PALMER, J., concurring. I join parts I B, II and III of the majority opinion. I also join that portion of part I A of the majority opinion in which the majority concludes that *Garcetti* v. *Ceballos*, 547 U.S. 410, 126 S. Ct. 1951, 164 L. Ed. 2d 689 (2006), entitles the defendants, the board of education of the city of Bridgeport, Henry R. Kelly and Daniel Shamas, to judgment as a matter of law on the claim of the plaintiff, Carmen I. Perez-Dickson, alleging a violation of her first amendment right to free speech in contravention of General Statutes § 31-51q. Although I also agree with the conclusion of the majority in part I A of its opinion that the plaintiff is not entitled to review of her unpreserved alternative ground for affirmance under § 31-51q that the defendants violated her free speech rights under the state constitution, I am unable to join that portion of part I A of the majority opinion because I disagree with certain aspects of the majority's reasoning and analysis. Specifically, I do not agree with the majority that (1) the *Golding* doctrine[1] is inapplicable to unpreserved claims under § 31-51q, (2) an appellant ordinarily is not entitled to review of an unpreserved alternative ground for affirmance even if the appellee will not be prejudiced by such review, and (3) the possibility that the appellee might have settled the case prior to trial if it had known of the appellant's alternative ground for affirmance constitutes prejudice for purposes of determining whether the appellant should be granted appellate review of that alternative ground. I nevertheless concur in the result that the majority reaches in part I A because I agree with the defendants that the plaintiff has failed to establish that the defendants would not be prejudiced by review of the plaintiff's unpreserved claim.

I

The majority concludes that the plaintiff's unpreserved alternative ground for affirmance under § 31-51q may not be brought under *Golding* because the plaintiff "has not raised a claim that the defendants violated her constitutional rights" but, instead, "has raised a claim implicating her statutory rights under § 31-51q."[2] Footnote 23 of the majority opinion. The majority's conclusion represents a classic example of elevation of form over substance. As this court has observed, the rationale for the *Golding* doctrine is that, when the trial record is adequate for appellate review, a party should be able to raise an unpreserved constitutional claim because such claims "implicate fundamental rights . . . ." *State* v. *Brunetti*, 279 Conn. 39, 55, 901 A.2d 1 (2006), cert. denied, 549 U.S. 1212, 127 S. Ct. 1328, 167 L. Ed. 2d 85 (2007). In light of this rationale, there simply is no justification for denying *Golding* review to an unpreserved claim under § 31-51q, a statute

that provides a remedy for violations of constitutional rights.

General Statutes § 31-51q provides in relevant part that "[a]ny employer . . . who subjects any employee to discipline or discharge on account of the exercise by such employee of rights guaranteed by the first amendment to the United States Constitution[3] or section 3,[4] 4[5] or 14[6] of article first of the Constitution of the state, provided such activity does not substantially or materially interfere with the employee's bona fide job performance of the working relationship between the employee and the employer, shall be liable to such employee for damages caused by such discipline or discharge . . . ." It is apparent, therefore, that "[§] 31-51q creates a cause of action for damages to protect employees from retaliatory action illegally grounded in the employees' exercise of enumerated constitutionally protected rights." *D'Angelo* v. *McGoldrick*, 239 Conn. 356, 360, 685 A.2d 319 (1996). In other words, "[t]he statute plainly was intended to protect the first amendment and related state constitutional rights of working men and women." *Cotto* v. *United Technologies Corp.*, 251 Conn. 1, 8, 738 A.2d 623 (1999). The purpose of § 31-51q, therefore, is to provide a mechanism pursuant to which an employee may vindicate certain of his or her federal and state constitutional rights. Because the rights protected by § 31-51q are all constitutional in nature, for present purposes, there is no appreciable difference between a claim under § 31-51q and a claim raised directly under the federal or state constitution. See, e.g., *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 397, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971) (recognizing private cause of action under United States constitution for alleged violation of fourth amendment's prohibition against unreasonable searches and seizures); *Binette* v. *Sabo*, 244 Conn. 23, 41, 710 A.2d 688 (1998) (recognizing private cause of action under Connecticut constitution, article first, §§ 7 and 9, for alleged violation of prohibition against unreasonable searches and seizures). Section 31-51q is similar to 42 U.S.C. § 1983, which provides a remedy for, inter alia, "the deprivation of any rights, privileges, or immunities secured by the Constitution . . . ." I see no reason why an unpreserved claim under 42 U.S.C. § 1983 should not warrant *Golding* review. Under the majority's formalistic analysis, however, no such review would be permitted because, even though 42 U.S.C. § 1983 protects constitutional rights, it is a statutory provision, not a constitutional one.

II

I also disagree with the majority's conclusion concerning the proper standard for determining the reviewability of an unpreserved alternative ground for affirmance. The majority declines to address the plaintiff's alternative ground for affirmance under § 31-51q

in large part because the plaintiff did not raise the claim in the trial court and there are no "exceptional circumstances" warranting this court's review of the claim. Unlike the majority, I would conclude that an appellate court ordinarily should consider an unpreserved alternative ground for affirmance if the record is adequate for review and the appellee can establish that the appellant will not be prejudiced by such review.[7] Under such circumstances, considering an appellee's alternative ground for affirmance would preserve the finality of judgments and promote judicial economy without perpetrating a wrong on the appellant or on the trial court.

In reaching a stricter conclusion, the majority hews to an approach that this court adopted without any real analysis and to which this court has not consistently adhered. The majority notes that "[t]his court previously has held that [o]nly in [the] most exceptional circumstances can and will this court consider a claim, constitutional or otherwise, that has not been raised and decided in the trial court. . . . This rule applies equally to alternate grounds for affirmance. . . . *New Haven* v. *Bonner*, 272 Conn. 489, 498, 863 A.2d 680 (2005); see also *Thomas* v. *West Haven*, 249 Conn. 385, 390 n.11, 734 A.2d 535 (1999) ([t]he appellee's right to file a [Practice Book] § 63-4 [a] [1][8] statement has not eliminated the duty to have raised the issue in the trial court . . .), cert. denied, 528 U.S. 1187, 120 S. Ct. 1239, 146 L. Ed. 2d 99 (2000); *Peck* v. *Jacquemin*, 196 Conn. 53, 62 n.13, 491 A.2d 1043 (1985) (compliance with [Practice Book § 63-4 (a) (1)] is not to be considered in a vacuum; particularly to be considered is its linkage with [Practice Book § 60-5] which provides in part that this court shall not be bound to consider a claim unless it was distinctly raised at trial or arose subsequent to trial). Such exceptional circumstances may occur where a new and unforeseen constitutional right has arisen between the time of trial and appeal or where the record supports a claim that a litigant has been deprived of a fundamental constitutional right and a fair trial. . . . An exception may also be made where consideration of the question is in the interest of public welfare or of justice between the parties. . . . *Lopiano* v. *Lopiano*, 247 Conn. 356, 373, 752 A.2d 1000 (1998)." (Internal quotation marks omitted.) Finding no such exceptional circumstances in the present case, the majority concludes that the plaintiff is not entitled to review of her claim.[9]

I do not dispute that the cases that the majority cites—*Bonner*, *Thomas* and *Peck*—say what the majority says they do. I nevertheless believe that these cases should not drive this court's policy concerning appellate review of unpreserved alternative grounds for affirmance, first, because the strict approach endorsed by these cases is not the most efficacious one and was adopted without any real analysis, and, second, because we have not consistently adhered to that strict

approach.

As we observed in *Bonner*, *Thomas* and *Peck*, under our rules, this court is never required to address unpreserved claims. See *New Haven* v. *Bonner*, supra, 272 Conn. 498; *Thomas* v. *West Haven*, supra, 249 Conn. 390 n.11; *Peck* v. *Jacquemin*, supra, 196 Conn. 61–62 n.13. Practice Book § 60-5 expressly provides that the reviewing court "shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial." By its broad terms, Practice Book § 60-5 applies to *all* unpreserved claims, whether the claim has been raised for the first time on appeal by the appellant seeking *reversal* of the judgment or has been raised for the first time on appeal by the appellee seeking *affirmance* of the judgment, as in *Bonner*, *Thomas* and *Peck*. See *New Haven* v. *Bonner*, supra, 498; *Thomas* v. *West Haven*, supra, 390 n.11; *Peck* v. *Jacquemin*, supra, 61–62 n.13. In none of those cases, however, did this court engage in any analysis or discussion as to why a reviewing court should treat all unpreserved claims alike irrespective of whether the claim was raised by the appellee or the appellant. In fact, there is sound reason to treat the former more liberally than the latter.

The general rule disfavoring review of claims raised by the appellant for the first time on appeal stems from the concern that any other rule would be unfair to the trial court and to the opposing party. "[I]t is the appellant's responsibility to present . . . a claim clearly to the trial court so that the trial court may consider it and, if it is meritorious, take appropriate action. That is the basis for the requirement that ordinarily [the appellant] must raise in the trial court the issues that he intends to raise on appeal. . . . For us [t]o review [a] claim, which has been articulated for the first time on appeal and not before the trial court, would result in a trial by ambuscade of the trial judge. . . . We have repeatedly indicated our disfavor with the failure, whether because of a mistake of law, inattention or design, to object to errors occurring in the course of a trial until it is too late for them to be corrected, and thereafter, if the outcome of the trial proves unsatisfactory, with the assignment of such errors as grounds of appeal." (Internal quotation marks omitted.) *Ravetto* v. *Triton Thalassic Technologies, Inc.*, 285 Conn. 716, 730, 941 A.2d 309 (2008).

Consequently, as this court has recognized, it is prudent to permit appellate review of an appellant's unpreserved claims only in exceptional circumstances. Claims that satisfy that stringent standard include claims of constitutional magnitude; see, e.g., *State* v. *Golding*, 213 Conn. 233, 239, 567 A.2d 823 (1989); claims involving the commission of plain error; see, e.g., *Crawford* v. *Commissioner of Correction*, 294 Conn. 165, 204–205, 982 A.2d 620 (2009); and claims implicating

the court's subject matter jurisdiction. See, e.g., *Gordon* v. *H.N.S. Management Co.*, 272 Conn. 81, 101, 861 A.2d 1160 (2004).

When an appellee, rather than an appellant, raises a claim for the first time on appeal, the claim, if successful, would preserve the judgment, not upset it. In such a circumstance, there is no possibility of an ambuscade of the trial court because the claim represents a separate and independent alternative ground on which the trial court's judgment may be affirmed. In the event that the appellant will not be prejudiced by review of the appellee's unpreserved claim, there is no persuasive reason to deny such review, and good reason to afford it. After all, a trial is a search for the truth conducted for the sake of resolving the parties' dispute. See, e.g., *Nix* v. *Whiteside*, 475 U.S. 157, 166, 106 S. Ct. 988, 89 L. Ed. 2d 123 (1986) ("the very nature of a trial [is] a search for truth"); *Miller* v. *Drouin*, 183 Conn. 189, 191, 438 A.2d 863 (1981) ("[a] trial is a search for truth"). Once a trial has been held and judgment rendered, granting review of an unpreserved alternative ground for affirmance furthers the public interest in preserving a legally correct judgment, an interest that is founded on two important and closely related principles, namely, the finality of judgments and judicial economy.[10] See, e.g., *Sawicki* v. *New Britain General Hospital*, 302 Conn. 514, 522, 29 A.3d 453 (2011) ("[t]he [courts have] a strong interest in the finality of judgments" [internal quotation marks omitted]); *Sikorsky Aircraft Corp.* v. *Commissioner of Revenue Services*, 297 Conn. 540, 544–45, 1 A.3d 1033 (2010) (recognizing "judicial policy in favor of judicial economy" [internal quotation marks omitted]); see also *LaSalla* v. *Doctor's Associates, Inc.*, 278 Conn. 578, 587, 898 A.2d 803 (2006) (recognizing "closely related" interests of judicial economy and finality of judgments). Appellate review should be denied only if the record is inadequate for review of the unpreserved claim or the appellant would be prejudiced by consideration of the claim because he did not have the opportunity to address the claim in the trial court, in which case, the validity of the judgment itself would be in doubt.[11]

Consistent with the foregoing considerations, "when the trial court reaches a correct decision but on mistaken grounds, this court has repeatedly sustained the trial court's action if proper grounds exist to support it." (Internal quotation marks omitted.) *State* v. *Colon*, 272 Conn. 106, 187–88, 864 A.2d 666 (2004), cert. denied, 546 U.S. 848, 126 S. Ct. 102, 163 L. Ed. 2d 116 (2005); accord *Kelley* v. *Bonney*, 221 Conn. 549, 592, 606 A.2d 693 (1992); *Morris* v. *Costa*, 174 Conn. 592, 597–98, 392 A.2d 468 (1978). Indeed, we sometimes have addressed such alternative grounds even though they were not raised in the trial court and no exceptional circumstances existed to justify appellate review; see, e.g., *State* v. *Jacobson*, 283 Conn. 618, 629 n.13, 930 A.2d

628 (2007); and we often have considered an appellee's alternative claim in support of affirming the judgment without reference to whether the claim first had been raised in the trial court. See, e.g., *Hopkins* v. *O'Connor*, 282 Conn. 821, 827, 925 A.2d 1030 (2007); *State* v. *Colon*, supra, 187–88; *State* v. *Perkins*, 271 Conn. 218, 256, 856 A.2d 917 (2004); *Lombardo's Ravioli Kitchen, Inc.* v. *Ryan*, 268 Conn. 222, 238 n.12, 842 A.2d 1089 (2004); *Levandoski* v. *Cone*, 267 Conn. 651, 658 n.5, 841 A.2d 208 (2004); *Kelley* v. *Bonney*, supra, 592; *State* v. *Ruffin*, 206 Conn. 678, 683, 539 A.2d 144 (1988); *Herrmann* v. *Summer Plaza Corp.*, 201 Conn. 263, 273–74, 513 A.2d 1211 (1986); *Morris* v. *Costa*, supra, 597–98. This court's failure even to mention the preservation issue in those cases suggests that the issue frequently has been a matter of some indifference to this court and that the critical factors for determining the propriety of appellate review are the adequacy of the record and whether the appellant would be prejudiced by consideration of the claim. As we stated nearly sixty years ago, "[t]hat the [trial] court relied [on] a wrong theory does not render the judgment erroneous. A judgment responsive to the issues and supported by the facts should stand, even if the court's method of reaching its decision might be questionable. . . . *To remand the case for a new trial is unnecessary. It is only prejudicial error which requires that course*."[12] (Citations omitted; emphasis added.) *Malone* v. *Steinberg*, 138 Conn. 718, 723, 89 A.2d 213 (1952).

I also note that, when an appellee *has* raised a claim in the trial court, a reviewing court will consider the claim as an alternative ground for affirmance, if the trial court did not address the claim, provided the record is adequate for review. See, e.g., *King* v. *Sultar*, 253 Conn. 429, 448–50, 754 A.2d 782 (2000). In such cases, the trial court record is incomplete, but the record nevertheless is sufficient for review. In cases in which the appellee has raised the alternative ground for affirmance for the first time on appeal, the record also is incomplete, but, if the record is adequate for review and consideration of the claim will not prejudice the appellant, the only reason to deny review is to sanction the appellee for his failure to raise the claim in the trial court. Although it is always preferable for parties to raise all of their claims in the trial court, I believe that the public and institutional interest in promoting judicial economy and the finality of judgments substantially outweighs any possible benefit that may be achieved by declining to review an alternative ground for affirmance solely as punishment for the appellee's failure to have raised the claim in the trial court.[13]

Finally, Practice Book § 63-4 (a) (1) provides in relevant part: "If any appellee wishes to (A) present for review alternate grounds upon which the judgment may be affirmed . . . that appellee shall file a preliminary statement of issues within twenty days from the filing

of the appellant's preliminary statement of the issues. . . ." Although Practice Book § 63-4 (a) (1) speaks in mandatory terms, this court has "refused to consider an issue not contained in a preliminary statement of issues *only in cases in which the opposing party would be prejudiced by consideration of the issue*." (Emphasis added; internal quotation marks omitted.) *State* v. *Cruz*, 269 Conn. 97, 99 n.2, 848 A.2d 445 (2004); see also *Pelletier* v. *Sordoni/Skanska Construction Co.*, 286 Conn. 563, 588 n.35, 945 A.2d 388 (2008). I see no reason why we should not adopt the same policy in cases involving an alternative ground for affirmance that was not raised in the trial court. The reviewing court should address the appellee's unpreserved claim upon a showing by the appellee both that the record is adequate for review and that the appellant will not be prejudiced by consideration of the unpreserved claim.

III

In concluding that the defendants would be prejudiced by our review of the plaintiff's unpreserved alternative ground for affirmance, the majority asserts that "affirming the . . . award [of damages] for the plaintiff's [state constitutional] claim pursuant to § 31-51q would prejudice the defendants because the plaintiff's failure to raise [that claim] in [the trial court] . . . deprived them of the opportunity to evaluate and possibly to settle the claim before the jury returned its verdict." Text accompanying footnote 27 of the majority opinion. Unlike the majority, I believe that considerations pertaining to the counterfactual settlement of a case have no bearing on the issue of whether an appellant would be prejudiced by appellate review of an appellee's unpreserved claim.

The decision whether to settle a case ordinarily is influenced by many diverse factors. Undoubtedly, one such factor is the strength of the opposing party's case. The more that a party knows about the other party's case, the better the former can evaluate the advantages and disadvantages of settlement. But no matter how straightforward a case might seem, almost any such evaluation is complicated and multifaceted. Consequently, there is no reason why this court should presume that, in any given case, the likelihood of settlement would have increased if only the appellee had not failed to raise its alternative ground for affirmance in the trial court. There simply is no way to determine whether the appellee would have had any interest in settling, let alone an interest in settling on terms agreeable to the appellant. In light of the multitude of factors in the settlement equation, it is mere speculation for the majority to conclude that an appellant likely will be prejudiced in its opportunity to settle the case merely because the appellee did not raise its alternative ground for affirmance in the trial court. We should not deprive the appellee of an opportunity to raise an alternative

ground for affirmance on the basis of such conjecture. Moreover, because it always can be said that an appellee's failure to raise its alternative ground for affirmance in the trial court conceivably might have affected the appellant's willingness to attempt to settle the case, the majority effectively bars appellate review of unpreserved alternative grounds for affirmance in all future cases. There is no legitimate reason to create such a bad policy.

In addition, this court ordered the parties to file supplemental briefs on the following question: "Under the facts of this case, are the defendants prejudiced if this court considers the unpreserved issue of whether the plaintiff's speech was protected under the state constitution?" The defendants responded in the affirmative and identified several ways in which they would be prejudiced by this court's review of the plaintiff's unpreserved state constitutional claim. Not surprisingly, the defendants themselves did not contend that they were prejudiced because the plaintiff's failure to raise that claim in the trial court deprived them of a meaningful opportunity to settle the case. For these reasons, I cannot agree with the majority's refusal to review the plaintiff's unpreserved claim on the wholly speculative ground that the defendants were prejudiced because their "opportunity to evaluate and possibly to settle the claim before the jury returned its verdict" might have been impaired.

I do agree with the defendants, however, that the plaintiff cannot establish that the defendants would not be prejudiced by this court's review of the plaintiff's unpreserved claim. In particular, I agree with the defendants' contention that, because they had an airtight defense to the plaintiff's federal constitutional claim—as the plaintiff now concedes, under *Garcetti* v. *Ceballos*, supra, 547 U.S. 410, she was required but failed to prove that her allegedly protected speech, namely, her reports of abuse to the state department of children and families (department), was not made in her official capacity—they had no reason to adduce any evidence of the plaintiff's motivation in making those reports. Even if it is assumed, arguendo, that the plaintiff's free speech rights are broader under the state constitution than under the federal constitution, § 31-51q "applies only to expressions regarding public concerns that are motivated by an employee's desire to speak out as a citizen." *Cotto* v. *United Technologies Corp.*, supra, 251 Conn. 17. The defendants, however, had no occasion to present evidence that the plaintiff's speech was motivated not by a desire to speak out as a private citizen but, rather, by a desire merely to comply with her legal duty as a mandated reporter.[14] The defendants surely would have introduced evidence tending to prove the latter if the plaintiff had raised a constitutional claim that was not otherwise barred by *Garcetti*. In such circumstances, the plaintiff cannot meet her burden of

demonstrating that the defendants were not prejudiced by her failure to raise her state constitutional claim in the trial court.

Accordingly, I concur in the result that the majority reaches in part I A of its opinion. I otherwise join the majority opinion.

[1] Under *State* v. *Golding*, 213 Conn. 233, 239, 567 A.2d 823 (1989), a defendant in a criminal case is entitled to appellate review of an unpreserved claim if the claim is of constitutional magnitude and the record is adequate for review of the claim. To prevail under *Golding*, the defendant also must demonstrate that his or her constitutional rights were violated and the state cannot prove that the violation was harmless beyond a reasonable doubt. Id., 240. As the majority acknowledges, this court repeatedly has recognized that the *Golding* doctrine also applies in civil cases. *Chatterjee* v. *Commissioner of Revenue Services*, 277 Conn. 681, 694 n.15, 894 A.2d 919 (2006); see, e.g., *Bennett* v. *New Milford Hospital, Inc.*, 300 Conn. 1, 32, 12 A.3d 865 (2011); *Perricone* v. *Perricone*, 292 Conn. 187, 212 n.24, 972 A.2d 666 (2009). Because I need not do so for purposes of the present case, however, I do not address the issue of whether the plaintiff's failure to bring her state constitutional claim under § 31-51q may be considered a waiver of the claim on the theory that competent counsel are presumed to have known of the claim but intentionally decided not to pursue it. Cf. *State* v. *Kitchens*, 299 Conn. 447, 482–83, 10 A.3d 942 (2011) (defendant deemed to have implicitly waived right to raise constitutional challenge to jury instructions when defense counsel fails to object to instructions after having been provided with copy of proposed jury instructions, allowed meaningful opportunity to review and comment on them, and counsel affirmatively accepts instructions proposed or given).

[2] As the majority notes, the plaintiff, in her brief to this court, did not seek *Golding* review of her state constitutional free speech claim under § 31-51q. It is apparent that she did not do so, however, because she viewed the claim as preserved. In any event, the majority's decision not to review her claim is predicated on what it characterizes as a problem more fundamental than her failure to seek *Golding* review, namely, her failure to raise a claim of constitutional magnitude. It is this latter conclusion with which I take issue.

[3] The first amendment to the United States constitution provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

[4] Article first, § 3, of the constitution of Connecticut provides: "The exercise and enjoyment of religious profession and worship, without discrimination, shall forever be free to all persons in the state; provided, that the right hereby declared and established, shall not be so construed as to excuse acts of licentiousness, or to justify practices inconsistent with the peace and safety of the state."

[5] Article first, § 4, of the constitution of Connecticut provides: "Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

[6] Article first, § 14, of the constitution of Connecticut provides: "The citizens have a right, in a peaceable manner, to assemble for their common good, and to apply to those invested with the powers of government, for redress of grievances, or other proper purposes, by petition, address or remonstrance."

[7] I agree with the majority that the burden is on the appellee to demonstrate that the appellant will not be prejudiced by review of the appellee's unpreserved alternative ground for affirmance. I add, however, that the appellant first should be required to advance a colorable claim of prejudice so that the appellee will know the nature of the alleged prejudice that it must disprove.

[8] Practice Book § 63-4 provides in relevant part: "(a) At the time the appellant sends a copy of the endorsed appeal form and the docket sheet to the appellate clerk, the appellant shall also send the appellate clerk an original and one copy of the following:

"(1) A preliminary statement of the issues intended for presentation on appeal. If any appellee wishes to (A) present for review alternate grounds upon which the judgment may be affirmed . . . that appellee shall file a preliminary statement of issues within twenty days from the filing of the appellant's preliminary statement of the issues. . . ."

[9] The majority also states that, "even if we were to assume that a lack of prejudice to an appellant would justify review of an alternate ground for affirmance that was not raised in the trial court, even in the absence of other exceptional circumstances, the plaintiff in the present case has not established that the defendants would not be prejudiced if we were to review this claim." Text accompanying footnote 25 of the majority opinion. Thereafter, the majority explains that the defendants would be prejudiced by review of the defendants' alternative ground for affirmance. Because I believe that the better, more efficacious policy would be to permit review of unpreserved alternative grounds for affirmance whenever the appellant would not be prejudiced by such review, I would not "assume" that that is the appropriate policy approach for purposes of the present case only.

[10] The latter of these two considerations, namely, judicial economy, is especially important when the judgment would have to be reversed *and a new trial ordered* in the event that the reviewing court rejected an otherwise meritorious alternative ground for affirmance merely because it had not been raised in the trial court.

[11] I also note the general rule that, "[i]f the alternate issue was not ruled on by the trial court, the issue must be one that the trial court would have been forced to rule in favor of the appellee. Any other test would usurp the trial court's discretion." (Internal quotation marks omitted.) *Zahringer* v. *Zahringer*, 262 Conn. 360, 371, 815 A.2d 75 (2003), quoting W. Horton & S. Cormier, Rules of Appellate Procedure (2003) § 63-4 (a) (1), author's comments, p. 138.

[12] In this regard, it bears noting that, in *Peck*, this court, without further explanation, "decided to address certain [of the] claims made by the [appellee] although he did not make them in the trial court"; *Peck* v. *Jacquemin*, supra, 196 Conn. 61–62 n.13; and, in *Bonner*, we declined to review the appellee's unpreserved alternative ground for affirmance because the record was inadequate for review. See *New Haven* v. *Bonner*, supra, 272 Conn. 497–500.

[13] To the limited extent that the denial of appellate review of unpreserved alternative grounds for affirmance may serve to deter parties from failing to raise claims in the trial court, I do not believe that that consideration trumps the significant interests favoring review of the claim.

[14] Indeed, in her complaint, the plaintiff expressly alleged that she had reported the abuse to the department "in the course of her employment-related obligations" and in the discharge of "her legal obligations as a mandated reporter pursuant to [s]tate . . . statutory law." Moreover, there is nothing in the plaintiff's trial testimony to indicate that her reports of abuse were motivated by any other concerns or considerations, and the record is devoid of any other allegedly protected speech. Under the circumstances, therefore, it is difficult to see how the plaintiff's mandated reports to the department could be found to implicate the free speech rights that § 31-51q was intended to protect. Even if the defendants would not have been entitled to judgment as a matter of law on the plaintiff's unpreserved state constitutional claim, however, as I have explained, they were prejudiced by the plaintiff's failure to raise the claim in the trial court.