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**SUPREME COURT  
of the  
STATE OF CONNECTICUT**

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**S.C. 20723**

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**STATE OF CONNECTICUT  
v.  
MATTHEW AVOLETTA, ET AL**

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**REPLY BRIEF OF THE DEFENDANT-APPELLANTS**

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## **CERTIFIED QUESTION**

**"Did the Appellate Court correctly determine that No. 17-4 of the 2017 Special Acts is an unconstitutional public emolument?"**

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## ARGUMENT

The Defendants respectfully offer the following in reply to the State's brief.

The State's argument in support of the constitutionality of Special Act #17-4 must be rejected for three main reasons: (1) the State failed, altogether, to answer this Court's question, i.e., "Did the Appellate Court correctly determine that No. 17-4 of the Special Acts is an unconstitutional public emolument?"; (2) the State failed to address or analyze, at all, whether the Appellate Court determined if the State met its burden of proving that the legislature's sole objective in adopting the Act was to grant personal gain to an individual; and, most importantly, (3) the State failed to address, analyze, or apply this Court's binding precedents to the decision of the Appellate Court.

### **I. The State failed, altogether, to answer this Court's question, i.e., "Did the Appellate Court correctly determine that No. 17-4 of the 2017 Special Acts is an unconstitutional public emolument?"**

In its brief, the State ignored that question completely, and, instead, re-framed it as follows: the "sole question before this Court is whether the legislature constitutionally excused Defendants' violation of §4-148(a) through Special Act 17-4 ("the Act"), which purports to authorize Defendants - and only these Defendants - to present their untimely claim to the Claims Commissioner." State's brief, 7. The State then answered its own question, stating the legislature "did not" do so, and that the "only legitimate public purpose in this context is if the State caused the untimely filing...even if resolving the claim on its merits could lead to 'substantial injustice' or would 'send[] a message' to state employees and thereby encourage accountable state government". Id., 7-8.

The State, thus, intentionally skipped over the Appellate Court's decision, in its entirety, and addressed only the lower courts' decisions on the narrow issue of timeliness of the 2007 claim under §4-148(a), concluding that "The lower courts have therefore correctly held...that the legislature's various efforts to authorize Defendants' untimely claim are unconstitutional, including most recently through the Act", and that "This Court should follow its established precedents that compelled that conclusion and affirm the judgment". *Id.*, 8. This, apparently, is the totality of the State's claim.

Indeed, the State provided extensive argument about the validity of General Statute §4-148(a); about lower court cases related to §4-148(a); and about whether the state caused an individual to delay in meeting a filing deadline, arguing that "the only" public policy purpose in allowing an untimely claim to proceed is if the State caused the delay. The State then reasoned that because the State did not cause the present Defendants to delay in filing their original claim in 2007, the Special Act is unconstitutional. The State provided no argument, at all, however, assessing the Appellate Court's decision on the matter. That, alone, is sufficient for this Court to reject the State's purported argument.

In addition, however, the State's argument should be rejected on the merits. Intentionally or not, the State failed to acknowledge the reality that its argument is no longer about §4-148(a) and whether the State caused a delay in the 2007 filing. The argument, more properly, at this stage, is focused on General Statute §4-148**(b)**, and whether the Appellate Court adequately analyzed and determined whether the legislature acted constitutionally in adopting the Special Act in accordance with that statute, which specifically authorizes the legislature to allow a claim to proceed, despite its having been

untimely filed. General Statute §4-148(b) only requires the legislature to do so in a specific manner, by Special Act, and to articulate a public policy purpose in doing so. In the present case, the legislature did just that. It strictly complied with §4-148(b), adopting it as Special Act #17-4, and articulating a public policy purpose in doing so. The issue that remained was whether the Appellate Court properly concluded that, notwithstanding the strict compliance of the legislature with §4-148(b), the Special Act was an exclusive public emolument. This the State failed to address. Despite being directed to do so by this Court, the State failed to provide any analysis or argument on the actual question of whether the Appellate Court correctly concluded that the Special Act was unconstitutional, given that the legislature strictly complied with §4-148(b) and articulated a valid public purpose.

Instead, knowingly disregarding this Court's directive, the State redirected and reframed the argument, answering its own question, urging this Court to rely only on decisions of "lower courts", while completely ignoring any analysis of the correctness of the Appellate Court's decision.

Because the State utterly failed to address or analyze, at all, the actual question before this Court, any other argument the State put forward is irrelevant and without merit.

This Court repeatedly has stated that it is "not required to review issues that have been improperly presented to this court through an inadequate brief.... Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly." (Internal quotation marks omitted.) *Traylor v. State*, 332 Conn. 789 (2019). "Whe[n] an issue is merely mentioned, but not briefed beyond a bare assertion of the claim, it is deemed to have been waived.... In addition, mere conclusory assertions regarding a claim,

with no mention of relevant authority and minimal or no citations from the record, will not suffice." (Internal quotation marks omitted.)

*Manere v. Collins*, 200 Conn.App. 356, 358 n.1, (2020); see also *Barros v. Barros*, 309 Conn. 499, 503 n.4 (2013) (claim deemed abandoned when defendant merely referenced actions by trial court but failed to provide any legal analysis).

Therefore, for those reasons, alone, this Court must determine that the State has inadequately briefed, waived, and/or abandoned any claim it might have had that the Appellate Court decision was correct.

**II. The State failed to address or analyze, at all, whether the Appellate Court determined if the State met its burden of proving that the legislature's sole objective in adopting the Act was to grant personal gain to an individual.**

As the Defendants pointed out in their brief,

"To prevail under article first, § 1, of our constitution, the **state must demonstrate** that 'the **sole objective** of the General Assembly is to **grant personal gain or advantage to an individual.**' *State ex rel. Higgins v. Civil Service Commission*, 139 Conn. 102, 106 (1952). In fact, a statute may be deemed unconstitutional only "when the case for invalidity is established beyond a reasonable doubt". *Kerrigan v. Commissioner of Public Health*, 228 Conn. 135, 300 (2008) (Borden, J., concurring).

In the present case, however, instead of running down the same rabbit hole as the State in deflecting and reframing the issue, this Court rightly focused narrowly on the question of whether the Appellate Court's decision concerning the Special Act was correct. Irrefutably, as part of that decision, the Appellate Court had a duty to determine whether the State met its heavy burden of proof, beyond a



reasonable doubt, that the sole objective of the legislature's articulated public purpose was to provide an exclusive benefit to an individual.

Instead of addressing that issue, head on in its brief, however, the State failed even to mention the Appellate Court's decision, or its own burden of proof, at all. Rather, the State continued, throughout its brief, to go into great detail about its claim that the only legitimate public policy purpose for a Special Act is one in which the State caused the delay in filing a claim.

Peeking into that rabbit hole momentarily, and straying from the actual question at hand, as the State leads us, and to correct the State, contrary to what the State alleges, this Court has not limited the public policy purpose exception "only" to procedural default caused by state action. This Court has the duty, discretion, and authority to determine, based on the documented intent of the legislature, and this Court's well established precedents, that a public policy purpose was fairly and appropriately articulated in any enactment, whether or not the State caused procedural default of an untimely filing. It is ludicrous for the State to claim otherwise. That is the function of this Court - to make discretionary decisions on the meaning of any legislative enactment. That discretionary function is not hamstrung by an artificially imposed limitation that a public policy purpose can be found only if the State caused an individual to file an untimely claim.

Furthermore, it is ludicrous for the State to have put forth an argument that posits two incongruous, opposing, and illogical theories. The State has argued, on the one hand, that the public policy purpose articulated by the legislature in the Special Act of "encouraging accountable state government" is unconstitutional because the Act benefits *only the present Defendants*. Yet, the State argues, on the other hand, because the Act is unconstitutional because it "applies

equally to *all litigants* and would be achieved by resolving all claims against the State on their merits”.

That reasoning defies the State’s own logic. Clearly, the State is obfuscating in making those wholly contradictory arguments, without basis, in the hopes that, at least one of them will stick to the wall. This Court should not while away its time in consideration of such illogical argument, especially when that contradictory argument is irrelevant to the main question before this Court as to whether the Appellate Court conducted appropriate analysis and reached a correct conclusion, based on the actual facts, the actual legislative intent, and the actual truly relevant precedents of this Court.

Leaving that rabbit hole, then, to address the actual issue before this Court, the State failed to address or analyze the correctness of the Appellate Court’s decision, given that the Appellate Court omitted any reference in its decision as to whether the State proved, beyond a reasonable doubt, that the legislature’s sole intent was to provide these Defendants, alone, an unconstitutional public benefit.

In its brief, the State completely ignored, not only the actual question before this Court, but also ignored analysis of its own burden to prove, beyond a reasonable doubt, that the legislature’s “sole” objective in adopting the Special Act was to grant personal gain to an individual. The State did not make even a single attempt to address that burden, or to prove it had met that burden. That, alone, also is sufficient to reject the State’s argument.

Instead, the State went one step further to boldly claim, without any basis, that the legislature cannot articulate “any” “legitimate” public policy purpose for its Acts, other than the State causing an individual’s delay in filing a claim. Stuningly, the State argues that this Court should totally ignore the public policy purpose that the

legislature actually articulated in the Special Act, and should totally ignore the intent of the General Assembly as shown in its legislative history, and simply blithely agree that “encouraging accountable state government is not a legitimate public purpose”; that a legislative intent to promote safety and “good health for school children” cannot be implied as a legitimate public policy purpose; and that “ensuring that claims are adjudicated on their merits” also is “not a legitimate public purpose”. State’s brief, 25-61. Indeed, the State is adamant that the “only” “legitimate” public policy purpose that the legislature ever could articulate is that the State caused an individual to delay in filing a claim. Period. That proposal should be resoundingly rejected.

While that may be the considered opinion of the State, again, that opinion falls far short of proving the State’s heavy burden, beyond a reasonable doubt, that the legislature’s “sole objective” in adopting the Special Act was to grant personal gain to an individual. Indeed, by referencing the various public policy purposes that the legislature did articulate, and by referencing its legislative intent, the State actually impliedly acknowledges that the legislature did have more than one “sole” objective in adopting the Special Act. The fact that the legislature did have more than one “sole objective” actually is irrefutable as the record clearly shows that to be true. More than likely that is the reason why the State provides only opinion, and not countervailing facts or law, in its argument, and why that argument is not aimed at meeting the State’s burden at all. The State, by its argument, simply grasps at straws.

The facts are there for all to see. The legislature, not only articulated a legitimate public policy purpose on the face of the Special Act, but also articulated, by way of its legislative history, its intent to provide much more than personal gain to a single individual.

Therefore, because the State did not even mention its own burden of proof, or the Appellate Court's failure to analyze that burden of proof; because the State offered absolutely nothing to show that it met that burden of proof; and because the underlying facts on the record and the legislative history clearly show that the legislature did **not** have as its "sole objective" to grant personal gain to an individual, the State utterly failed to establish that the Appellate Court was correct in finding the Act unconstitutional.

**III. The State failed to address, analyze, or apply this Court's binding, and controlling, precedents to the decision of the Appellate Court as to whether that decision was correct.**

In its brief, the State provided nary a word as to the Defendants' claim that the Appellate Court inappropriately failed to abide by this Court's binding and controlling precedents, which would have shown, and do show, that the Special Act is not an unconstitutional public emolument and the Appellate Court was wrong in concluding otherwise.

In fact, the State failed to refute, at all, the Defendants' claim that several of this Court's binding precedents are dispositive of the issue, in that, having failed to apply those precedents, the Appellate Court did not correctly conclude that Special Act #17-4 was unconstitutional.

Once again, the State abandoned or waived any argument concerning the validity of those precedents, when the State completely ignored them, factually, legally, and analytically.

Among the most crucial facts that the Defendants addressed, in their own brief, was the fact that the Appellate Court failed to consider, apply, or analyze this Court's most relevant, binding, and controlling precedents. The Defendants pointed out that the Appellate

Court, first and foremost, failed to apply this Court’s finding in *Kerrigan v. Commissioner of Public Health*, 228 Conn. 135, 300 (2008), (Borden, J., concurring), that there is a “strong presumption of constitutionality” of legislative enactments, and that an enactment should be declared unconstitutional “**only when the case of invalidity is established beyond a reasonable doubt**”. In the present case, the invalidity was not established beyond a reasonable doubt. Yet, the Appellate Court did not apply this binding precedent, and did not include in its analysis any presumption of constitutionality or whether the Special Act’s invalidity was established beyond a reasonable doubt. **In its brief, the State completely ignored this issue.**

The Defendants also pointed out that this Court said in *Snyder v. Newtown*, 147 Conn. 374, 390 (1960), that in considering the validity of a legislative enactment, in the case of “real doubt, a law must be sustained”. The Defendants also pointed out that the Appellate Court did not apply this binding precedent, at all, choosing instead to find the Special Act unconstitutional, even though there was real doubt about its invalidity, given all of the underlying facts and legislative history presented. **In its brief, the State completely ignored this issue.**

The Defendants next pointed out that in *State v. Ross*, 230 Conn. 183, 236 (1994), this Court found that a court must “indulge in every presumption in favor of a statute’s constitutionality, and search for a construction that “reasonably accords with the legislature’s underlying intent”. The Defendants also pointed out that the Appellate Court also did not apply this binding precedent in its analysis and decision, even though there was a construction that reasonably accorded with the legislature’s underlying intent. **In its brief, the State completely ignored this issue, as well.**

The Defendants also pointed out that in *Honulik v. Town of Greenwich*, 293 Conn. 641 (2009), this Court said that a court has a “duty to construe statutes, whenever possible, to avoid constitutional infirmities”. The Defendants also pointed out that the Appellate Court did not apply this binding precedent in its analysis and decision, even though it was possible in the present case to avoid constitutional infirmities. Again, in its brief, **the State completely ignored this issue.**

The Defendants pointed out that in *Adams v. Rubinow*, 157 Conn. 150, 153 (1968), this Court said “where a statute reasonably admits of two constructions, one valid and the other invalid on the ground of unconstitutionality, courts should adopt the construction which will uphold the statute even though that construction may not be the most obvious one.” The Defendants also pointed out, again, that the Appellate Court did not apply this binding precedent in its analysis and decision, even though there were two constructions. Again, in its brief, **the State completely ignored this issue.**

The Defendants also pointed out in *Roan v. Connecticut Industrial Building Commission*, 150 Conn. 333, 345 (1963), this Court more emphatically stated, “[W]e are not to assess [the constitutionality of an act] in the light of what we think of the wisdom and discernment of the lawmaking body in the particular instance. Rather, we are bound to approach the question from the standpoint of upholding the legislation as a valid enactment unless there is no reasonable ground upon which it can be sustained.” The Defendants pointed out that the Appellate Court, in the present case, appears to have done just the opposite of what they were required to do, and assessed the Special Act’s constitutionality in light of what the court, itself, thought of the wisdom and discernment of the legislature was, instead of analyzing

whether there was no reasonable ground upon which it could be sustained. Again, in its brief, **the State completely ignored this issue.**

The Defendants pointed out, also in *Roan*, that this Court stated “a legislative enactment is not unconstitutional by reason of the fact that the purpose is not spelled out with clarion specificity”. The Defendants also pointed out that, assuming arguendo in the present case that the Appellate Court found the purpose of the Special Act not spelled out with clarion specificity, it, nonetheless, did not apply this binding precedent but, instead, found the enactment unconstitutional. Again, in its brief, **the State completely ignored this issue.**

The Defendants also pointed out, critically, in *Lyman v. Adorno*, 133 Conn. 511, 517 (1947), *Chotkowski v. State*, 240 Conn. 246 (1997), and *Merly v. State*, 211 Conn. 199, 205 (1989), that this court said “if there be the **least possibility** [that the enactment] will be promotive in any degree of the public welfare...the determination of the legislature is conclusive”; and that “if we can discern ‘**any conceivable justification** for [the] challenged legislation from the public viewpoint’...’**we are bound to uphold it** against a constitutional challenge.” (emphasis added). The Defendants pointed out that, in the present case, the Appellate Court also did not apply any of these important binding and controlling precedents in its analysis or decision. Again, in its brief, **the State completely ignored this issue.**

Finally, and most importantly, the Defendants pointed out that this court said in *Barnes v. New Haven*, 140 Conn. 8, 15 (1953), that while “[W]hat constitutes a public purpose is primarily a question for the legislature...its determination **should not be reversed by the court unless it is manifestly and palpably incorrect**”. (Emphasis

added). The Defendants pointed out that, once again in the present case, that the Appellate Court did not apply this most important binding and controlling precedent in its analysis or decision. Once again, in its brief, however, **the State completely ignored this issue as well.**

More than likely, it is reasonable to infer, that because the State could not refute any of this Court's binding and controlling precedents as applicable, therefore, the State did not do so.

Instead of conducting a complete and thorough analysis of all of this Court's binding and controlling precedents, the Appellate Court appears to have jumped down that rabbit hole, along with the State, and focused very narrowly on the State's singular, yet very flawed, argument that because the State did not cause the untimely 2007 filing of the claim, the 2017 Special Act was unconstitutional. Thus, because the Appellate Court was led down the garden path to this rabbit hole by the State, unfortunately, it jumped in with full force, with blinders on, ignored its duty bound role to conduct a thorough analysis while applying binding precedent, and found the Act unconstitutional.

Therefore, unequivocally, in light of these many binding and controlling precedents, and the State's glaring omission of any reference to them, this Court must determine that any argument that the State could have provided as to why the Appellate Court's decision was correct, must be considered inadequately briefed, waived, and/or abandoned.

In short, the Defendants cited valid argument and controlling precedents as to why the Appellate Court's decision declaring the Special Act unconstitutional was incorrect. The State not only failed to address the Defendants' arguments and the correctness of the Appellate Court's decision, but, more importantly, the State chose to



ignore this Court's binding and controlling precedents, just as the Appellate Court did.

Regardless, the conclusion is obvious. The State inadequately briefed, waived, and/or abandoned any argument it could have made under these controlling precedents, as did the Appellate Court, rendering the Appellate Court's decision wholly incorrect, and the State has failed to prove otherwise.

#### **IV. Conclusion:**

Because the State failed to answer this Court's question as to whether the Appellate Court correctly held the Special Act to be unconstitutional, because the State failed to meet its burden to prove the legislature's "sole objective" in adopting the Act was to grant personal gain to an individual; and because the State failed to address, analyze, or apply this Court's binding precedent to the decision of the Appellate Court, the State's arguments must be considered inadequately briefed, waived, and/or abandoned, and this Court must overrule the Appellate Court's decision and declare that the Special Act is constitutional.

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## **Certification of Electronic Filing of Brief**

Pursuant to P.B. §§62-7, 66-3, 67-2, 67-2A, 84-9, 84-11, and 84-12, it is hereby certified that a copy of the foregoing was sent electronically this date to: Michael K. Skold, Assistant Attorney General, Juris No. 434128, 55 Elm Street, P.O. Box 120, Hartford, CT 06141, Tel. (860) 808-5020, Fax (860) 808-5347, Email: michael.skold@ct.gov; and to the defendants Joanne Avoletta, Matthew Avoletta, and Peter Avoletta at 13 School Street, Torrington, CT, Tel. (860) 618-0598, email: [mimijta@gmail.com](mailto:mimijta@gmail.com).

It is also certified that the reply brief filed with the clerk is a true copy of the reply brief filed electronically.

It is also certified that a copy of the reply brief has been sent electronically to each counsel of record in compliance with Section 62-7, except for counsel of record exempt from electronic filing pursuant to Section 60-8, to whom a paper copy of the reply brief must be sent; the reply brief has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law, unless the brief is filed pursuant to Section 79a-6; and that the word count in the brief is 3,744 words.

It also is certified that the brief complies with all provisions of this rule, and that no deviations from this rule were not requested or approved, and that a copy of the electronic confirmation receipt indicating that the reply brief was submitted electronically in compliance with subsection (f) of §67-2A is being filed with the paper copies of the reply brief.

It is also certified that this document complies with all applicable rules of appellate procedure.

*/s/ Deborah G. Stevenson*

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