KATZ, J., dissenting. Since the adoption of the Connecticut constitution in 1818, judges age seventy and older have been barred from holding judicial office. Conn. Const. (1818), art. V, § 3.[1] From 1818 until 1965, pursuant to that prohibition, judges who had reached the age of seventy years were not permitted to exercise any judicial powers, but, beginning in 1889,[2] could act in a limited capacity as state referees, consistent with that limitation to find facts and recommend rulings to the trial court. *Harbor Construction Corp.* v. *D. V. Frione & Co.*, 158 Conn. 14, 16, 255 A.2d 823 (1969). Then, in 1965, the constitution was amended to permit judges who were not "eligible to hold [their] office" upon reaching the age of seventy years but had chosen to serve as state referees to exercise limited judicial power, including the powers of the Superior Court, in that capacity. Conn. Const. (1965), art. V, § 6. With the adoption of that amendment, article fifth, § 6, now provides in relevant part: "No judge shall be eligible to hold his office after he shall arrive at the age of seventy years, except that a chief justice or judge of the supreme court . . . [or] a judge of the superior court . . . who has attained the age of seventy years and has become a state referee may exercise, as shall be prescribed by law, the powers of the superior court . . . on matters referred to him as a state referee."[3] Conn. Const., amend. VIII, § 2.

Notably, that amendment failed to permit such referees to exercise the powers of the Supreme Court in any capacity. In recognition of that limitation, the long established practice of the Supreme Court had been to have justices refrain from hearing cases several months prior to their seventieth birthdays so that their role in any pending cases would be completed before they were no longer constitutionally authorized to act in that judicial capacity. *Doyle* v. *Metropolitan Property & Casualty Ins. Co.*, 252 Conn. 912, 914E–14F, 746 A.2d 125 (2000) ("In order to accomplish that result, the uniform practice has been not to assign justices approaching that age to cases argued less than three or four months before the justice's approaching seventieth birthday, and for the other members of the court to strive to issue the decision before that date. This practice is not . . . merely based on 'logistical pressures' . . . . It is based, instead on article fifth, § 6, of the constitution of Connecticut . . . ." [Citation omitted.]).

In 2000, however, to circumvent that prohibition, the legislature enacted Public Acts 2000, No. 00-191, now codified at General Statutes § 51-198 (c), which provides in relevant part: "A judge of the Supreme Court who has attained the age of seventy years may continue

to deliberate and participate in all matters concerning the disposition of any case which the judge heard prior to attaining said age, until such time as the decision in any such case is officially released. . . .'' The constitutionality of this act, however, was questioned from its inception, in light of the well established distinction between the powers exercised by a justice of the Supreme Court and the limited powers that may be exercised by a state referee. See Office of Legislative Research, Amended Bill Analysis for Substitute House Bill No. 5130, as amended by House Amendments A and C, comment.[4]

The majority today nonetheless concludes that § 51-198 (c) is constitutional because, in the majority's view, Supreme Court justices age seventy and older may deliberate on and participate in cases that were argued prior to the justices reaching the constitutional age limit without ''holding office.'' In one fell swoop, the majority casts aside more than 100 years of constitutional jurisprudence to uphold a statute whose constitutionality was questioned from the time of its passage. Indeed, implicit in the majority's reasoning, the very statute that it declares constitutional today was wholly unnecessary for the legislature to enact because such acts could be performed irrespective of whether an individual holds office. Moreover, taking the majority's reasoning to its logical conclusion, because deliberation and participation on a case do not constitute ''hold[ing] . . . [judicial] office,'' *anyone* can exercise judicial power without violating the constitution, including judges age seventy and over, provided that the legislature vests in them statutory authority to exercise judicial powers. Significantly, by permitting the legislature to grant powers belonging to the judiciary to one not constitutionally authorized to exercise them; *Norwalk Street Railway Co.'s Appeal*, 69 Conn. 576, 592, 37 A. 1080 (1897); the majority ignores the mandates of article second of the Connecticut constitution, which confines the powers of the government to ''separate magistrac[ies] . . . .'' Accordingly, I respectfully dissent.

At the outset, I note that the meaning of § 51-198 (c) is not in dispute, and I agree with the majority that, were this statute constitutional, it would authorize justices of the Supreme Court to continue to deliberate on and participate in cases after their seventieth birthdays as long as those cases had been heard prior to their seventieth birthdays. The central question that needs to be answered, therefore, is not whether the *statute* may be construed in a manner consistent with the constitution; see *Kerrigan* v. *Commissioner of Public Health*, 289 Conn. 135, 155, 957 A.2d 407 (2008) (statutes are presumed constitutional and court has duty to search for construction within constitution unless statute's invalidity is clear); but, rather, whether the *constitution* permits a justice over the age of seventy to engage in the acts authorized by the statute. Because article fifth,

§ 6, of the state constitution bars judges who have reached seventy years of age from being eligible to "hold . . . office," and provides only one exception to that prohibition, namely, that such a judge who has become a state referee "may exercise, as shall be prescribed by law, the powers of the superior court . . . on matters referred to him as a state referee," there are three inquiries this court must resolve: (1) what it means for a judge to "hold . . . office"; (2) whether "the powers of the superior court" include the power to deliberate on and participate in decisions of this court; and (3) if not, to what extent the legislature may "[prescribe] by law" those powers.

The rules of constitutional interpretation are well settled. As a general matter, "[i]n dealing with constitutional provisions we must assume that infinite care was employed to couch in scrupulously fitting language a proposal aimed at establishing or changing the organic law of the state. *Cahill* v. *Leopold*, 141 Conn. 1, 19, 103 A.2d 818 [1954]; 1 Cooley, Constitutional Limitations (8th Ed.) p. 125. Unless there is some clear reason for not doing so, effect must be given to every part of and each word in the constitution." *Stolberg* v. *Caldwell*, 175 Conn. 586, 597–98, 402 A.2d 763 (1978), appeal dismissed sub nom. *Stolberg* v. *Davidson*, 454 U.S. 958, 102 S. Ct. 496, 70 L. Ed. 2d 374 (1981). Moreover, constitutional analysis must be performed contextually, as "each provision of a constitution must be construed in view of its relation to the whole instrument." *McGovern* v. *Mitchell*, 78 Conn. 536, 551, 63 A. 433 (1906). Finally, it is well established that the question of whether a statute falls within the contours of the constitution is a question of law over which this court exercises plenary review. *Kerrigan* v. *Commissioner of Public Health*, supra, 289 Conn. 155.

I turn therefore to the provision at issue and the constitutional backdrop against which it is set. Article fifth, § 6, had its origins in the Connecticut constitution of 1818 as article fifth, § 3, which provided in relevant part: "No judge . . . shall be capable of holding his office, after he shall have arrived to the age of seventy years." Adopted contemporaneously with article fifth, § 6, were two other constitutional provisions that shape the lens through which we view the present case: article second,[5] which divided the power of the state among three distinct departments, and article fifth, § 1,[6] which divided the power of the judicial department among the constitutional courts established by the constitution and the lesser courts established by the legislature.

As this court explained in *Norwalk Street Railway Co.'s Appeal*, supra, 69 Conn. 586–89, the adoption of the 1818 constitution represented a radical departure from the government that previously had been in existence. In contrast to the earlier establishment, in which the elected General Assembly had been free to exercise

the entirety of state power without constraints, the new government was founded upon the principle of separation of powers, which specifies that the sovereign authority of the people is granted to three separate branches of government—legislative, executive and judicial—each of which maintains separate and independent power over its individual sphere of authority. Id., 587, 592–94. The powers granted to each branch encompass the full range of its authority over that sphere, except as limited by the constitution, and no branch may invade the powers of another branch. Conn. Const. (1818), art. II; *Norwalk Street Railway Co.'s Appeal*, supra, 587, 592–94. In accordance with this tenet, for more than 100 years, this court consistently has reaffirmed the principle of separation of powers and has held that no branch may usurp powers belonging to another branch for the purposes of exercising the authority of that branch. See, e.g., *State* v. *Clemente*, 166 Conn. 501, 510–11, 513–15, 353 A.2d 723 (1974) (explaining division of power among branches, noting that some incidental overlap of powers is necessary for government to function but stating constitution requires branches to be kept separate in areas where they possess exclusive power).

In the same instrument, the power of the judicial branch similarly was divided. Article fifth, § 1, of the Connecticut constitution divides judicial power among the various constitutional courts—those established directly by the constitution itself—and the lower courts—those that may be established by the legislature. *Adams* v. *Rubinow*, 157 Conn. 150, 155–56, 251 A.2d 49 (1968). Although, at the time of its enactment in 1818, article fifth, § 1, referred only to the Supreme Court of Errors and the Superior Court, it later was amended to reflect the current court structure and currently provides: "The judicial power of the state shall be vested in a supreme court, an appellate court, a superior court, and such lower courts as the general assembly shall, from time to time, ordain and establish. The powers and jurisdiction of these courts shall be defined by law."[7] Conn. Const., amend. XX, § 1. As this court has explained previously in detail; *Styles* v. *Tyler*, 64 Conn. 432, 445–50, 30 A. 165 (1894); the judicial power exercised by each of these courts is separate and distinct, and only together do they comprise a full and complete adjudicatory system that encompasses the full scope of judicial authority. Id., 449–50; accord *McGovern* v. *Mitchell*, supra, 78 Conn. 547.

With respect to the ability of the legislature to define the "powers and jurisdiction of these courts," this court has held that this power is not unlimited. *Brown* v. *O'Connell*, 36 Conn. 432, 446 (1870). The legislature has no authority to organize courts by virtue of its general legislative power but instead must do so pursuant to a constitutional grant of authority. Id. Accordingly, the legislature may exercise only the limited authority

granted therein and must act in accordance with the constitutional scheme set forth in article fifth of the state constitution. Id. It must be underscored that, although the legislature is free to establish lower courts and apportion jurisdiction between those courts and the Superior Court, pursuant to its authority under article fifth, § 1, of the state constitution, the legislature has no authority to alter or impair the essential nature or jurisdiction of any of the courts defined by the constitution. *Walkinshaw* v. *O'Brien*, 130 Conn. 122, 140–42, 32 A.2d 547 (1943); id., 140 ("[n]ot only must any other court the General Assembly creates be an 'inferiour court' but it may not be so constituted as materially to detract from the essential characteristics of the Superior Court as it was then constituted [in 1818]"); accord *State* v. *Clemente*, supra, 166 Conn. 514–15 (discussing independence of judiciary and limitations to legislative actions affecting judicial branch); *Brown* v. *O'Connell*, supra, 36 Conn. 446 (noting that legislature must define court system in accordance with constitutional grant of authority). Moreover, although the legislature may make reasonable rules of administration, practice or procedure concerning lower courts, provided that those rules do not significantly interfere with court operations, it has no inherent power to do so with respect to the constitutional courts. *Adams* v. *Rubinow*, supra, 157 Conn. 155–57; accord *State* v. *Clemente*, supra, 507.

I

With these principles in mind, I turn to the first question we must answer—what it means for a judge to "hold his office" pursuant to article fifth, § 6, of the state constitution. Nowhere does the constitution define the phrase "hold[ing] his office . . . ." Although the prohibition against judges holding office upon reaching the age of seventy has existed since the adoption of the 1818 constitution; see Conn. Const. (1818), art. V, § 3; Conn. Const. (1965), art. V, § 6; there was no discussion as to its meaning at either the constitutional convention of 1818 or 1965. W. Horton, The Connecticut State Constitution: A Reference Guide (1993) p. 131.

Case law following the ratification of the 1818 constitution, however, consistently has interpreted holding office to mean the exercise of judicial powers. Consequently, judges who were ineligible to hold office were prohibited from exercising any judicial power at all. The earliest case on point that my research has uncovered is *Griffing* v. *Danbury*, 41 Conn. 96 (1874), in which this court held that a judge, who had resigned and, therefore, no longer held judicial office, had no power to grant a motion for a new trial in a case that had been tried before him prior to his resignation, even though he had granted the motion two days after his resignation had taken effect. This court later determined, in *Johnson* v. *Higgins*, 53 Conn. 236, 237–38, 1 A. 616 (1885), that a judge who no longer holds office properly may articu-

late findings in cases tried to him in which judgment had entered while he still held his office because such acts were merely "clerical" rather than "judicial."[8] The distinction between clerical and judicial acts was clarified further in *Todd* v. *Bradley*, 97 Conn. 563, 567–68, 117 A. 808 (1922). In that case, this court examined a series of cases that had considered whether findings made by judges following the expiration of their term of office were permissible and concluded that "the making of a finding for the purposes of perfecting an appeal, by one whose term of office has ceased, is not a judicial act. . . . Since the making of a finding is not a judicial act, there is no reason why one whose term of office as a judge has expired may not make up the finding for the appeal." (Citations omitted.) Id., 568–69. In accordance with this principle, in 1944, this court dismissed an appeal that had stemmed from a decision made by a judge who no longer held office because the judge's decision constituted a judicial act. *DeLucia* v. *Home Owners' Loan Corp.*, 130 Conn. 467, 471–73, 35 A.2d 868 (1944). In that case, the judge had rendered judgment while he duly held office. Id., 468. The plaintiff subsequently filed a motion for extension of time to file an appeal. Id., 469. The judge, who in the meantime had ceased to hold his office as a judge, granted the motion. Id. Declaring that the judge was without power to do so after he had left office, this court noted: "The granting of an extension requires a determination whether good cause exists as a basis for the exercise of a judicial discretion. . . . Such a determination is clearly a judicial and not a clerical act. . . . [T]he trial judge lacked power to make the order granting the extension and his act in so doing was void."[9] (Citations omitted.) Id., 472–73.

The recurring theme throughout our case law is that, absent a *constitutional* grant of authority, judges may not perform judicial acts following the completion of their term of office but may perform clerical acts in connection with judgments they already have rendered.[10] Clerical acts include articulating factual findings as necessary for an appeal or signing a judgment that already had been rendered by the court prior to the expiration of a judge's term of office. Notably, such acts take place following the rendering of judgment in a case and, therefore, can have no effect on that judgment. Indeed, an articulation presumes that the judge simply is making express what he or she previously had relied on in rendering that judgment. Practice Book § 66-5; *State* v. *Wilson*, 199 Conn. 417, 434, 513 A.2d 620 (1986) ("[A]n articulation presupposes ambiguity or incompleteness in the legal reasoning of the trial court in reaching its decision. An articulation may be necessary where the trial court fails completely to state any basis for its decision . . . or where the basis, although stated, is unclear." [Citations omitted.]). This interpretation is buttressed by statements made at the

1965 constitutional convention[11] in support of the amendment allowing state referees to exercise limited judicial power, which those speakers understood as a departure from the state referees' previous role as fact finders who only could recommend rulings, which then would be reviewed and accepted or rejected by a sitting judge, without the power to perform any judicial acts. *Harbor Construction Corp.* v. *D. V. Frione & Co.*, supra, 158 Conn. 16; see also *State* v. *Miranda*, 274 Conn. 727, 744, 878 A.2d 1118 (2005) (*Borden*, *J.*, concurring) (discussing 1965 constitutional convention and noting that state referees had limited power prior to adoption of article fifth, § 6, of state constitution in 1965).

Significantly, in the Supreme Court, as in any court, judicial power is exercised up to the point when a judgment is rendered. See *McGovern* v. *Mitchell*, supra, 78 Conn. 547 ("[t]he judges of each court in their joint or separate action exercise the power of that court; each, equally with every other, represents in his official action the judicial power of the [s]tate vested in the court of which he is a member"). It is well established that a Supreme Court judgment is rendered on the date it is published in the Connecticut Law Journal. Practice Book § 71-1;[12] *Doyle* v. *Metropolitan Property & Casualty Ins. Co.*, supra, 252 Conn. 914E. Indeed, as every member of this court is well aware, a justice may elect to change his or her vote on any pending case up until the time that the decision is published.[13] Consequently, a justice who deliberates on and participates in a pending case in support of a judgment to be rendered subsequently is performing a judicial act *until* the time the decision is published. Indeed, deliberation and participation in the course of deciding cases constitutes the very essence of judicial action, namely, fulfilling our core function by rendering a decision that disposes of a case. *State* v. *Clemente*, supra, 166 Conn. 509 ("[t]he most basic component of [the judicial] power is the function of rendering judgment in cases before the court"). The fact that a case was *argued* while the justice constitutionally was authorized to exercise judicial powers is of no moment, as the exercise of judicial powers relevant to that case continues following the time he or she is no longer constitutionally permitted to exercise those powers.[14]

The majority maintains that the acts authorized under § 51-198 (c) do not constitute holding office because, in order to "hold . . . office," a judge must be able to exercise the *full* panoply of judicial authority that may be wielded by the officeholder. Therefore, the majority asserts that the deliberation and participation in pending cases may be undertaken without holding office because those actions represent only one limited facet of judicial power. This interpretation is incorrect for three reasons. First, as I previously have discussed, this interpretation is in direct conflict with all of our relevant case law prohibiting the exercise of any judicial power

by one who does not hold office. Second, the act of rendering a judgment constitutes the very essence of judicial power, which, as courts from other jurisdictions make clear, may not be exercised in the absence of some constitutional grant of authority.[15] Cf. *Booth* v. *United States*, 291 U.S. 339, 350, 54 S. Ct. 379, 78 L. Ed. 836 (1934) (noting that retired federal judges continue to hold office, otherwise judicial actions performed after retirement would be illegal since they have would have no authority to exercise judicial power); *Johnson* v. *Board of Control of the Employees' Retirement System*, 740 So. 2d 999, 1012 (Ala. 1999) (holding that retired state judge who is not vested with authority to exercise state power does not hold office); *State ex rel. Racicot* v. *District Court*, 243 Mont. 379, 402, 794 P.2d 1180 (1990) (noting that constitutional officer may not holdover in office past end of term, absent constitutional authority or empowering statute); *Opinion of the Justices (Marital Masters' Recommendations)*, 155 N.H. 524, 526–27, 924 A.2d 377 (2007) (holding that "marital masters," as nonjudicial officers, may make only recommendations and may not render judgment because only judicial officers have power to render judgment).

Finally, if the majority's view is correct, then the acts of deliberating on and participating in pending cases may, in fact, be performed by anyone, provided that the legislature enacts an enabling statute to vest judicial authority in that person. Despite the majority's attempt to minimize the significance of this court's decision in *Doyle* v. *Metropolitan Property & Casualty Ins. Co.*, supra, 252 Conn. 914E–14F, however, we stressed in that case that article fifth, § 6, of the state constitution prevented judges who are not constitutionally authorized to hold office from deciding cases. Id. ("The notion that one who, by virtue of the constitution is no longer a member of this court, may not participate in its decisions . . . has been the uniformly held and followed view of this court long before . . . any current member of this court was appointed to it . . . . This practice is not . . . based on logistical pressures . . . . It is based, instead, on article fifth, § 6, of the constitution of Connecticut . . . ." [Citations omitted; internal quotation marks omitted.]).

It would appear, then, that the legislature disagreed with this court's interpretation of a constitutional provision and took it upon itself to circumvent that interpretation by statute.[16] This issue, however, was the very one that forced the framers of the 1818 constitution to separate the powers of the state into three distinct departments. *Moore* v. *Ganim*, 233 Conn. 557, 679 n.41, 660 A.2d 742 (1995) (*Berdon, J.*, dissenting) (discussing *Lung's Case*, 1 Conn. 428 [1815], in which defendant appealed to legislature to overturn murder conviction). For the legislature to proclaim by fiat an alternate interpretation of our state constitution is a violation of both

the separation of powers doctrine and fundamental principles of judicial review, and such action categorically is beyond the power of the legislature. *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed. 60 (1803) ("[i]t is emphatically the province and duty of the judicial department to say what the law is"); accord *State* v. *Clemente*, supra, 166 Conn. 515 ("[When] there was a clear invasion of judicial power by the legislature . . . courts have not hesitated to step in . . . as a duty imposed by the constitution to keep the three great departments of the government separate. Otherwise, acquiescence to a gradual invasion of the judiciary by the legislature would eventually render the former little more than a judicial staff of the legislature."); *Atwood* v. *Buckingham*, 78 Conn. 423, 428, 62 A. 616 (1905) ("[i]t is the province of the legislative department to define rights and prescribe remedies: of the judicial to construe legislative enactments, determine the rights secured thereby, and apply the remedies prescribed").

The determination that judges may not exercise judicial powers without holding office would dispose of this case were it not for the fact that article fifth, § 6, of the state constitution authorizes a judge who has reached the age of seventy and has become a state referee to "exercise, as shall be prescribed by law, the powers of the superior court . . . on matters referred to him [or her] as a state referee." The question that remains to be resolved, therefore, is whether the powers vested in state referees on cases so referred include the power of the Supreme Court and, if not, to what extent the legislature may prescribe those powers by law.

II

I turn first to the question of whether the powers vested by the state constitution in state referees on cases referred to them include the power of the Supreme Court.[17] As I have noted previously, the amendment to the constitution in 1965 granted limited judicial power to state referees. See *State* v. *Miranda*, supra, 274 Conn. 744 (*Borden*, *J.*, concurring); see also footnote 11 of this dissenting opinion. The history surrounding this amendment indicates that this change was proposed because of the burden imposed on both litigants and the judicial system because the state referees had no authority to render a judgment that would dispose of the case and the trial court could reject the referee's recommendation, thereby requiring in essence a second trial. See *Harbor Construction Corp.* v. *D. V. Frione & Co.*, supra, 158 Conn. 16–19 (explaining state referee procedural process in detail); see also footnote 11 of this dissenting opinion. At the 1965 constitutional convention, the discussion centered on whether to grant state referees the authority to exercise the powers of a "trial judge," and no mention was made of the powers of a justice of the Supreme Court. Constitutional Com-

mittee Hearings, Resolutions and Rules of the 1965 Connecticut Constitutional Convention (August 24, 1965) p. 34, remarks of former Chief Justice Raymond E. Baldwin; see also id., p. 36, remarks of former Justice Abraham S. Bordon ("it would help the load, the congestion, *in the Superior Court* if, for instance, there is an over-abundance of negligence cases, contract cases, and others that can be tried more effectively by a judge than by a [s]tate [r]eferee" [emphasis added]). This distinction is significant.

Although a justice of the Supreme Court is also a judge of the Superior Court; General Statutes § 51-198 (a);[18] the powers exercised by a Supreme Court justice are not the same as those exercised by a Superior Court judge. As I previously have noted, pursuant to article fifth, § 1, of the state constitution, the judicial power is divided among the constitutional courts, whose essential powers and jurisdiction are fixed by the constitution, and the lesser courts, whose powers and jurisdiction are fixed by the legislature, within constitutional limits. *State* v. *Clemente*, supra, 166 Conn. 514–15. With respect to the Supreme Court and the Superior Court, both of whose origins predate the Appellate Court, this court has recognized that the judicial power exercised by each of these courts is separate and distinct. *Styles* v. *Tyler*, supra, 64 Conn. 445–50; accord *McGovern* v. *Mitchell*, supra, 78 Conn. 547. Specifically, the Supreme Court has authority as the court of last resort for errors in law, while the Superior Court holds both unlimited jurisdiction over all issues not consigned to the lower courts and jurisdiction as the court of last resort for issues of fact. *Styles* v. *Tyler*, supra, 450; *Dudley* v. *Deming*, 34 Conn. 169, 174 (1867). The General Statutes implicitly support this interpretation, as they indicate that, when judges sit by designation on a different court, they exercise the power of that court, not their original court. See, e.g., General Statutes § 51-207 (b) (authorizing Superior Court judges to sit by designation on Supreme Court when needed and "attend and act as judges of the Supreme Court"); General Statutes § 51-197c (d) (authorizing Superior Court judges to serve on Appellate Court); *Kerin* v. *Stangle*, 209 Conn. 260, 264, 550 A.2d 1069 (1988) ("[w]hen entertaining an appeal from an order or decree of a Probate Court, the Superior Court takes the place of and sits as the court of probate").

This court has explained that the distinction between the Superior Court and the Supreme Court "expressed the conviction of the people that a jurisdiction of mixed law and fact vested in any court of last resort, exercising a supreme and uncontrolled power, was inconsistent with a sound system of jurisprudence and was dangerous to the administration of justice . . . ." *Styles* v. *Tyler*, supra, 64 Conn. 451. Indeed, precisely because of these distinct spheres of power, the office of legislative research warned the legislature that the statute author-

izing judges to continue work on pending cases after the age of seventy raised serious constitutional questions. It is clear, therefore, that the judicial powers vested in the Superior Court and the Supreme Court never were intended to be coincident and that the authorization in article fifth, § 6, of the state constitution for state referees to exercise powers of the Superior Court does not include the power of the Supreme Court.

III

Finally, I turn to the question of whether the phrase "as shall be prescribed by law" included in article fifth, § 6, of the state constitution gives the legislature license to expand the scope of the powers of the Superior Court and allow state referees to exercise the powers of the Supreme Court. Although early cases had held that the only constitutional limits on the General Assembly's authority were those limitations expressly stated in the state and federal constitutions and that it even could exercise powers of the other branches as necessary for the good of the people when not so limited; see, e.g., *Starr* v. *Pease*, 8 Conn. 540, 546–47 (1831); that doctrine was firmly repudiated in the latter half of the nineteenth century. *Norwalk Street Railway Co.'s Appeal*, supra, 69 Conn. 591–93. Since that time, this court consistently has reaffirmed the principle that the constitution represents a grant of sovereign authority from the people to separate and distinct branches of government, and the legislature is not free to act beyond either the strictures of that grant of authority or the constitution.[19] It is now well established that, although the legislature has the authority to define the powers and jurisdiction of the various courts, it may not do so in a manner contrary to that provided by the constitution. See *Brown* v. *O'Connell*, supra, 36 Conn. 446 ("no judicial power is vested by the constitution in the General Assembly, either directly or as an incident of the legislative power, and the General Assembly cannot confer it"); see also *McGovern* v. *Mitchell*, supra, 78 Conn. 551 ("each provision of a constitution must be construed in view of its relation to the whole instrument").

Brown v. *O'Connell*, supra, 36 Conn. 432, sheds light on the nature of authority conferred on the legislature when the constitution permits the legislature to prescribe something by law. In that case, this court was required to decide whether the legislature, which had created a "police court" pursuant to its constitutional authority over the lower courts, could delegate its constitutional authority to appoint judges to a municipal body. Id., 447. The court noted that, if no provision for judicial appointment had been set forth in the constitution, then the legislature would have been free to define the procedures by which such appointment could be made. Id. The court explained that article fifth, § 3, of the 1818 state constitution, however, expressly provided that "[t]he judges of the Supreme Court of Errors,

of the superior and inferior courts, and all justices of the peace, *shall be appointed by the General Assembly*, in such manner as shall by law be prescribed." (Emphasis added; internal quotation marks omitted.) Id. The court considered whether the constitutional phrase "in such manner as shall by law be prescribed" allowed the legislature to delegate its judicial appointment authority by statute. Id. Noting that the provision required an appointment "by the General Assembly," the court held that an appointment by a municipal body in a manner "as shall by law be prescribed" was not equivalent to an appointment by the General Assembly because, if the General Assembly could delegate its authority to another body, the words "by the General Assembly" would be rendered superfluous. (Internal quotation marks omitted.) Id., 447–48. Consequently, this court held that the legislature could not invest in another body the authority constitutionally granted to it simply because the constitution allowed it to prescribe by law the manner of exercising that authority. Id., 448.

Therefore, when the constitution expressly provides a specific grant of power to be used under particular circumstances, the mere presence of the words "as prescribed by law" does not empower the legislature to override that express grant of power. As this court long ago aptly put it: "The constitution of [this] state, framed by a convention elected for that purpose and adopted by the people, embodies their *supreme original will*, in respect to the organization and perpetuation of a state government; the division and distribution of its powers; the officers by whom those powers are to be exercised; and the limitations necessary to restrain the action of each and all for the preservation of the rights, liberties and privileges of all; and is therefore the supreme and paramount law, to which the legislative, as well as every other branch of the government, and every officer in the performance of his duties, must conform." (Emphasis in original.) *Opinion of the Judges of the Supreme Court as to Constitutionality of Soldiers' Voting Act*, 30 Conn. 591, 593 (1862). The fundamental principles of our constitution that divide governmental power, vest in each department authority over its sphere of power and authorize the exercise of those powers by particular government officials cannot be regarded merely as half-formed thoughts.

In the present case, the constitution limits the grant of judicial power that may be exercised by state referees to the power of the Superior Court. Those words exist for a purpose, as a limitation on the grant of authority to individuals who heretofore never had been invested with that authority, and the legislature is not at liberty to disregard them. As this court long ago aptly put it, "no dicta of judges, no doubtful or improper legislation, can alter the plain fact that in 1818 the people, in the exercise of their sovereignty, granted to the General Assembly then constituted the legislative power, and

forbade their exercise of other than legislative power (unless specially granted) . . . . The unequivocal mandate therein contained, that the powers delegated or granted by the sovereign, the people, through the [c]onstitution, shall be divided into three distinct departments, and those belonging to each confided to a separate magistracy . . . is binding upon this court at all times. These mandates are the voice of the sovereign speaking ever with a present authority from which there is no escape." *Norwalk Street Railway Co.'s Appeal*, supra, 69 Conn. 592. To suppose that the legislature may ignore the constitution's command and expand the grant of power to encompass any and all *judicial* authority not only would render the specific grant of authority to state referees superfluous but would exceed the legislature's authority vested by the constitution. In light of the express grant of power to state referees that notably fails to include the powers of the Supreme Court, the legislature is not free to confer that which the constitution withholds.[20]

Finally, although I do not doubt that it is constitutional for Superior Court judges to sit by designation on the Supreme Court, as authorized by statute; see General Statutes § 51-207 (b); that grant of authority cannot invest *state referees* with similar powers merely by virtue of the fact that state referees constitutionally may exercise the powers of the Superior Court. This court repeatedly has held that state referees are not, in fact, judges of the Superior Court, and their powers are not coincident with such judges. *Florida Hill Road Corp.* v. *Commissioner of Agriculture*, 164 Conn. 360, 363, 321 A.2d 856 (1973). Indeed, this court has emphasized that the authority vested in state referees is sui generis, and that they sit as a special tribunal exercising authority only as prescribed to them pursuant to the constitution and relevant enabling statutes. *Monroe* v. *Monroe*, 177 Conn. 173, 178–79, 413 A.2d 819, cert. denied, 444 U.S. 801, 100 S. Ct. 20, 62 L. Ed. 2d 14 (1979). Consequently, the statutory grant of authority in § 51-207 (b) to Superior Court judges, who are, after all, judicial officers invested with judicial power, to exercise powers of the Supreme Court is not sufficient to sanction the exercise of that power by state referees.

In summary, I regretfully am compelled to conclude that, *whatever* laudable motivations existed behind the enactment of § 51-198 (c), the constitution simply does not permit a Supreme Court justice who has attained the age of seventy to deliberate and participate on cases simply because that case was heard prior to his or her seventieth birthday. Although duly enacted statutes enjoy a strong presumption of constitutionality, carrying with them the imprimatur of both the legislative and executive branches; *Kerrigan* v. *Commissioner of Public Health*, supra, 289 Conn. 155; this presumption is only the beginning of our inquiry, not the end. As has been recognized since 1803, it is "emphatically the

province and duty of the judicial department to say what the law is"; *Marbury* v. *Madison*, supra, 5 U.S. 177; and it would be wholly improper for this court to rest on the interpretation of other branches of government when called upon to execute that duty.

Notwithstanding the majority's assertions to the contrary, our case law consistently has held that judges who no longer hold office may not perform judicial acts, and there can be no question that the acts of deliberating and participating in cases to decide their legal outcome are judicial acts. When a justice of the Supreme Court deliberates and participates in cases to be decided, he necessarily exercises the power of the Supreme Court because those actions constitute the very essence of judicial power—the signature judicial act of rendering judgment to resolve disputes brought to the judicial branch. That power can be vested only in a Supreme Court justice, not in a state referee, and when that justice leaves office, that power is divested from him or her and may not be restored by legislative fiat. While judges who have reached the age of seventy may exercise limited judicial power on cases referred to them in their capacity as state referees, their exercise of that authority must comport with the grant of power afforded them under the constitution. That grant does not include the powers of the Supreme Court but is limited to the powers of the Superior Court, powers which are separate and distinct from those exercised by the Supreme Court, divided intentionally in 1818.

In closing, judicial power may not be vested in one who is not permitted by the constitution to wield it, not even with the best of intentions and not even to a former Supreme Court justice.

Accordingly, I respectfully dissent.

[1] Article fifth, § 3, of the 1818 constitution of Connecticut, provides in relevant part: "No judge or justice of the peace shall be capable of holding his office, after he shall have arrived to the age of seventy years."

[2] The position or office of state referee appears to have been created in 1889 when retiring Chief Justice John D. Park was appointed a state referee to hear and report factual findings on any case referred to him. *Florida Hill Road Corp.* v. *Commissioner of Agriculture*, 164 Conn. 360, 365, 321 A.2d 856 (1973).

[3] Although article fifth, § 6, of the Connecticut constitution also referred to judges of the Court of Common Pleas and the powers of that court, the Court of Common Pleas was merged into the Superior Court in 1978. Public Acts 1976, No. 76-436, §§ 1, 681; see General Statutes § 51-164s. Therefore, for purposes of clarity and because it is not relevant to the issue in this appeal, I have omitted from this dissenting opinion references to the Court of Common Pleas.

[4] The office of legislative research expressly recognized the distinction between the powers of the Supreme Court and the Superior Court when it stated in the bill analysis that it submitted to the legislature: "Article [fifth], [§] 6 of Connecticut's [c]onstitution requires that judges retire at age [seventy]. It permits retired Supreme Court justices to sit as state referees and to exercise [powers] of the Superior Court as powers conferred on referees by statute. This bill does not specify that Supreme Court powers [are] include[d] and other statutes do not specifically deal with this issue. Thus, the bill's grant [of] authority to Supreme Court justices to complete work on cases after they [reach] age [seventy] . . . might be challenged on constitutional grounds." Office of Legislative Research, Amended Bill Analysis for Substitute House Bill No. 5130, as amended by House Amendments A and

C, comment. The office of legislative research issued a similar warning concerning the original bill that had been proposed prior to amendment, which would have authorized Supreme Court justices who had reached the age of seventy to work on cases that had been *submitted* to them prior to their seventieth birthday: "This bill does not confer Supreme Court powers on referees and other statutes do not specifically deal with this issue. Thus, these provisions dealing with Supreme Court justices are subject to constitutional challenge." Office of Legislative Research, Bill Analysis for Substitute House Bill No. 5130, comment.

[5] The following language in article second of the Connecticut constitution has remained unchanged since its adoption in 1818: "The powers of government shall be divided into three distinct departments, and each of them confided to a separate magistracy, to wit, those which are legislative, to one; those which are executive, to another; and those which are judicial, to another."

[6] Article fifth, § 1, of the Connecticut constitution was adopted in 1818 and originally provided: "The [j]udicial power of the state shall be vested in a Supreme Court of Errors, a Superior Court and such [i]nferior [c]ourts as the General Assembly shall, from time to time, ordain and establish. The powers and jurisdiction of [these] [c]ourts shall be defined by law." This provision subsequently was amended. See footnote 7 of this dissenting opinion.

[7] Article fifth, § 1, was amended in 1965 to rename the Supreme Court of Errors as the Supreme Court. See Conn. Const. (1965), art. V, § 1; Constitutional Committee Hearings, Resolutions and Rules of the 1965 Connecticut Constitutional Convention (August 24, 1965) pp. 31–32, remarks of former Chief Justice Raymond E. Baldwin. It was amended again in 1982 to establish the Appellate Court as an intermediate appeals court between the Superior and Supreme Courts to alleviate the large caseload then being serviced by the Supreme Court. See 24 H.R. Proc., Pt. 12, 1981 Sess., pp. 3955–56, remarks of Representative Richard D. Tulisano. There was no discussion at that time relevant to the interpretation of article fifth, § 6.

[8] The majority states that this court, in *Johnson* v. *Higgins*, supra, 53 Conn. 237, noted the lack "of authority denying the legislature the power to authorize the actions contemplated by the statute . . . ." Specifically, however, this court stated only that "no authority has been brought to our attention denying the legislature the power implied in the law in question." *Johnson* v. *Higgins*, supra, 237. It seems clear, therefore, that rather than concluding that the legislature was empowered to authorize nonjudicial officers to perform judicial acts, the court merely remarked that no one had questioned that assumption. This interpretation is bolstered by the fact that two sentences later, the court in *Johnson* discussed the grant of authority the legislative power encompassed, and judicial acts were not included: "No substantial reason is given why the legislative power is incompetent to authorize judicial officers, after their term of office, to complete the history of trials had, and to give permanent and official form to facts found during their term of office. Such acts are rather clerical than judicial." Id.

[9] Because the trial judge in *DeLucia* was a "town" judge, this court determined that then General Statutes § 5698, now codified at General Statutes § 51-183g, which provided that judges of the Superior Court "or of any city court may, after ceasing to hold office as such judge, settle and dispose of all matters relating to appeal cases . . . as if he were still such judge," did not apply. *DeLucia* v. *Home Owners' Loan Corp.*, supra, 130 Conn. 471–72. As such, the court had no occasion to consider whether such a statute would be constitutional if it did apply. What is significant for purposes of the present case is the court's determination that a judicial act cannot be undertaken by a judge who no longer holds office.

[10] The majority claims, to the contrary, that this line of cases establishes that, in the absence of a *legislative* grant of authority, judicial acts may not be performed by one not holding judicial office. The majority apparently relies on some well of authority that the legislature may draw from without pointing to any constitutional text that would confer such sweeping powers. For the reasons I discuss more fully in part III of this dissenting opinion, this court long ago rejected the concept that in the absence of such language, the legislature has such power. *Norwalk Street Railway Co.'s Appeal*, supra, 69 Conn. 587, 592–94. Therefore, the legislature is not free to confer judicial powers outside the scope of that authorized by the constitution, and as a result, it cannot confer authority to perform judicial acts by statute.

[11] See Proceedings of the Conn. Constitutional Convention (October 15, 1965) p. 764, remarks of Charles S. Tarpinian ("[The amendment] permits

the [j]udges of the Superior Court . . . upon their retirement and their appointment as state referees to exercise the powers of the respective courts from which various causes come. At the present time, when a referee enters a recommendation, that is exactly what it is, a recommendation to the particular [c]ourt from which the subject emanated, and thereupon the [c]ourt must accept his recommendation or go on and determine it."); Constitutional Committee Hearings, Resolutions and Rules of the 1965 Connecticut Constitutional Convention (August 24, 1965) p. 35, remarks of former Justice Abraham S. Bordon ("At the present time, a retired judge becomes a [s]tate [r]eferee. . . . A [s]tate [r]eferee has no right or power to enter a judgment after he decides the case. He may only make a recommendation to the Superior or the Common Pleas Court, which recommendation may or may not be adopted . . . . The matter has to then be referred back to the court for the passage of an order that may be important or necessary for the continuance of the case.").

[12] Practice Book § 71-1 provides in relevant part: "Unless the court otherwise directs, its judgments and orders shall be deemed to have been rendered or made on the date they appear in the Connecticut Law Journal, and the judgments or orders shall be entered as of that date."

[13] The majority's characterization of the duties of a Supreme Court justice acting pursuant to § 51-198 (c) as restricted to "completing unfinished Supreme Court matters" ignores the fact that during the course of writing the majority opinion of the court, panel members can and have undertaken considerable debate on issues that ultimately may be outcome determinative. For example, panel members may change their vote from their original vote after draft majority or dissenting opinions are circulated or after a petition for rehearing has been granted. The majority fails to explain why a judge's vote taken prior to age seventy is sacrosanct while subsequent votes taken to decide a case following age seventy are any less so.

[14] Indeed, at the trial court level, General Statutes § 51-183f expressly provides that if a judge becomes ineligible to hold his or her office *during the pendency of a case*, any other judge from the court of which the ineligible judge is a member may continue that judge's caseload. It does not contemplate the rendering of judgment by a judge who no longer holds office.

[15] I am mindful that certain sister states have permitted *retired* judges to serve after attaining the age of mandatory retirement. See, e.g., *Opinion of the Justices to the Senate*, 362 Mass. 895, 284 N.E.2d 908 (1972); *Claremont School District* v. *Governor*, 142 N.H. 737, 712 A.2d 612 (1998); *Werlein* v. *Calvert*, 460 S.W.2d 398 (Tex. 1970). Because of the fact that each state has adopted different constitutional provisions and statutes, and because different terms have different meanings; see *Opinion of the Justices to the Senate*, supra, 903 (noting that distinction between "holding office" and "retiring" was "significant"); it is not possible to extract a uniform theory of law that governs the question of whether a judge who exercises judicial power following a constitutionally mandated retirement actually holds office.

For example, the majority relies on a decision by the Vermont Supreme Court holding that it is constitutionally permissible for a judge to continue his or her participation in a case postretirement; see *Wolfe* v. *Yudichak*, 153 Vt. 235, 253, 571 A.2d 592 (1989); but that state's constitution expressly authorizes the chief justice to "appoint retired justices and judges to special assignments as permitted under the rules of the Supreme Court." Vt. Const., c. II, § 35. The majority ignores this significant textual difference both in its constitutional argument and its reliance on this case in its passing reference to the proposition that this court has *inherent* authority to allow judges to participate in cases postretirement. Its inherent authority reasoning suffers from the same defect as its constitutional reasoning, because there is no authority to support the proposition that the court's inherent authority supersedes an express constitutional limitation. Indeed, if this court's inherent authority would allow us to uphold the constitutionality of § 51-198 (c) as a mere legislative recognition of such authority, as the majority contends, the rest of the majority's analysis would be superfluous. Finally, to the extent that the majority also relies on the policy concerns cited in the Vermont case as to whether the court could function effectively in the absence of a rule permitting such continued participation, such concerns cannot overcome an express constitutional limitation and are not borne out by this court's history.

The factually closest case to the issue as presented in the present appeal is *Claremont School District* v. *Governor*, supra, 142 N.H. 742, in which the New Hampshire Supreme Court held that a statute authorizing retired jus-

tices over the age of seventy to serve in a temporary capacity on a case-by-case basis was constitutional, despite the fact that the New Hampshire constitution prohibits judges over the age of seventy from holding office. See N.H. Const., pt. I, art. 78 ("[n]o person shall hold the office of judge of any court, or judge of probate, or sheriff of any county, after he has attained the age of seventy years"). In that case, the court held that: (1) the retired justice did not hold a judicial office by virtue of the temporary assignment and, therefore, did not violate part II, article 78 of the New Hampshire constitution; and (2) because the legislature is constitutionally empowered to determine the composition of the courts and facilitate the administration of justice, the temporary assignment of a retired justice for that purpose on a case-by-case basis is within its power. *Claremont School District* v. *Governor*, supra, 741–43. The court did not engage in a textual or historical constitutional analysis to reach its conclusion, but, rather, appeared simply to justify its conclusion with past practice. Therefore, I find its reasoning unpersuasive. Moreover, I note that, to the extent that our legislature wants to facilitate the administration of justice by statutorily authorizing judges over the age of seventy to serve in a limited and temporary capacity, article fifth, § 6, of the Connecticut constitution already provides, by virtue of its grant of authority to state referees, a means by which this can be done, and the legislature must be constrained by those means.

[16] Although in his dissent in *Doyle* v. *Metropolitan Property & Casualty Ins. Co.*, supra, 252 Conn. 915, former Chief Justice McDonald expressed concern, echoed by the majority in the present case, that if a justice, who has heard a case before his seventieth birthday, cannot continue to deliberate and decide those cases after his birthday, he will be bereft of any responsibilities in between those dates, that assertion is both specious and demonstrably wrong. As recent history demonstrates, former Chief Justice Peters, former Chief Justice Callahan, and former Justices Berdon, Glass, Shea, Hull and Healey all managed to work on their opinions and opinions by other justices, act on petitions for certification and fulfill other judicial responsibilities during this time interval and get their opinions either published or slipped in accordance with the constitutional mandates. See, e.g., *State* v. *Turner*, 252 Conn. 714, 751 A.2d 372 (2000); *State* v. *Quinet*, 253 Conn. 392, 752 A.2d 490 (2000); *Burke* v. *Fleet National Bank*, 252 Conn. 1, 742 A.2d 293 (1999); *Carr* v. *Bridgewater*, 224 Conn. 44, 616 A.2d 257 (1992); *Cheshire Mortgage Service, Inc.* v. *Montes*, 223 Conn. 80, 612 A.2d 1130 (1992); *Preston* v. *Dept. of Environmental Protection*, 218 Conn. 821, 591 A.2d 421 (1991); *Rostain* v. *Rostain*, 214 Conn. 713, 573 A.2d 710 (1990).

Moreover, despite the majority's repeated attempt to emphasize the temporary and limited nature of this exercise of authority, I note that in at least two recent cases, decisions of this court were issued long after a justice on the panel had reached the age of seventy and no longer constitutionally was eligible to hold office. See, e.g., *Kerrigan* v. *Commissioner of Public Health*, supra, 289 Conn. 135 (issued more than fourteen months after seventieth birthday of Justice David M. Borden, member of panel); *State* v. *DeCaro*, 280 Conn. 456, 908 A.2d 1063 (2006) (following remand for determination in *State* v. *DeCaro*, 252 Conn. 229, 259, 745 A.2d 800 [2000] [*DeCaro I*], in which court had retained jurisdiction over any further appellate proceedings after remand, final decision was rendered by panel that included former Chief Justice McDonald *five years* after he had turned seventy because of earlier participation in *DeCaro I*). It is clear that, despite the majority's characterization, the powers exercised by such retiring justices may be limitless.

[17] The majority's assertion that a justice may act pursuant to § 51-198 (c) because he is neither "hold[ing] . . . office" nor acting as a state referee and therefore is not bound by constitutional restrictions on state referees entirely misses the point that the legislature lacks the power to confer judicial powers outside the boundaries of the constitution. *Brown* v. *O'Connell*, supra, 36 Conn. 446 ("*the General Assembly* [*has*] *no power or authority to organize courts, or appoint judges, by virtue of the general legislative power conferred upon* [*it*], and that [its] authority to do either is special, and derived from [article fifth] of the constitution alone; and that the judicial power is not conferred by the General Assembly, but vests, by force of the constitution, in the courts, when organized pursuant to the special provisions of that article" [emphasis added]).

[18] General Statutes § 51-198 (a) provides: "The Supreme Court shall consist of one Chief Justice and six associate judges, who shall, at the time of their appointment, also be appointed judges of the Superior Court."

[19] See *Norwalk Street Railway Co.'s Appeal*, supra, 69 Conn. 592–94, 597;

see also *Opinion of the Judges of the Supreme Court as to the Constitutionality of Soldiers' Voting Act*, 30 Conn. 591, 593 (1862) ("[t]he constitution of the state . . . embodies [the people's] *supreme original will*, in respect to the organization and perpetuation of a state government; the division and distribution of its powers; the officers by whom those powers are to be exercised; and the limitations necessary to restrain the action of each and all for the preservation of the rights, liberties and privileges of all" [emphasis in original]); *Brown* v. *O'Connell*, supra, 36 Conn. 446 ("[N]o judicial power is vested by the constitution in the General Assembly, either directly or as an incident of the legislative power, and the General Assembly cannot confer it. . . . [I]t was one of the objects which the people had in view, in framing and adopting the constitution, to divest the General Assembly of all judicial power. . . . Thus, while the entire legislative power is vested in the General Assembly, the judicial power is separated from it and vested in the courts as a separate magistracy." [Internal quotation marks omitted.]); *Bridgeport Public Library & Reading Room* v. *Burroughs Home*, 85 Conn. 309, 319, 82 A. 582 (1912) ("our [c]onstitution is to be construed as a grant and not as a limitation of power, and that the exercise of judicial power is forbidden to the legislative branch of the government, as the legislative is to the judicial"); *Adams* v. *Rubinow*, supra, 157 Conn. 154 ("[I]n [*Norwalk Street Railway Co.'s Appeal*] it was finally clearly determined that [1] the constitution represented a grant of power from the people, in whom all power originally resided, and [2] the powers granted to the General Assembly are legislative only and those granted to the judiciary are judicial only. . . . But the legislative powers granted the General Assembly are complete except as restricted by the state or federal constitution, just as the judicial powers granted the judicial department are complete except as restricted by the state or federal constitution." [Citation omitted.]); *State* v. *Clemente*, supra, 166 Conn. 513–14 (same).

[20] I am mindful that a decision that § 51-198 (c) is unconstitutional ultimately may call into question the ability of state referees to sit on the Appellate Court and therefore could impact judicial efficiency. Nonetheless, to allow this consideration to influence the outcome in the present case would be improper. In the first instance, the question of whether state referees may exercise Appellate Court powers on new cases referred to them in that capacity is not before this court. Second, as I previously have noted, the Appellate Court was established by constitutional amendment in 1982, long after the 1965 amendment had been adopted to grant state referees the authority to exercise the power of the Superior Court. Conn. Const., amend. XX, § 1. Consequently, interpreting the meaning of the 1965 amendment in light of an amendment that did not exist until 1982 is specious at best, as it is impossible for the 1982 amendment to have been contemplated in 1965.

Moreover, even if this court were to consider the question of whether state referees may exercise the powers of the Appellate Court, there are different considerations that come into play. The history of the amendment establishing the Appellate Court indicates that the legislature created that court as an intermediate reviewing court with the power to hear appeals from the Superior Court to relieve the Supreme Court of the excessively large number of appeals that impeded efficient dispute resolution. 24 H.R. Proc., Pt. 12, 1981 Sess., p. 3967; 24 H.R. Proc., Pt. 23, 1981 Sess., p. 7758. Notably, the legislature contemplated the possibility of establishing a rotation of Superior Court judges to fill the Appellate Court, similar to what had been done under the existing practice of rotating Superior Court judges through its Appellate Session, and the legislature did not appear to envision a distinction between Superior and Appellate Court judges. 24 H.R. Proc., Pt. 23, 1981 Sess., pp. 7758–59. This conclusion is buttressed by the text of General Statutes § 51-197c, which defines the Appellate Court and statutorily recognizes that Superior Court judges are qualified to serve on the Appellate Court. In contrast, § 51-198, which defines the Supreme Court, does not qualify Superior Court judges to serve on the Supreme Court, although other statutes permit Superior Court judges to serve in the event of a disqualification or the absence of a justice. See, e.g., General Statutes § 51-207 (b).

Finally, there is authority that suggests that the grant of authority to state referees in 1965, although limited to the powers of the Superior Court and the Court of Common Pleas; see footnote 3 of this dissenting opinion; actually encompassed, in effect, the entire judicial power of the state, *except* that of the Supreme Court as the court of last resort on matters of law. See *Styles* v. *Tyler*, supra, 64 Conn. 449–50 ("[t]he whole judicial power of the

[s]tate is vested in the courts; that power is fully granted and is subject to no limitations except those contained in the [c]onstitution itself; inferior courts may be from time to time ordained and established by the legislature in accordance with the public needs as developed by future changes; and inferior courts are courts inferior to the Superior Court, exercising portions of that jurisdiction vested in the Superior Court, subject to such apportionment"). As such, it may be constitutionally permissible for state referees to exercise the powers of the Appellate Court because that court is not a court of last resort on matters of law. This issue, however, is not the one before the court in the present case.