

## SUPREME COURT PENDING CASES

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

STATE v. ROBERT J. WILLIAMS, SC 20766  
*Judicial District of Waterbury*

**Criminal; Jury Instructions; Whether Trial Court Erred in Declining to Give Self-Defense Instruction on Manslaughter Charge; Whether Trial Court Erred in Refusing to Instruct Jury on Defense of Necessity; Whether Defendant's Conviction for Both Criminal Possession of Firearm and Criminal Possession of Ammunition Violates Double Jeopardy.** The defendant was charged with murder, manslaughter in the first degree, and several firearm offenses in connection with the shooting death of the victim, Terry Smith. Surveillance videos recorded the victim and another individual, Kenny Martin, arriving at the TreeTop Café in Waterbury together in Martin's car. The defendant was standing across the street when he spoke and gestured to Martin. Soon thereafter, the defendant charged across the street towards Martin, who discharged a firearm in the defendant's direction. The defendant fell to the ground and simultaneously began shooting at Martin. During the exchange of gunfire, the defendant was shot in his leg and the victim, who was seated in Martin's car, was shot in the head and died. During trial, the defendant requested a self-defense instruction on both the murder and the manslaughter charges, but the trial court instructed the jury on self-defense only with respect to the murder charge, reasoning in accordance with *Morris v. Platt*, 32 Conn. 75 (1864), that, when a lawful act of self-defense is done with wantonness and negligence, the defendant is liable for the unintentional wounding or killing of an innocent bystander. The court also rejected the defendant's request for an instruction on the common-law defense of necessity because that would “essentially” be a “repeat” of the self-defense instruction. The jury found the defendant not guilty of murder but guilty of manslaughter, and, thereafter, the court found the defendant guilty of, inter alia, separate counts of criminal possession of a firearm and criminal possession of ammunition, both in violation of General Statutes (Rev. to 2016) § 53a-217 (a). The defendant directly appealed from the judgment of conviction to the Supreme Court pursuant to General Statutes § 51-199 (b) (3) and claims that he was entitled to a self-defense instruction on the manslaughter charge under the doctrine of “transferred intent self-defense,” which he requests the Supreme Court adopt. Under that doctrine, the defendant's privilege to use deadly force in the proper exercise of self-defense is transferred to the unintended victim. He argues that the doctrine should be adopted because it is “illogical to deem a killing justified if the defendant accurately kills the aggressor” in self-defense and “yet consider [the killing] a crime if he unintentionally kills a bystander.” The defendant also claims that he was entitled to an instruction on the defense of necessity because the evidence established that he had no alternative but to return fire and that the harm to be avoided was imminent. Finally, he claims that his conviction for both criminal possession of a firearm and criminal possession of ammunition violate double jeopardy because the legislature did not intend for a person who illegally

possesses a gun to also be convicted of illegally possessing the ammunition contained within that gun. The state argues that any instructional error was harmless and that the defendant's double jeopardy claim fails because the fact that "the ammunition was loaded in the firearm" does not change the fact that the defendant "criminally possessed both a firearm and ammunition."

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STATE OF CONNECTICUT v. FRANKLIN FOSTER, SC 20829  
*Judicial District of Stamford-Norwalk at G.A. 1*

**Criminal; Mental Disease or Defect; Evidentiary Sufficiency; Equal Protection; Whether State Proved by Clear and Convincing Evidence that Acquittee Remained Dangerous; Whether Recommitment Procedure under General Statutes § 17a-593 Violated Acquittee's Federal Constitutional Right to Equal Protection.** The acquittee was charged with several offenses after he entered a middle school and physically assaulted two sixth grade students. Upon being found not guilty by reason of mental disease or defect, he was committed to the jurisdiction of the Psychiatric Security Review Board (board) and admitted to a psychiatric hospital. The acquittee was eventually granted conditional release and began living in the community subject to his compliance with several requirements pertaining to his ongoing mental health treatment. The following year, the state filed a petition for continued commitment pursuant to General Statutes § 17a-593, alleging that the acquittee remained "a danger to himself or others." The acquittee moved to dismiss the petition on the ground that § 17a-593, as applied to him, violated the equal protection clause of the fourteenth amendment to the United States constitution. He argued that, despite being similarly situated to "civilly committed inmates" transferred to a psychiatric facility after becoming mentally ill while incarceration, the recommitment procedure established by § 17a-593 is applied more conservatively than the nominally identical procedure that applies to civilly committed inmates under General Statutes 17a-515 and that this disparate treatment could not withstand intermediate scrutiny. The trial court denied the motion and granted the state's petition to extend the acquittee's commitment. On appeal, the Appellate Court (217 Conn. App. 476) first rejected the acquittee's claim of error related to the trial court's finding that he was still dangerous. The Appellate Court determined that the trial court had properly considered the nature of the acquittee's offenses and his subsequent, inappropriate conduct toward women and that the evidence logically supported a finding that he would risk relapse and present an imminent danger if released from the board's supervision. In so holding, the court noted evidence that the acquittee has a history of treatment noncompliance and is likely to become noncompliant and potentially dangerous if the substantial supervision and support mandated by the board were to be discontinued. The Appellate Court also rejected the acquittee's equal protection claim, concluding that he is not similarly situated to a civilly committed inmate given the proven role that his mental illness played in his violent criminal conduct, which nexus need not exist in the civil commitment context. The acquittee thereafter petitioned for certification to appeal the Appellate Court's judgment, which our Supreme Court granted as to the following questions: (1) Did the Appellate Court

correctly conclude that the trial court's factual finding that the acquittee poses a continued risk of danger to himself or to others was supported by clear and convincing evidence? (2) Did the Appellate Court correctly conclude that the acquittee was not similarly situated to civilly committed inmates for the purpose of deciding whether § 17a-593, as applied to the acquittee, violated his right to equal protection under the fourteenth amendment to the United States constitution? (3) If the answer to the second question is “no,” is § 17a-593 subject to rational basis review or to intermediate scrutiny?

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AMMAR I. v. DEPARTMENT OF CHILDREN AND FAMILIES,  
SC 20906  
*Judicial District of New Britain*

**Litigation Privilege; Whether Appellate Court Correctly Determined That Litigation Privilege Barred Plaintiff's Action Alleging Discrimination During the Course of Child Protection Proceedings.** The plaintiff, having received a release of jurisdiction from the Commission on Human Rights and Opportunities (CHRO), brought this action alleging that the defendant, the Department of Children and Families, violated General Statutes §§ 46a-58 (a) and 46a-71 (a) by discriminating against him on the basis of his religion during the course of the child protection proceedings in which his parental rights were terminated. The trial court granted in part the defendant's motion to dismiss, determining that the majority of the discriminatory conduct in his complaint to the CHRO was time barred, and denied the motion “to the extent that [the plaintiff's discrimination claim] arises from events occurring prior to January 12, 2019.” The defendant filed a motion to reargue, contending for the first time that the trial court lacked jurisdiction because the litigation privilege provides absolute immunity for statements or conduct during the course of the child protection proceedings. The trial court denied the motion, concluding that the plaintiff's discrimination claim was more akin to vexatious litigation or abuse of process claims, to which the litigation privilege does not apply, than to a claim of defamation or fraud “in the ordinary course of a legal proceeding,” to which the litigation privilege does apply. The defendant appealed, and the Appellate Court (220 Conn. App. 77) reversed the judgment denying the defendant's motion to dismiss after concluding that the plaintiff's claims were barred by the litigation privilege. Because it found “no appellate authority” directly on point, the Appellate Court balanced the competing public policies, and the court found that the plaintiff's discrimination claims are not the kind that subvert the underlying purpose of a judicial proceeding because the antidiscrimination statutes do not “contemplate a claim based on the improper use of a judicial proceeding” but, rather, focus on prohibiting discrimination generally. Relatedly, those statutes also do not provide the sort of safeguards against inappropriate retaliatory litigation that are built into vexatious litigation and abuse of process claims, such as requiring that the prior action terminated in the plaintiff's favor. Moreover, the court found that “[e]liminating the litigation privilege for these types of discrimination claims” could “lead to a wave of retaliatory litigation against the

defendant” and interfere significantly with the its statutory obligations regarding children. The Appellate Court found it significant that the plaintiff's claims were predicated on “the defendant's participation in a properly brought judicial proceeding,” which is “like a defamation claim” that would be protected by the absolute litigation privilege. The court also found that there was no merit to the argument by the CHRO, which was permitted to intervene on appeal, that the remedial nature of the antidiscrimination statutes counsels against applying the litigation privilege. Accordingly, the Appellate Court reversed the judgment and remanded the case to the trial court with direction to grant the defendant's motion to dismiss. The plaintiff was granted certification to appeal pursuant to General Statute § 51-197f, and the Supreme Court will decide whether the Appellate Court correctly determined that the litigation privilege bars the plaintiff's claims.

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HIGH WATCH RECOVERY CENTER, INC. v. TOWN OF KENT PLANNING  
AND ZONING COMMISSION, SC 20996  
*Judicial District of Litchfield*

**Zoning; Whether Appellate Court Correctly Concluded Plaintiff Had Right (1) to Erect Greenhouse as Nonconforming Clinical Use and (2) to Erect Structure Not Shown in Approved Special Permit Site Plan Even Though Special Permit Was No Longer Allowed in Subject Zone.** The plaintiff operates a residential treatment program on a certain parcel of property (residential property) in the town of Kent. In 2017, the plaintiff purchased a parcel of farm property (farm property) located across the street from the residential property. Both the farm property and the residential property are located in Kent's rural residential district (RU-1 district). In early 2018, the defendant commission granted the plaintiff's applications for a special permit and a site plan to conduct therapeutic activities on the farm property in conjunction with “a privately operated hospital, clinic, nursing home, or convalescent home.” In 2020, Kent's zoning regulations were amended to prohibit, by special permit, “[a] privately operated hospital, clinic, nursing home, or convalescent home” in the RU-1 district. Subsequently, the plaintiff applied for a special permit to construct a greenhouse on the farm property. The defendant denied the application, finding that the proposed greenhouse was an impermissible expansion of a nonconforming use. The plaintiff appealed, and the trial court affirmed the defendant's decision. The plaintiff appealed to the Appellate Court (223 Conn. App. 424), which reversed the trial court's judgment and remanded with direction to sustain the plaintiff's appeal. First, based on a review of the case law addressing nonconforming uses, the Appellate Court, contrary to the trial court's determination, held that the plaintiff's valid nonconforming use arising out of a previously issued special permit may be intensified in accordance with the criteria set forth in *Zachs v. Zoning Board of Appeals*, 218 Conn. 324 (1991). Second, it ruled that the trial court erred in concluding that there was substantial evidence in the record to support the defendant's stated reason for denying the plaintiff's special permit application, namely, that the use of the

proposed greenhouse would be an illegal expansion of the plaintiff's valid nonconforming use of the farm property. Applying the *Zachs* factors, the court held that the greenhouse would constitute a permissible intensification of the nonconforming use. Specifically, the court found that the use of the proposed greenhouse (1) reflected the nature and purpose of the existing, original use of the farm property, (2) would not constitute a change in the character of the nonconforming use, and (3) would not result in a substantial difference in effect on the surrounding neighborhood. In so ruling, the court rejected the defendant's contention that the greenhouse constituted a change in character of the nonconforming use because it allowed the plaintiff to grow fruits and vegetables into the winter season. The defendant was granted certification to appeal, and the Supreme Court will decide whether the Appellate Court correctly concluded (1) that the plaintiff had a legal right to erect a 2100 square foot greenhouse as a nonconforming clinical use when it (a) was intended to be accessory to the use of a separate lot and (b) would change a seasonal nonconforming use of the property to a year-around use and (2) that the plaintiff had a right to erect a structure not shown in an approved special permit site plan even though the special permit use was no longer allowed in the zone where the property was located.

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COMMONWEALTH SERVICING GROUP, LLC, et al. v. STATE OF  
CONNECTICUT DEPARTMENT OF BANKING, SC 21011  
*Judicial District of Hartford*

**Debt Negotiation; Whether Trial Court Erred in Refusing to Dismiss Plaintiffs' Action Seeking Declaratory and Injunctive Relief with Respect to Ongoing Administrative Enforcement Proceeding for Failure to Exhaust Administrative Remedies.** Commonwealth Law Group (CLG) provides legal representation to clients faced with consumer debt, and Commonwealth Servicing Group, LLC (CSG), provides CLG with routine administrative and client support services. The Department of Banking issued a temporary cease and desist order (CDO) against CSG, asserting that CSG was violating the Debt Adjusters and Debt Negotiation Act, General Statutes § 36a-671 et seq. The plaintiffs, CLG and CSG, brought this action against the department, seeking declaratory and injunctive relief with respect to the ongoing administrative enforcement proceeding and the CDO. Specifically, CLG sought, inter alia, a declaration that the department did not have the authority to regulate the operations of CLG because CLG fell under the act's exemption for attorneys engaged in the practice of law set forth in General Statutes § 36a-671c. CSG sought, inter alia, a declaration that it also fell under the act's exemption because its personnel act under the supervision and direction of CLG. CSG sought review of its claims under General Statutes § 4-183 (b), which permits a person to appeal an agency's preliminary action or ruling "if . . . postponement of the appeal would result in an inadequate remedy." The department filed a motion to dismiss for failure to exhaust administrative remedies. The trial court denied the motion to

dismiss. In denying the motion as to CLG, the court ruled that the department failed to overcome the presumption in *Persels & Associates, LLC v. Banking Commissioner*, 318 Conn. 652 (2015), that an attorney who purports to provide debt negotiation services is actually engaged in the practice of law. The department asserted that, without having to make any showing to overcome the *Persels* presumption, it had authority to (1) conduct hearings to determine whether a particular individual or entity is engaged in the practice of law, (2) bring an administrative enforcement action, and (3) issue cease and desist orders. The court disagreed, stating that interpreting *Persels* to permit such actions would effectively vitiate the presumption and expose lawyers engaged in debt negotiation and their support staff to the regulatory authority of the department. The court therefore ruled that CLG was not required to seek to become a party to the administrative proceedings or to await the conclusion of those proceedings before it may seek relief from the court. In denying the motion as to CSG, the court ruled that it had jurisdiction to consider CSG's claims under § 4-183 (b), stating that an appeal from a final judgment would not remedy the loss that CSG, and indirectly CLG, would suffer were CSG forced to bear the burdens of an unlawful administrative proceeding. The department appealed to the Appellate Court, and the Supreme Court transferred the appeal to itself pursuant to General Statutes § 51-199 (c). On appeal, the department claims that the trial court's denial of its motion to dismiss for failure to exhaust administrative remedies was based on its erroneous interpretation of *Persels*. Further, the department contends that CSG is not entitled to maintain an action under § 4-183 (b) because there is no basis to conclude that the postponement of CSG's administrative appeal would result in an inadequate remedy.

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STATE OF CONNECTICUT v. STEPHEN GUILD, SC 21023  
*Judicial District of Middlesex*

**Criminal; Mental Disease or Defect; Evidentiary Sufficiency; Equal Protection; Whether State Proved by Clear and Convincing Evidence that Acquittee Remained Dangerous; Whether Recommitment Procedure under General Statutes § 17a-593 Violated Acquittee's Federal and State Constitutional Rights to Equal Protection.** While experiencing delusions, the acquittee attacked and seriously injured his father. At the time of the attack, the acquittee had been diagnosed with schizophrenia but was not taking his antipsychotic medications. After being acquitted of charges related to the attack by reason of mental disease or defect, he was committed to the jurisdiction of the Psychiatric Security Review Board (board). After a period in psychiatric hospitals, the acquittee's mood stabilized, and he was granted conditional release, whereupon he began living in the community under the board's supervision. In 2020, he experienced a reemergence of paranoid and delusional thinking. Initially, he was not forthcoming with his care team about his symptoms but eventually agreed to readmit himself to a psychiatric hospital. After the acquittee resumed living in the community, the state petitioned the trial court to continue his commitment pursuant to General Statutes § 17a-593 on the ground that he remained

a “danger to himself or others.” The acquittee opposed the petition and moved to dismiss it on the ground that § 17a-593, as applied to him, violated the equal protection clause of the fourteenth amendment to the United States constitution because the recommitment procedure established by § 17a-593 is applied more conservatively than the nominally identical procedure that applies to civilly committed inmates under General Statutes § 17a-515 and could not withstand intermediate scrutiny. In denying the motion, the court determined that it was bound by the concurring opinion in *State v. Foster*, 217 Conn. App. 476, cert. granted, 346 Conn. 920 (2023), to apply rational basis review. The court further concluded that the acquittee's equal protection claim would fail even under intermediate scrutiny. At the subsequent hearing on the state's petition, the acquittee presented expert testimony opining that he was not a danger to himself or others and should be unconditionally released from the board's supervision. The court ultimately granted the petition, finding that the acquittee continued to have paranoid and delusional thoughts that others sought to harm him and that he was therefore still a danger to himself and others. In rejecting the expert's opinion, the court noted that it was unknown whether the acquittee would continue to abide by his treatment plan without supervision and that, without medication, there was an increased risk of the acquittee becoming violent. The acquittee then filed the present appeal, which was subsequently transferred to our Supreme Court. The acquittee first claims that the trial court erred in concluding that the state had proven by clear and convincing evidence that he remained dangerous. He argues that the court's findings are too speculative and do not bear on his current dangerousness and that the court improperly shifted the burden to him to disprove his dangerousness. The acquittee also claims that the court erred in determining that § 17a-593 did not violate his federal constitutional right to equal protection. Finally, he seeks review under *State v. Golding*, 213 Conn. 233 (1989), of his claim that § 17a-593 also violates his state constitutional rights, which the trial court had not addressed.

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7 GERMANTOWN ROAD, LLC, et al. v. CITY OF DANBURY,  
SC 21024  
*Judicial District of Danbury*

**Tax Appeals; General Statutes § 12-117a (a) (2); Whether Failure to Timely File Real Estate Appraisal Deprived Trial Court of Jurisdiction over Tax Appeal.**

The six plaintiffs, who each own property in the defendant city of Danbury, filed separate applications in the Superior Court challenging the tax assessment of their respective properties, which were all valued at more than one million dollars. Pursuant to General Statutes § 12-117a (a) (2), “if the assessed value of the real property . . . is one million dollars or more and the application concerns the valuation of such real property, the applicant shall file with the court, not later than one hundred twenty days after making such application, an appraisal of the real property . . . . If such appraisal is not timely filed, the court may dismiss the application.” The plaintiffs were granted an extension of the 120 day deadline but failed to timely file the appraisals with the

court, although the plaintiffs did serve them on the defendant. Consequently, the defendant moved to dismiss the applications, claiming that the plaintiffs lacked standing under § 12-117a (a) (2) due to the untimely filed appraisals. On March 12, 2024, the trial court, *Shaban, J.*, granted the motions in five of the six cases, ruling that, because the plaintiffs had failed to file the appraisals by the extended deadline, the court was “without jurisdiction to hear the appeal[s].” The plaintiffs subsequently moved to open the judgments on the ground that Judge Shaban's rulings conflicted with his decisions in two prior tax appeals involving the defendant. In those cases, Judge Shaban denied motions to dismiss finding that, although the appraisals were untimely, there was no prejudice to the defendant because it had received the appraisals prior to argument on the motions to dismiss and had been fully informed of the claimed value of the properties well in advance of any trial. On June 12, 2024, upon reconsideration, Judge Shaban determined that the inconsistent decisions constituted a “good and compelling reason to warrant reopening the judgments so that the matters may be heard on the merits.” The court opened the judgments and, on that same day, denied the motion to dismiss the sixth tax appeal, finding that, although the appraisal was not timely filed, there was no prejudice to the defendant because it had received the appraisal prior to argument on the motion to dismiss and had been fully informed of the claimed value of the properties well in advance of any trial. After the Chief Justice granted the defendant certification to bring public interest appeals pursuant to General Statutes § 52-265a, the defendant appealed the decisions in all six tax appeals, arguing that it has “the right to the dismissal of [the] tax appeals” because the plaintiffs lack standing, as they failed to timely file the appraisals, which deprived the trial court of jurisdiction under § 12-117a (a) (2).

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CITY OF STAMFORD *v.* COMMISSION ON HUMAN  
RIGHTS AND OPPORTUNITIES, OFFICE OF  
PUBLIC HEARINGS, *et al.*, SC 21026  
*Judicial District of New Britain*

**Administrative Appeal; Whether Referee's Decision to Permit Amendment to Discrimination Complaint to Add New Claim is Immediately Appealable to Superior Court; Whether Referee Correctly Permitted New Claim Without First Requiring an Investigation and Showing of Reasonable Cause.** The complainant, John Ward, filed a discrimination complaint with the Commission on Human Rights and Opportunities (CHRO), alleging that his former employer, the city of Stamford, wrongfully terminated his employment on the basis of his disability, specifically, post-traumatic stress disorder. The CHRO investigated Ward's complaint and, upon finding reasonable cause, appointed a human rights referee to hear the complaint pursuant to General Statutes § 46a-84. After the hearing began, Ward moved pursuant to § 46a-84 (g) to amend his complaint to assert a claim based on new allegations, namely, that Stamford failed to make



reasonable accommodations for his disability in violation of the Americans with Disabilities Act (ADA). The referee granted Ward's motion to amend, and Stamford appealed that decision to the Superior Court pursuant to General Statutes § 46a-94a (a), which permits an appeal from a "final order" of a referee. The CHRO moved to dismiss that appeal, contending that the referee's order allowing Ward to amend his complaint to add a new claim such that the matter would proceed immediately to a public hearing without an investigation or reasonable cause finding was not a "final order." The trial court denied the motion to dismiss and concluded that the challenged order was a "final order" because, first, the issues presented were ripe for adjudication, as the referee "directly and fully" decided whether the CHRO has jurisdiction to hold a public hearing on Ward's ADA claim without first investigating and finding reasonable cause. Second, the court found that the appeal will not disrupt the adjudication of the underlying proceeding and, third, that the issues raised had tangible, concrete legal consequences on the parties' rights. In addition, the court, in a footnote, found that the CHRO lacked jurisdiction over Ward's ADA claim without first conducting an investigation and finding reasonable cause. The court also rejected the CHRO's contention that Ward's ADA claim could proceed directly to a public hearing under the early legal intervention process in General Statutes § 46a-83 (e), as "it [was] plain from the proceedings" that "Ward's complaint was not being adjudicated through the [CHRO's] early legal intervention process." The CHRO appealed from the trial court's judgment upon the granting of certification by the Chief Justice pursuant to General Statutes § 52-265a. The Supreme Court will decide whether the referee's decision to permit an amendment to allow a new claim is an agency order that is immediately appealable to the Superior Court under § 46a-94a (a) and General Statutes § 4-183 (b). If the answer is yes, the Supreme Court will then decide whether the referee correctly permitted Ward to amend his complaint without first requiring an investigation and finding of reasonable cause under General Statutes §§ 46a-83 and 46a-84.

*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.*

*Jessie Opinion  
Chief Staff Attorney*

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