiving the letter and resume, Estrada drafted a letter for Blaschinski's review but did not verify that Wang actually had received a master's degree in public health. The letter subsequently was signed by the commissioner of the department approving Wang's appointment as acting director of health.[4]

On June 17, 2015, an employee of the department notified Estrada that she had received information from an employee of the city of Hartford that Wang did not possess a master's degree in public health. Estrada asked her secretary to contact the University of Connecticut, who confirmed that Wang in fact did not receive a master's degree in public health from the university.[5] Thereafter, Estrada reported this new information to Blaschinski.

In July, 2017, Estrada filed an amended complaint with the commission in which she alleged that her report to Blaschinski, which stated that Wang did not possess a graduate degree in public health, disclosed a violation of § 19a-200 because the statute requires

[4] The letter, signed by the commissioner of the department, stated in relevant part: "We have reviewed . . . Wang's credentials and find them appropriate for the position. Therefore, pursuant to Section 19a-200 of the Connecticut General Statutes, you may appoint . . . Wang as the Acting/Interim Director of Health for the City of Hartford . . . ."

[5] There are no facts in the record to indicate that Wang received a master's degree in public health from any other institution.

that a person nominated for the position of director of health hold a graduate degree in public health. She alleged that this new information constituted a protected whistleblower disclosure pursuant to § 4-61dd. She further claimed that, after her report to Blaschinski, she was subjected to retaliation on multiple occasions. Estrada alleged that, in response to her disclosure, she received multiple "unwarranted and unjustified written reprimand[s]" and "negative and unsatisfactory performance appraisal[s]" and that she was demoted from the position of epidemiologist 4 to epidemiologist 3. Pursuant to § 4-61dd, Estrada sought, inter alia, "compensation for [lost wages], restoration of her position [as] epidemiologist 4, [damages for] emotional distress and loss of enjoyment [of life's activities], the removal of documentation from her personnel file reflecting the acts of retaliation against her, and reimbursement for the attorney's fees and costs that she has incurred . . . ."

A hearing on Estrada's complaint took place in September, 2017. In July, 2018, the referee issued a final decision in which she concluded that Estrada had made a protected whistleblower disclosure under § 4-61dd and that the department had retaliated against her.[6] Thereafter, the department appealed to the Superior Court. On January 14, 2020, after a hearing, the court issued a memorandum of decision sustaining the appeal

[6] In order for Estrada to establish a prima facie case of whistleblower retaliation, three elements must be shown: (1) Estrada must have engaged in a protected activity as defined by the statute; (2) Estrada must have incurred or been threatened with an adverse personnel action; and (3) there must be a causal connection between the actual or threatened personnel action and the protected activity. See General Statutes § 4-61dd; *Kisala* v. *Malecky*, Superior Court, judicial district of New Britain, Docket No. CV-13-5015760-S (October 7, 2013) (56 Conn. L. Rptr. 902, 905); see generally *Commissioner of Mental Health & Addiction Services* v. *Saeedi*, 143 Conn. App. 839, 841–42 n.1, 71 A.3d 619 (2013); *Eagen* v. *Commission on Human Rights & Opportunities*, 135 Conn. App. 563, 565–66 n.1, 42 A.3d 478 (2012).

and rendering judgment for the department. The court concluded that the commission lacked subject matter jurisdiction to adjudicate the complaint, that Estrada had not made a protected whistleblower disclosure under § 4-61dd, and that Estrada had failed to establish a causal connection between any alleged whistleblower disclosure and the alleged retaliation.[7] This appeal followed.

I

We first address the commission's claim that the court erred in concluding that the commission lacked subject matter jurisdiction to adjudicate Estrada's complaint. We agree.

The following additional facts and procedural history are relevant to our resolution of this claim. In its answer to Estrada's amended whistleblower retaliation complaint, the department asserted five special defenses. The first special defense asserted that "[t]he office of public hearings lacks subject matter jurisdiction over this complaint, as [Estrada] fails to make a valid claim of whistleblower retaliation, as required by . . . § 4-61dd."[8] Additionally, the department filed a "motion to dismiss and/or strike" in which it argued, inter alia, that the office of public hearings lacked jurisdiction "to hear a whistleblower claim for any of [Estrada's] alleged adverse personnel actions for which she has filed a grievance under her collective bargaining contract . . . because the two remedies are mutually exclusive" and that Estrada's claims did not "fall under the purview of . . . § 4-61dd and are therefore barred by sovereign immunity." This motion was denied by the referee.

[7] Because we agree with the court that Estrada did not prove that she was engaged in any protected whistleblower activity, we need not address the commission's remaining claims of whistleblower retaliation.

[8] The remaining four special defenses are not relevant to this claim.

In its posthearing brief, the department argued that the office of public hearings lacked jurisdiction because § 4-61dd offered Estrada "a clear choice of either filing a grievance or bringing the instant [whistleblower retaliation] case, but not both." (Emphasis omitted.) The department asserted that, because Estrada had filed grievances in connection with the adverse employment actions that she claimed were acts of retaliation in her whistleblower retaliation complaint, the office of public hearings had no jurisdiction to hear the case. In addition, the department argued that Estrada's claim did not "qualify as a whistleblower retaliation claim under the plain meaning of [§ 4-61dd]" and, therefore, the action was "barred by sovereign immunity" and "beyond the jurisdiction of [the office of public hearings] . . . ."

In her decision, the referee determined that the office of public hearings had subject matter jurisdiction over Estrada's whistleblower retaliation complaint. The referee stated that, "[w]hen a defendant challenges a complaint on the ground that a plaintiff has elected an exclusive remedy, the issue is properly raised by a special defense and not a motion to dismiss since [i]t is both rational and fair to place the burden of pleading and proving an election of remedies on the party asserting the claim . . . ." (Internal quotation marks omitted.) She concluded that the department's "argument that this tribunal does not have jurisdiction and violates sovereign immunity is without merit . . . ."

The court disagreed with the referee's conclusion and determined that the office of public hearings lacked subject matter jurisdiction to hear Estrada's whistleblower retaliation case. The court discussed the three grievances filed by Estrada and determined that her whistleblower retaliation complaint challenged the same personnel actions that were raised in her grievances. The court analyzed the relevant statute, § 4-61dd,

and concluded that, because "the statute clearly provides a mutually exclusive choice in this regard, [Estrada] is precluded from relitigating the propriety of the same personnel actions before the [referee]. The statute offered [Estrada] a clear choice of either filing grievances or bringing the instant [whistleblower retaliation] case to address the personnel actions, but not both."

On appeal, the department argues that "[t]he fact that Estrada filed grievances regarding the same adverse personnel actions at issue in this case deprived [the office of public hearings] of subject matter jurisdiction because Estrada's claim does not fall within the statute's limited waiver of sovereign immunity." We are not persuaded by this contention and conclude that the office of public hearings had subject matter jurisdiction to adjudicate Estrada's whistleblower retaliation claim pursuant to § 4-61dd.

We begin our analysis by setting forth the legal principles relevant to our review of this claim. "The principle that the state cannot be sued without its consent, or sovereign immunity, is well established under our case law. . . . [T]he practical and logical basis of the doctrine [of sovereign immunity] is today recognized to rest . . . on the hazard that the subjection of the state and federal governments to private litigation might constitute a serious interference with the performance of their functions and with their control over their respective instrumentalities, funds, and property." (Internal quotation marks omitted.) *Jezouit* v. *Malloy*, 193 Conn. App. 576, 584, 219 A.3d 933 (2019).

"Sovereign immunity relates to a court's subject matter jurisdiction over a case, and therefore presents a question of law over which we exercise de novo review. . . . In so doing, we must decide whether [the trial court's] conclusions are legally and logically correct

and find support in the facts that appear in the record." (Internal quotation marks omitted.) *Columbia Air Services, Inc.* v. *Dept. of Transportation*, 293 Conn. 342, 349, 977 A.2d 636 (2009).

"[I]t is well established that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged. . . . Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it. . . . The subject matter jurisdiction requirement may not be waived by any party, and also may be raised by a party, or by the court sua sponte, at any stage of the proceedings, including on appeal." (Internal quotation marks omitted.) *Sousa* v. *Sousa*, 322 Conn. 757, 770, 143 A.3d 578 (2016).

Furthermore, "[s]ubject matter jurisdiction does not rest on the viability of the claims that a court is asked to adjudicate. Subject matter jurisdiction involves the authority of a court to adjudicate the *type* of controversy presented by the action before it. . . . A court does not truly lack subject matter jurisdiction if it has competence to entertain the action before it. . . . Once it is determined that a tribunal has authority or competence to decide the class of cases to which the action belongs, the issue of subject matter jurisdiction is resolved in favor of entertaining the action." (Emphasis in original; internal quotation marks omitted.) *Olympus Healthcare Group, Inc.* v. *Muller*, 88 Conn. App. 296, 300, 870 A.2d 1091 (2005).

"[T]he sovereign immunity enjoyed by the state is not absolute. There are [three] exceptions: (1) when the legislature, either expressly or by force of a necessary implication, statutorily waives the state's sovereign immunity . . . (2) when an action seeks declaratory or injunctive relief on the basis of a substantial claim that the state or one of its officers has violated the

plaintiff's constitutional rights . . . and (3) when an action seeks declaratory or injunctive relief on the basis of a substantial allegation of wrongful conduct to promote an illegal purpose in excess of the officer's statutory authority. . . . For a claim made pursuant to the first exception, this court has recognized the well established principle that statutes in derogation of sovereign immunity should be strictly construed. . . . Where there is any doubt about their meaning or intent they are given the effect which makes the least rather than the most change in sovereign immunity. . . . In the absence of a proper factual basis in the complaint to support the applicability of these exceptions, the granting of a motion to dismiss on sovereign immunity grounds is proper." (Citations omitted; internal quotation marks omitted.) *Columbia Air Services, Inc.* v. *Dept. of Transportation*, supra, 293 Conn. 349–50.

The department does not dispute that § 4-61dd contains a statutory waiver of sovereign immunity. Rather, the department argues that, because Estrada filed grievances challenging the same adverse personnel actions that form the basis of her whistleblower complaint, her whistleblower retaliation action falls outside of the waiver of sovereign immunity in § 4-61dd and, therefore, the office of public hearings lacks subject matter jurisdiction to hear Estrada's whistleblower claim. By way of this argument, the department attempts to transform an election of remedies claim into an issue of subject matter jurisdiction by implicating sovereign immunity.

"As a general rule, facts must be pleaded as a special defense when they are consistent with the allegations of the complaint but demonstrate, nonetheless, that the plaintiff has no cause of action." *Mitchell* v. *Guardian Systems, Inc.*, 72 Conn. App. 158, 166, 804 A.2d 1004, cert. denied, 262 Conn. 903, 810 A.2d 269 (2002). Our

courts previously have stated that an election of remedies claim is properly raised by a special defense rather than as a challenge to the jurisdiction of the court.

In *Grant* v. *Bassman*, 221 Conn. 465, 470, 473, 604 A.2d 814 (1992), our Supreme Court held that the defendants' claim that the plaintiffs had made an exclusive election of workers' compensation pursuant to General Statutes § 31-284 (a)[9] was not raised properly by a motion to dismiss challenging the court's subject matter jurisdiction and should have been raised by a special defense. In that case, a minor employee was injured at work and applied for and began receiving workers' compensation benefits for his injuries. Id., 468. Thereafter, the plaintiffs, the injured employee and his mother, filed a personal injury action against the defendant employer and its president, seeking damages for injuries sustained by the employee. Id., 466. The defendant employer moved to dismiss the plaintiffs' complaint, arguing that the trial court lacked subject matter jurisdiction because the employee had applied for and received workers' compensation benefits for those injuries. Id. The court explained that "[t]he purpose of a special defense is to plead facts that are consistent

[9] General Statutes § 31-284 (a) provides: "An employer who complies with the requirements of subsection (b) of this section shall not be liable for any action for damages on account of personal injury sustained by an employee arising out of and in the course of his employment or on account of death resulting from personal injury so sustained, but an employer shall secure compensation for his employees as provided under this chapter, except that compensation shall not be paid when the personal injury had been caused by the wilful and serious misconduct of the injured employee or by his intoxication. All rights and claims between an employer who complies with the requirements of subsection (b) of this section and employees, or any representatives or dependents of such employees, arising out of personal injury or death sustained in the course of employment are abolished other than rights and claims given by this chapter, provided nothing in this section shall prohibit any employee from securing, by agreement with his employer, additional compensation from his employer for the injury or from enforcing any agreement for additional compensation."

with the allegations of the complaint but demonstrate, nonetheless, that the plaintiff has no cause of action. . . . The claim that a plaintiff has elected an exclusive remedy relies on facts outside those alleged in the complaint that operate to negate what may once have been a valid cause of action. . . . It is therefore both rational and fair to place the burden of pleading and proving an election of remedies on the party asserting the claim, usually the defendant." (Citations omitted.) Id., 472–73. The court concluded that a special defense, and not a motion to dismiss, was the proper procedural mechanism for the defendant employer's challenge to the plaintiffs' complaint. Id., 473.

In making its determination, our Supreme Court in *Grant* v. *Bassman*, supra, 221 Conn. 471–72, adopted the reasoning of the court in *Fusaro* v. *Chase Brass & Copper Co.*, 21 Conn. Supp. 240, 242–44, 154 A.2d 138 (1956), in which the court discussed the appropriate procedural mechanism for raising a claim that a plaintiff has made an exclusive election of workers' compensation. The court in *Fusaro* stated that the exclusivity provision "is not at all a denial of jurisdiction in the Superior Court, as such, but is basically a destruction of an otherwise existent common-law right of action. . . . The confusion, if there be any, arises from the fact that the compensation procedure which is substituted for the common-law right of action involves a special tribunal, rather than the Superior Court. However, this is a mere incident of the destruction of the common-law right of action. In other words, there is not a lack of jurisdiction in the court but a want of a cause of action in the plaintiff." Id., 243.

In *Commissioner of Mental Health & Addiction Services* v. *Saeedi*, 143 Conn. App. 839, 71 A.3d 619 (2013), the defendant filed a whistleblower retaliation complaint with the office of public hearings in which he alleged that he had been subjected to retaliation for

making a whistleblower disclosure pursuant to § 4-61dd. Id., 845. The plaintiffs filed an answer in which they pleaded one special defense asserting that the office of public hearings lacked subject matter jurisdiction because the defendant had failed to satisfy the prerequisites for protection under § 4-61dd. Id. The plaintiffs also filed a motion to dismiss in which they alleged, inter alia, that the office of public hearings did not have subject matter jurisdiction because the defendant had filed grievances through his union and, therefore, had elected to pursue his remedies though his collective bargaining agreement. Id., 846. After the referee found in favor of the defendant, the plaintiffs appealed to the Superior Court and again argued, inter alia, that the office of public hearings lacked subject matter jurisdiction. Id., 855. The Superior Court upheld the decision of the referee. Id. On appeal to this court, the plaintiffs presented "the argument that [the defendant's] use of the grievance process served to invalidate [the defendant's] claims because he chose to pursue them through the forum provided by the collective bargaining agreement. The plaintiffs no longer claim[ed] that this deprive[d] the referee of jurisdiction to decide the matter. They claim[ed] that [the defendant's] claims should have been dismissed because § 4-61dd requires the employee to elect an exclusive forum in which to pursue these claims, and [the defendant] elected his exclusive forum when his union filed its grievances." (Footnote omitted; internal quotation marks omitted.) Id., 855–56. This court declined to review the plaintiffs' claim because it was raised for the first time on appeal. Id., 857. The court stated, however, that "[t]he plaintiffs' abandonment of their jurisdictional argument is unsurprising considering our Supreme Court's holding in *Grant* v. *Bassman* [supra, 221 Conn. 472]." *Commissioner of Mental Health & Addiction Services* v. *Saeedi*, supra, 143 Conn. App. 856 n.16.

In the present case, the statute at issue, § 4-61dd, provides two procedures to challenge an alleged retaliatory personnel action. First, an employee may "file a complaint . . . with the Chief Human Rights Referee . . . . The decision of a human rights referee under this subsection may be appealed by any person who was a party at such hearing, in accordance with the provisions of section 4-183." General Statutes § 4-61dd (e) (2) (A). Second, "[a]s an alternative to the provisions of subdivision (2) of this subsection: (A) A state or quasi-public agency employee who alleges that a personnel action has been threatened or taken may file an appeal . . . with the Employees' Review Board under section 5-202, or, in the case of a state or quasi-public agency employee covered by a collective bargaining contract, in accordance with the procedure provided by such contract . . . ." General Statutes § 4-61dd (e) (3).

There is no dispute that § 4-61dd contains a waiver of sovereign immunity and confers on the office of public hearings the authority to adjudicate the type of controversy presented in this case: a whistleblower retaliation claim. The fact that the statute also provides for an "alternative" avenue for a complainant to seek redress for adverse personnel actions taken in retaliation for a whistleblower disclosure; General Statutes § 4-61dd (e) (3); does not deprive the office of public hearings of subject matter jurisdiction to the claim. Although the language used in § 4-61dd differs from that used in § 31-284 and discussed in *Grant* v. *Bassman*, supra, 221 Conn. 471–73, in both circumstances, the issue that arises is one regarding the election of remedies. When a complainant elects to pursue one of the avenues provided for in § 4-61dd and then subsequently proceeds to pursue the second avenue, the issue concerns the complainant's election of remedies, not subject matter jurisdiction. Estrada's complaint to the office of public hearings, even if it is pursued after

the initial grievance process, does not create a lack of subject matter jurisdiction. Instead, it may result in " 'a want of a cause of action' "; (emphasis omitted) id., 472; which the department may challenge in a special defense. See id., 471. Accordingly, we conclude that the office of public hearings had subject matter jurisdiction to adjudicate Estrada's whistleblower retaliation claim.

II

We next address the commission's contention that the court erred when it concluded that Estrada did not make a protected whistleblower disclosure pursuant to § 4-61dd. The commission asserts, specifically, that Estrada's disclosure "fits within three of the enumerated categories [in § 4-61dd]: a violation of law, mismanagement, and a danger to public safety." We conclude that Estrada did not disclose a violation of law and, therefore, did not make a protected whistleblower disclosure pursuant to § 4-61dd.[10]

The following additional facts and procedural history are relevant to our resolution of this claim. In her decision, the referee stated that § 4-61dd " 'is a remedial

[10] The commission claims that Estrada's disclosure to Blaschinski fits within two other enumerated categories under § 4-61dd: mismanagement and a danger to public safety. The commission raises these arguments, however, for the first time on appeal. "We adhere to the well settled principle that [t]his court will not review issues of law that are raised for the first time on appeal. . . . We have repeatedly held that this court will not consider claimed errors on the part of the trial court unless it appears on the record that the question was distinctly raised at trial and was ruled upon and decided by the court adversely to the appellant's claim." (Internal quotation marks omitted.) *Rosa* v. *Lawrence & Memorial Hospital*, 145 Conn. App. 275, 309, 74 A.3d 534 (2013). "[A] party cannot present a case to the trial court on one theory and then seek appellate relief on a different one . . . ." (Internal quotation marks omitted.) *U.S. Bank National Assn.* v. *Eichten*, 184 Conn. App. 727, 756, 196 A.3d 328 (2018). These arguments were neither raised by the defendants at the administrative hearing or in the trial court nor decided by the referee or the court. Therefore, we decline to review the commission's claims that Estrada's report to Blaschinski was a disclosure of mismanagement or a danger to public safety pursuant to § 4-61dd.

statute and is to be interpreted broadly to effectuate [its] purpose.' . . . By using such broadly defined words as 'abuse' and 'mismanagement,' the legislature intended to protect employees who disclose a wide array of transgressions under . . . § 4-61dd." (Citation omitted.) In concluding that Estrada had made a protected disclosure under § 4-61dd, the referee stated that Estrada "reported a violation of . . . § 19a-200, which required a city health director possesses the required degrees. General Statutes § 19a-2a[11] confers broad powers to the [department] to administer all laws under the jurisdiction of the [department], which includes oversight of compliance with . . . § 19a-200. The OLHA is charged with reviewing resumes to determine if the schools attended by the applicant were properly accredited; the OLHA is part of the [department]. This is clearly reporting a violation of law under the jurisdiction of the agency; and falls squarely within a qualifying disclosure." (Footnote added; footnotes omitted.)

On appeal, the court disagreed with the conclusions of the referee. It concluded, inter alia, that Estrada's disclosure to Blaschinski was not a whistleblower disclosure under § 4-61dd. The court stated that "the disclosure does not reveal corruption, unethical practices, violations of state law or regulations, mismanagement, gross waste of funds, abuse of authority or danger to public safety occurring in any state department or agency or quasi-public agency as required by [the statute]." (Internal quotation marks omitted.) The court further stated that the letter from the department approving the city of Hartford's appointment of Wang as acting director was merely a mistake, as a result of Wang's misrepresentation and Estrada's failure to verify

[11] General Statutes § 19a-2a provides in relevant part: "The Commissioner of [the department] shall employ the most efficient and practical means for the prevention and suppression of disease and shall administer all laws under the jurisdiction of the [department] and the Public Health Code. . . ."

Wang's qualifications. The court determined that there was "no evidence that the commissioner, Blaschinski, [Estrada], or any other personnel at [the department] knew that the letter was mistaken at the time it was sent. . . . [S]ending the letter did not violate any law, nor did it represent corruption or unethical practices on the part of [the department] or the commissioner. . . . Further, the commissioner and [the department] promptly addressed the mistake when they discovered it."

The court then analyzed the relevant statutes to determine if a violation of law had occurred. "It is true that . . . § 19a-200 specifies the required qualifications of a city director of health. It is also true that . . . § 19a-2a confers broad authority upon the commissioner to administer public health laws, which includes oversight of compliance with § 19a-200. The disclosure, however, as here, that an acting city health director was unknowingly, mistakenly appointed and approved does not create a violation of law, corruption, or unethical practice at the [department] or by the commissioner [of the department]. . . .

"Two important points clearly arise from [§ 19a-200]. First, and most importantly, the commissioner [of the department] had the absolute power to approve persons for *acting* directors of health who he deems suitable. It is undisputed that Wang was an acting director of health. As such, the commissioner's letter approving Wang as an *acting* director of health broke no law. The commissioner [of the department] had the ability to deem Wang suitable and approve him. The specific [educational] qualifications for a permanent director of health do not apply to an acting director of health. Second, the obligation to appoint directors of health that meet the applicable qualifications lies with the appointing authority (i.e., the city), not the commissioner [of the department]. As such, even if the commissioner mistakenly approved a

person without the necessary qualifications, he broke no law, but merely made a mistake." (Emphasis in original; footnotes omitted; internal quotation marks omitted.)

We first set forth our standard of review and the legal principles relevant to our resolution of this claim. We review the trial court's judgment pursuant to the Uniform Administrative Procedure Act, General Statutes § 4-166 et seq. "[I]t is [not] the function . . . of this court to retry the case or to substitute its judgment for that of the administrative agency." (Internal quotation marks omitted.) *Valliere* v. *Commissioner of Social Services*, 328 Conn. 294, 308, 178 A.3d 346 (2018).

"Judicial review of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . An administrative finding is supported by substantial evidence if the record affords a substantial basis of fact from which the fact in issue can be reasonably inferred. . . . The substantial evidence rule imposes an important limitation on the power of the courts to overturn a decision of an administrative agency . . . and . . . provide[s] a more restrictive standard of review than standards embodying review of weight of the evidence or clearly erroneous action. . . . [A]s to questions of law, [t]he court's ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion. . . . Conclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts." (Citation omitted; internal quotation marks omitted.) *Blinkoff* v. *Commission on Human Rights & Opportunities*, 129 Conn.

App. 714, 720–21, 20 A.3d 1272, cert. denied, 302 Conn. 922, 28 A.3d 341 (2011).

"Cases that present pure questions of law, however, invoke a broader standard of review than is . . . involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion. . . . Furthermore, when a state agency's determination of a question of law has not previously been subject to judicial scrutiny . . . the agency is not entitled to special deference. . . . 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 . . . . Even if time-tested, we will defer to an agency's interpretation of a statute only if it is reasonable; that reasonableness is determined by [application of] our established rules of statutory construction." (Internal quotation marks omitted.) *Valliere* v. *Commissioner of Social Services*, supra, 328 Conn. 308. In the present case, the parties do not claim that the referee's interpretation of the statute is time-tested or has previously been subjected to judicial scrutiny.

The question before this court is whether Estrada's disclosure that the commissioner of the department improperly designated Wang as acting director of health for the city of Hartford constituted a protected disclosure under § 4-61dd. Section § 4-61dd (a) provides in relevant part: "Any person having knowledge of any matter involving . . . corruption, unethical practices, *violation of state laws* or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in any state department or agency, [or] any quasi-public agency . . . may transmit all facts and information in such person's possession

concerning such matter to the Auditors of Public Accounts. . . .'' (Emphasis added.)

The statute further provides in relevant part: ''No state officer or employee . . . shall take or threaten to take any personnel action against any state or quasi-public agency employee . . . in retaliation for (A) such employee's . . . disclosure of information to (i) an employee of the Auditors of Public Accounts . . . [or] (ii) an employee of the state agency or quasi-public agency where such officer or employee is employed . . . .'' General Statutes § 4-61dd (e) (1). The commission contends that Estrada's reporting to Blaschinski that Wang did not hold a master's degree constituted a disclosure of a violation of § 19a-200 and, therefore, is a protected whistleblower disclosure under § 4-61dd. Specifically, the commission argues that § 19a-200 requires all directors, whether permanent or acting, either to be a licensed physician with a degree in public health or to hold a graduate degree in public health and that, regardless of the qualifications set forth in the statute, Wang was not '' 'suitable' '' for the position of acting director of health. Therefore, we must determine whether Estrada's disclosure constitutes a disclosure of a ''violation of state laws'' as used in § 4-61dd. We conclude that it does not.

''When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider 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. . . . The test to determine ambiguity is whether the statute, when

read in context, is susceptible to more than one reasonable interpretation. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . .'' (Internal quotation marks omitted.) *Chairperson, Connecticut Medical Examining Board* v. *Freedom of Information Commission*, 310 Conn. 276, 283, 77 A.3d 121 (2013). We iterate that, because the referee's interpretation of the statute ''has not been 'subjected to judicial scrutiny or consistently applied by the agency over a long period of time,' our review is de novo.'' Id.; see also *Valliere* v. *Commissioner of Social Services*, supra, 328 Conn. 309 (''no special deference is required because there is no claim that the department's construction of the applicable statutes is time-tested, or has previously been subject to judicial scrutiny'').

The parties dispute whether § 19a-200 requires that an *acting* director of health possess the qualifications set forth in § 19a-200 (a) and, consequently, whether Estrada's report that Wang did not possess a master's degree in public health disclosed a violation of state law and, thus, was a protected disclosure under § 4-61dd. We conclude that the statutory qualifications set forth in § 19a-200 do not apply to a person designated to serve as an acting director of health. Estrada, therefore, did not disclose a violation of § 19a-200 and, consequently, did not make a protected disclosure under § 4-61dd.

Section 19a-200 (a) provides in relevant part: ''[A]ny person nominated to be a director of health shall (1) be a licensed physician and hold a degree in public health . . . or (2) hold a graduate degree in public health . . . .'' General Statutes (Rev. to 2015) § 19a-200

(a). It further provides that, in the absence or inability to act of a director of health or if a vacancy exists, the appointing local authority, with approval of the commissioner of the department, may "designate in writing a *suitable* person to serve as *acting* director of health . . . ." (Emphasis added.) General Statutes (Rev. to 2015) § 19a-200 (a). The statute makes a distinction between qualifications required for a director of health, who must either be a licensed physician and hold a degree in public health or hold a graduate degree in public health, and those for an *acting* director of health, stating that an *acting* director of health need only be *suitable*. See General Statutes (Rev. to 2015) § 19a-200 (a).

In construing the statute, the commission's argument that the qualifications set forth in § 19a-200 (a) for a director of public health also apply to an *acting* director of public health is belied by the plain language of the statute. When subsection (a) is read as a whole, it is apparent that the legislature did not intend for the qualifications set forth in § 19a-200 (a) to apply to an *acting* director of health. It is significant that the legislature stated that a director of health must possess certain educational qualifications but used the phrase "suitable person" when discussing the designation of an acting director of health. See *Stone* v. *East Coast Swappers, LLC*, 337 Conn. 589, 602, 255 A.3d 851 (2020) ("[t]he use of the 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)). The legislature's inclusion of qualifications for those nominated as a director of health, while stating that an individual designated for *acting* director should be "suitable," indicates its decision that the qualifications required for a director of health not apply to an *acting* director of health. Because

our objective is to ascertain and give effect to the apparent intent of the legislature, "we cannot accomplish a result that is contrary to the intent of the legislature as expressed in the [statute's] plain language. . . . The intent of the legislature, as [the] court has repeatedly observed, is to be found not in what the legislature meant to say, but in the meaning of what it did say." (Footnote omitted; internal quotation marks omitted.) *Vincent* v. *New Haven*, 285 Conn. 778, 792, 941 A.2d 932 (2008).

We conclude that no violation of § 19a-200 occurred, and, therefore, it follows that Estrada did not disclose a violation of law. We conclude that her report to Blaschinski is not a protected disclosure under § 4-61dd.[12] Thus, we agree with the court that Estrada is not entitled to protection under § 4-61dd on these facts and circumstances.

The judgment is affirmed.

In this opinion the other judges concurred.

[12] Moreover, this is not the type of disclosure intended to be protected under § 4-61dd. The court concluded that the letter signed by the commissioner of the department approving Wang as acting director of health was prepared and executed without knowledge that the information in Wang's resume was incorrect and that Wang did not actually possess a master's degree in public health. Therefore, the approval was merely a mistake. Furthermore, the court stated that Estrada "bore substantial responsibility for the mistake" because she drafted the letter with an understanding of the purpose of the letter and knowing that the letter would be signed by the commissioner of the department. The court determined that, "[a]lthough the letter was mistaken, sending the letter did not violate any law, nor did it represent corruption or unethical practices on the part of [the department] or the commissioner [of the department]. . . . Further, the commissioner [of the department] and [the department] promptly addressed the mistake when they discovered it." We agree with the court's analysis. Therefore, even assuming, arguendo, that § 19a-200 (a) requires that an acting director of health possess the qualifications that apply to permanent directors of health, Estrada did not disclose a violation of law but merely disclosed the fact that the department was mistaken in believing that Wang held a master's degree in public health, a mistake that was "induced by the false resume of Wang . . . ." We conclude that a mistake such as this one is not the type of disclosure the legislature intended to protect under the statute.

MARK BOVA *v.* COMMISSIONER OF CORRECTION (AC 43993)

Moll, Clark and Bear, Js.

Syllabus

The petitioner, who had previously been convicted of murder and conspiracy to commit murder, filed an amended petition for habeas corpus, claiming, inter alia, that the state failed to disclose exculpatory evidence or to correct certain false and misleading testimony, in violation of his due process rights. At the petitioner's criminal trial, D, a coconspirator, testified as to how she and the petitioner were involved in the death of the victim, and her testimony was corroborated by forensic evidence. The habeas court rendered judgment dismissing in part and denying in part the petitioner's claims, from which the petitioner, on the granting of certification, appealed to this court. *Held* that the petitioner could not prevail on his claim that the habeas court erred in failing to find the existence of a cooperation agreement or understanding between D and the state with respect to D's testimony: the petitioner's reliance on *Gomez* v. *Commissioner of Correction* (336 Conn. 168) was misplaced because, even assuming the veracity of the petitioner's allegations that D was provided benefits in exchange for her cooperation, *Gomez* applies only when a petitioner establishes the existence of an agreement between the state and a witness and that the witness received some benefit as a result of the agreement, and this court's review of the record confirmed the habeas court's finding that the petitioner failed to prove that the state had entered into an agreement or understanding with D; moreover, with respect to the petitioner's due process claim, the habeas court's finding that the petitioner had not proved that an agreement or understanding existed between the state and D was supported by substantial evidence.

Submitted on briefs January 26—officially released March 15, 2022

Procedural History

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland, where the court, *Newson*, *J.*, dismissed in part the petition; thereafter, the case was tried to the court, *Seeley*, *J.*; judgment dismissing in part and denying in part the petition, from which the petitioner, on the granting of certification, appealed to this court. *Affirmed.*

J. Patten Brown III, assigned counsel, for the appellant (petitioner).

Nancy L. Chupak, senior assistant state's attorney, with whom, on the brief, were *Margaret E. Kelley*, state's attorney, and *Angela R. Macchiarulo* and *Michael Joseph Proto*, senior assistant state's attorneys, for the appellee (respondent).

Opinion

PER CURIAM. Following the granting by the habeas court of his petition for certification to appeal, the petitioner, Mark Bova, appeals from the judgment of the habeas court denying his third petition for a writ of habeas corpus. On appeal, the petitioner claims that the habeas court erred in failing to find the existence of a cooperation agreement or understanding between Diana Donofrio, a coconspirator, and the state with respect to Donofrio's testimony at the petitioner's criminal trial. We disagree with the petitioner's claim of error and, accordingly, affirm the judgment of the habeas court.

The following facts and procedural history are relevant to our resolution of the petitioner's appeal. After a jury trial, the petitioner was found guilty of the murder of his wife in violation of General Statutes § 53a-54a (a) and of conspiracy to commit murder in violation of General Statutes §§ 53a-48 (a) and 53a-54a (a). *State* v. *Bova*, 240 Conn. 210, 213, 690 A.2d 1370 (1997). At the petitioner's criminal trial, Donofrio testified as to how she and the petitioner were involved in the death of the petitioner's wife. Id., 216–17.[1] Donofrio's testimony was corroborated

[1] Specifically, our Supreme Court summarized Donofrio's testimony as follows: "In May, 1993, the [petitioner] terminated his relationship with Donofrio and moved in with another woman. Two months later, Donofrio contacted the West Haven police to report that the [petitioner] had killed the victim. Thereafter, Donofrio explained that she and the [petitioner] had discussed his plans to murder the victim at least one week prior to the murder. Specifically, the [petitioner] told Donofrio that he loved her and could not afford a divorce, that he intended to kill the victim by strangulation, and that he would commit the murder on a Tuesday because he did not work on Wednesday.

"Donofrio testified that the [petitioner] telephoned her between 6 and 6:30 p.m. on Tuesday, January 28, 1992, to tell her that he was in the process of killing the victim and that he needed her assistance. When Donofrio arrived at the [petitioner's] home a few minutes later, she found the [petitioner] and

by forensic evidence presented at the trial. Id., 217–18. The petitioner appealed from the judgment of the trial court, which sentenced him to concurrent terms of sixty years of incarceration on the murder conviction and twenty years of incarceration on the conspiracy conviction. Id., 212–13. Our Supreme Court affirmed the judgment of the trial court. Id., 246.

On April 24, 2017, the petitioner filed his third petition for a writ of habeas corpus.[2] The petitioner subsequently amended his petition on August 16, 2018, and September 13, 2018. In the operative petition, the petitioner asserted claims of (1) judicial misconduct, (2) prosecutorial impropriety, (3) insufficient probable cause, and (4) the state's failure to disclose exculpatory evidence or to correct false and misleading testimony with respect to an informal agreement or understanding with Donofrio that, in return for her testimony against the petitioner, the state would provide her with various benefits, including pretrial release on a $100,000 nonsurety bond, a reduction in the severity of the charges against her, and no recommendation by the state concerning her sentence. On February 6, 2019, the habeas court dismissed the petitioner's claim of prosecutorial impropriety. On January 15, 2020, after a trial, the habeas court dismissed the petitioner's claims of judicial misconduct and insufficient probable cause. The habeas court also rendered judgment denying

the victim in the couple's bedroom. The victim was lying on the bed, face down and unconscious. The [petitioner], who was on top of the victim, was strangling her with an extension cord. Because the victim continued to exhibit a pulse, the [petitioner] began to strangle her manually, holding his thumbs on the back of her head and his fingers at the front of her neck. Donofrio then helped the [petitioner] move the victim from the bed onto the floor, where they took turns smothering her with a pillow until she had no pulse." *State* v. *Bova*, supra, 240 Conn. 216.

[2] The petitioner's prior petitions for a writ of habeas of corpus were unsuccessful. See *Bova* v. *Commissioner of Correction*, 162 Conn. App. 348, 131 A.3d 268, cert. denied, 320 Conn. 920, 132 A.3d 1094 (2016); *Bova* v. *Commissioner of Correction*, 95 Conn. App. 129, 894 A.2d 1067, cert. denied, 278 Conn. 920, 901 A.2d 43 (2006).

the habeas petition because the petitioner had failed to prove his claim that there was any agreement or understanding between the state and Donofrio for her testimony, and thus, the petitioner could not prove that the state had not disclosed exculpatory evidence to him, or failed to correct any false and misleading testimony by Donofrio about any agreement or understanding with the state with respect to her testimony.

On January 28, 2020, the petitioner filed a petition for certification to appeal, which was granted by the habeas court. On appeal, the petitioner claims that the court erred in finding that no agreement or understanding existed between Donofrio and the state concerning her testimony.[3] Specifically, the petitioner claims that his due process rights were violated because Donofrio testified falsely that she had not entered into an agreement with the state, and the state failed to correct this false testimony. We disagree.

We begin by setting forth the applicable standard of review. "The existence of an undisclosed plea agreement is an issue of fact for the determination of the trial court. . . . Furthermore, the burden is on the [petitioner] to prove the existence of undisclosed exculpatory evidence. . . . A finding of fact will not be disturbed unless it is clearly erroneous in view of the evidence and pleadings on the whole record . . . . [W]hen a question of fact is essential to the outcome of a particular legal determination that implicates a defendant's constitutional rights, and the credibility of witnesses is not the primary issue, our customary deference to the trial court's factual findings is tempered by a scrupulous examination of the record to ascertain that the trial court's factual findings are supported by substantial evidence." (Citation omit-

[3] The petitioner has not appealed from the judgment of the habeas court dismissing in part and denying in part his claims of prosecutorial impropriety, judicial misconduct, and insufficient probable cause.

ted; internal quotation marks omitted.) *Greene* v. *Commissioner of Correction*, 330 Conn. 1, 29, 190 A.3d 851 (2018), cert. denied sub nom. *Greene* v. *Semple*, U.S. , 139 S. Ct. 1219, 203 L. Ed. 2d 238 (2019).

In the present case, the petitioner relies on the decision of our Supreme Court in *Gomez* v. *Commissioner of Correction*, 336 Conn. 168, 243 A.3d 1163 (2020). This reliance, however, is misplaced. In the consolidated criminal case in *Gomez*, the petitioner and his two codefendants were each charged, inter alia, with one count of murder and one count of conspiracy to commit murder. Id., 171. During their criminal trial, two other alleged coconspirators testified against the petitioner and his codefendants. Id., 171–72. In his habeas appeal, the petitioner in *Gomez* claimed that both of the alleged coconspirators "falsely testified at trial that (1) the state had not promised them anything in return for their cooperation, and (2) they did not receive any benefit at their respective bond hearings in exchange for cooperating." Id., 176. Our Supreme Court resolved this claim in favor of the petitioner after determining that "the prosecutor . . . had promised both [of the alleged coconspirators] that he would bring their cooperation to the attention of the sentencing court," and that they did, in fact, receive benefits in exchange for their cooperation that were not disclosed to the jury. Id.

In the present case, the petitioner argues that *Gomez* applies because "Donofrio was given three benefits in exchange for her cooperation: (1) she was released on a nonsurety bond;[4] (2) the state filed substitute charges (which did not include a charge of perjury); and (3) the state did not recommend a sentence." (Footnote added.) Even if we assume that these allegations are true, the

[4] During the habeas trial, the petitioner did not offer the transcript of Donofrio's arraignment as an exhibit, and, therefore, there is no evidence to support the petitioner's argument that the prosecutor suggested that this "benefit" was provided to her.

petitioner's reliance on *Gomez* is still misplaced. *Gomez* applies only when a petitioner establishes (1) the existence of an agreement between the state and a witness *and* (2) that the witness did, in fact, receive some benefit as a result of the agreement. See *Gomez* v. *Commissioner of Correction*, supra, 336 Conn. 176. Our review of the record in the present case confirms the finding of the habeas court that "the petitioner has failed to prove that the [state] had entered into a[n] . . . agreement or understanding, either formal or informal, with Donofrio."[5] With respect to the petitioner's due process claim, we conclude that the habeas court's finding that the petitioner had not proved that an agreement or understanding existed between the state and Donofrio is supported by

[5] The habeas court set forth the following facts in support of its finding that no agreement or understanding existed between the state and Donofrio: "On February 23, 1995, Donofrio pleaded guilty to conspiracy to commit murder and making a false statement to the police before the same trial judge, *Gormley, J.*, who had presided over the petitioner's [criminal] trial. Prior to the entry of Donofrio's guilty pleas, the prosecutor . . . indicated that she was filing a substituted information as a result of a judicial pretrial that had occurred subsequent to the jury's verdict in the petitioner's case. [The prosecutor] stated that 'prior to the time of this pretrial which occurred after the guilty verdict was entered on [the petitioner], there had been no representation to defense counsel or to the court as to what the state would do.' Donofrio's counsel . . . confirmed that 'there were never any agreements that were entered into by us and the state regarding any disposition of the case.' Judge Gormley also stated that 'there were no discussions with reference to a disposition of [Donofrio's] case prior to the verdict being entered in the case of [the petitioner].' The court indicated disposition for Donofrio's guilty pleas was a maximum sentence of twelve years, execution suspended after the service of six years, followed by probation, with Donofrio's counsel having the opportunity to argue for a lesser sentence.

"Donofrio was sentenced on April 6, 1995, to a total effective sentence of ten years of incarceration, execution suspended after the service of four years, followed by a period of probation of three years. During the sentencing hearing, the trial court stated: 'One further thing the court wants to say and to say very clearly and categorically, and that is that there have been no deals at all in this case. I read in the paper this morning that the Bova family still believes, and will believe until their dying days, that there has been a deal. I can't change how they feel and they can feel there's been a deal for as long as they want. I can only tell them that there has been no deal, none that I've participated in.' "

substantial evidence. *Greene* v. *Commissioner of Correction*, supra, 330 Conn. 29. Accordingly, we conclude that the finding of the habeas court that no agreement or understanding existed between the state and Donofrio with respect to her testimony precludes the application of the law set forth in *Gomez* to the petitioner's claim.

The judgment is affirmed.

GRIFFIN HOSPITAL *v.* ISOTHRIVE, LLC
(AC 43714)

Alvord, Clark and Bishop, Js.

Syllabus

The plaintiff sought to recover damages from the defendant for breach of contract, alleging that the defendant had failed to make the final payment for services rendered. The parties had entered into a research agreement for the plaintiff to study the potential benefits of the defendant's nutrition supplement on a certain group of individuals. The agreement was amended and was accompanied by a revised protocol concerning the characteristics of individuals suitable for the study. The defendant filed a counterclaim alleging that the plaintiff breached the parties' contract by, inter alia, failing to comply with the requirements of the agreement and the protocol regarding the population of individuals to be included in the study. Following a trial to the court, the court awarded the plaintiff damages for the defendant's breach of contract and prejudgment interest based on its finding that the defendant had wrongfully withheld funds from the plaintiff, and the defendant appealed to this court. *Held*:

1. The trial court properly concluded that the defendant had breached the research agreement by failing to pay a final invoice, the plaintiff having conducted the study in accordance with the agreement: contrary to the defendant's claim, the plaintiff was not obligated, under the definitive terms of the revised protocol and amended agreement, to perform any analysis to determine whether certain medications had the potential to interact with the ingredients in the supplement, as the language of the parties' revised protocol unambiguously provided that the plaintiff was required to exclude only potential study participants with diabetes or hypertension who were taking medication with a known potential to interact with the supplement; moreover, the language of the revised protocol, including the term "overweight but otherwise healthy," was clear and unambiguous with respect to the selection of study participants, as it set forth the criteria that, if met, would allow prospective participants to enroll in the study and detailed the criteria that would

exclude a prospective participant from the study; furthermore, there was ample evidence in the record to support the court's finding that the plaintiff performed its obligations under the contract, including the selection of study participants, and the fact that the defendant did not obtain the results it wanted from the study did not constitute a breach of contract nor did it negate its obligation to pay the amount due on the final invoice.

2. This court concluded that the trial court did not abuse its discretion by awarding prejudgment interest to the plaintiff pursuant to the applicable statute (§ 37-3a), as the record supported the court's finding that the defendant had no good faith basis to withhold final payment and, therefore, doing so was a wrongful detention of money due under the contract.

Argued September 22, 2021—officially released March 15, 2022

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 Haven, where the defendant filed a counterclaim; thereafter, the matter was tried to the court, *Wilson*, *J.*; judgment for the plaintiff on the complaint and on the counterclaim, from which the defendant appealed to this court. *Affirmed.*

Matthew D. Popilowski, for the appellant (defendant).

Peter T. Fay, for the appellee (plaintiff).

Opinion

BISHOP, J. This appeal concerns a dispute between the parties arising out of an agreement to study the potential benefits of a certain nutrition supplement on a group of overweight but otherwise healthy individuals. The central question at issue in this appeal is whether the plaintiff, Griffin Hospital,[1] conducted the study in accordance with the study protocol agreed upon by the parties. After trial, the court found in favor of the plaintiff, concluding that the defendant, ISOThrive, LLC,

[1] Although the plaintiff in this matter is Griffin Hospital, the research which is the subject of this appeal was conducted by the Yale-Griffin Prevention Research Center, a division of the plaintiff.

had breached the research agreement by failing to pay a final invoice. The court found for the plaintiff, as well, on the defendant's counterclaim, which alleged that the plaintiff had breached the research agreement by failing to conduct the study in accordance with the agreement's research study protocol. Accordingly, the court awarded the plaintiff $68,204.12 on its breach of contract claim. Additionally, the court ordered the defendant to pay prejudgment interest at the rate of 8 percent for its wrongful detention of funds due to the plaintiff. This appeal followed.

On appeal, the defendant argues that the court improperly (1) concluded that the plaintiff was not obligated to perform an analysis to determine whether certain medications had the potential to interact with the supplement, (2) concluded that the term "overweight but otherwise healthy" was governed exclusively by the inclusion and exclusion criteria set forth in the parties' agreement, (3) concluded that the plaintiff performed the study in accordance with the agreement, (4) awarded prejudgment interest to the plaintiff, and (5) found against the defendant on its counterclaim.[2] We affirm the judgment of the court.

We briefly set forth the standards of review applicable to the defendant's various claims. In addressing the defendant's claims regarding the court's interpretation of the parties' agreement, our review implicates the court's factual findings as well as its interpretation of the contract. As to the defendant's claims that challenge

[2] In its counterclaim, the defendant sought damages on the basis of the plaintiff's alleged breaches of the parties' agreement by not following the protocol established for the study, by failing to provide certain analyses in its study report and by publicly posting the study results. On review, we need not separately reach the defendant's counterclaim because our resolution of the appeal affirming the trial court's awards to the plaintiff subsumes and resolves, by necessity, the defendant's arguments in support of its counterclaim.

the court's factual findings, we apply the clearly erroneous standard of review to determine whether the record supports the court's factual findings. See *Coppola Construction Co.* v. *Hoffman Enterprises Ltd. Partnership*, 157 Conn. App. 139, 158, 117 A.3d 876, cert. denied, 318 Conn. 902, 122 A.3d 631 (2015), and cert. denied, 318 Conn. 902, 123 A.3d 882 (2015). As to the defendant's claims that challenge the court's legal conclusions, "our review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record." (Internal quotation marks omitted.) *Sun Val, LLC* v. *Commissioner of Transportation*, 330 Conn. 316, 325–26, 193 A.3d 1192 (2018). Lastly, as to the defendant's claim that the court improperly awarded prejudgment interest, as authorized by General Statutes § 37-3a, we apply an abuse of discretion standard of review. See *Riley* v. *Travelers Home & Marine Ins. Co.*, 173 Conn. App. 422, 460–61, 163 A.3d 1246 (2017) ("The decision of whether to grant interest under § 37-3a is primarily an equitable determination and a matter lying within the discretion of the trial court. . . . Under the abuse of discretion standard of review, [w]e will make every reasonable presumption in favor of upholding the trial court's ruling, and only upset it for a manifest abuse of discretion." (Internal quotation marks omitted.)), aff'd, 333 Conn. 60, 214 A.3d 345 (2019).

This matter was tried to the court over the course of three days in January, 2019. In its memorandum of decision, the court found the following facts. "In October, 2014, the defendant entered into a research agreement with the plaintiff, which the defendant's [chief executive officer], Jack Oswald, signed on behalf of the defendant on October 24, 2014. The agreement provided that the plaintiff would provide its research services pursuant to the study protocol and would provide the defendant with a final written report. The agreement

also provided that the plaintiff would invoice the defendant according to the following schedule: 50 percent upon execution of the agreement, 40 percent at the six month mark, and 10 percent upon completion of the study and final report. The defendant was to pay the invoices within thirty days. The parties signed a Supplemental Agreement, effective April 17, 2015, which called for a final budget of $302,403. The defendant has made payments of $224,731.40. On December 18, 2015, the plaintiff issued a final invoice to the defendant in the amount of $68,204.12 [which the defendant declined to pay]."

During the course of their dealings, the parties amended their "agreement to reflect the fact that the defendant had decided to change the study design. The amended agreement was effective March 23, 2015, and signed by Jack Oswald on April 2, 2015. Attached to the amended agreement was a revised protocol, which stated that the study's purpose was '[t]o compare the effects of daily intake of the [defendant's] supplement [versus] a placebo on the primary outcome measure of body weight and secondary outcome measures (hunger/satiety, health-related measures and self-reported quality of life) in a group of overweight but otherwise healthy adults.' The revised protocol provided that the study would be of '105 overweight men and women in the age range of 18 to 75 years, who are nonsmokers with a body mass index (BMI) ≥ 25, and a maximum body weight of 350 pounds (due to limitations of the weight scale). *Individuals with diabetes or hypertension will be included in the study if they are not taking medications with a known potential to interact with ingredients in the supplement.*' "[3] (Emphasis in original.)

[3] The revised protocol set forth the following exclusion criteria: "Pregnant and/or lactating women"; "Evidence or history of substance or alcohol abuse (include if over [five] years)"; "History of major depression, bipolar disorder or schizophrenia, any type of obsessive-compulsive disorder"; "Current history of migraine headaches (include if controlled with medication)"; "Current use of any prescription or non-prescription weight loss products";

In its decision, the court found that "[i]t is undisputed that the defendant contracted with the plaintiff to perform a clinical trial, and agreed to pay for such services. It is equally undisputed that the defendant failed to pay the final invoice, despite demand from the plaintiff and the fact that the plaintiff sent a final report on February 23, 2016, and a revised final report on July 14, 2016, as required by the contract." The court awarded the plaintiff $68,204.12 in contract damages and, in addition, prejudgment interest at the rate of 8 percent on the basis of its finding that the defendant had wrongfully withheld funds from the plaintiff. This appeal followed. Additional facts will be set forth as necessary.

The defendant first argues that the court erred in concluding that the plaintiff was not obligated, under the definitive terms of the revised protocol and amended agreement, to perform any analysis to determine whether certain medications had the potential to interact with the ingredients of the supplement under study. We disagree.

Subsequent to the parties' initial agreement, they agreed to a revised protocol for the study concerning the characteristics of individuals suitable for the study. The protocol detailed both inclusion and exclusion criteria. At trial, the parties were not in agreement regarding

"Tobacco use"; "Active eating disorder including anorexia nervosa and bulimia"; "Known sensitivity or allergy to any of the ingredients in the product"; "Symptomatic coronary artery disease or congestive heart failure"; "History of a stroke in the past year"; "Symptomatic arrhythmia"; "Uncontrolled hypertension (i.e., systolic pressure >180 mmHg and or diastolic > 100mmHg)"; "History of a seizure in the past [five] years"; "Any cancer in the past [five] years other than non-melanoma skin cancer or in-situ cervical cancer"; "Active or history of inflammatory bowel disease"; "Current use of TNF-alpha inhibitor medications"; "Current use of COX-2 inhibitor medications"; "Current use of JAK inhibitor medications"; "History of weight loss procedures including bariatric surgery"; and "[H]abitual use of prebiotic supplements or more than occasional consumption of naturally fermented foods, including probiotics such as kimchi and sauerkraut."

the terms of this protocol as to the characteristics of potential subjects for inclusion and for exclusion. The court's task, then, was to interpret the relevant provisions of the protocol. In doing so, the court was performing the legal task of contract interpretation. Accordingly, as noted, our review of this claim is plenary.

The relevant provision of the revised protocol states that "[i]ndividuals with diabetes or hypertension will be included in the study if they are not taking medications with a known potential to interact with ingredients in the supplement." On the basis of our review of the revised protocol, including the provision in question, we agree with the trial court's conclusion that "[t]he revised protocol did not exclude persons with a current use of antibiotics and the plaintiff was not obligated by the terms of the agreement to undertake any form of analysis to determine whether a medication had a potential to interact with the ingredients of the supplement."

It is well established that "[a] contract must be construed to effectuate the intent of the parties, which is determined from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction." (Internal quotation marks omitted.) *Poole* v. *Waterbury*, 266 Conn. 68, 87–88, 831 A.2d 211 (2003). Here, we agree with the trial court's determination that the language of the revised protocol unambiguously provides that the plaintiff was only required to exclude potential study participants with diabetes or hypertension who were taking medication with a *known* potential to interact with the supplement. Accordingly, the unambiguous language of the parties' agreement does not support the defendant's claim that the plaintiff was required to conduct a particular analysis to determine whether a participant's medication might interact with the defendant's supplement.

The defendant next argues that the court erred in concluding that the term "overweight but otherwise healthy" in the revised protocol was unambiguous and governed exclusively by the inclusion and exclusion criteria. This argument is similarly unavailing. On the basis of our review, we determine that the court's conclusions regarding this claim were legally correct.

Notwithstanding the defendant's framing of this claim, our review of the court's memorandum of decision reveals that the court did not conclude that the term "overweight but otherwise healthy" was governed exclusively by the inclusion and exclusion criteria. Rather, the court stated that "[t]he phrase 'overweight but otherwise healthy' must be understood in the context of the inclusion and exclusion criteria; the language of the revised protocol makes no sense otherwise."

When reviewing a court's determination regarding the ambiguity of an agreement, we reiterate that a "contract must be viewed in its entirety, with each provision read in light of the other provisions . . . and every provision must be given effect if it is possible to do so." (Internal quotation marks omitted.) *Cruz* v. *Visual Perceptions, LLC*, 311 Conn. 93, 103, 84 A.3d 828 (2014). Additionally, "the mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous." (Internal quotation marks omitted.) Id.

Accordingly, on the basis of our review, we agree with the trial court that the language of the revised protocol is clear and unambiguous with respect to the selection of study participants. It sets forth the criteria that, if met, would allow prospective participants to enroll in the study. The revised protocol similarly details the criteria that would exclude a prospective participant from the study. See *State* v. *Lombardo Bros. Mason Contractors, Inc.*, 307 Conn. 412, 468, 54 A.3d 1005

(2012) ("[a] court will not torture words to import ambiguity [when] the ordinary meaning leaves no room for ambiguity" (internal quotation marks omitted)).

The defendant also argues that the court erred in concluding that the plaintiff performed the study in accordance with the agreement. Specifically, the defendant argues that the plaintiff did not comply with the agreement because (1) the study participants included individuals who were not "otherwise healthy" and individuals who were taking medication that interacted with the supplement; (2) the number of obese individuals who participated in the study exceeded the agreed to percentage; and (3) the plaintiff failed to produce a written report containing all of the requisite analyses. This claim implicates the court's fact-finding function.

After our careful review, we conclude that there is ample evidence in the record to support the court's finding that "the plaintiff performed its obligations under the contract. . . . The fact that the defendant did not obtain the results it wanted from the study does not constitute a breach of contract nor does it negate its obligation to pay the amount due on the final invoice."

The defendant next argues that the trial court erred in awarding prejudgment interest to the plaintiff pursuant to § 37-3a.[4] More specifically, the defendant argues that "there existed additional good faith reasons for [the defendant] to refuse to pay the final invoice."

"The purpose of § 37-3a is to compensate plaintiffs who have been deprived of the use of money wrongfully withheld by defendants. . . . Whether interest may be

[4] General Statutes § 37-3a (a) provides in relevant part: "Except as provided in sections 37-3b, 37-3c and 52-192a, interest at the rate of ten per cent a year, and no more, may be recovered and allowed in civil actions or arbitration proceedings under chapter 909, including actions to recover money loaned at a greater rate, as damages for the detention of money after it becomes payable. . . ."

awarded depends on whether the money involved is payable . . . and whether the detention of the money is or is not wrongful under the circumstances." (Internal quotation marks omitted.) *Riley* v. *Travelers Home & Marine Ins. Co.*, supra, 173 Conn. App. 461; see also *Ballou* v. *Law Offices Howard Lee Schiff, P.C.*, 304 Conn. 348, 365, 39 A.3d 1075 (2012) ("under § 37-3a (a), an interest rate of less than 10 percent is presumptively valid, and therefore will be upheld, unless the party challenging the rate set by the court can demonstrate that it represents an abuse of discretion").

In awarding prejudgment interest, the court first found "that the plaintiff performed its obligations under the contract" and that "[t]he evidence presented at trial, including the facts stipulated to by the parties, clearly establishes that it was the parties' agreement that the defendant would pay the final invoice within thirty days after receipt of the final report." The court additionally found that "[t]he plaintiff delivered the Revised Final Report on July 14, 2016," but "[t]he defendant has refused to pay the invoice, and the evidence establishes that it had no good faith basis for refusing to pay because its argument that the inclusion and exclusion criteria did not specify who could be enrolled in the study in accordance with the Revised Protocol strains credulity."

On the basis of our review of the procedural history of this matter and the trial court's findings as set forth in its memorandum of decision, we conclude that the court did not abuse its discretion by awarding prejudgment interest. This is because the record supports the court's finding that the defendant had no good faith basis to withhold final payment and, therefore, doing so was a wrongful detention of money due under the contract.

The judgment is affirmed.

In this opinion the other judges concurred.

SCIENT FEDERAL CREDIT UNION *v.* MARK RABON (AC 43915)

Bright, C. J., and Elgo and Suarez, Js.

Syllabus

The plaintiff sought to recover damages resulting from the defendant's alleged breach of a credit card agreement. In its complaint, the plaintiff alleged that the defendant applied for and received a credit card by virtue of a credit card agreement, and the defendant defaulted under the terms of that agreement by failing to make the payments agreed to therein. The defendant filed a motion to dismiss on the ground that the trial court lacked personal jurisdiction over him due to insufficient service of process, which the court denied without issuing a memorandum of decision. Thereafter, the plaintiff filed a motion for summary judgment as to liability and damages. The plaintiff appended to the motion an affidavit from H, the director of collections for the plaintiff. H's affidavit stated that as a result of the defendant's credit card application submitted to the plaintiff, the defendant received two credit cards. Attached as exhibits to the affidavit were the defendant's credit card application, credit card disclosure statements, transaction listings for the two accounts, and the credit card agreement that allegedly established the defendant's liability to the plaintiff and the amount of the debt that the defendant owed, $46,812.08. The defendant opposed the motion for summary judgment, arguing that it differed from the complaint because the complaint referenced only one credit card and underlying agreement, while the motion for summary judgment referenced multiple credit cards with separate debts, along with documents that indicated the existence of separate agreements. The trial court granted the plaintiff's motion for summary judgment and rendered judgment thereon, from which the defendant appealed to this court. *Held*:

1. The trial court properly granted the plaintiff's motion for summary judgment, that court having properly concluded that the plaintiff met its burden to establish the absence of any genuine issue of material fact as to the factual basis for the defendant's liability to the plaintiff and the amount of damages owed: although the defendant argued that the complaint referenced only one credit card agreement and one credit card, the defendant admitted at oral argument before this court that he held two separate accounts with the plaintiff and that the two accounts arose from the same application and, therefore, he failed to establish that there was a genuine issue of material fact with respect to his liability on the two accounts; moreover, because H's affidavit asserted that the plaintiff was owed $46,812.08, which was also reflected in the attached transaction ledger for each account, and the defendant admitted at

oral argument before this court that the total amount of the debt was $46,812.08, there was no genuine issue of material fact in dispute as to the amount of damages.

2. The trial court properly denied the defendant's motion to dismiss that alleged that the court lacked personal jurisdiction over him due to insufficient service of process: pursuant to the applicable rule of practice (§ 10-30 (b)), a claim of lack of personal jurisdiction as a result of an insufficiency of service of process is waived unless raised by a motion to dismiss filed within thirty days of the filing of an appearance; accordingly, because the defendant filed an appearance and failed to file a motion to dismiss within thirty days of filing his appearance, he waived any right to challenge the court's exercise of personal jurisdiction over him.

Argued January 6—officially released March 15, 2022

Procedural History

Action to recover damages for the breach of a credit card agreement, and for other relief, brought to the Superior Court in the judicial district of New London, where the court, *Hon. James J. Devine*, judge trial referee, denied the defendant's motions to dismiss and to strike; thereafter, the court, *Hon. James J. Devine*, judge trial referee, granted the plaintiff's motion for summary judgment and rendered judgment thereon, from which the defendant appealed to this court. *Affirmed.*

Mark E. Rabon, self-represented, the appellant (defendant).

Kyle R. Barrett, for the appellee (plaintiff).

Opinion

SUAREZ, J. In this action seeking to recover credit card debt, the self-represented defendant, Mark Rabon, appeals from the judgment rendered by the trial court in favor of the plaintiff, Scient Federal Credit Union, following the granting of the plaintiff's motion for summary judgment. The defendant claims that the trial court improperly (1) granted the plaintiff's motion for summary judgment and (2) denied the defendant's

motion to dismiss. We affirm the judgment of the trial court.

The following facts and procedural history are relevant for our resolution of the defendant's claims. The plaintiff initiated this action by a single count complaint, which was dated July 13, 2017. In the complaint, the plaintiff alleged that "[b]y virtue of a Visa credit card agreement, the defendant applied for and received a credit card." The plaintiff further alleged that "[t]he defendant defaulted under the terms of the credit card agreement by failing to make the payments agreed to therein." Finally, the plaintiff alleged that "the defendant has failed and refused to satisfy the debt owed to the plaintiff" and that, "[a]s a result of the defendant's conduct, the plaintiff has been damaged."

Following the commencement of the present case, the defendant filed a motion to dismiss and a supporting memorandum of law on March 8, 2018. The defendant moved to dismiss this action on the ground that the court lacked personal jurisdiction over him due to insufficient service of process.[1] The plaintiff filed an objection to the motion to dismiss on April 18, 2018. The court, *Hon. James J. Devine*, judge trial referee, denied the motion to dismiss on May 1, 2018, and sustained the plaintiff's objection to the motion on the same day without issuing a memorandum of decision.

On September 27, 2018, the defendant filed a motion to strike, to which the plaintiff objected. In his motion to strike, the defendant alleged that "[t]he complaint [did] not properly plead facts with enough specificity" and that "[t]he complaint [alleged] conclusions that

[1] The defendant makes several arguments as to why the service of process was insufficient in the present case. Because we conclude that the court's denial of the defendant's motion to dismiss was proper on the basis of the untimeliness of the motion, it is unnecessary for us to address the merits of the defendant's claims with respect to improper service of process.

[were] unsupported by the facts alleged." The court, *Hon. James J. Devine*, judge trial referee, sustained the plaintiff's objection to the motion on February 4, 2019, and the motion was denied on February 6, 2019.

On May 30, 2019, the plaintiff filed a motion for summary judgment claiming that no genuine issues of material fact existed and that it was entitled to judgment as a matter of law as to both liability and damages. In support of its motion for summary judgment, the plaintiff submitted the affidavit of Irvine Hagewood, the director of collections for the plaintiff. The affidavit stated that the defendant submitted a "Loanliner Visa credit card application" to the plaintiff and, as a result of that application, the defendant received two credit cards. The plaintiff extended the credit accounts to the defendant on or about April 4, 2013. The defendant thereafter defaulted on the accounts by failing to pay the amounts that were due under the agreement. The affidavit further stated that the defendant was indebted to the plaintiff in the total amount of $46,812.08.[2] The affidavit provided that the defendant had failed to pay the plaintiff the balance due, which constituted the outstanding balances under both accounts. The plaintiff attached to its affidavit several exhibits, including the defendant's application, credit card disclosure statements, transaction listings for the two accounts, and the credit card agreement.

In its memorandum of law in support of the motion for summary judgment, the plaintiff argued that, because "the defendant has raised no special defenses and the plaintiff's affidavit in support of summary judgment establishes the defendant's liability to the plaintiff and the amount of damages owed, summary judgment

[2] Although not specified in the affidavit, the plaintiff's memorandum in support of the motion for summary judgment clarifies that the defendant owed $26,655.04 on one credit account and $20,157.04 on the other credit account, which totaled $46,812.08 in debt.

is proper as there are no genuine issues of material fact left in dispute and the plaintiff is entitled to judgment as a matter of law."

On November 12, 2019, the defendant filed his objection to the motion and a memorandum in opposition to the motion for summary judgment. In the memorandum, the defendant argued that genuine issues of material fact existed for several reasons. The defendant asserted that the plaintiff's complaint referenced only one credit card agreement that had been breached and indicated that the defendant had received only one credit card. Although not stated in the complaint, the plaintiff's memorandum of law in support of the motion for summary judgment asserted that the total amount of damages being sought reflected a combination of debts from two separate credit card accounts. The defendant also asserted in an affidavit, which was filed with his objection to the motion for summary judgment, that he received more than one credit card from the plaintiff. The defendant's memorandum further asserted that both the plaintiff's complaint and Hagewood's affidavit failed to identify which credit card agreement had been breached. The defendant argued that the motion for summary judgment and the complaint "stand in stark contradiction" because the complaint referenced only one credit card and underlying agreement, while the motion for summary judgment referenced multiple credit cards with separate debts, along with documents indicating the existence of separate agreements.[3]

[3] In this regard, the defendant essentially argued before the trial court and argues before this court that the allegations in the complaint do not align with the relief requested in the plaintiff's motion for summary judgment. The defendant, however, did not file a request to revise to clarify the allegations in the complaint. Moreover, although the defendant focuses on the fact that the complaint references a single credit card, the uncontroverted evidence presented by the plaintiff in support of its motion for summary judgment reflects that it sought in its complaint to recover balances incurred by him by the use of two separate credit cards, which the defendant received after he filed a single application.

Despite raising these arguments, the defendant admitted in his affidavit, and he does not dispute on appeal, that he held multiple credit card accounts with the plaintiff. In his memorandum in opposition to the motion for summary judgment, the defendant also admitted that he owed the total amount being sought of $46,812.08, and that this amount reflected the combined balance of multiple credit cards.[4]

On November 12, 2019, the court, *Calmar*, *J.*, ordered the defendant to refile his memorandum because it contained personal identifying information. The memorandum was refiled with redactions but without substantive changes on November 21, 2019. Prior to the defendant's refiling of the memorandum, on November 15, 2019, the court, *Hon. James J. Devine*, judge trial referee, granted the plaintiff's motion for summary judgment. The defendant filed a motion to reargue on November 21, 2019, which the court denied on January 22, 2020. The defendant also filed a motion for articulation on November 21, 2019, which the court denied on January 22, 2020.

The defendant filed the present appeal on February 10, 2020. Subsequent to filing this appeal, the defendant moved for the court to issue a written decision pursuant to Practice Book § 64-1, and the court issued its memorandum of decision on February 25, 2020. In its memorandum of decision, the court stated that, because the "defendant has raised no special defenses and the plaintiff's affidavit in support of summary judgment establishes the defendant's liability to the plaintiff and the amount of damages owed, summary judgment is proper

[4] During oral argument before this court, the defendant once again acknowledged that he did in fact hold two separate accounts at the plaintiff, which were created simultaneously following the plaintiff's approval of the defendant's single application. The defendant also acknowledged at oral argument that he owed $46,812.08 on the two accounts, which was the same amount that the plaintiff claimed in damages related to the accounts.

as there are no genuine issues of material fact left in dispute and the plaintiff is entitled to judgment as a matter of law." This appeal followed.

I

The defendant first claims that the trial court improperly granted the plaintiff's motion for summary judgment. Specifically, the defendant claims that he demonstrated that there were genuine issues of material fact in dispute and, therefore, the court should not have granted the plaintiff's motion. Because the record establishes that there was no genuine issue of material fact as to whether the defendant applied for and received two separate credit accounts from the plaintiff by virtue of a single application or as to the total amount of the debt that the defendant owed on the two accounts, we conclude that the court properly granted the plaintiff's motion for summary judgment.

We now set forth the legal principles and standard of review relevant to this claim. "The fundamental purpose of summary judgment is preventing unnecessary trials. . . . If a [party] is unable to present sufficient evidence in support of an essential element of his cause of action at trial, he cannot prevail as a matter of law. . . . To avert these types of ill-fated cases from advancing to trial, following adequate time for discovery, a [party] may properly be called upon at the summary judgment stage to demonstrate that he possesses sufficient counterevidence to raise a genuine issue of material fact as to any, or even all, of the essential elements of his cause of action. . . .

"Practice Book § [17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . In deciding a motion for summary judgment, the

trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . .

"It is not enough . . . for the opposing party merely to assert the existence of such a disputed issue. Mere assertions of fact . . . are insufficient to establish the existence of a material fact and, therefore, cannot refute evidence properly presented to the court. . . . [T]ypically [d]emonstrating a genuine issue requires a showing of evidentiary facts or substantial evidence outside the pleadings from which material facts alleged in the pleadings can be warrantably inferred. . . . Only if the . . . moving party has submitted no evidentiary proof to rebut the allegations in the complaint, or the proof submitted fails to call those allegations into question, may the [nonmoving party] rest upon factual allegations alone. . . .

"[I]ssue-finding, rather than issue-determination, is the key to the procedure. . . . [T]he trial court does not sit as the trier of fact when ruling on a motion for summary judgment. . . . [Its] function is not to decide issues of material fact, but rather to determine whether any such issues exist. . . . Our review of the decision to grant a motion for summary judgment is plenary. . . . We therefore must decide whether the court's conclusions were legally and logically correct and find support in the record." (Internal quotation marks omitted.) *Carolina Casualty Ins. Co.* v. *Connecticut Solid Surface, LLC*, 207 Conn. App. 525, 532–33, 262 A.3d 885 (2021).

The plaintiff's complaint sounds in breach of contract. "The elements of a breach of contract action are the formation of an agreement, performance by one party, breach of the agreement by the other party and damages." (Internal quotation marks omitted.) *American Express Centurion Bank* v. *Head*, 115 Conn. App. 10, 15–16, 971 A.2d 90 (2009).

We first conclude that there was no genuine issue of material fact in dispute as to whether the defendant was liable to the plaintiff for breaching his contract with respect to two separate credit accounts. As noted previously in this opinion, the plaintiff submitted with its motion for summary judgment an affidavit prepared by Hagewood, which stated that the defendant became indebted to the plaintiff by virtue of a credit card application in which the defendant applied for two credit cards. Following the defendant's submission of the application, the plaintiff and the defendant entered into an agreement, and the plaintiff then extended the two credit accounts to the defendant. The defendant subsequently defaulted under the accounts and has failed to pay the balance due, which totals $46,812.08. On the basis of these facts, the plaintiff has established the defendant's liability as to the two credit accounts.

Moreover, the defendant did not allege any defense to liability or otherwise establish any genuine issue of material fact that would eliminate his obligation to satisfy the debt claimed by the plaintiff. Although the defendant argues that the complaint referenced only one credit card agreement and one credit card, the defendant admitted at oral argument that he did in fact hold two separate accounts with the plaintiff and that the two accounts arose from the same application. Despite the defendant's argument that the complaint only references the breach of a singular credit card agreement, it is clear that both of the defendant's

accounts arose from that same application and agreement. We therefore conclude that the defendant has not raised a genuine issue of material fact with respect to his liability on the two credit accounts.

We also determine that there is no genuine issue of material fact in dispute as to the plaintiff's damages. Hagewood's affidavit asserts that the plaintiff is owed $46,812.08 related to the agreement. Specifically, the defendant owed the plaintiff $26,655.04 on one account and $20,157.04 on the other account, which totaled $46,812.08. The amounts of the debts were reflected on the true and accurate copies of the transaction ledger for each account. Before the trial court, the defendant never disputed the total amount of the debt. In fact, the defendant admitted at oral argument before this court that the total amount of the debt was $46,812.08. Accordingly, we conclude that there is no genuine issue of material fact in dispute as to the amount of damages. The court's conclusion that there was no genuine issue of material fact and that the plaintiff was entitled to summary judgment as a matter of law was therefore logically and legally correct.

II

The defendant also claims that the trial court improperly denied his motion to dismiss. We disagree.

We begin by setting forth the legal principles and standard of review relevant to this claim. "A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction." (Internal quotation marks omitted.) *Beecher* v. *Mohegan Tribe of Indians of Connecticut*, 282 Conn. 130, 134, 918 A.2d 880 (2007).

"A defect in process . . . implicates personal jurisdiction . . . . [W]hen a particular method of serving process is set forth by statute, that method must be followed. . . . Unless service of process is made as the statute prescribes, the court to which it is returnable does not acquire jurisdiction." (Internal quotation marks omitted.) *Pedro* v. *Miller*, 281 Conn. 112, 117, 914 A.2d 524 (2007).

"[T]he Superior Court . . . may exercise jurisdiction over a person only if that person has been properly served with process, has consented to the jurisdiction of the court or has waived any objection to the court's exercise of personal jurisdiction. . . . Accordingly, jurisdiction over a person can be obtained by waiver." (Citation omitted; internal quotation marks omitted.) *Foster* v. *Smith*, 91 Conn. App. 528, 536, 881 A.2d 497 (2005). Practice Book § 10-30 (b), which governs motions to dismiss, provides that "[a]ny defendant, wishing to contest the court's jurisdiction, shall do so by filing a motion to dismiss *within thirty days of the filing of an appearance*." (Emphasis added.) As our Supreme Court has explained, § 10-30 (b) "specifically and unambiguously provides that any claim of lack of jurisdiction over the person as a result of an insufficiency of service of process is waived unless it is raised by a motion to dismiss filed within thirty days . . . . Thus, thirty-one days after the filing of an appearance . . . a party is deemed to have submitted to the jurisdiction of the court. Any claim of insufficiency of process is waived if not sooner raised." (Citation omitted; emphasis omitted; footnote omitted.) *Pitchell* v. *Hartford*, 247 Conn. 422, 433, 722 A.2d 797 (1999).

In the present case, the defendant filed a self-represented appearance on January 16, 2018. The defendant's motion to dismiss was not filed until March 8, 2018, which was fifty-one days after the defendant filed his

appearance in the present matter. The defendant, therefore, has waived any potential defects in the court's personal jurisdiction over him. Considering the untimeliness of the defendant's motion to dismiss, it is unnecessary for this court to examine the merits of the defendant's argument with respect to any improper service of process. Because the defendant filed his motion to dismiss more than thirty days after he filed an appearance, the defendant had submitted to the jurisdiction of the court. The defendant's motion to dismiss was untimely and, therefore, we conclude that the court properly denied the motion.

The judgment is affirmed.

In this opinion the other judges concurred.

MEMORANDUM DECISIONS

CONNECTICUT APPELLATE REPORTS

VOL. 211

MEMORANDUM DECISIONS

JAHMAL FULCHER *v.* COMMISSIONER OF CORRECTION
(AC 44200)

Alvord, Alexander and Flynn, Js.

Argued March 2—officially released March 15, 2022

Petitioner's appeal from the Superior Court in the judicial district of Tolland, *Chaplin*, *J.*

Per Curiam. The appeal is dismissed.

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PERSONNEL NOTICE

DIVISION OF CRIMINAL JUSTICE
(Affirmative Action/Equal Opportunity Employer)

CHIEF STATE'S ATTORNEY
STATE OF CONNECTICUT

Applications are being accepted for the full-time position of Chief State's Attorney for the Division of Criminal Justice, State of Connecticut (PCN 4853).

Pursuant to Article XXIII of the Connecticut Constitution, the Chief State's Attorney shall be the administrative head of the Division of Criminal Justice, and with the thirteen State's Attorneys, shall be in charge of the investigation and prosecution of all criminal matters within the State of Connecticut. For a full job description, follow this link:
https://portal.ct.gov/DCJ/Employment/Job-Descriptions/Chief-States-Attorney

Appointment shall be made by the Criminal Justice Commission in accordance with Sec. 51-278 of the Connecticut General Statute. The successful applicant shall hold office from the date of appointment through June 30, 2026, and thereafter be subject to re-appointment to a five (5) year term. The annual salary is $191,408.00

At the time of appointment, the successful candidate must be an attorney-at-law and shall have been admitted to the practice of law for at least three (3) years; residency in the State of Connecticut is a prerequisite to appointment. Applicants must be admitted to practice law in the State of Connecticut at the time of appointment. Division of Criminal Justice application forms must be completed by all applicants. These forms may be downloaded from the Division website at https://portal.ct.gov/-/media/DCJ/EmploymentApplicationFillablepdf.pdf?la=en. A job description for this position may also be viewed on this website.

Two (2) complete sets of application forms along with resumes must be sent via U.S. Mail to**:** The Honorable Andrew J. McDonald, Chairman, Criminal Justice Commission, c/o Human Resources - Office of the Chief State's Attorney, 300 Corporate Place, Rocky Hill, CT 06067, Attn: Chief State's Attorney (PCN 4853) and must be postmarked no later than March 25th 2022. In addition, an electronic copy (pdf) of application materials should be sent to DCJ.HR@ct.gov**.** Applications received by facsimile will not be accepted. The Division of Criminal Justice is an Affirmative Action/Equal Opportunity Employer.

NOTICE

Notice of Reprimand of Attorneys

Pursuant to Practice Book Section 2-54, notice is hereby given of the following reprimands ordered by reviewing committees of the Statewide Grievance Committee:

Reviewing Committee Reprimands

December 16, 2021: Alisha Carrie Mathers - 427808

December 17, 2021: Alisha Carrie Mathers - 427808

Copies of the full text of the decision of the Statewide Grievance Committee are available through the Committee's offices at 287 Main Street, Second Floor, Suite Two, East Hartford, Connecticut 06118-1885. The fee for copies is $.25 (twenty-five cents) per page. The full text of the decision is also available on the Connecticut Judicial Branch website (www.jud.ct.gov).

Attest:

Michael P. Bowler
Statewide Bar Counsel