NORCOTT, J., concurring. Despite my long-standing belief that the death penalty has no place whatsoever in a civilized and rational criminal justice system,[1] I agree with the reasoning and conclusion of the majority opinion as limited to the context of this particular case, namely, the issue of standing with respect to the plaintiff in error, the office of the chief public defender of the state of Connecticut, as next friend of the defendant, Michael B. Ross. I write separately because our order will indirectly, but inexorably, lead in a matter of days to the death of the defendant at the hands of the state. This troubles me because of legitimate claims, still unresolved, that our death penalty system is administered in a racially discriminatory, arbitrary or capricious manner.[2] See *State* v. *Cobb*, 234 Conn. 735, 738 and n.4, 663 A.2d 948 (1995) (discussing preliminary data). Indeed, a comprehensive statistical study about the influence of race and other factors in the application of Connecticut's death penalty presently is ongoing in the context of consolidated habeas corpus litigation that is being supervised by a special master, former Chief Justice Robert Callahan. See *State* v. *Reynolds*, 264 Conn. 1, 232–33, 836 A.2d 224 (2003), cert. denied, U.S. , 124 S. Ct. 1614, 158 L. Ed. 2d 254 (2004); see also General Statutes § 53a-46b (b) (1) (''[t]he Supreme Court shall affirm the sentence of death unless it determines that . . . [t]he sentence was the product of passion, prejudice or any other arbitrary factor'').[3] My concern is that to permit an execution to proceed without the benefit of the completion of that study and a ruling thereon amounts to an informal and premature judicial imprimatur on the fairness of the death penalty process. Moreover, should the habeas court subsequently conclude that our entire death penalty system is fundamentally flawed as discriminatory on the basis of race *after* the defendant has been executed, our citizens' confidence in this court and the rest of the judicial branch as a bastion of civil rights might suffer irreparable harm.[4] My reservations aside, I nevertheless concur in the instant judgment because this issue was not addressed in this writ of error.

[1] See *State* v. *Peeler*, 271 Conn. 338, 464, 857 A.2d 808 (2004) (*Katz, J.*, with whom *Norcott, J.*, joins, dissenting); *State* v. *Ross*, 269 Conn. 213, 392–93, 849 A.2d 648 (2004) (*Norcott, J.*, dissenting); *State* v. *Breton*, 264 Conn. 327, 446–49, 824 A.2d 778 (*Norcott, J.*, dissenting), cert. denied, 540 U.S. 1055, 124 S. Ct. 819, 157 L. Ed. 2d 708 (2003); *State* v. *Webb*, 252 Conn. 128, 147, 750 A.2d 448 (*Norcott, J.*, dissenting), cert. denied, 531 U.S. 835, 121 S. Ct. 93, 148 L. Ed. 2d 53 (2000); *State* v. *Griffin*, 251 Conn. 671, 742–48, 741 A.2d 913 (1999) (*Norcott, J.*, dissenting); *State* v. *Ross*, 251 Conn. 579, 597, 742 A.2d 312 (1999) (*Norcott, J.*, dissenting); *State* v. *Cobb*, 251 Conn. 285, 543–52, 743 A.2d 1 (1999) (*Norcott, J.*, dissenting), cert. denied, 531 U.S. 841, 121 S. Ct. 106, 148 L. Ed. 2d 64 (2000); *State* v. *Webb*, 238 Conn. 389, 566–70, 680 A.2d 147 (1996) (*Norcott, J.*, dissenting); see also *State* v. *Rizzo*, 266 Conn. 171, 313–14, 833 A.2d 363 (2003) (*Norcott, J.*, concurring); *State* v. *Courchesne*, 262 Conn. 537, 583–84, 816 A.2d 562 (2003) (*Norcott, J.*, concurring).

[2] I previously have noted the ''pervasive and insidious influence of race and poverty in the administration of the death penalty.'' *State* v. *Breton*, 264 Conn. 327, 447, 824 A.2d 778 (*Norcott, J.*, dissenting), cert. denied, 540 U.S. 1055, 124 S. Ct. 819, 157 L. Ed. 2d 708 (2003); see also *State* v. *Cobb*, 251 Conn. 285, 545–46, 743 A.2d 1 (1999) (*Norcott, J.*, dissenting) (''I am convinced that the arbitrariness inherent in the sentencer's discretion is intensified by the issue of race. Indications from the available evidence suggest that the death penalty has been imposed in a racially discriminatory manner and has been geared toward minorities and the poor.''), cert. denied, 531 U.S. 841, 121 S. Ct. 106, 148 L. Ed. 2d 64 (2000); *State* v. *Webb*, 238 Conn. 389, 566–67, 680 A.2d 147 (1996) (*Norcott, J.*, dissenting) (''I am persuaded that our statutory scheme for its imposition cannot withstand constitutional scrutiny because that scheme, by its very nature, admits of an unacceptable opportunity for arbitrariness and the influence of racial discrimination to operate in the determination of who shall die at the hands of the state'').

[3] In *State* v. *Cobb*, supra, 234 Conn. 738 n.4, which was decided in 1995, the defendant produced preliminary data and contended that race has an impermissible effect on capital sentencing because: ''(1) since 1973, prosecutors have charged a capital felony pursuant to General Statutes § 53a-54b in seventy-four cases, of which only eleven, or 15 percent, have involved the murder of a victim who was black, even though 40 percent of all murder victims in the state during that same time period were black; (2) since 1973, although there have been eighteen capital prosecutions for murder committed during the course of kidnapping, none was prosecuted where the victim was black; (3) during the same period, there have been twelve capital prosecutions for murder committed in the course of a sexual assault, and only one involved the murder of a black victim; (4) since 1973, twenty-eight cases have resulted in a conviction of capital felony, by verdict or plea, and eighteen of those twenty-eight have proceeded to a hearing on the imposition of the death penalty. Of the twenty-eight capital felony convictions, only four, or 14 percent, have involved the murder of a victim who was black, and of the eighteen that have gone to a penalty phase hearing, only one, or 5.5 percent, has involved the murder of a black victim; (5) of the sixty-six capital convictions in which the guilt phase has been concluded, twenty-one involved black defendants and forty-five involved nonblack defendants. Of the black defendants, thirteen of twenty-one, or 62 percent, were convicted of capital felonies and fifteen of forty-five, or 33 percent, nonwhite defendants were so convicted.'' He sought ''the opportunity to demonstrate the number of kidnap murders of black victims and the number of sexual assault murders of black victims that were not prosecuted as capital felonies and to demonstrate the disproportionate treatment of those crimes as compared to the treatment of comparable crimes involving white victims.'' Id.

Because of the need for the creation of an adequate factual record as to alleged discrimination, this court concluded that the defendant's claim in *Cobb* was more appropriately raised collaterally via a habeas corpus proceeding, rather than a remand from direct appeal. Id., 741. Data collection and analysis by the public defenders commenced shortly thereafter, and in *State* v. *Reynolds*, supra, 264 Conn. 233, this court ordered that the *Cobb* and *Reynolds* racial discrimination claims ''be litigated before the same habeas judge and in the same general, consolidated hearing, on behalf of all defendants who have been sentenced to death.'' In December, 2002, Chief Justice William J. Sullivan appointed former Chief Justice Robert Callahan as special master to manage the litigation, including the preparation and submission of the state's response. Id.

[4] It is of no consequence that the defendant in the present case and his victims are white, and that there is no question as to his guilt, or that his acquiescence to the death penalty is competent, knowing and voluntary. My trepidation transcends the defendant in this case because our concerns of racial discrimination in the administration of Connecticut's death penalty are not the product of conjecture informed by the voracious consumption of law review articles. Rather, a court supervised statistical analysis of our capital sentencing scheme, from intake to disposition, is in actual progress. The preliminary statistical data has revealed allegations of racial disparity that are substantial enough to require years of analysis under the supervision of a special master. I find profound the implications of knowingly using a death penalty process that plausibly may well be seriously flawed as discriminatory on the basis of race.