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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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ZARELLA, J., concurring. Although I agree with and join in the reasoning of the majority in all respects, I write separately to disassociate myself from the unwarranted speculation in the concurrence of Justice Borden that a coordinate branch of government may have acted unconstitutionally in enacting General Statutes § 1-2z. I am concerned that Justice Borden's concurring opinion represents a significant and unfortunate departure from our jurisprudence of restraint and deference. In the present case, it is clear from the record that neither party has claimed that § 1-2z is unconstitutional, and, indeed, the appellant expressly declined to raise such a claim. Additionally, as the majority opinion makes clear, the statute's constitutionality need not be addressed in order to resolve the issues presented. Nevertheless, Justice Borden, in his concurring opinion, articulates at length his doubts regarding the constitutionality of § 1-2z under the separation of powers doctrine.

A judicial opinion has been defined as ''a reasoned elaboration, publicly stated, that justifies a conclusion or decision. Its purpose is to set forth an explanation for a decision that adjudicates a live case or a controversy that has been presented before a court.'' R. Aldisert, Opinion Writing (1990) p. 9. A concurring opinion serves the special purpose of presenting an additional rationale or different theory in support of the majority's conclusion. Id., p. 166. Certainly, a concurrence can serve to warn of the precedential effect of a majority opinion or to warn that the legal doctrine employed therein must not be ''pressed too far'' or extended in other factual contexts. R. Moorhead, ''Concurring and Dissenting Opinions,'' 38 A.B.A. J. 821, 823 (1952). Justice Borden's concurrence meets none of these criteria because it extends beyond the reasoning of the majority and speaks to an issue that is not before the court. I never have understood the purpose of a concurrence to be an excursion into waters uncharted by the parties' briefs or to be a comment on issues that are not presented in the case.[1]

Moreover, our precedent is absolutely clear on the limits of our authority to address constitutional issues. As we recently have stated, ''[w]e do not take lightly our responsibility to act as the final arbiter in resolving issues relating to our constitution. See *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed. 60 (1803); *Pratt* v. *Allen*, 13 Conn. 119, 132 (1839). *We also, however, do not engage in addressing constitutional questions unless their resolution is unavoidable.* Ordinarily, [c]onstitutional issues are not considered unless *absolutely necessary* to the decision of a case . . . . *State*

v. *Cofield*, 220 Conn. 38, 49–50, 595 A.2d 1349 (1991); *State* v. *Onofrio*, 179 Conn. 23, 37–38, 425 A.2d 560 (1979); *State* v. *DellaCamera*, 166 Conn. 557, 560–61, 353 A.2d 750 (1974); see *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288, 346–47, 56 S. Ct. 466, 80 L. Ed. 688 (1936) (Brandeis, J., concurring). . . . *State* v. *Torres*, 230 Conn. 372, 382, 645 A.2d 529 (1994); *Moore* v. *McNamara*, 201 Conn. 16, 20, 513 A.2d 660 (1986) ([t]his court has a basic judicial duty to avoid deciding a constitutional issue if a nonconstitutional ground exists that will dispose of the case); see also 16 Am. Jur. 2d, Constitutional Law § 117 (1998).'' (Emphasis added; internal quotation marks omitted.) *State* v. *McCahill*, 261 Conn. 492, 501–502, 811 A.2d 667 (2002).

A similar point of view has been expressed in other jurisdictions. ''While [c]ourts cannot shun the discussion of constitutional questions when fairly presented, they will not go out of their way to find such topics. They will not seek to draw in such weighty matters collaterally, nor on trivial occasions. It is both more proper and more respectful to a co-ordinate department, to discuss constitutional questions only whe[n] that is the very lis mota. Thus presented and determined, the decision carries a weight with it to which no extra-judicial disquisition is entitled.'' *Hoover* v. *Wood*, 9 Ind. 271, 273 (1857). At least one prominent constitutional scholar likewise has concluded that ''[i]t must be evident to any one that the power to declare a legislative enactment void is one which the judge, conscious of the fallibility of the human judgment, will shrink from exercising in any case [in which] he can conscientiously and with due regard to duty and official oath decline the responsibility. The legislative and judicial are coordinate departments of the government, of equal dignity; each is alike supreme in the exercise of its proper functions, and cannot directly or indirectly, while acting within the limits of its authority, be subjected to the control or supervision of the other, without an unwarrantable assumption by that other of power which, by the constitution, is not conferred upon it.'' T. Cooley, Constitutional Limitations (7th Ed. 1903) p. 229. In keeping with this policy, we repeatedly have declined to consider constitutional issues when alternative, nonconstitutional grounds exist for deciding an appeal. See *Binette* v. *Sabo*, 244 Conn. 23, 84, 710 A.2d 688 (1998) (*Katz, J.*, concurring in part and dissenting in part).

Our restraint in such matters does not stem from blind adherence to principles of judicial deference to the legislative and executive branches of government but, rather, from our recognition that members of *all three* branches, in carrying out their duties, have a common obligation and solemn responsibility to support the United States constitution and the constitution of the state of Connecticut. See General Statutes § 1-25.[2] Thus, the legislature, in passing legislation, and the governor, in signing legislation into law, are stating, in

effect, that they believe the legislation is constitutional. Indeed, one commentator has noted that, at the time of our country's founding, the federal constitution ''integrated several enforcement devices in its general system of separated powers.'' A. Amar, America's Constitution (2005) p. 60. One such device, the oath of office, obligated members of both houses of Congress, as well as the president, to avoid the enactment of proposed bills that might offend the constitution. Id. ''Among men punctilious about their personal reputations, such oaths would discourage—by making *dishonorable*—any legislative logrolls involving proposals that either house deemed unconstitutional. . . . So, too, if the president were asked to put his own name on every proposed bill, his sense of personal honor would prevent him from signing on to a project that he found to violate his personal pledge to preserve, protect, and defend the [c]onstitution.'' (Emphasis in original; internal quotation marks omitted.) Id., pp. 62–63. It is this shared commitment by members of all three branches of government to uphold the constitution, expressed in the oaths they take upon assuming office, that underlies the ''bedrock principle'' that Connecticut courts ''indulge in every presumption in favor of [a] statute's constitutionality.'' (Internal quotation marks omitted.) *State* v. *Lutters*, 270 Conn. 198, 217, 853 A.2d 434 (2004).

To be sure, this court, on occasion, has taken note of, but declined to consider, constitutional issues not directly implicated in the resolution of an appeal or addressed by the parties in their briefs. See, e.g., *State* v. *DeFusco*, 224 Conn. 627, 629 n.5, 620 A.2d 746 (1993) (declining to consider whether garbage left for collection outside but adjacent to curtilage of residence enjoys protection under state constitution because issue did not fall within scope of certified question); *State* v. *Breton*, 212 Conn. 258, 271, 562 A.2d 1060 (1989) (declining to consider whether death penalty violated state constitution because defendant did not advance concrete arguments for separate state constitutional treatment of issue). Such issues, however, typically have been raised not by the justices themselves but by the parties or the lower courts.

In the present case, Justice Borden suggests that § 1-2z raises a ''serious constitutional question'' that this court ''[s]ooner or later . . . will be required to face and to resolve . . . .'' In light of the foregoing policy of avoidance of constitutional issues unless absolutely necessary to the decision of a case, even when those issues are raised by the parties, it is troubling to me that a member of this court would suggest that a constitutional issue exists when neither of the parties has done so. Even more inexplicable is Justice Borden's devotion of a significant portion of his concurring opinion to explaining why § 1-2z may violate the separation of powers doctrine. I simply do not comprehend this

apparent thirst for debate on a matter that is not in dispute.

Accordingly, while I concur in the reasoning of the majority, I lament Justice Borden's unwarranted suggestion that a coordinate branch of government has acted in violation of its constitutional duties.

[1] Footnote 1 of Justice Borden's concurrence serves to highlight one of my main points, that is, I do not believe that a concurring opinion serves the same purpose as a speech or scholarly article.

[2] General Statutes § 1-25 provides in relevant part: "The forms of oaths shall be as follows, to wit:

"FOR MEMBERS OF THE GENERAL ASSEMBLY, EXECUTIVE AND JUDICIAL OFFICERS.

"You do solemnly swear (or affirm, as the case may be) that you will support the Constitution of the United States, and the Constitution of the state of Connecticut, so long as you continue a citizen thereof; and that you will faithfully discharge, according to law, the duties of the office of [ ] to the best of your abilities; so help you God. . . ."