BISHOP, J., dissenting. Although I agree with the majority that this case is moot, I disagree with the majority's conclusion that the issues on appeal are not capable of repetition, yet evading review. Accordingly, I would reach the merits of these appeals and, for the reasons set forth herein, reverse the judgments of the trial court.

I

As the majority notes, "to qualify for review under the 'capable of repetition, yet evading review' exception, [the challenged action] must meet three requirements. First, the challenged action, or the effect of the challenged action, by its very nature must be of a limited duration so that there is a strong likelihood that the substantial majority of cases raising a question about its validity will become moot before appellate litigation can be concluded. Second, there must be a reasonable likelihood that the question presented in the pending case will arise again in the future, and that it will affect either the same complaining party or a reasonably identifiable group for whom that party can be said to act as surrogate. Third, the question must have some public importance. Unless all three requirements are met, the appeal must be dismissed as moot." *Loisel* v. *Rowe*, 233 Conn. 370, 382–83, 660 A.2d 323 (1995). I do not believe that the majority disagrees that these appeals meet the second two requirements. We diverge, however, on the first factor.

At our request, the parties have briefed the issue of mootness, all agreeing not only that the issue in these appeals is moot, but also that it is capable of repetition, yet evading review. The Center for Children's Advocacy, Inc., the National Association of Counsel for Children and the Connecticut commission on child protection also filed a joint amicus brief in which they agree that the issues in these appeals are moot but capable of repetition, yet evading review. Although I agree that the parties' shared desire for a resolution of the issue on appeal cannot create jurisdiction where it does not otherwise exist, I find their reasoning cogent and persuasive. Consequently, like the parties, I believe that this case meets all three requirements for review under the capable of repetition, yet evading review exception.

The majority concludes to the contrary on the basis of its reasoning that an order requiring a compact study pursuant to General Statutes § 17a-175 has an indefinite lifespan. Consequently, the majority believes that these appeals do not satisfy the *Loisel* requirement that the order is of inherently limited duration and, therefore, likely to escape review. Respectfully, I disagree. As acknowledged by the majority, the petitioner, the com-

missioner of children and families, has provided statistics in a supplemental brief demonstrating that approximately 73 percent of interstate compact requests are completed prior to oral argument on appeal.[1] This is persuasive evidence that there exists a strong likelihood that a substantial majority of cases regarding interstate compact studies will become moot prior to appellate resolution.[2]

Because the issue raised on appeal affects biological parents, a reasonably identifiable group for whom the appellant herein, the respondent father, can be said to act as a surrogate, and the issue regarding the right of a parent to the care of his minor children is of unquestionable public importance, I believe that this case meets the remaining prongs of *Loisel*. Accordingly, I believe that, although moot, the claim presented in these appeals is capable of repetition, yet evading review.

II

The respondent and his minor children claim on appeal that § 17a-175 does not apply to out-of-state, noncustodial parents. Specifically, they argue that article III of § 17a-175 is unambiguous and by its plain language excludes out-of-state, noncustodial parents from its reach. I agree and, accordingly, would reverse the judgments of the trial court.[3]

"Our standard of review for issues of statutory interpretation is well settled. Issues of statutory construction raise questions of law, over which we exercise plenary review." (Internal quotation marks omitted.) *Goodspeed Airport, LLC* v. *East Haddam*, 115 Conn. App. 438, 442–43, 973 A.2d 678, cert. granted in part on other grounds, 294 Conn. 907, 982 A.2d 1082 (2009).

"The process of statutory interpretation involves the determination of the meaning of the statutory language as applied to the facts of the case, including the question of whether the language does so apply. . . . In seeking to determine [the] meaning [of a statute], 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." (Internal quotation marks omitted.) *Dechio* v. *Raymark Industries, Inc.*, 299 Conn. 376, 389–90, 10 A.3d 20 (2010).

The compact initially was codified by General Statutes § 17-81a in 1967; Public Acts 1967, No. 67-178, § 1; and by 1990, every state, the District of Columbia and the Virgin Islands had passed legislation enacting the compact into law. See V. Sankaran, "Out of State and

Out of Luck: The Treatment of Non-Custodial Parents Under the Interstate Compact on the Placement of Children," 25 Yale L. & Policy Rev. 63, 68 (2006). Today, § 17a-175 includes ten articles that encompass the compact and provide detailed guidelines for placing minor children out-of-state.

According to article I of § 17a-175, the purpose of the compact is to promote cooperation among the states "in the interstate placement of children to the end that: (a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care. (b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child. (c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made. (d) Appropriate jurisdictional arrangements for the care of children will be promoted."

Article III of the statute provides: "No sending state shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein." Article VIII provides in relevant part: "This compact shall not apply to . . . [t]he sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state."

I conclude that § 17a-175 is both plain and unambiguous and that it does not apply to an out-of-state, noncustodial parent. Specifically, article III provides that no sending state shall send any child for placement in *foster care* or as a preliminary to a *possible adoption*. Although the statute does not define "foster care" or "adoption," I conclude that pursuant to their plain meaning, these terms do not include a noncustodial parent. These terms are not susceptible to more than one reasonable interpretation; and equating persons to whom the compact applies with noncustodial parents expands the reach of the statute beyond the breaking point. Consistent with the dictates of § 1-2z, therefore, I will not consider any extratextual evidence of the meaning of the statute. I conclude that the compact does not require a state that is placing children with an out-of-state, noncustodial parent to comply with

its provisions.

The petitioner argues that by interpreting article III to exclude out-of-state, noncustodial parents, we would render article VIII meaningless. Moreover, the petitioner claims that article VIII defines the only situations in which the compact does not apply. I do not believe, however, that article VIII provides an exhaustive list of situations in which the compact does not apply. While article VIII specifically lists certain situations pursuant to which the compact does not apply, as noted, article III clearly establishes, as a precondition, that the placement of children in foster care, or as a preliminary to a possible adoption, is contemplated.

My interpretation of § 17a-175 is not at odds with article VIII. Both articles III and VIII of the compact "[evince] the intent of the drafters to respect the integrity of the family and to allow parents to plan for the care of their own children unless the children were being placed in foster care or were being adopted." V. Sankaran, supra, 25 Yale L. & Policy Rev. 70–71. My conclusion is consistent with this intent. Here, the respondent is seeking to care for his own children, in his home state, and is not seeking to adopt them or place them in foster care. I do not believe that the drafters intended to burden parents with the same requirements as those individuals or agencies who are seeking to adopt children or provide foster care to children to whom they are not related.

The petitioner further argues that our construction of § 17a-175 contradicts the compact's regulations. By way of background, the Association of Administrators of the Interstate Compact on the Placement of Children drafted model regulations for states to adopt as a supplement to the compact. Id., 71–72. Specifically, Regulation No. 3 (6) (b) provides: "The Compact does not apply whenever a court transfers the child to a noncustodial parent with respect to whom the court does not have evidence before it that such parent is unfit, does not seek such evidence, and does not retain jurisdiction over the child after the court transfers the child." Subsection (5) of this regulation also provides: "The term 'foster care' as used in Article III . . . means care of a child on a 24-hour a day basis away from the home of the child's parent(s). Such care may be by a relative of the child . . . ." Finally, subsection (1) provides: " 'Placement' as defined in Article II (d)[4] includes the arrangement for the care of a child in the home of his parent . . . ."

The petitioner argues that pursuant to these regulations, § 17a-175 must apply to out-of-state, noncustodial parents. I conclude that the petitioner's interpretation of Regulation No. 3 is in direct conflict with § 17a-175 and, as such, the statute must control. Specifically, the petitioner's reading of the regulation expands article III to include situations that were not originally included

when the compact was adopted by our legislature. This is the judicial equivalent of permitting the tail to wag the dog. "A regulation cannot be upheld if it is contrary to the statute under which it was promulgated." (Internal quotation marks omitted.) *McComb* v. *Wambaugh*, 934 F.2d 474, 481 (3d Cir. 1991). The regulation provides no basis upon which to elongate the language of § 17a-175 to apply to parents in the respondent's situation.

The petitioner argues that our decision will place children at risk of harm because the compact provides the most thorough investigation possible of the proposed placement by the receiving state. I understand, and share, the petitioner's desire to assure the highest level of safety for children who are placed with an out-of-state, noncustodial parent. Expanding the meaning of § 17a-175, however, to include situations clearly not within the reach of the statute, to the detriment of noncustodial parents, is not the proper way, or the only way, to protect children who are being placed out of state. Our role as an appellate court, moreover, is not to provide alternatives to a compact study. Our role in this case simply is to determine whether the compact applies to out-of-state, noncustodial parents. I have concluded that it does not. I have confidence that the responsible authorities will be able to devise alternative approaches that safeguard children placed with noncustodial parents in other states.[5]

In reaching this decision, I join at least five other state courts,[6] and the only federal court to address the issue of whether the compact applies to out-of-state, noncustodial parents. In *McComb* v. *Wambaugh*, supra, 934 F.2d 474, the United States Court of Appeals for the Third Circuit concluded that, in determining whether the compact applied to an out-of-state, noncustodial parent, "[t]he most significant and, to our minds, determinative language is found in Article III (a) . . . ." Id., 480. The court concluded that, "[t]he scope of the Compact *is carefully limited to foster care or dispositions preliminary to an adoption*. Article III thus precisely reflects the articulated intention of the Council of State Governments." (Emphasis added.) Id.

In addressing article VIII, the *McComb* court concluded that it "excludes from the scope of the Compact the sending of a child into a receiving state by certain relatives (including a parent) or his guardian and leaving the child with any such relative [including a parent]. The word guardian is not defined in the statute. Presumably if an agency has been appointed guardian, it can place a child in another state with a parent or other relative designated in the Compact without being affected by its terms.

"The detailed draftsman's notes, supplied by the Council of State Governments, reinforce the notion that the Compact does not apply to parental placements. The notes state that Article VIII exempts certain close

relatives. This was done in order to protect the social and legal rights of the family and because it is recognized that regulation is desirable only in the absence of adequate family control or in order to forestall conditions which might produce an absence of such control." (Internal quotation marks omitted.) Id., 480–81.

Finally, the Court of Appeals noted that "[w]e are persuaded that read as a whole the Compact was intended only to govern placing children in substitute arrangements for parental care. Thus, the Compact does not apply when a child is returned by the sending state to a natural parent residing in another state. The language of Article III is unambiguous . . . ."[7] Id., 482. I agree with the court's interpretation of article III and join those jurisdictions that have held that the compact applies to children being placed in substitute arrangements for parental care, and does not apply to out-of-state, noncustodial parents.

On the basis of the foregoing, I would reverse the judgments of the trial court and remand the case with direction to render judgments for the respondent and the children. Accordingly, I respectfully dissent.

[1] Specifically, the attorney general explained that: "In the 2005 reporting period, there were 50 home study requests by an out-of-state parent; 31 of them being completed before [the amount of time it would take for an average appeal to be ready for oral argument], or 62 [percent]. [In 2006, it was 14 out of 34 home study requests, or 41 percent]. In 2007, the number was 69 out of 88, or 78 [percent]. In 2008, the number was 75 from a total of 95 home study requests, or 79 [percent]. In 2009, [it was] 67 out of 91 home study requests . . . or 74 percent. In 2010 . . . , [it was 83 out of 109 home study requests, or 76 percent]. Combining all six years from 2005 to 2010, 339 home study requests out of 467, or [73] percent, would have received a placement decision prior to any appeal being heard for oral argument."

[2] I recognize, as the majority has noted, that this court, in *In re Forrest B.*, 109 Conn. App. 772, 953 A.2d 887 (2008), concluded that the respondent mother failed to offer any evidence showing that "most cases challenging a temporary custody order are, by their very nature, of such a limited duration that there is a strong likelihood that they will become moot before appellate litigation can be concluded." Id., 776. In the case at hand, however, the petitioner has provided statistical evidence regarding interstate compact cases leading me to believe that a substantial majority of these cases are, in fact, likely to evade review.

[3] Because I agree that § 17a-175 by its own very terms does not apply to out-of-state, noncustodial parents, I would not address the respondent's claim that § 17a-175 violates a parent's federal and state constitutional rights.

[4] Article II (d) of General Statutes § 17a-175 provides: " 'Placement' means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility."

[5] In an article, "Out of State and Out of Luck: The Treatment of Non-Custodial Parents Under the Interstate Compact on the Placement of Children," Vivek Sankaran discusses the use of custody hearings as a substitute for the compact when out-of-state, noncustodial parents are seeking custody of their children. The author stated that "[c]hild welfare agencies routinely contract with licensed private foster care groups . . . to assess potential placements, license foster parents, and monitor children in homes. Courts and states could make greater use of such arrangements to help ensure that home studies of biological parents are completed in a more timely manner. The result of this home study could be admitted into evidence at the custody hearing at which a judge, not a caseworker, would have the final authority to approve or deny the placement. . . . Courts could [also] maintain the

current [compact] framework but modify its application when the interests of biological parents are implicated. For example, if an out-of-state parent requests placement of his child, the receiving state could continue to bear responsibility for conducting the home study and making an initial recommendation about the parent's suitability. But under this modified approach, the home study would have to be conducted on an expedited basis, and the court, either in the sending or receiving state, would possess the exclusive authority to make the ultimate placement decision after a hearing at which the parent could be heard." V. Sankaran, supra, 25 Yale L. & Policy Rev. 88–89. Again, while I will not opine as to the appropriate replacement for the compact, I believe alternative approaches exist, and can be devised, to assure the safety of children placed with out-of-state, noncustodial parents.

[6] Other state cases that have found that the compact does not apply to out-of-state, noncustodial parents include *Arkansas Dept. of Human Services* v. *Huff*, 347 Ark. 553, 65 S.W.3d 880 (2002); *Tara S.* v. *Superior Court*, 13 Cal. App. 4th 1834, 17 Cal. Rptr. 2d 315 (1993); *In re Alexis O.*, 157 N.H. 781, 959 A.2d 176 (2008); *In re Mary L.*, 108 N.M. 702, 778 P.2d 449 (App.), cert. denied, 108 N.M. 713, 778 P.2d 911 (1989); *In re Rholetter*, 162 N.C. App. 653, 592 S.E.2d 237 (2004).

[7] Unconstrained by § 1-2z, or any analogous federal statute, the court also examined extratextual evidence in arriving at its conclusion.