ROGERS, C. J., with whom PALMER, J., joins, concurring. The majority concludes in part I of its opinion that the state was required under General Statutes § 53-395 (b) of the Corrupt Organizations and Racketeering Activity Act (CORA), to prove that the defendant, Jannette Rodriguez-Roman, engaged in at least two incidents of racketeering activity that had "a nexus to the same enterprise . . . ." The majority further concludes in part III of its opinion that, although the trial court improperly failed to charge the jury on the essential element of an enterprise, the impropriety was harmless because the defendant concedes that she engaged in a pattern of illegal activity to issue fraudulent drivers licenses and, as a matter of law, this scheme constituted an enterprise.

I disagree that the state was required to prove that the defendant's racketeering activities had a nexus to the same enterprise to establish that she violated § 53-395 (b). Rather, I would conclude that the state could establish a violation if it proved that her illegal activities had "the same or similar purposes, results, participants, victims or methods of commission or otherwise [were] interrelated by distinguishing characteristics . . . ." General Statutes § 53-394 (e). Because the defendant does not dispute that the evidence was sufficient to support a finding that she "engage[d] in a pattern of racketeering activity that was not associated with a corporate criminal entity," I would conclude that the state met its burden of proving the racketeering charges. Accordingly, I concur with parts I and III of the majority opinion.[1]

I begin with the language of the statute defining "pattern of racketeering activity . . . ."[2] Section 53-395 (b) provides: "It is unlawful for any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to receive anything of value or to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property." Section 53-394 (e) defines " '[p]attern of racketeering activity' " as "engaging in at least two incidents of racketeering activity that have the same or similar purposes, results, participants, victims or methods of commission or otherwise are interrelated by distinguishing characteristics, including a nexus to the same enterprise, and are not isolated incidents . . . ." The majority concludes that "the qualifying phrase in § 53-394 (e), 'including a nexus to the same enterprise,' modifies all of the antecedent language in subsection (e) defining racketeering activity. . . . Accordingly, although § 53-395 (b) contains no direct reference to an enterprise,[3] any person charged with violating the [statute] in the same manner as the defendant must have engaged in a pattern

of racketeering activity, which, according to § 53-394 (e), requires that the incidents in question share 'a nexus to the same enterprise . . . .' "

I disagree. In my view, these statutes clearly and unambiguously set forth several *alternative* methods of proving a pattern of racketeering activity. Under § 53-395 (b), the state may prove that the defendant: (1) received something of value through a pattern of racketeering activity or through the collection of an unlawful debt; or (2) acquired an interest in an enterprise through a pattern of racketeering activity or through the collection of an unlawful debt. Under § 53-394 (e), a pattern of racketeering activity may be proved by establishing that the defendant engaged in at least two incidents of racketeering activity that: (1) "have the same or similar purposes, results, participants, victims *or* methods of commission"; (emphasis added); *or* (2) "otherwise are interrelated by distinguishing characteristics, *including* a nexus to the same enterprise . . . ." (Emphasis added.) Thus, in my view, the state could prove the elements of § 53-395 (b) by establishing that the defendant had received something of value through engaging in two incidents of racketeering activity that had the same purpose or participants and were not isolated incidents. Similarly, if the state could prove that the incidents were interrelated by distinguishing characteristics, it would meet its burden. I see nothing in the statutory scheme that requires the state to prove a "nexus to the same enterprise" in every case. Rather, the class of racketeering activities that have "a nexus to the same enterprise" is *included* in the larger group of racketeering activities that are interrelated by distinguishing characteristics.[4]

In support of its interpretation of §§ 53-394 (e) and 53-395 (b), the majority relies on the purported rule of statutory construction that, "where a qualifying phrase is separated from several phrases preceding it by means of a comma, one may infer that the qualifying phrase is intended to apply to all its antecedents, not only the one immediately preceding it." (Internal quotation marks omitted.) The latest edition of the treatise cited by the majority states, however, that "[r]eferential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent. The last antecedent is the last word, phrase, or clause that can be made an antecedent without impairing the meaning of the sentence. Thus a proviso usually is construed to apply to the provision or clause immediately preceding it."[5] (Internal quotation marks omitted.) 2A N. Singer & J. Singer, Sutherland Statutory Construction (7th Ed. 2007) § 47:33, pp. 487–90. In the present case, this rule supports the most reasonable reading of the statute. The word nexus connotes connection; see Merriam-Webster's Collegiate Dictionary (10th Ed. 1993) (defining "nexus" as "1: CONNECTION, LINK . . . 2: a connected group or series"); which, in turn, connotes

interrelation. It is clear to me, therefore, that the phrase "including a nexus to the same enterprise" modifies only the immediately antecedent phrase, referring to activities that "otherwise are interrelated by distinguishing characteristics . . . ." General Statutes § 53-394 (e).

In any event, even if the phrase "including a nexus to the same enterprise" also modified the phrase "two incidents of racketeering activity that *have the same or similar purposes*, *results*, *participants*, *victims or methods of commission*"; (emphasis added) General Statutes § 53-394 (e); that still would not mean that *all* incidents of racketeering activity must have a nexus to the same enterprise. As I have indicated, as used in § 53-394 (e), the word "including" is a word of enlargement, not a word of limitation. See footnote 4 of this concurring opinion. In other words, activities having "a nexus to the same enterprise" are *in addition* to other activities that may constitute a pattern of racketeering activity.

This court's decision in *Hartford Electric Light Co.* v. *Sullivan*, 161 Conn. 145, 149–50, 285 A.2d 352 (1971), illustrates the distinction between a limiting use of the word "include" and an enlarging use of the word. In that case, this court construed General Statutes (Rev. to 1964) § 12-264, which provides: "Gross earnings . . . shall include all income classified as operating revenues by the public utilities commission in the uniform systems of accounts prescribed by said commission . . . all income classified in said uniform systems of accounts as income from merchandising, jobbing and contract work, income from nonutility operations and revenues from lease of physical property not devoted to utility operation, and receipts from the sale of residuals and other by-products obtained in connection with the production of gas, electricity or steam." (Internal quotation marks omitted.) Id., 149–50. This court concluded that the word " 'include' " was ambiguous as to whether it was a word of limitation or a word of enlargement. Id., 150. In other words, this court found it unclear whether the enumerated types of revenue were the *only* types of revenue included in "gross earnings," or whether they were merely examples of the types of revenue included in the statute. After reviewing the legislative genealogy and history of the statute, we concluded that the word " 'include' " was a word of limitation, and that the list was comprehensive. Id., 153–54.

The structure of § 53-394 (e) is entirely different, however, than the structure of § 12-264. Section 12-264 sets forth a general class—gross earnings—and then provides that that general class "shall include" each of the specifically enumerated items. The possibility that unenumerated items may also be included in the general class does not change the meaning of the word

"include." Thus, the word is ambiguous in that context. In contrast, the phrase "including a nexus to the same enterprise," as used in § 53-394 (e), *necessarily* implies an antecedent general class of which the specific class of crimes having a nexus to the same enterprise is a member. Under the majority's interpretation, however, there is no such antecedent general class. Rather, the other enumerated classes, such as the class of racketeering activities that have the same victims, all are included in the general class of "incidents of racketeering activity that have . . . a nexus to the same enterprise . . . ." General Statutes § 53-394 (e). This completely *reverses* the meaning of the word "including" and turns the statute on its head.

Moreover, the fourth edition of Black's Law Dictionary, which this court cited in *Hartford Electric Light Co.* v. *Sullivan*, supra, 161 Conn. 150, supports my interpretation of § 53-394 (e). That dictionary defines "include" as: "To confine within, hold as in an inclosure, take in, attain, shut up, contain, inclose, comprise, comprehend, embrace, involve. *Including* may, according to context, express an enlargement and have the meaning of *and* or *in addition to*, or merely specify a particular thing already included within general words theretofore used." (Emphasis in original.) Black's Law Dictionary (4th Ed. 1968). Although the majority has established that "include" *may be* understood as a word of limitation, especially when used in the phrase "shall include," it has provided no explanation, other than pointing to the existence of a perfectly innocent comma between the words "characteristics" and "including," as to why, in the context of § 53-394 (e), the word "including" is not most reasonably—indeed, necessarily—read to "express an enlargement" or to "specify a particular thing already included within the general words"; id.; "otherwise . . . interrelated by distinguishing characteristics . . . ." General Statutes § 53-394 (e). This interpretation is compelled by the grammar and structure of the statute and is bolstered by the most recent edition of Black's Law Dictionary, which defines "include" as: "To contain as a part of something. The participle *including* typically indicates a partial list <the plaintiff asserted five tort claims, including slander and libel>. . . ." (Emphasis in original.) Black's Law Dictionary (9th Ed. 2009); see also Merriam-Webster's Collegiate Dictionary (10th Ed. 1993) (defining "include" as "2: to take in or comprise as a part of a whole"). Finally, the majority has not cited one other instance in which the legislature has used the word "including" to mean "and must have."

The majority also states that, "if all of the descriptive language is eliminated and the definition of a 'pattern of racketeering activity' is reduced to the essential language of 'engaging in at least two incidents of racketeering activity that have the same or similar . . . distinguishing characteristics, including a nexus to the

same enterprise, and are not isolated incidents,' it is clear that the incidents of racketeering activity must, among other distinguishing characteristics, include 'a nexus to the same enterprise,' because they cannot be 'isolated incidents . . . .' " Footnote 7 of the majority opinion. Again, I disagree. First, the majority has not reduced the statute to its essential elements because, as I have indicated, the statute sets forth numerous *alternative* elements. Second, I see no reason why the fact that incidents of racketeering activity may not be isolated incidents necessarily means that they must have a nexus to the same enterprise. Indeed, if that were the case, the phrase "including a nexus to the same enterprise" in § 53-394 (e) would be entirely superfluous. In any event, even if the majority were correct that all incidents of racketeering that are not isolated necessarily have a nexus to the same enterprise, that still would mean only that the state is required to prove that the incidents are not isolated, not that they have a nexus to the same enterprise. Third, if the legislature had intended that all incidents constituting a pattern of racketeering activity must: (1) have the same or similar purpose, results, participants, victims or methods of commission or otherwise be interrelated by distinguishing characteristics; *and* (2) have a nexus to the same enterprise; *and* (3) not be isolated incidents, it easily could have adopted that definition.

Finally, the majority relies on the legislative history of § 53-394 (e) to support its interpretation. In the cover letter to the members of the judiciary committee forwarding the memorandum relied on by the majority, however, then Chief State's Attorney Austin J. McGuigan stated that, "in order to sustain [a] prosecution [under CORA], the acts must be related to each other *or* to an ongoing enterprise so as to form the pattern of racketeering activity." (Emphasis added.) Conn. Joint Standing Committee Hearings, Judiciary, Pt. 3, 1982 Sess., p. 661. In addition, the memorandum itself states that "[a CORA] prosecution can be maintained when a person commits two predicate racketeering acts . . . . These predicate acts, however, cannot be isolated or unconnected, but must somehow be related to each other *or* to the same ongoing enterprise so as to form a 'pattern of racketeering activity.' " (Emphasis added.) Id., p. 666. It is clear to me, therefore, that McGuigan recognized that the proposed legislation did not require proof of an enterprise in every case and that the statement relied on by the majority, that "evidence of criminal activity related to an ongoing enterprise is not only admissible, it is essential" to a CORA prosecution; id., p. 668; was merely loosely worded shorthand for the notion that the acts of racketeering cannot be isolated.

The majority relies heavily on cases construing 18 U.S.C. § 1962 in support of its interpretation of the word "enterprise" as used in § 53-394 (e). See *Boyle* v. *United States*, 556 U.S. , 129 S. Ct. 2237, 173 L. Ed. 2d 1265

(2009); *United States* v. *Turkette*, 452 U.S. 576, 101 S. Ct. 2524, 69 L. Ed. 2d 246 (1981). Section 1962 (c) of title 18 of the United States Code provides: "It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." Thus, unlike our statutes, proof of the existence of an enterprise clearly is required by the federal statute. Accordingly, although the majority may be correct that the meaning of the word enterprise as used in our statutes is the same as used in the federal statute, I see no need to address that question because the meaning of the word "enterprise" as used in § 53-395 (b) is not at issue here.

The defendant does not dispute that the evidence was sufficient to support the jury's conclusion that she received something of value through engaging in at least two incidents of racketeering activity, namely, receiving bribes in violation of General Statutes § 53a-148; see General Statutes § 53-394 (a) (10); and that she did so with the participation of the same person, namely, Hector R. Portillo. Because I disagree with the majority's conclusions in part I of its opinion that proof of an enterprise is an essential element of § 53-395 (b), I also disagree with part III of its opinion that the trial court improperly failed to instruct the jury on that essential element, but that the impropriety was harmless because the evidence of an enterprise was overwhelming and uncontested. Rather, I would conclude that the state met its burden of proving the elements of § 53-395 (b), regardless of whether it established that the incidents of racketeering activity had a nexus to the same enterprise. I therefore concur with parts I and III of the majority opinion.

[1] I agree with the reasoning and results of parts II and IV of the majority opinion.

[2] The principles governing our construction of statutes are set forth in part I of the majority opinion.

[3] Contrary to the majority's statement, § 53-395 (b) does contain a direct reference to an "enterprise." See General Statutes § 53-395 (b) ("[i]t is unlawful for any person, through a pattern of racketeering activity . . . to acquire . . . any interest in or control of any enterprise"). The majority presumably intended to say that the portion of the statute under which the defendant was charged, namely, the "receive anything of value" portion, does not directly require the state to prove the existence of an enterprise.

[4] This court previously has held that "the word 'include' may be considered a word of limitation as well as a word of enlargement." *State* v. *White*, 204 Conn. 410, 422–23, 528 A.2d 811 (1987). We stated in *White*, that, although the word has been defined as " 'to place, list or rate as part or component of a whole larger group, class or aggregate . . . to take in, enfold, or comprise as a discrete or subordinate part or item of a larger aggregate' "; id., 422; "the most likely common use of the term 'shall include' is one of limitation." Id., 423. Section 53-394 (e) does not provide that a pattern of racketeering activity "shall include" a nexus to the same enterprise and nothing in the language or structure of the statute suggests that the word "including" was intended to be a word of limitation rather than a word of enlargement. Rather, in my view, the language and structure of the statute clearly indicate that the class of racketeering activities that have "a nexus to the same enterprise" is one component of the larger group of racketeering

activities that "are interrelated by distinguishing characteristics . . . ." General Statutes § 53-394 (e).

[5] The treatise also states that, "[*w*]*here the sense of the entire act requires that a qualifying word or phrase apply to several preceding or even succeeding sections*, the word or phrase will not be restricted to its immediate antecedent." (Emphasis added.) 2A N. Singer & J. Singer, Sutherland Statutory Construction (7th Ed. 2007) § 47:33, p. 491. In that case, "[e]vidence that a qualifying phrase is supposed to apply to all antecedents instead of only to the immediately preceding one may be found in the fact that it is separated from the antecedents by a comma." Id. Because the sense of § 53-394 (e) does not require the phrase "including a nexus to the same enterprise" to apply to all of the antecedent phrases, this rule does not apply.