SUPREME COURT PENDING CASES

The following appeals are fully briefed and eligible for assignment by the Supreme Court in the near future.

MARIA J. DERBLOM, EXECUTRIX (ESTATE OF FRED H. RETTICH), et al. *v.* ARCHDIOCESE OF HARTFORD, SC 20584
Judicial District of New Haven

Standing; Wills; Charitable Gifts and Trusts; Whether Appellate Court Correctly Concluded Plaintiffs, as Putative Beneficiaries of Testamentary Bequest, Did Not Have Standing to Enforce Terms of Bequest Under "Special Interest" Exception to Rule Giving State's Attorney General Exclusive Enforcement Authority. In 2012, the decedent, Fred H. Rettich, executed a will that contained a residuary clause in favor of Our Lady of Mercy School (OLM), or its successor. Beginning in 2004, OLM had become an archdiocesan school under the auspices of the defendant, the Archdiocese of Hartford. After Rettich died in 2013, the residuary of his estate, approximately $4.7 million, was distributed to OLM in accordance with his will. In 2018, the defendant announced that it would be closing OLM, which was located in Madison, and establishing a new school in Branford. The parents of some of the students attending OLM then formed Our Lady of Mercy School of Madison, Inc. (OLM Corp.), a corporation established to operate a private school purporting to be the successor to OLM. The plaintiffs, Maria J. Derblom, the executrix of Rettich's estate, several former students of OLM, the students' parents, and OLM Corp., brought this action against the defendant, alleging that the residuary clause in Rettich's will created a constructive trust for the benefit of the plaintiffs and that the defendant had a duty to convey the funds to OLM Corp., as successor to OLM, or to return the funds to Rettich's estate for distribution to his heirs. The defendant moved to dismiss the action on the ground that the plaintiffs lacked standing to bring an action to enforce the charitable gift. The trial court found that Rettich's will made a gift of his residual estate to OLM and the "special interest" exception to the rule giving exclusive authority to bring an action to protect any gifts, legacies or devises intended for public or charitable purposes to the state's attorney general was inapplicable to confer standing to the plaintiffs. Thus, the trial court granted the motion to dismiss. The plaintiffs appealed, and the Appellate Court (203 Conn. App. 197) affirmed the trial court's judgment. The Appellate Court determined that the trial court did not err in construing Rettich's bequest as an absolute or outright gift to OLM instead of an endowment that created a charitable trust benefit-

ting the plaintiffs. The Appellate Court also determined that the "special interest" exception has been applied narrowly only in cases involving charitable trusts, not charitable gifts and, because the court had determined that Rettich's bequest constituted an outright gift, it concluded that the "special interest" exception was inapplicable to confer standing to the plaintiffs and affirmed the judgment of dismissal. The plaintiffs were granted certification to appeal and the Supreme Court will decide whether the Appellate Court correctly concluded that the plaintiffs, as putative beneficiaries of a testamentary bequest, did not have standing to enforce the terms of that bequest under the "special interest" exception to the rule giving the state's attorney general exclusive enforcement authority.

TIM DUNN *v.* NORTHEAST HELICOPTERS FLIGHT SERVICES, L.L.C., SC 20626
Judicial District of Tolland

Employment; Whether Appellate Court Correctly Concluded That General Statutes § 31-73 (b), Which Prohibits Employers From Demanding Money From Employees as Condition of Continued Employment, Was Inapplicable to Plaintiff's Wrongful Termination Action; Whether Appellate Court Correctly Concluded That Evidence Presented at Summary Judgment Failed to Show That Defendant Violated Public Policy Contained in § 31-73 (b). The defendant operates a helicopter flight training school, and the plaintiff was employed by the defendant as its chief flight instructor. While employed by the defendant, the plaintiff sought to start his own flight examination business. The plaintiff was terminated from his employment after he informed John Boulette, the defendant's owner, that he wanted to keep his employment with the defendant and his new flight examination business separate so that he could retain all exam fees. The plaintiff brought this action, claiming that the termination of his employment was unlawful because the defendant had demanded 50 percent of any future proceeds from his flight examination business as a condition of his continued at-will employment in violation of the public policy underlying General Statues § 31-73 (b). That statute prohibits employers from coercing an employee to refund wages or related sums of money to the employer, or from withholding wages due and owing to an employee, as a condition to secure or continue employment. The parties filed cross motions for summary judgment. The trial court denied the plaintiff's motion and granted the defendant's motion, concluding that the evidence failed to establish

that the defendant violated the public policy underlying § 31-73 (b). The plaintiff appealed. The Appellate Court (206 Conn. App. 412) affirmed, concluding that § 31-73 (b) was not applicable here because any request or demand of money made by Boulette concerned funds that could not reasonably be attributed to the existing employment relationship but rather involved negotiations related to a separate, albeit related, future business venture between the parties. In support of its ruling, the court added that an employer that discharges an at-will employee has not violated § 31-73 (b) or any public policy contained therein that should subject the employer to a claim of wrongful termination where the employment at-will doctrine permits an employer to discharge an employee for any reason, including anger or resentment over an employee's refusal of a business proposal. Alternatively, even if § 31-73 (b) were applicable as a matter of law, the court determined that the plaintiff still could not prevail because he failed to present evidence to raise a genuine issue of material fact that Boulette had ever conditioned his continued employment on acceptance of the fee sharing offer. The plaintiff was granted certification to appeal, and the Supreme Court will decide whether the Appellate Court correctly concluded that the public policy contained in § 31-73 (b) is inapplicable to the facts of this case and, as a matter of law, cannot form the basis for a common-law wrongful termination action. Alternatively, if § 31-73 (b) is found to be applicable, the Supreme Court will determine whether the Appellate Court correctly concluded that the evidence presented at the summary judgment stage failed to support the plaintiff's claim that the defendant actually violated the public policy contained in § 31-73 (b).

CT FREEDOM ALLIANCE, LLC, et al. *v.* STATE OF CONNECTICUT DEPARTMENT OF EDUCATION et al., SC 20627

Judicial District of Hartford

Separation of Powers; General Statutes § 28-9; Civil Preparedness Emergency; Whether Governor's Emergency Authority Under § 28-9 May be Extended for Longer than Six Months; Whether Special Acts Ratifying Prior Emergency Declarations and Permitting Extensions Rendered Claim Moot; Whether Public School Mask Mandate Violates State Constitutional Right to Free Public Education. In March, 2020, Governor Ned Lamont declared a civil preparedness emergency pursuant to General Statutes § 28-9 in response to the Covid-19 pandemic. Section 28-9 authorizes the governor to declare a civil preparedness emergency and, during

it, to modify or suspend for six months any state law that conflicts with the efficient and expeditious execution of civil preparedness functions. In June, 2020, the state Department of Education issued a publication providing guidance for the safe reopening of schools that required children to wear masks in public school buildings. In September, 2020, the governor subsequently issued an executive order (EO9) authorizing the department to issue binding guidance concerning mask wearing in public schools. EO9 also provided that any mask mandate by the department, including that previously issued, was not a regulation for purposes of the Uniform Administrative Procedures Act (UAPA). The governor renewed his emergency declaration and extended EO9 multiple times. The plaintiffs, the CT Freedom Alliance, LLC, and individual parents with children in public schools, brought this action claiming that the mask mandate is invalid because it was issued in violation of UAPA procedures for an administrative agency to enact an emergency regulation and because the governor did not have the authority to retroactively validate the department's action by executive order. The plaintiffs also claimed that the governor's exercise of his authority under § 28-9 violated the separation of powers provision of our state constitution. The trial court rendered summary judgment in favor of the defendants, finding that the plaintiffs' claims had been rendered moot by certain Special Acts enacted by the General Assembly in 2021 that ratified the governor's prior emergency declarations and authorized him to extend them if he received legislative approval. The plaintiffs appealed to the Appellate Court, and the Supreme Court transferred the appeal to itself. The plaintiffs allege on appeal that their claims are not moot because the Special Acts could not properly serve as validating acts ratifying the governor's prior actions or, alternatively, because the capable of repetition yet evading review exception to the mootness doctrine applies. The plaintiffs then allege that § 28-9 does not permit the governor to exercise his emergency authority for longer than six months and that the General Assembly's repeated delegation of its legislative power to the governor for a prolonged period of time violated the separation of powers enshrined in our state constitution. The plaintiffs also allege that the trial court improperly found that they failed to produce sufficient evidence that masks cause physical and psychological harm to children and do not prevent the spread of Covid-19 to support their claim that the mask mandate violates the state constitutional right to a free public education.

COMMISSIONER OF DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES et al. *v.* FREEDOM OF INFORMATION COMMISSION et al., SC 20686

Judicial District of New Britain

Freedom of Information Act; Whether Disclosure of Police Report Regarding Death of Patient at Mental Health Facility Violates the Psychiatrist-Patient Privilege and the Health Insurance Portability and Accountability Act. The Department of Mental Health and Addiction Services (DMHAS) operates the Whiting Forensic Hospital, a maximum security psychiatric facility, and keeps its own police force there. Josh Kovner, a reporter, filed a complaint with the Freedom of Information Commission (FOIC), alleging that DMHAS violated the Freedom of Information Act (FOIA) by denying his request for disclosure of a police report regarding "a death of a patient on December 1, 2016." The FOIC agreed and ordered DMHAS to disclose an unredacted copy of the report. DMHAS appealed to the trial court, claiming that the report was exempt from disclosure under the psychiatrist-patient privilege as provided by General Statutes § 52-146d (2), which prohibits the disclosure of records "relating" to the "treatment of a patient's mental condition between" the patient or the patient's family member and a psychiatrist "or between any of such persons and a person participating under the supervision of a psychiatrist . . . wherever made, including . . . records which occur in or are prepared at a mental health facility." Here, the court concluded that the police report was a "record" under § 52-146d (2) because it was "prepared at a mental health facility" and related to the treatment of a "patient's mental condition." The court, however, ruled that the disclosure of a redacted report would not violate the privilege, which only prohibits disclosing records "which identify a patient" per General Statutes § 52-146e (a). It also concluded that the report was protected under the federal Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. § 160.103, finding (1) that the DMHAS police was a "covered entity" and (2) that the report "relates" to the mental and physical health condition of a patient at the facility. The court sustained DMHAS's appeal in part, ordering DMHAS to disclose a redacted copy of the report, deleting any information that identifies the patient and any health information protected by HIPAA. The FOIC appealed to the Appellate Court, and the Supreme Court transferred the appeal to itself. The FOIC claims that the trial court failed to recognize that § 52-146d (2) only applies to communications between the three groups of people delineated in the statute in determining that the report was protected by the privilege. Further, it claims that HIPAA is not

applicable to the report because, inter alia, (1) a law enforcement agency is not a "covered entity" under 45 C.F.R. § 160.103 and (2) the report does not contain "health information" within the meaning of 45 C.F.R. § 160.103. DMHAS cross appeals and claims that the report could not be considered a "public record" subject to disclosure under § 1-210 (a) of the FOIA once the court determined that it was protected by the psychiatrist-patient privilege. It also claims that disclosing a redacted copy of the police report would violate both § 52-146d (2) and HIPAA because, given the specificity of the request and news coverage of the incident, even the redacted version of the report would reveal the identity of the patient.

The summaries appearing here are not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. These summaries are prepared by the Staff Attorneys' Office for the convenience of the bar. They in no way indicate the Supreme Court's view of the factual or legal aspects of the appeal.

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