ZARELLA, J., concurring. I agree with the result that the majority reaches but write separately to express my view that *Litchfield Asset Management Corp.* v. *Howell*, 70 Conn. App. 133, 799 A.2d 298, cert. denied, 261 Conn. 911, 806 A.2d 49 (2002), which applied the doctrine of reverse veil piercing in this state for the first time, should be disavowed. Because the facts of the present case implicate the applicability of the doctrine, and because the defendants[1] expressly have asked this court to overrule *Howell*, I believe it is appropriate and necessary to address the issue. The majority decides this case by assuming that the doctrine is viable in Connecticut but nevertheless determines that the facts of this case do not fall within that doctrine. Resolution of the larger issue, according to the majority, should be left for another day. Connecticut courts, however, have followed *Howell* in several decisions and, in doing so, have allowed reverse veil piercing in some cases, including in the prior proceedings in the present case.[2] Notably, the courts following *Howell* have extended it beyond the scenario presented by that case, in which the Appellate Court allowed a judgment creditor to engage in the reverse veil piercing of a limited liability company in which the debtor held a controlling membership. See id., 135–36, 158. In sum, the rule espoused in *Howell* has been broadly interpreted such that reverse veil piercing is applicable to all corporate entities as well as limited liability companies. It appears, therefore, that the majority's decision to "express no opinion on the continued viability of . . . *Howell*"; footnote 13 of the majority opinion; will effectively sanction the continued application of the reverse veil piercing doctrine in our courts. I believe that this court should avail itself of this opportunity to consider and reject this doctrine. Because I believe that compelling considerations militate against allowing reverse veil piercing, I would overrule *Howell* to the extent it holds that reverse veil piercing is a viable legal theory in this state.

The majority has summarized and explained the general principles governing both traditional veil piercing and reverse veil piercing, and, therefore, I do not repeat that discussion in any length. Suffice it to say that virtually all jurisdictions accept the doctrine of traditional veil piercing, whereas jurisdictions are split on the propriety of adopting the reverse veil piercing doctrine.[3] Those jurisdictions that reject reverse veil piercing provide several justifications for doing so, but those that adopt the doctrine typically do so with little or no exploration of its potential effects, although they generally cite equitable grounds for doing so. Certainly, at first glance, traditional veil piercing and reverse veil piercing

appear to be two sides of the same coin. See *In re Phillips*, 139 P.3d 639, 645 (Colo. 2006); see also *In re Moore*, 608 F.3d 253, 258 (5th Cir. 2010) ("[w]e have previously held that distinction [between traditional and reverse veil piercing] to be one without a difference"). "In traditional veil piercing, the veil shields a shareholder who is abusing the corporate fiction to perpetuate a wrong. In outside reverse piercing, however, the corporate form protects the corporation which, through the acts of a dominant shareholder or other corporate insider, uses the legal fiction to perpetuate a fraud or defeat a rightful claim of an outsider. While traditional [piercing] and outside reverse piercing affect diverse corporate interests, the purposes sought to be achieved are similar.

"Both types of piercing strive to achieve an equitable result. . . . In traditional piercing, equity requires [that] the veil be pierced to impose liability on a shareholder who has abused the corporate form for his or her own advantage. . . . Similarly, in outside reverse piercing, an equitable result is achieved by ignoring the corporate fiction to attach liability to the corporation." (Citations omitted.) *In re Phillips*, supra, 139 P.3d 645.

Jurisdictions adopting the reverse veil piercing doctrine largely have relied on a perceived fundamental similarity between traditional and reverse piercing. With respect to both types of piercing, courts focus on identifying whether an individual has abused the corporate form by failing to treat the corporation as a distinct legal entity. Accordingly, a court will not allow that individual to rely on the statutory protections limiting the individual's liability. Put differently, if an individual and a corporation are indistinguishable by virtue of the individual's own acts, the corporate veil should be subject to piercing in either direction. Thus, both traditional piercing and reverse piercing attempt to rectify the same inequity, and, therefore, some jurisdictions that permit traditional veil piercing also permit reverse veil piercing.

The flaw with this rationale is that it glosses over critical distinctions between traditional and reverse veil piercing. See *Postal Instant Press, Inc.* v. *Kaswa Corp.*, 162 Cal. App. 4th 1510, 1522, 77 Cal Rptr. 3d 96 (2008) ("[t]raditional alter ego doctrine and reverse piercing, while having similar goals, advance those goals by addressing very different concerns"), review denied, 2008 Cal. LEXIS 10671 (Cal. August 27, 2008). The focus cannot be only on whether an individual has abused the corporate form. Under traditional veil piercing, when an individual is held liable for the actions of the corporation, the corporation itself is not affected by the piercing. In the case of reverse veil piercing, however, the opposite is true. The corporation itself is liable—and thus corporate assets are vulnerable—for the wrongdoing of an individual. In more concrete terms, reverse veil

piercing allows courts to alter the legislatively created corporate form by allowing a creditor to reach otherwise protected corporate assets. Three separate but related issues specifically illustrate the problem with this result.[4]

First, reverse veil piercing "bypasses normal judgment-collection procedures, whereby judgment creditors attach the judgment debtor's shares in the corporation and not the corporation's assets." *Cascade Energy & Metals Corp.* v. *Banks*, 896 F.2d 1557, 1577 (10th Cir.), cert. denied sub nom. *Weston* v. *Banks*, 498 U.S. 849, 111 S. Ct. 138, 112 L. Ed. 2d 105 (1990); see also M. Richardson, comment, "The Helter Skelter Application of the Reverse Piercing Doctrine," 79 U. Cin. L. Rev. 1605, 1624 (2011) ("counts raised against the corporation for aiding and abetting or under general agency principals could succeed under similar circumstances to those present in many reverse piercing cases"). "[T]raditional theories of conversion, fraudulent conveyance of assets, respondeat superior and agency law are adequate to deal with situations [in which] one seeks to recover from a corporation for the wrongful conduct committed by a controlling stockholder without the [need] to invent a new theory of liability." *Cascade Energy & Metals Corp.* v. *Banks*, supra, 1577.

The Tenth Circuit Court of Appeals recently explained why creating an additional means of securing a judgment against a corporation would be inappropriate by distinguishing a claim grounded in fraudulent transfer from one grounded in reverse veil piercing: "The difference between finding an entity to be a nominee holding fraudulently conveyed assets and finding an entity to be the debtor's alter ego under [the] reverse veil piercing doctrine may be a subtle one. But it is no less significant for its subtlety. Under [the] reverse veil piercing doctrine, the [creditor] would have needed to show that the [corporations] at issue were not just [the debtor's] nominees with respect to the particular assets in question but his alter ego for all purposes. See *Bollore S.A.* v. *Import Warehouse, Inc.*, 448 F.3d 317, 325 (5th Cir. 2006) (recognizing that courts can reverse pierce a corporation's veil based on a finding of alter ego). As reward for making this more onerous showing, the [creditor] might have seized all the assets in the trusts without regard to their original source. See *Oxford Capital Corp.* v. *United States*, 211 F.3d 280, 284 (5th Cir. 2000) (Under the alter ego doctrine . . . all the assets of an alter ego corporation may be levied [on] to satisfy the tax liabilities of a delinquent taxpayer-shareholder if the separate corporate identity is merely a sham.). . . . By contrast, a nominee holding a fraudulently conveyed asset may maintain an independent legal identity and lawfully hold other assets of its own. Finding that an entity is a nominee of the debtor only requires a showing that the nominee holds bare or apparent title

to a particular asset that actually belongs to the debtor. And it is only the particular assets held in this fashion (not others the nominee may possess in its own right) that the debtor's creditor may reach." (Internal quotation marks omitted.) *In re Krause*, 637 F.3d 1160, 1165 (10th Cir. 2011); see also *Postal Instant Press, Inc.* v. *Kaswa Corp.*, supra, 162 Cal. App. 4th 1523 ("[c]ounsel for [the creditor] acknowledged . . . that [it] did not pursue those [traditional] legal remedies because amending the judgment to add [a reverse veil piercing claim against the corporation] as a judgment debtor was simply more expedient"). Simply put, reverse veil piercing greatly expands the scope of assets that a judgment creditor would normally be able to reach under traditional causes of action.

A second issue arises with respect to what assets can, and should be, reached by a creditor. Reverse veil piercing allows a judgment creditor to reach the assets of a corporation to the detriment of other shareholders and existing creditors. That is, "to the extent that the corporation has other non-culpable shareholders, they obviously will be prejudiced if the corporation's assets can be attached directly. In contrast, in ordinary piercing cases, only the assets of the particular shareholder who is determined to be the corporation's alter ego are subject to attachment." *Cascade Energy & Metals Corp.* v. *Banks*, supra, 896 F.2d 1577. Some jurisdictions that have allowed reverse veil piercing have attempted to eliminate, or at least minimize, this concern by prohibiting reverse veil piercing in situations in which doing so would harm other shareholders, or otherwise would be inequitable. See *C.F. Trust, Inc.* v. *First Flight Ltd. Partnership*, 266 Va. 3, 12–13, 580 S.E.2d 806 (2003) ("[A] court considering reverse veil piercing must weigh the impact of such action [on] innocent investors, in this instance, innocent limited partners or innocent general partners. A court considering reverse veil piercing must also consider the impact of such an act [on] innocent secured and unsecured creditors. The court must also consider the availability of other remedies the creditor may pursue."); see also *In re Phillips*, supra, 139 P.3d 646 ("A court may reverse pierce the corporate veil and obtain the assets of a corporation for the obligations of a controlling shareholder or other corporate insider only upon a clear showing that [1] the controlling insider and the corporation are alter egos of each other . . . [2] justice requires recognizing the substance of the relationship over the form because the corporate fiction is utilized to perpetuate a fraud or defeat a rightful claim . . . and [3] an equitable result is achieved by piercing . . . . Only when a claimant makes a clear showing of each factor may the corporate form be disregarded." [Citations omitted.]).

Another way to minimize this concern may be to restrict veil piercing to single shareholder corporations, for it is difficult to conceive of other circumstances in

which reverse piercing would not affect other shareholders. See *Postal Instant Press, Inc.* v. *Kaswa Corp.*, supra, 162 Cal. App. 4th 1524 ("To ameliorate the flaws in outside reverse piercing, courts recognizing the doctrine have imposed qualifications and requirements which, in their totality, essentially eliminate the outside reverse piercing doctrine as a practical matter. Indeed, if all the requirements of outside reverse piercing are met, its application would be unnecessary to protect the judgment creditor."). Moreover, if reverse veil piercing is truly an equitable remedy, and thus only available to a plaintiff if no legal remedy exists, it would appear that the limitations espoused by the Virginia and Colorado Supreme Courts in *C.F. Trust, Inc.*, and *In re Phillips*, respectively, are superfluous.[5] In any event, it does not address a broader, systemic problem implicated by the doctrine, which I discuss next.

A third concern is that reverse piercing injects uncertainty into the corporate structure in a way that could systemically alter the ability of corporations to obtain loans and investment capital. "[T]he prospect of losing out to an individual shareholder's creditors will unsettle the expectations of corporate creditors who understand their loans to be secured—expressly or otherwise—by corporate assets. Corporate creditors are likely to insist on being compensated for the increased risk of default posed by outside reverse-piercing claims, which will reduce the effectiveness of the corporate form as a means of raising credit." *Floyd* v. *Internal Revenue Service*, 151 F.3d 1295, 1299 (10th Cir. 1998); see also M. Richardson, supra, 79 U. Cin. L. Rev. 1628 ("If reverse piercing is allowed, there would be no rational way to investigate a business to determine the risk it presents. . . . There are multiple implications to [reverse piercing as a] collateral attack on the rights of consensual creditors. . . . If creditors take steps to shield themselves from this increased risk, the result could be a general chilling of the ability of small businesses with few owners to receive financing. At the very least, lenders may begin through altered risk calculations to spread the cost of individual misdeeds across all small businesses.").

In light of the foregoing, I believe that we should overrule *Howell* and reject the doctrine of reverse veil piercing until the legislature signals otherwise. Reverse veil piercing should be a remedy created by the legislature, and not the courts, because corporate entities are creatures of statute, and, unlike traditional veil piercing, reverse veil piercing alters the corporate attributes established by those statutes. As one court has succinctly stated in rejecting the doctrine, "[a]llowing . . . reverse piercing claims would constitute a radical change to the concept of piercing the corporate veil . . . and, thus, should be created by the [legislature] and not by [the] [c]ourt." *Acree* v. *McMahan*, 276 Ga. 880, 883, 585 S.E.2d 873 (2003).

[1] The defendants are State Five Industrial Park, Inc., and Jean L. Farricielli.

[2] The doctrine has been cited in at least seven trial court decisions. *Commissioner of Environmental Protection* v. *State Five Industrial Park, Inc.*, Superior Court, judicial district of Hartford, Docket No. HHD-CV-05-4105888-S (January 5, 2009) (reverse veil piercing is viable legal theory and is applicable to corporations); *Cadle Co.* v. *Zubretsky*, Superior Court, judicial district of Hartford, Docket No. CV-04-0832477-S (January 30, 2008) (same); *Angle* v. *Angle*, Superior Court, judicial district of Stamford-Norwalk, Docket No. FST-FA-04-4000812-S (March 22, 2007) ("Connecticut law clearly recognizes the doctrine of piercing the corporate veil as well as the concept of reverse piercing"); *LSE Leasing Corp.* v. *Greenblatt*, Superior Court, judicial district of New London, Docket No. KNL-CV-06-5000878 (December 14, 2006) ("[w]hen the elements of piercing the corporate veil have been established, a reverse pierce is a viable remedy that a court may employ [against a corporation] when necessary to achieve an equitable result and when unfair prejudice will not result" [internal quotation marks omitted]); *Cadle Co.* v. *Zubretsky*, Superior Court, judicial district of Hartford, Docket No. CV-04-0832477-S (February 23, 2006) (same); *Ackerman* v. *Sobol Family Partnership, LLP*, Superior Court, judicial district of Hartford, Docket No. CV-03-0826123 (May 12, 2004) (recognizing applicability of reverse veil piecing doctrine to limited liability companies but dismissing case in part because pleadings failed to support claim under that doctrine); see also *In re Flanagan*, 373 B.R. 216, 223 (Bankr. D. Conn. 2007) ("'[r]everse piercing' claims have been recognized as viable causes of action in Connecticut").

The impact of the Appellate Court's decision in *Howell* extends beyond the boundaries of this state. For example, the Virginia Supreme Court relied on the decision when it adopted reverse veil piercing as a viable doctrine in that state. See *C.F. Trust, Inc.* v. *First Flight Ltd. Partnership*, 266 Va. 3, 11, 580 S.E.2d 806 (2003); see also *C.F. Trust, Inc.* v. *First Flight Ltd. Partnership*, 306 F.3d 126, 141 (4th Cir. 2002) (reasoning that "[i]f a Virginia court followed the rationale of [*Howell*], outsider reverse veil-piercing against the limited partnership would be a viable option . . . even if not generally permitted in cases involving limited partnerships"). Scholars and academics also have relied on *Howell* in their discussions regarding the appropriateness and applicability of the doctrine of reverse veil piercing. See, e.g., C. Bishop, "Reverse Piercing: A Single Member LLC Paradox," 54 S.D. L. Rev. 199, 230–31 (2009); L. Heilman, comment, "*C.F. Trust, Inc.* v. *First Flight Limited Partnership*: Will the Virginia Supreme Court Permit Outside Reverse Veil-Piercing Against a Limited Partnership?," 28 Del. J. Corp. L. 619, 628–29, 636–37 (2003); M. Richardson, comment, "The Helter Skelter Application of the Reverse Piercing Doctrine," 79 U. Cin. L. Rev. 1605, 1623 n.141 (2011). Additionally, commentary to the Revised Limited Liability Company Act cites to *Howell* with approval in its discussion of charging orders against limited liability companies. Revised Uniform Limited Liability Company Act (2006) § 503 (g), comment, 6B U.L.A. 500 (2008).

[3] The traditional veil piercing doctrine has a long history in the law of business corporations in this state and virtually all other jurisdictions, and generally has been expanded to limited partnerships and, more recently, limited liability companies. See, e.g., *Angelo Tomasso, Inc.* v. *Armor Construction & Paving, Inc.*, 187 Conn. 544, 552–53, 447 A.2d 406 (1982) (citing cases in which Connecticut courts have found it appropriate to pierce corporate veil). See generally S. Bainbridge, "Abolishing Veil Piercing," 26 J. Corp. L. 479, 480–513 (2001) (describing history and evolution of veil piercing doctrine). Reverse veil piercing, although considerably less developed and only somewhat recently addressed by the Appellate Court in *Howell*, also can be traced back nearly one century in other jurisdictions. See, e.g., *Kingston Dry Dock Co.* v. *Lake Champlain Transportation Co.*, 31 F.2d 265, 267 (2d Cir. 1929) (recognizing in very rare circumstances that parent company may be held liable for subsidiary).

Although the plaintiffs argue that our holding in *Zaist* v. *Olson*, 154 Conn. 563, 576–78, 227 A.2d 552 (1967), suggests that this court also previously has employed reverse veil piercing, it is unclear from the facts and reasoning in that decision whether that is true. To the extent that *Zaist* can be read to support the application of the reverse veil piercing doctrine, I would overrule its application of that doctrine for the same reasons that I would overrule the Appellate Court's adoption of it in *Howell*.

[4] In addition, there is somewhat of an internal, conceptual inconsistency with the reverse veil piercing doctrine. As I noted previously, the test for traditional veil piercing generally requires courts to find that the corporation causing the harmful act was so dominated by the individual shareholder

that they became the same for purposes of establishing liability. Yet, if this analysis is properly inverted for a reverse veil piercing claim, a court should be required to find that a shareholder was so dominated by the corporation that they became the same. Cf. *Estate of Daily* v. *Title Guaranty Escrow Service, Inc.*, 178 B.R. 837, 845 (D. Haw. 1995), aff'd mem. sub nom. *Estate of Daily* v. *Lilipuna Associates*, 81 F.3d 167 (9th Cir. 1996). Herein lies the conceptual inconsistency, and "it stretches the imagination, not to mention the equities, to conceive of how someone wholly outside the corporation may be used to pierce the corporate veil from within." Id.

[5] There may be one instance in which reverse veil piercing is the only feasible means to adequately satisfy a judgment. When the wrongdoer is also the alter ego of a single member limited liability company, current judgment collection methods may prevent adequate satisfaction of a judgment. Judgment creditors are initially limited to obtaining a charging order against the limited liability company member. See General Statutes § 34-171. This, however, only transfers to the judgment creditor a right to receive distributions; it does not confer membership or voting rights. See General Statutes §§ 34-170 and 34-171. "[T]he transferee then does not become a member in substitution for the only transferring member simply by default. Rather, the transferee must obtain the consent of the transferor to become the only substituted member." C. Bishop, "Reverse Piercing: A Single Member LLC Paradox," 54 S.D. L. Rev. 199, 219 (2009). Simply put, "the transferring member may well insist on continuing as the only rightful member to prevent the creditor from reaching the [limited liability company's] assets. In these cases, the creditor will be effectively precluded from reaching those assets under statutory approaches inherent in . . . limited liability company law." Id., 220. Nevertheless, even if reverse veil piercing would be the only feasible method available, limited liability companies, like corporations, are creatures of statute. It therefore should be within the prerogative of the legislature, rather than the courts, to amend the statutory scheme to allow reverse veil piercing.