BERDON, J., dissenting in part. Although I agree with the majority's conclusion in part I, I disagree with the majority's conclusion in part II that the failure of the attorney for the plaintiffs, Aramis Rios and her mother, Betzabel Flores, to attach a written opinion of a similar health provider to his good faith certificate, as set forth in General Statutes (Rev. to 2005) § 52-190a (a), as amended by Public Acts 2005, No. 05-275, § 2 (P.A. 05-275), renders the complaint subject to a motion to dismiss instead of a motion to strike. A motion to strike would allow a plaintiff, as a matter of right, to file a new complaint with an appropriate certificate within fifteen days, whereas the granting of a motion to dismiss puts the plaintiff out of court. In the latter situation, if the statute of limitations applicable to a medical malpractice action had expired, it may very well be that a plaintiff would be without a remedy merely because counsel, through inadvertence or neglect, failed to attach a document to his good faith certificate.

First, let me set the record straight. In reaching its conclusion, the majority *erroneously* relies on the claim that "[t]he plaintiffs' attorney informed the [trial] court that he had not obtained an opinion of a similar health care provider prior to filing the action in court." What actually transpired was the following:

"The Court: Why didn't you file the certificate with the thing [that is, the attorney's certification]?

"[The Plaintiffs' Counsel]: Well, I didn't have a *written letter* at the time that brought this from the doctor." (Emphasis added.)

This colloquy reveals that the plaintiffs' counsel never admitted, as claimed by the majority, that he failed to obtain an opinion from a similar health care provider.[1] Rather, counsel informed the court that he had not obtained the opinion in written form at the time that he brought the complaint. Accordingly, if a motion to strike was granted, this would have allowed the plaintiffs to plead over, and the plaintiffs' attorney could have attached the written opinion of the similar health care provider to his good faith certificate.

I begin my analysis, as our Supreme Court did in *LeConche* v. *Elligers*, 215 Conn. 701, 579 A.2d 1 (1990), by recognizing "the premise that traditionally the Superior Court has had subject matter jurisdiction of a common law medical malpractice action." Id., 709. The issue presented in the present case, therefore, is whether, in enacting the most recent amendment to § 52-190a, the legislature intended to subject a plaintiff's action to dismissal where his attorney has failed to attach the written opinion of a similar health care provider to his good faith certificate. It is well established that this

"determination must be informed by the established principle that every presumption is to be indulged in favor of jurisdiction." Id., 709–10.

Prior to the passage of P.A. 05-275, § 2, which amended § 52-190a, our Supreme Court considered the issue of whether a medical malpractice plaintiff's failure to file an attorney's good faith certificate as required by the 1987 revision of § 52-190a constituted a jurisdictional defect that rendered the complaint subject to a motion to dismiss. Id., 701. Although our Supreme Court acknowledged that the statute established a mandatory pleading requirement, the court determined that such a defect did not render the complaint subject to a motion to dismiss. Rather, characterizing the inclusion of a good faith certificate as "a pleading necessity akin to an essential allegation to support a cause of action"; id., 711; the Supreme Court concluded that a medical malpractice plaintiff's failure to file a good faith certificate rendered the complaint subject to a motion to strike for failure to state a claim upon which relief can be granted, a curable defect. Id.; see also Practice Book §§ 10-39 and 10-44 (party whose pleading has been stricken may file new pleading within fifteen days).

Although I recognize that *LeConche* v. *Elligers*, supra, 215 Conn. 701, addressed the inclusion of an attorney's good faith certificate, the legislature's amendment of § 52-190a did not overrule existing case law. Accordingly, if the plaintiffs had failed to attach a good faith certificate to the complaint, a pleading requirement set forth in § 52-190a (a), their complaint would have been subject to a motion to strike.[2] See id., 711. In the present case, however, the plaintiffs failed to attach to that certificate a written opinion of a similar health care provider, and, under the majority's conclusion today, this defect rendered the complaint subject to a motion to dismiss. In other words, if there was a complete failure of the attorney to file his good faith certificate, including the written opinion of a similar health care provider, the complaint would only be subject to attack by a motion to strike allowing the plaintiffs to file a new complaint within fifteen days in accordance with Practice Book § 10-44, but, according to the majority, when an attorney's good faith certificate is filed that does not include the written opinion of a similar health care provider, the complaint is subject to dismissal. Surely, the legislature could not have intended such an anomalous result. See *Broadnax* v. *New Haven*, 284 Conn. 237, 249, 932 A.2d 1063 (2007) (recognizing overriding principle that statutes should be construed "so as to create a rational, coherent and consistent body of law" [internal quotation marks omitted]). "[W]e must seek a meaning which avoids a result which the legislature could not have intended even at the expense of departing from the literal meaning of the words used." (Internal quotation marks omitted.) *City Savings Bank* v. *Lawler*, 163 Conn. 149, 157, 302 A.2d 252 (1972).

Moreover, in utilizing the word "dismissal" in subsection (c) of the current revision of § 52-190a, I cannot agree that the legislature intended to implement tort reform measures that would function in a manner such that a procedural technicality based on a defect in the pleadings, rather than applicable substantive law, would govern the outcome of a case. Such an interpretation of the statute is reminiscent of eighteenth century common-law pleading, a system plagued by archaic legalism and highly technical formality that Connecticut abandoned long ago. The general purpose of § 52-190a was to discourage the filing of baseless lawsuits against health care providers. See *LeConche* v. *Elligers*, supra, 215 Conn. 710. When a plaintiff has failed to include the written opinion of a similar health care provider, this policy is just as well served by interpreting § 52-190a to permit a medical malpractice defendant to file a motion to strike.

A "case should not be decided solely on the basis of the literal meaning of a word. As Justice Reed of the United States Supreme Court has said: When that meaning has led to absurd or futile results, . . . this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one plainly at variance with the policy of the legislation as a whole this Court has followed that purpose, rather than the literal words." (Internal quotation marks omitted.) *Simonette* v. *Great American Ins. Co.*, 165 Conn. 466, 474, 338 A.2d 453 (1973) (*Bogdanski*, *J.*, dissenting), quoting *United States* v. *American Trucking Assns., Inc.*, 310 U.S. 534, 543, 60 S. Ct. 1059, 84 L. Ed. 1345 (1940).

Accordingly, I would interpret § 52-190a in light of the existing case law and conclude that the plaintiffs' failure to attach a written opinion of a similar health care provider to the attorney's good faith certificate renders the complaint subject to a motion to strike. To rule otherwise effectively creates a procedural trap for unwary litigants that would not only disregard the plasticity of modern pleading practice but also would frustrate the fundamental policy preference in this state that seeks to "bring about a trial on the merits of a dispute whenever possible and to secure for the litigant his or her day in court." (Internal quotation marks omitted.) *Vollemans* v. *Wallingford*, 103 Conn. App. 188, 198, 928 A.2d 586, cert. granted on other grounds, 284 Conn. 920, 933 A.2d 722 (2007).

For the reasons given, I dissent.

[1] In fact, it is implicit from this colloquy that the attorney for the plaintiffs did have in hand the "written and signed opinion of the health care provider" when the parties initially were heard on the motion to dismiss.

[2] A review of the record reveals that the plaintiffs did attach a good faith certificate to their complaint.