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CARMEN L. LOPEZ ET AL. *v.* BOARD OF EDUCATION OF THE CITY OF BRIDGEPORT ET AL.
(SC 19172)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh and Espinosa, Js.*

Argued September 23—officially released November 26, 2013

Steven D. Ecker, with whom were *James J. Healy* and, on the brief, *M. Caitlin S. Anderson*, for the appellant (defendant Paul Vallas).

Norman A. Pattis, with whom were *Bruce L. Levin* and *Kevin Smith* and, on the brief, *Barbara M. Schellenberg*, for the appellees (plaintiffs).

Gregory T. D'Auria, solicitor general, *George Jepsen*, attorney general, and *Henry A. Salton* and *Jane R. Rosenberg*, assistant attorneys general, filed a brief for the State Board of Education et al. as amici curiae.

Opinion

NORCOTT, J. An action seeking a writ of quo warranto provides a "limited and extraordinary remedy" that is the "exclusive" avenue under both the common law and General Statutes § 52-491[1] for judicial review of, inter alia, a person's qualifications to hold a particular public office. (Internal quotation marks omitted.) *Bateson* v. *Weddle*, 306 Conn. 1, 10–11, 48 A.3d 652 (2012). In this public interest appeal, we consider whether, when an administrative agency has issued a license, certification, or waiver that is required by statute to hold a public office, a court may issue a writ of quo warranto because it has deemed a person to be unqualified for that office on the ground that the agency improperly granted the requisite license, certification, or waiver. The defendant Paul Vallas[2] appeals, upon certification by Chief Justice Rogers pursuant to General Statutes § 52-265a,[3] from the judgment of the trial court granting the writ of quo warranto sought by the plaintiffs, Carmen Lopez and Deborah Reyes-Williams,[4] and ordering the removal of the defendant from his office as acting superintendent of the public schools of the city of Bridgeport. On appeal, the defendant claims, inter alia, that the trial court improperly concluded that he was not qualified to serve as a superintendent on the ground that he had failed to complete the "school leadership program" required by subsection (b) of General Statutes § 10-157,[5] notwithstanding the conclusions to the contrary during the administrative vetting process by Stefan Pryor, the Commissioner of Education (commissioner), and the State Board of Education (state board). We conclude that a quo warranto action may not be utilized to avoid the administrative process by mounting a collateral attack on an administrative agency's decision to issue a license, certification, or waiver that renders a public officer qualified to hold his or her position. Accordingly, we reverse the judgment of the trial court.

The record reveals the following undisputed facts, as set forth in the record and the trial court's memorandum of decision, and procedural history. In December, 2011, the Board of Education of the City of Bridgeport (city board) selected the defendant to serve as its acting superintendent of schools. The defendant has an extensive professional background in public education and state and local government, including: service as a school teacher in the 1970s; service in numerous high level state and municipal positions in Illinois; service as the chief executive officer of the public school systems in the cities of Chicago and Philadelphia; and service as the superintendent of the public school system in the city of New Orleans after Hurricane Katrina. The defendant has not, however, taken any graduate courses in education and is not certified as a school superintendent in Connecticut.

Because the defendant is not certified to serve as a school superintendent in Connecticut, Robert Trefry, the chairperson of the city board at the time, requested that the commissioner approve the defendant's appointment as acting superintendent for a ninety day period from January 1, 2012 through March 30, 2012. Trefry simultaneously requested an extension of that ninety day period from April 1, 2012 through December 31, 2012. The commissioner approved these requests, pursuant to General Statutes (Rev. to 2011) § 10-157 (b),[6] by two separate letters issued on December 23, 2011. The defendant's tenure as acting superintendent commenced on January 1, 2012.

During the defendant's tenure as acting superintendent, the legislature enacted Public Acts 2012, No. 12-116, § 58, which, effective July 1, 2012, amended the certification waiver process previously provided by General Statutes (Rev. to 2011) § 10-157 (b) and (c). As amended, § 10-157 (b) permits the appointment of an acting superintendent "who is or is not properly certified for a probationary period, not to exceed one school year, with the approval of the Commissioner of Education. During such probationary period such acting superintendent shall assume all duties of the superintendent for the time specified and shall successfully complete a school leadership program, approved by the State Board of Education, offered at a public or private institution of higher education in the state. . . ." As amended, § 10-157 (c) permits the commissioner, upon a local school board's request, to grant a waiver of certification to a person "who has successfully completed a probationary period as an acting superintendent pursuant to subsection (b) of this section, and who the commissioner deems to be exceptionally qualified for the position of superintendent." For the complete text of the current revision of § 10-157, see footnote 5 of this opinion.

On January 23, 2013, the commissioner sent a letter to Jacqueline Kelleher, who was elected chairperson of the city board following our decision in *Pereira* v. *State Board of Education*, 304 Conn. 1, 37 A.3d 625 (2012),[7] approving the defendant's appointment as acting superintendent for a probationary period of January 1, 2013 through December 31, 2013. Shortly thereafter, the defendant contacted Robert Villanova, the director of the Executive Leadership Program at the University of Connecticut's Neag School of Education (UConn), to inquire about the "school leadership programs" mandated by § 10-157 (b). Villanova proposed a three credit independent study course in district leadership (independent study course) for the defendant, which they subsequently designed together. Thereafter, the commissioner reported to the state board that UConn had developed the independent study course as "an individualized, noncertification leadership program" specifi-

cally for the defendant. At its April 15, 2013 meeting, the state board approved the independent study course pursuant to § 10-157 (b). The commissioner subsequently notified Thomas DeFranco, dean of education at UConn, of the state board's decision.

The defendant completed the independent study course by submitting six papers over the course of ten weeks from April 10, 2013 through May 30, 2013, along with attending a pair of meetings that were approximately two hours in duration and having several telephone conversations with Villanova. Villanova awarded the defendant a grade of "A" for the course. Subsequently, on June 14, 2013, Kenneth Moales, the current chairperson of the city board, requested that the commissioner waive certification for the defendant pursuant to § 10-157 (b) and (c), on the basis of the defendant's completion of a school leadership program approved by the state board, successful completion of a probationary period, and a requested finding that he is "exceptionally qualified" to serve as a permanent superintendent. The commissioner made the requisite findings and granted that waiver by letter dated June 17, 2013.

In the interim, on May 8, 2013, the plaintiffs filed their amended complaint; see footnote 2 of this opinion; seeking a writ of quo warranto that would remove the defendant from his office as acting superintendent. With respect to relevant pretrial motions practice, the trial court first denied the defendant's motion to dismiss the quo warranto action for lack of subject matter jurisdiction on the ground that the plaintiffs had not exhausted their administrative remedies, including seeking a declaratory ruling under General Statutes § 4-176, concluding that "no administrative procedure exists to redress the specific injury [the plaintiffs] claim—the unlawful holding of a public office."[8] The trial court subsequently denied the defendant's motion in limine seeking to preclude, on relevance and political question grounds, the admission of "any and all evidence relating to the merits or sufficiency of any 'school district leadership program' " identified in the complaint or § 10-157.

After a two day court trial, the trial court issued a twenty-seven page memorandum of decision rendering judgment in favor of the plaintiffs. The trial court concluded that the defendant "did not complete a school leadership program" and, therefore, was "not entitled to a waiver of certification pursuant to § 10-157 (c)." Consequently, the trial court concluded that "[t]he waiver [of] certification that [the defendant] receive[d] on June 17, 2013, was invalid." Specifically, the trial court determined that the independent study course completed by the defendant was not a "school leadership program" as contemplated by § 10-157 (b), notwithstanding its approval by the state board.[9] In so concluding, the trial court rejected the defendant's argu-

ment that determining whether such a "school leadership program" passes muster is a task committed to the state board, noting that, unlike other statutes, § 10-157 (b) "does not explicitly give or commit to the sole discretion of the state board . . . the authority to define terms within the statute."[10] (Emphasis omitted.) Accordingly, the trial court rendered judgment for the plaintiffs, and granted a writ of quo warranto ordering the removal of the defendant from his office as acting school superintendent. This expedited public interest appeal followed.[11] See footnote 3 of this opinion.

On appeal, the defendant claims, inter alia,[12] that "[t]his lawsuit never should have made it out of the starting gate" because "the writ of quo warranto cannot properly be used to collaterally attack a state administrative agency's licensing determination."[13] Noting that this argument is a subset of his jurisdictional claim that the plaintiffs failed to exhaust their administrative remedies before the state board, the defendant posits that the writ of quo warranto "is a limited and extraordinary remedy" that "has *never* been used or recognized as the plaintiffs wish to use it here, i.e., as a means to challenge a state agency's licensing/waiver determination that serves as a prerequisite to eligibility for any particular public office." (Emphasis in original; internal quotation marks omitted.) Citing, for example, *State ex rel. Williams* v. *Kennelly*, 75 Conn. 704, 55 A. 555 (1903), *State ex rel. McIntyre* v. *McEachern*, 231 Ala. 609, 166 So. 36 (1936), and *People ex rel. Beardsley* v. *Harl*, 109 Colo. 223, 124 P.2d 233 (1942), the defendant contends that the plaintiffs cannot pursue a legal theory that he is not qualified for the superintendent's position "in a quo warranto action, because the writ of quo warranto cannot be used to challenge an officeholder's professional qualifications issued by the appropriate state administrative authority." The defendant further posits that permitting the use of quo warranto for the collateral attack of agencies' licensing decisions "would wreak havoc if adopted under Connecticut law," observing that this would open the floodgates to "*any* taxpayer acting on *any* motivation" to test the underlying professional qualifications of dozens of public officers. (Emphasis in original.)

In response, the plaintiffs argue first that we should decline to consider the defendant's collateral attack claim because he failed to preserve it before the trial court. Turning to the merits, the plaintiffs posit that they had no administrative remedies available to exhaust, as "unless otherwise provided by statute, a quo warranto action is the exclusive method of trying the title to an office . . . ." (Internal quotation marks omitted.) *Bateson* v. *Weddle*, supra, 306 Conn. 11. The plaintiffs argue that quo warranto is appropriately used here, "because it challenges an individual's right to hold office, not his performance." Noting that § 52-491, which provides for the use of quo warranto actions to challenge the usurpa-

tion of "the exercise of any office, franchise or jurisdiction," does not restrict the reach of such actions at common law, the plaintiffs further rely specifically on *Deguzis* v. *Jandreau*, 27 Conn. App. 421, 606 A.2d 52 (1992), wherein the Appellate Court reviewed a trial court's validation of the grading of a specific fire officer civil service examination, as demonstrating the "wide reach of quo warranto." The plaintiffs then emphasize that "[t]here is no requirement in the law of quo warranto that the appointing board be found to have violated the law," observing that the action and the writ are directed at the office holder, rather than the appointing authority. Finally, the plaintiffs argue that the body of case law relied upon by the defendant, specifically *State ex rel. McIntyre* v. *McEachern*, supra, 231 Ala. 609, and *People ex rel. Beardsley* v. *Harl*, supra, 109 Colo. 223, has: (1) been rejected by other courts, citing *Ex parte Sierra Club*, 674 So. 2d 54 (Ala. 1995), *People ex rel. Henderson* v. *Redfern*, 48 Ill. App. 2d 100, 197 N.E.2d 841 (1964), and *State ex rel. Oregon Consumer League* v. *Zielinski*, 60 Or. App. 654, 654 P.2d 1161 (1982), review denied, 294 Or. 682, 662 P.2d 725 (1983); and (2) is distinguishable because the "plaintiffs did not challenge [the] defendant's professional qualifications. Instead, [the] plaintiffs claimed that [the defendant] failed to complete a statutorily required school leadership program." We disagree with the plaintiffs, and conclude that a quo warranto action may not be used to challenge the underlying administrative determinations made by the state board and the commissioner qualifying the defendant to serve as a school superintendent.

We begin with the applicable standard of review. The defendant's claim that a quo warranto action may not be used to mount a collateral attack on a decision of an administrative agency regarding licensing or certification implicates the jurisdictional issue, considered by the trial court and discussed at oral argument before this court, of whether the plaintiffs had exhausted all available administrative remedies before bringing the present action seeking a writ of quo warranto.[14] See, e.g., *Republican Party of Connecticut* v. *Merrill*, 307 Conn. 470, 478, 55 A.3d 251 (2012) (exhaustion of administrative remedies implicates subject matter jurisdiction). Accordingly, we need not consider the plaintiffs' preservation arguments relative to this issue, as issues of subject matter jurisdiction may be raised at any time, including by the court sua sponte, regardless of the manner in which the issue is treated by the parties. See, e.g., *Waterbury* v. *Washington*, 260 Conn. 506, 527–29, 800 A.2d 1102 (2002). Further, and as the parties agree given the undisputed facts relevant to this issue, our review is plenary. See, e.g., *Bateson* v. *Weddle*, supra, 306 Conn. 7.

"Historically, the writ of quo warranto originated as a device to require [Norman kings'] barons to justify their claims to power or to abandon them. . . . Today,

unless otherwise provided by statute, a quo warranto action is the exclusive method of trying the title to an office . . . . It lie[s] to prevent the usurpation of a public office or franchise . . . by placing the burden on the defendant to prove lawful entitlement to a particular office . . . and oust[ing] individuals illegally occupying public offices . . . . The purpose of the proceeding, therefore, is to test the actual right to the office and not merely a use under color of right. . . . In other words, in a quo warranto proceeding, a plaintiff[15] may contest an individual's right to hold an office; however, a challenge to the manner in which a lawful incumbent is exercising the powers, privileges and duties pertaining to an office exceeds the scope of such an action. Thus, the writ of quo warranto developed and has continued as a limited and extraordinary remedy . . . to test who the lawful public official is." (Citations omitted; emphasis omitted; footnote added; internal quotation marks omitted.) Id., 10–11.

"A successful quo warranto action unseats an illegal office holder and declares the position vacant. It does not place the rightful claimant into the office." *New Haven Firebird Society* v. *Board of Fire Commissioners*, 219 Conn. 432, 436, 593 A.2d 1383 (1991). "The parties defendant or respondent in quo warranto proceedings are those charged with exercising the particular office or franchise without lawful right. Stated otherwise, a writ of quo warranto must be directed toward the objectionable person holding an office and exercising its functions in his or her individual capacity." (Internal quotation marks omitted.) *Demarest* v. *Fire Dept.*, 76 Conn. App. 24, 29, 817 A.2d 1285 (2003). "It is well established that in quo warranto proceedings the burden is upon the defendant to show a complete title to the office in dispute." (Internal quotation marks omitted.) *Cheshire* v. *McKenney*, 182 Conn. 253, 257, 438 A.2d 88 (1980).

Whether a court evaluating the qualifications of a public officer in a quo warranto action may examine the merits of an administrative licensing or certification decision that has rendered that person qualified to hold the office is a question of first impression in Connecticut. Numerous sister state decisions, however, demonstrate the existence of a century old common-law rule that, absent allegations of fraud, a quo warranto action may not be used to mount a collateral attack on a governmental agency's licensing or certification decision that has qualified a public officer to hold his or her position. For example, in *State ex rel. Pape* v. *Hockett*, 61 Wyo. 145, 154–55, 156 P.2d 299 (1945), a challenge was based on a claim that the winner of a county school superintendent election "did not possess the requisite qualifications to be nominated or elected to the office." The relators contended, inter alia, that the superintendent's administrative certificate[16] had been improperly issued fourteen years earlier, on the ground that she

lacked the required teaching experience. See id., 162. The Wyoming Supreme Court rejected this claim, calling it "clearly a collateral attack on the certificate which may not be made in this action," and cited Corpus Juris for the proposition that a "teacher's certificate is prima facie evidence of the teacher's qualifications, and of the fact that the board or committee issuing such certificates have properly performed their duty as to the manner and requisites of their issuing it, and in the absence of fraud cannot be collaterally impeached . . . ." (Internal quotation marks omitted.) Id., 162–63; see 78 C.J.S. Schools and School Districts § 307 (2013).

Similarly, in *Wendt* v. *Waller*, 46 N.D. 268, 270, 176 N.W. 930 (1920), the North Dakota Supreme Court rejected a challenge to the qualifications of a county school superintendent, which claimed that "the facts with reference to the [defendant superintendent's] qualifications to receive the [required teaching] certificates show that they could not have been legally issued." The court concluded that the "legislature . . . imposed this duty upon the state superintendent of public instruction, and, when that officer has determined the existence of the necessary qualifications to entitle one to a certificate, *such determination cannot be reviewed by a judicial tribunal except for fraud*." (Emphasis added.) Id. Given the existence of an administrative remedy, which had not been utilized, and the lack of a fraud claim, the court concluded that "the attempt to go back to the certificate of qualification given by the proper authority in this proceeding involves a collateral attack on the certificate, such as we have recently held . . . is not permissible." (Citation omitted.) Id., citing *McDonald* v. *Nielson*, 43 N.D. 346, 354, 175 N.W. 361 (1919) (The state superintendent of public instruction "determined that the defendant was so qualified, and he issued to [the defendant] a certificate in kind and form as prescribed by law as formal evidence of his determination, and he entered upon the proper record in his office an entry of such determination. It seems self-evident that the certificate or commission so issued ought not to be subject to collateral impeachment."); accord *Kimball* v. *School District No. 122 of Spokane County*, 23 Wash. 520, 526–27, 63 P. 213 (1900) (The court concluded in a breach of contract action that the plaintiff teacher had maintained the required certification for her position, despite the fact that her certification was legally questionable, because "[w]e do not think that this temporary certificate was subject to a collateral attack. We do not mean, however, to hold that it could not be assailed for fraud, but the pleadings in this case contain no allegations of fraud or collusion in obtaining the certificate.").

Moving beyond public education, we also find persuasive the decision of the Colorado Supreme Court in *People ex rel. Beardsley* v. *Harl*, supra, 109 Colo. 223, which concerned a challenge to the gubernatorial

appointment of the defendant state banking commissioner on the ground that he did not have the statutorily mandated five years of experience as a banker. Id., 225–26. Prior to being appointed, the banking commissioner had been vetted and examined by the state civil service commission, which ranked him at the top of the eligibility list it maintained for the position. Id., 225. The court upheld the dismissal of the quo warranto action, determining that the state constitution's civil service amendment[17] "did confer upon the [c]ivil [s]ervice [c]ommission, and upon it alone, the discretion to ascertain the qualifications, fitness and merit of all applicants under the classified service, whether the standards thereof were prescribed by [c]onstitution, statute or rule. Thus, it would follow that the resolution of the question as to whether [the defendant] had 'five [years of] experience as a banker' involved a factual and discretionary determination by the commission." (Emphasis omitted.) Id., 227. The court further emphasized that the case "was not instituted to compel action by the commission nor to inquire directly into any alleged failure by it to regularly pursue its authority in making the certification of which complaint is made, but, on the contrary, sought to have the [D]istrict [C]ourt by way of an original adjudication, as a matter of first impression, determine a question of fact constitutionally within the discretion of the commission . . . ." Id.

Similarly, in *State ex rel. McIntyre* v. *McEachern*, supra, 231 Ala. 613, the Alabama Supreme Court concluded that a quo warranto action could not be used to remove a county road foreman who had been deemed qualified for appointment by the appropriate local legislative body. In that case, the relevant statute provided that the office shall be held "by an experienced road builder who shall be a competent engineer." Id. The court concluded that "there should have been no inquiry into the fact on this trial of whether [the] appellee was thus qualified" because it "was the duty of the county commissioners to determine whether the [defendant] was an experienced road builder and competent engineer before electing and inducting him into office. Such qualifications have no definite and fixed standard for measurement. They are relative in essence. Persons often differ as to whether one is so qualified. The county commissioners pass on that when they elect one to that office. They may think he possesses the qualifications, and his later conduct in office may show that they were mistaken. But, when they elected [the defendant] and inducted him into office, he was not usurping it nor holding it illegally, and had not thereby forfeited it."[18] Id.

Other authorities revealed by the parties' briefs and our independent research are consistent with this common-law rule that, in the absence of fraud, a quo warranto action may not be used to mount a collateral attack on a governmental agency's licensing or certifica-

tion decision that has qualified a public officer to hold his or her position. See *People ex rel. Neilson* v. *Wilkins*, 101 Idaho 394, 396, 614 P.2d 417 (1980) (rejecting quo warranto challenge based on elected commissioner's residency because board of county commissioners previously had exercised its statutory powers to alter commissioner districts, and when that board "acts on matters within its jurisdiction and no appeal is taken, then the act becomes final and is not subject to collateral attack"); *People ex rel. Henderson* v. *Redfern*, supra, 48 Ill. App. 2d 110–12 (reversing dismissal of quo warranto action seeking ouster of highway superintendent, and rejecting his reliance on executive discretion and civil service agency's administrative determination as to eligibility, on basis of allegation that superintendent had provided false and fraudulent information to induce agency to find him qualified to sit for examination);[19] cf. *Attorney General ex rel. O'Hara* v. *Montgomery*, 275 Mich. 504, 510–11, 267 N.W. 550 (1936) (rejecting claim that review of criminal conviction prohibiting service as county clerk would constitute impermissible collateral attack on ground that attack was based on convicting court's lack of jurisdiction, rather than legal errors); but cf. *State ex rel. Oregon Consumer League* v. *Zielinski*, supra, 60 Or. App. 656–58 (upholding challenge to gubernatorial appointment to state agriculture board of defendant who was farmer, farmer's wife, and officer of two farming trade associations, on ground that she did not qualify for appointment as one of two members mandated to be " 'representative of consumer interests of the state,' " and concluding that relevant statutory standards "are sufficiently definite to permit judicial inquiry into the validity of [the] defendant's appointment as one of the two consumer representatives on the [agriculture board]").[20]

Contrary to the plaintiffs' arguments, Connecticut's body of quo warranto case law is consistent with this common-law rule. First, this court's venerable decision in *State ex rel. Williams* v. *Kennelly*, supra, 75 Conn. 704, makes clear that a quo warranto action is not to be used to second-guess the discretion and motivations of appointing officials. In that case, the relator, the former public works director for the city of Bridgeport, challenged the mayoral appointment of a new public works director. Id., 704–705. The mayor, however, had terminated the relator from his position "for sufficient cause" on the ground that he had been negligent, incompetent, and had conflicts of interest. Id., 705. This court noted the great discretion given to executive decisions with respect to the appointment and removal of public officials when that decision is unconstrained by municipal charter provisions, observing that "[a]n executive removal may be unjust and induced by reprehensible motives, but it is not therefore invalid. *The executive discretion, whether in appointment or removal, is absolute. The person abusing that discretion may be*

punished, but not by judicial reversal of his official action. When the absolute discretion, whether in appointment or removal, is limited by law, while the due observance of those limits may be enforced, *yet the action of the executive within the limits prescribed cannot be controlled by the court.*" (Emphasis added.) Id., 708.

Second, the common-law rule is consistent with the separation of powers principles underlying the exhaustion doctrine, namely, "to foster an orderly process of administrative adjudication and judicial review, offering a reviewing court the benefit of the agency's findings and conclusions. It relieves courts of the burden of prematurely deciding questions that, entrusted to an agency, may receive a satisfactory administrative disposition and avoid the need for judicial review. . . . Moreover, the exhaustion doctrine recognizes the notion, grounded in deference to [the legislature's] delegation of authority to coordinate branches of [g]overnment, that *agencies, not the courts, ought to have primary responsibility for the programs that* [*the legislature*] *has charged them to administer.* . . . Therefore, exhaustion of remedies serves dual functions: it protects the courts from becoming unnecessarily burdened with administrative appeals and it ensures the integrity of the agency's role in administering its statutory responsibilities." (Citations omitted; emphasis added; internal quotation marks omitted.) *Stepney, LLC* v. *Fairfield*, 263 Conn. 558, 564–65, 821 A.2d 725 (2003). Given that the legislature, through the enactment of § 10-157 (b) and (c), has placed the determination of the defendant's eligibility to serve as a superintendent squarely in the hands of an executive branch agency with the greatest expertise in the administration of public education, we are loath to second-guess that agency's determination in the guise of deciding a quo warranto action. This is particularly so given the plaintiffs' failure to invoke administrative remedies, such as a declaratory ruling pursuant to § 4-176, available for voicing their objection to the defendant's qualifications to serve. See also footnote 23 of this opinion.

Given these policy considerations, we disagree with the plaintiffs' assessment of the Appellate Court's decision in *Deguzis* v. *Jandreau*, supra, 27 Conn. App. 421, as "illustrat[ive] [of] the wide reach of quo warranto," in support of their argument that the writ may be utilized to challenge underlying qualification matters that are prerequisite to the appointment of a public official. In *Deguzis*, which was a challenge to the grading of Bristol's fire captain civil service examination,[21] the Appellate Court concluded that the trial court had not committed clear error in finding that the challenged fire captain had proven his entitlement to that office, on the ground that the record factually supported the proposition that the answer he had selected was the correct choice. See id., 424–26. The Appellate Court's

opinion in *Deguzis* is, however, confined to the propriety of the trial court's factual determination, and does not address the jurisdictional issue argued by the defendant in this appeal. Accordingly, it does not support the plaintiffs' attempt to expand the reach of quo warranto. Cf. *State ex rel. Kelly* v. *Alcorn*, 6 Conn. Supp. 210, 214 (1938) (court's appointment of special prosecutor is "judicial determination which [cannot] be attacked on quo warranto proceedings," because "[t]he [c]ourt having jurisdiction to enter the order when the order is entered, it is final and conclusive even though the [c]ourt had erred in finding that the state's attorney was disqualified in the sense prescribed by the statute").

We, therefore, adopt the common-law rule followed by our sister states and conclude that a quo warranto action may not be used to avoid the administrative process by mounting a collateral attack on a governmental agency's licensing or certification decision that has qualified a public officer to hold his or her position.[22] Thus, we further conclude that the trial court exceeded the bounds of its quo warranto jurisdiction in determining, as matters of statutory interpretation and finding of fact, that the defendant was not qualified for his position as superintendent of the public schools of Bridgeport on the ground that he had not completed a "school leadership program" as prescribed by § 10-157 (b). That determination, which underlay the commissioner's ultimate decision to waive certification requirements for the defendant, was a licensing decision squarely committed to the state board and the commissioner by the legislature, and the plaintiffs failed to avail themselves of appropriate avenues to raise this challenge to the defendant's qualifications in the appropriate administrative forum.[23]

The judgment is reversed and the case is remanded to the trial court with direction to dismiss the amended complaint.

In this opinion the other justices concurred.

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

[1] General Statutes § 52-491 provides: "When any person or corporation usurps the exercise of any office, franchise or jurisdiction, the Superior Court may proceed, on a complaint in the nature of a quo warranto, to punish such person or corporation for such usurpation, according to the course of the common law and may proceed therein and render judgment according to the course of the common law."

[2] Also originally named as defendants in this case were Stefan Pryor, the state Commissioner of Education (commissioner), and the named defendant, the Board of Education of the City of Bridgeport (city board). The trial court subsequently granted the commissioner's motion to dismiss the case against him for lack of personal jurisdiction. Thereafter, the plaintiffs voluntarily withdrew this action against the city board, leaving Vallas as the sole defendant in this case. Accordingly, all references herein to the defendant are to Vallas.

[3] General Statutes § 52-265a provides: "(a) Notwithstanding the provisions of sections 52-264 and 52-265, any party to an action who is aggrieved by an order or decision of the Superior Court in an action which involves a matter of substantial public interest and in which delay may work a substantial injustice, may appeal under this section from the order or decision to the Supreme Court within two weeks from the date of the issuance of the

order or decision. The appeal shall state the question of law on which it is based.

"(b) The Chief Justice shall, within one week of receipt of the appeal, rule whether the issue involves a substantial public interest and whether delay may work a substantial injustice.

"(c) Upon certification by the Chief Justice that a substantial public interest is involved and that delay may work a substantial injustice, the trial judge shall immediately transmit a certificate of his decision, together with a proper finding of fact, to the Chief Justice, who shall thereupon call a special session of the Supreme Court for the purpose of an immediate hearing upon the appeal.

"(d) The Chief Justice may make orders to expedite such appeals, including orders specifying the manner in which the record on appeal may be prepared."

[4] We note that the plaintiffs in the present case brought the underlying action in their capacity as taxpaying residents of the city of Bridgeport. See footnote 15 of this opinion.

[5] General Statutes § 10-157 provides: "(a) Any local or regional board of education shall provide for the supervision of the schools under its control by a superintendent who shall serve as the chief executive officer of the board. The superintendent shall have executive authority over the school system and the responsibility for its supervision. Employment of a superintendent shall be by election of the board of education. Except as provided in subsection (b) of this section, no person shall assume the duties and responsibilities of the superintendent until the board receives written confirmation from the Commissioner of Education that the person to be employed is properly certified or has had such certification waived by the commissioner pursuant to subsection (c) of this section. The commissioner shall inform any such board, in writing, of the proper certification, waiver of certification or lack of certification or waiver of any such person not later than fourteen days after the name of such person is submitted to the commissioner pursuant to section 10-226. A majority vote of all members of the board shall be necessary to an election, and the board shall fix the salary of the superintendent and the term of office, which shall not exceed three years. Upon election and notification of employment or reemployment, the superintendent may request and the board shall provide a written contract of employment which includes, but is not limited to, the salary, employment benefits and term of office of such superintendent. Such superintendent shall, at least three weeks before the annual town or regional school district meeting, submit to the board a full written report of the proceedings of such board and of the condition of the several schools during the school year preceding, with plans and suggestions for their improvement. The board of education shall evaluate the performance of the superintendent annually in accordance with guidelines and criteria mutually determined and agreed to by such board and such superintendent.

"(b) A local or regional board of education may appoint as acting superintendent a person who is or is not properly certified for a probationary period, not to exceed one school year, with the approval of the Commissioner of Education. During such probationary period such acting superintendent shall assume all duties of the superintendent for the time specified and shall successfully complete a school leadership program, approved by the State Board of Education, offered at a public or private institution of higher education in the state. At the conclusion of such probationary period, such appointing local or regional board of education may request the commissioner to grant a waiver of certification for such acting superintendent pursuant to subsection (c) of this section.

"(c) The commissioner may, upon request of an employing local or regional board of education, grant a waiver of certification to a person (1) who has successfully completed at least three years of experience as a certified administrator with a superintendent certificate issued by another state in a public school in another state during the ten-year period prior to the date of application, or (2) who has successfully completed a probationary period as an acting superintendent pursuant to subsection (b) of this section, and who the commissioner deems to be exceptionally qualified for the position of superintendent."

[6] General Statutes (Rev. to 2011) § 10-157 (b) provides: "A local or regional board of education may appoint as acting superintendent a person who is or is not properly certified for a specified period of time, not to exceed ninety days, with the approval of the Commissioner of Education. Such acting superintendent shall assume all duties of the superintendent for the

time specified, provided such period of time may be extended with the approval of the commissioner, which he shall grant for good cause shown."

We also note that General Statutes (Rev. to 2011) § 10-157 (c) provides: "The commissioner may, upon request of an employing local or regional board of education, grant a waiver of certification to a person (1) who has successfully completed at least three years of experience as a certified administrator with a superintendent certificate issued by another state in a public school in another state during the ten-year period prior to the date of application, or (2) who the commissioner deems to be exceptionally qualified for the position of superintendent. In order for the commissioner to find a person exceptionally qualified, such person shall (A) be an acting superintendent pursuant to subsection (b) of this section, (B) have worked as a superintendent in another state for no fewer than fifteen years, and (C) be certified or have been certified as a superintendent by such other state."

[7] In July, 2011, the city board voted to dissolve itself and request that the state board reconstitute it pursuant to General Statutes § 10-223e. See *Pereira* v. *State Board of Education*, supra, 304 Conn. 9–10. Thereafter, the state board granted the city board's request for reconstitution, and the interim Commissioner of Education, George A. Coleman, appointed the members of the reconstituted city board in August, 2011. See id., 10–11. On February 28, 2012, this court concluded, however, that the reconstitution of the city board violated § 10-223e (h) because the city board lacked the authority to waive the training session that the statute mandated prior to reconstitution by the state. See id., 60–61. Thereafter, a special election was held, pursuant to this court's order, and the new city board took office in September, 2012.

[8] For additional discussion of the defendant's jurisdictional claims, see footnotes 14 and 23 of this opinion.

[9] The trial court specifically concluded that "a proposed course of study may only be called a 'program' within the meaning of subsection (b) of § 10-157 if the institution that offers it recognizes the course of study as a 'program,' " and emphasized that "other evidence . . . establishes that a 'program' means something more intensive than a single course," comparing, for example, the thirteen month Executive Leadership Program, which provides students with course instruction, mentoring, and an internship.

[10] The trial court further found, as a factual matter, that even assuming that the independent study course "was a 'program' within the meaning of § 10-157 . . . [the defendant] did not successfully complete a school leadership program because the course that [he] did complete was not the course that the state board . . . believed it had approved," inasmuch as the defendant had never actually "attended a class or in-person seminar, nor did he participate in any technology assisted discussions . . . ."

[11] We note that, prior to the defendant's filing of a petition for an expedited appeal pursuant to § 52-265a, the plaintiffs filed a motion with the trial court, over the defendant's objection, seeking termination of an automatic stay of execution pursuant to Practice Book § 61-11. Thereafter, on July 10, 2013, following an evidentiary hearing, the trial court granted the plaintiffs' motion and terminated the automatic stay, thus requiring the defendant to leave office immediately. This court, however, subsequently granted the defendant's motion for review of that decision pursuant to Practice Book § 66-6, and granted the requested relief by ordering the trial court to reinstate the automatic stay.

[12] The defendant also claims that the trial court improperly construed § 10-157 in determining that he had not completed the "school leadership program" requisite to his positions as acting and permanent superintendent. Because we resolve this appeal in favor of the defendant on the basis of his procedural claims, we need not decide the statutory construction issues presented in this case.

[13] We note that this claim is echoed in the amicus brief filed by the state board and the commissioner.

[14] In the defendant's motion to dismiss, he contended that the plaintiffs had failed to exhaust their administrative remedies before the state board by seeking a declaratory ruling pursuant to General Statutes § 4-176 and §§ 10-4b-1 through 10-4b-10 of the Regulations of Connecticut State Agencies. The trial court concluded, however, that these "administrative procedures . . . could not provide the plaintiffs with the relief they now seek—ouster of [the defendant] and a finding that his appointment was void ab initio—when the law of our state provides that such relief is only available through quo warranto. The plaintiffs have not, therefore, impermissibly failed to exhaust their administrative remedies because no administrative procedure

exists to redress the specific injury they claim—the unlawful holding of a public office."

We note that the defendant's arguments with respect to the unavailability of quo warranto for mounting a collateral attack on an administrative agency's licensing decision are framed under the exhaustion doctrine, although the defendant does not make a classic exhaustion argument in his primary brief. In his reply brief, however, the defendant echoes the exhaustion arguments advanced by the amici curiae in their brief, contending that the plaintiffs were required first, pursuant to § 4-176, to submit "a petition for a declaratory ruling to [the state board] or the [c]ommissioner suggesting that the 'school leadership program' the defendant had taken was not appropriate or that he had not 'successfully completed' his probationary period. . . . Had such a remedy been invoked, there would have been a record of the reasons supporting the administrative agencies' action if judicial review were available to an aggrieved party." (Citations omitted.)

We agree with the defendant that his quo warranto claims are jurisdictional in nature, particularly given the "limited" nature of that "extraordinary remedy"; (internal quotation marks omitted) *Bateson* v. *Weddle*, supra, 306 Conn. 11; and the fact that they are colored significantly by the well established policy concerns, including the doctrine of the separation of powers, that underlie the exhaustion requirement, including, inter alia, "to foster an orderly process of administrative adjudication and judicial review, offering a reviewing court the benefit of the agency's findings and conclusions. It relieves courts of the burden of prematurely deciding questions that, entrusted to an agency, may receive a satisfactory administrative disposition and avoid the need for judicial review." (Internal quotation marks omitted.) *Stepney*, *LLC* v. *Fairfield*, 263 Conn. 558, 564, 821 A.2d 725 (2003).

[15] We note that, in *Bateson* v. *Weddle*, supra, 306 Conn. 12–13, we reaffirmed the existence of a "broader and more lenient threshold [under *State ex rel. Waterbury* v. *Martin*, 46 Conn. 479, 482 (1878)] to establish [taxpayer] standing as an exception limited to the particular context of quo warranto proceedings. Thus, to determine whether the plaintiffs had standing to pursue the present action, we must determine (1) whether the plaintiffs' complaint does, indeed, sound in quo warranto, and (2) whether they demonstrated sufficient interest to establish standing to pursue the present action."

[16] Observing regulatory changes in the relevant licensing structure, the Wyoming Supreme Court first noted that the trial court therein had credited testimony of the state education superintendent and the Commissioner of Education that the administrative certificate held by the winner was of sufficient grade to qualify her as a county superintendent under the applicable rules. *State ex rel. Pape* v. *Hockett*, supra, 61 Wyo. 160–62.

[17] The court noted that "the presently operative civil service amendment to the [Colorado] [c]onstitution, § 13, article XII, which it is conceded, as is positively certain, placed the office of state bank commissioner under the classified civil service. The first paragraph of this amendment recites: 'Appointments and employments in and promotions to offices and places of trust and employment in the classified civil service of the state shall be made according to merit and fitness, to be ascertained by competitive tests of competence, the person ascertained to be the most fit and of the highest excellence to be first appointed. All appointees shall be qualified electors of the state of Colorado, except as to those offices or positions held by the civil service commission to require special training and technical qualifications, in which cases competitive tests need not be limited to qualified electors and may be held without the state.' " *People ex rel. Beardsley* v. *Harl*, supra, 109 Colo. 226.

[18] *Ex parte Sierra Club*, supra, 674 So. 2d 54, the more recent Alabama Supreme Court decision relied upon by the plaintiffs, does not undermine that court's decision in *State ex rel. McIntyre* v. *McEachern*, supra, 231 Ala. 609. In *Ex parte Sierra Club*, the Alabama Supreme Court concluded that the trial court lacked jurisdiction over a declaratory judgment action brought by the plaintiff, an environmental advocacy organization (club), challenging the legality of certain appointments to the state environmental management commission. *Ex parte Sierra Club*, supra, 55–57. The court determined that the club lacked standing to bring a declaratory judgment action because it had no interest in the offices at issue, but noted that the Alabama state legislature had provided for the writ of quo warranto, wherein the club would have had the limited standing necessary to challenge the legality of the commissioners' appointments and their qualifications for office. Id., 57–58; see also id., 58 ("The question whether [the appointees] were properly

or improperly appointed and confirmed strikes directly at the heart of their qualifications for those offices. Because [the appointees'] qualifications for service in office are being questioned, the writ of quo warranto is [the club's] only proper remedy in this case. . . . To suggest otherwise—that the qualifications of [the appointees] are not at issue—is to ignore [the club's] attempts to remove them from office or, at the least, require them to submit to another confirmation process." [Citations omitted.]).

In our view, *Ex parte Sierra Club* is distinguishable from *State ex rel. McIntyre* and inapposite to the present case. Specifically, we view *Ex parte Sierra Club* as limited to the topics of standing and appointment procedure. It did not address the club's specific objections to the merits of the commissioners' qualifications, or whether the writ of quo warranto could provide relief vis-á-vis those particular objections. See id., 59 (Butts, J., dissenting) (noting that claims at issue centered on club's challenge to appointment and confirmation process, and "did not involve an allegation that the commission members are unqualified to hold those positions, and their qualifications are not at issue in this case").

[19] We note that, in concluding that fraud in the underlying application process was challengeable via quo warranto, the Appellate Court of Illinois also distinguished *State ex rel. McIntyre* v. *McEachern*, supra, 231 Ala. 609, and *People ex rel. Beardsley* v. *Harl*, supra, 109 Colo. 223, on the ground that the statutory qualifications at issue in those cases were vague and indefinite, rendering them more subject to administrative discretion, than the more specific educational and experiential qualifications at issue in the Illinois case. *People ex rel. Henderson* v. *Redfern*, supra, 48 Ill. App. 2d 111–12.

[20] The plaintiffs rely specifically on *People ex rel. Henderson* v. *Redfern*, supra, 48 Ill. App. 2d 100, and *State ex rel. Oregon Consumer League* v. *Zielinski*, supra, 60 Or. App. 654. In our view, both of these cases are, however, distinguishable. First, the Illinois decision in *People ex rel. Henderson* is grounded in the official's fraudulent submissions to the certifying civil service agency—an issue not present in the present case. *People ex rel. Henderson* v. *Redfern*, supra, 110. Further, *Zielinski* is inapposite because the statutory qualifications of the agriculture board member therein were not subject to a licensing or certification determination that previously had been made by an administrative agency. See *State ex rel. Oregon Consumer League* v. *Zielinski*, supra, 658.

Moreover, we note that *Zielinski* was not a unanimous decision. The dissenting judge astutely observed that the "majority's holding constitutes an unauthorized intrusion into the domain of the executive branch of our state government, and the reasoning on which the holding rests unfortunately opens the door to similar intrusions in the future," arguing that, "as the majority has apparently forgotten, that we are not called upon here to determine the merits of this appointment." (Emphasis omitted.) Id., 660 (Rossman, J., dissenting). The dissenting judge relied on the Alabama decision in *State ex rel. McIntyre* v. *McEachern*, supra, 231 Ala. 609, noting that, as in that case, "where there were no definite, statutorily-defined standards for determining whether the road and bridge foreman was an 'experienced road builder' and a 'competent engineer,' here there are no specific, objective criteria prescribed in the pertinent statute on which to base a determination whether [the] defendant '[is] representative of consumer interests of the state.' " *State ex rel. Oregon Consumer League* v. *Zielinski*, supra, 661. The dissent then attacked the majority's interpretation of the governing statute as providing that, "in effect, that anyone engaged in farm production is automatically disqualified from serving on the [agricultural board] as a 'representative of consumer interests,' " and emphasized that whether a candidate is " 'representative of consumer interests' " is "relative in essence, and different persons are likely to disagree whether a prospective appointee 'possesses' those qualities. Thus, this decision is committed to the executive branch and not the courts." (Emphasis omitted.) Id., 661–63.

[21] Specifically, in *Deguzis*, the plaintiffs, who had received lower scores on the promotional examination than the defendant, contended that the defendant had been appointed to the office of fire captain in violation of the Bristol city charter; *Deguzis* v. *Jandreau*, supra, 27 Conn. App. 422; which required that the prerequisite civil service examination " 'be based on [f]ire [d]epartment material taken from current reference sources. Prior to the exam, each applicant shall upon request, be provided by [d]irector of [p]ersonnel, with a bibliography of the sources used in preparing the test.' " Id., 422 n.2. Relying on this charter provision, the plaintiffs alleged that the defendant, who achieved the highest score on the test, had improperly

received credit for his answer to a specific multiple choice question; further, the plaintiffs had improperly not received credit for selecting a different answer choice. Id., 423–24.

[22] We recognize that the common-law rule provides for an exception in cases of fraud perpetrated by the public officer during the vetting process. See, e.g., *People ex rel. Henderson* v. *Redfern*, supra, 48 Ill. App. 2d 110–12; *State ex rel. Pape* v. *Hockett*, supra, 61 Wyo. 162–63. Because allegations of fraud are not, however, before us in the present case, we need not consider herein whether to adopt that exception.

[23] We disagree with the plaintiffs' claim that they were not required to exhaust their administrative remedies because, had the "state board . . . entertained a request by [the] plaintiffs to determine whether [the] defendant had completed a school leadership program, [the] plaintiffs would certainly not have been aggrieved by an adverse decision, and not, therefore, entitled to appeal." The plaintiffs accurately cite *Bingham* v. *Dept. of Public Works*, 286 Conn. 698, 706, 945 A.2d 927 (2008), for the proposition that the "expansive right to petition for a declaratory ruling under § 4-176 therefore does not confer an automatic right to appeal under [General Statutes] § 4-183." See id., 706–707 (petition for declaratory ruling does not, without more, "establish the first requisite for classical aggrievement—that [the plaintiffs] had a specific, personal and legal interest in the decision of the commissioner different from that of the general public"). We view the plaintiffs as arguing, in essence, that resort to administrative procedures would be futile or inadequate because, unlike with a quo warranto action; see *Bateson* v. *Weddle*, supra, 306 Conn. 12–13; they lack the standing necessary to challenge an adverse administrative determination in court in a subsequent administrative appeal brought pursuant to § 4-183. See, e.g., *Piteau* v. *Board of Education*, 300 Conn. 667, 684–85, 15 A.3d 1067 (2011) (explaining futility and inadequacy exceptions to exhaustion doctrine). We disagree, and instead agree with the reliance of the amici on *River Bend Associates, Inc.* v. *Water Pollution Control Authority*, 262 Conn. 84, 101, 809 A.2d 492 (2002), for the proposition that it does not matter for exhaustion purposes that those administrative remedies "could not provide the relief the plaintiffs preferred: removal of the defendant." "It is well established . . . [t]he plaintiff's preference for a particular remedy does not determine the adequacy of that remedy. [A]n administrative remedy, in order to be adequate, need not comport with the [plaintiff's] opinion of what a perfect remedy would be." (Internal quotation marks omitted.) *Piteau* v. *Board of Education*, supra, 685. This "lack of standing to pursue administrative appeals . . . does not constitute futility that would excuse the necessity of recourse to those procedures." *Andross* v. *West Hartford*, 285 Conn. 309, 334, 939 A.2d 1146 (2008); cf. id., 335 ("[i]t would be anomalous to excuse the plaintiffs from exhausting administrative remedies because they lacked standing to pursue those remedies in that forum and then permit them to obtain relief in another forum by way of an independent action by applying a less stringent standing requirement"); see also *Connecticut Business & Industry Assn., Inc.* v. *Commission on Hospitals & Health Care*, 218 Conn. 335, 346–48, 589 A.2d 356 (1991) (plaintiffs lacked standing to bring declaratory judgment action, despite fact that their previous administrative appeals challenging same administrative decision had been dismissed for lack of aggrievement).