McLACHLAN, J., dissenting. I respectfully disagree with the majority's conclusion that we should part ways with well established United States Supreme Court precedent and a majority of jurisdictions throughout the nation.

Our Supreme Court has determined that when an overlap between state and federal law is deliberate, federal precedent is particularly persuasive. *Commission on Human Rights & Opportunities* v. *Savin Rock Condominium Assn., Inc.*, 273 Conn. 373, 386, 870 A.2d 457 (2005). Conversely, we have been reluctant to interpret state statutory schemes in a manner at odds with federal schemes on which they are modeled. See, e.g., *Blasko* v. *Commissioner of Revenue Services*, 98 Conn. App. 439, 456, 910 A.2d 219 (2006) (finding "highly significant" that federal tax code permitted plaintiffs to claim credit, while interpretation of state credit scheme, which sought "to mirror the federal credit scheme" disallowed application of any credit).

In drafting and modifying the Connecticut Fair Employment Practices Act (CFEPA), General Statutes § 46a-51 et seq., our legislature modeled CFEPA after its federal counterpart, Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. § 2000e et. seq., and it has sought to keep our state law consistent with federal law in this area. See, e.g., *Commission on Human Rights & Opportunities* v. *Savin Rock Condominium Assn., Inc.*, supra, 273 Conn. 385 ("[w]ith the intent of creating a state antidiscrimination housing statute consistent with its federal counterpart, the legislature adopted [General Statutes] § 46a-64c and related provisions"). Accordingly, in matters involving the interpretation of the scope of our antidiscrimination statutes, our courts consistently have looked to federal precedent for guidance. *Brittell* v. *Dept. of Correction*, 247 Conn. 148, 164, 717 A.2d 1254 (1998) ("[i]n defining the contours of an employer's duties under our state antidiscrimination statutes, we have looked for guidance to federal case law interpreting Title VII of the Civil Rights Act of 1964, the federal statutory counterpart to [General Statutes] § 46a-60").

The issue before us concerns the proper interpretation of CFEPA's filing limitations statute, General Statutes § 46a-82 (e), which provides in relevant part: "Any complaint filed pursuant to this section must be filed within one hundred and eighty days after the alleged act of discrimination . . . ." Where, as here, the alleged act of discrimination is the termination of employment, § 46a-82 (e) provides no guidance to assist us in determining precisely at what point the alleged act of discrimination occurs. As the majority correctly notes, therefore, this issue presents a question of first impres-

sion in Connecticut that requires us to look to extratextual evidence to determine at what point the "discharge from employment" arises, triggering the 180 day filing limitations period in § 46a-82 (e). See General Statutes § 1-2z.

Beginning with the legislative history, in modifying the filing limitations period set forth in § 46a-82 (e), the legislature has expressed its clear intent to keep state law *consistent* with federal law. *Williams* v. *Commission on Human Rights & Opportunities*, 257 Conn. 258, 275, 777 A.2d 645 (" 'The 1974 [G]eneral [A]ssembly increased the period for filing complaints with the [c]ommission from ninety to one hundred eighty days after the alleged act of discrimination, *which reflected its concern for consistency with the federal legislation* and presumably extended that back pay to one hundred eighty days.' 18 H.R. Proc., Pt., 2, 1975 Sess., pp. 908–909." [Emphasis added; internal quotation marks omitted.]), on appeal after remand, 67 Conn. App. 316, 786 A.2d 1283 (2001). Thus, it is no coincidence that § 46a-82 (e) is, in all relevant respects, identical to its federal counterpart, 42 U.S.C. § 2000e-5 (e) (1), which provides in relevant part that "[a] charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred . . . ."

The majority references portions of the legislative history of § 46a-82 (e) as evidence that the legislature sought to avoid the dismissal of complaints due to late filing and concludes that "[o]ur interpretation of § 46a-82 (e) must be mindful of that legislative policy." However, the majority fails to address adequately why we should ignore the expressly stated legislative intent to keep the statute consistent with its federal counterpart and "to bring state law into accord with federal law." *Williams* v. *Commission on Human Rights & Opportunities*, supra, 257 Conn. 274.[1] Because we are asked to interpret the provisions of a state statute that is virtually identical to its federal counterpart, and our legislature has clearly expressed its intent to harmonize state law with federal law in this area, I find no compelling reason why we should not accord great deference to the United States Supreme Court, which has already resolved the issue before us.[2]

In *Delaware State College* v. *Ricks*, 449 U.S. 250, 101 S. Ct. 498, 66 L. Ed. 2d 431 (1980), the United States Supreme Court held that the period for filing a discriminatory discharge complaint accrues when the employer unequivocally notifies the employee of termination. Similarly, in *Chardon* v. *Fernandez*, 454 U.S. 6, 8, 102 S. Ct. 28, 70 L. Ed. 2d 6 (1981), the court explained: "[R]espondents were notified, when they received their letters [giving them specific dates when their employment would end], that a final decision had been made to terminate their appointments. The fact that they were afforded reasonable notice cannot extend the period

within which suit must be filed." As the majority concedes, the *Ricks-Chardon* rule has been applied uniformly in lower federal courts in filing limitation cases[3] and adopted by a majority of state courts throughout the nation.[4]

The majority relies on our Supreme Court's explanation that we may depart from federal precedent "under certain circumstances." *State* v. *Commission on Human Rights & Opportunities*, 211 Conn. 464, 470, 559 A.2d 1120 (1989). On the basis of policy concerns arising from the application of the *Ricks-Chardon* rule, the majority concludes that it is appropriate not to follow the rule because CFEPA is a remedial statutory scheme, designed to avoid the dismissal of complaints and therefore must be liberally construed. In the antidiscrimination context, however, a departure from federal precedent has been recognized only in highly limited circumstances to fill in the gaps in federal legislation on matters of substance rather than on procedural issues. See *Evening Sentinel* v. *National Organization for Women*, 168 Conn. 26, 34 n.5, 357 A.2d 498 (1975) (departing from federal statute where federal statute drew distinction between sex and race discrimination). Here, we are concerned with the interpretation of a procedural time limit. It cannot be disputed that the legislature intended that *some* finite deadline would exist for filing an employment discrimination claim. See *Williams* v. *Commission on Human Rights & Opportunities*, supra, 257 Conn. 284 ("[w]e conclude that the time limit of § 46a-82 (e) is mandatory"). The majority cites no authority to support the notion that we ought to depart from sound federal precedent in interpreting a procedural statute such as § 46a-82 (e), which our legislature has amended to keep consistent with its federal counterpart.

Further, I am unconvinced that the policy considerations raised by the majority are so significant to warrant an outright rejection of federal precedent because there are sound policy considerations supporting the *Ricks-Chardon* rule. As the United States Supreme Court recently observed in a similar context: "Statutes of limitations serve a policy of repose. . . . They represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time and that the right to be free of stale claims in time comes to prevail over the right to prosecute them." (Citation omitted; Internal quotation marks omitted.) *Ledbetter* v. *Goodyear Tire & Rubber Co.*, U.S. , 127 S. Ct. 2162, 2170, 167 L. Ed. 2d 982 (2007) (holding that Title VII pay discrimination claim cannot be based on allegedly discriminatory events that occurred before last pay decision that affected employee's pay during relevant filing limitation period). With respect to the Title VII federal counterpart of § 46a-82 (e), therefore, the United States Supreme Court explained: "The [federal Equal Employment Opportu-

nity Commission] (EEOC) filing deadline protect[s] employers from the burden of defending claims arising from employment decisions that are long past. . . . Certainly, the 180-day EEOC charging deadline, 42 U.S.C. § 2000e–5 (e) (1), is short by any measure, but [b]y choosing what are obviously quite short deadlines, Congress clearly intended to encourage the prompt processing of all charges of employment discrimination. . . . This short deadline reflects Congress' strong preference for the prompt resolution of employment discrimination allegations through voluntary conciliation and cooperation." (Citations omitted; internal quotation marks omitted.) *Ledbetter* v. *Goodyear Tire & Rubber Co.*, supra, 2170–71.

Thus, as the majority notes, the *Ricks* court explained that the "limitations periods, while guaranteeing the protection of the civil rights laws to those who promptly assert their rights, also protect employers from the burden of defending claims arising from employment decisions that are long past." *Delaware State College* v. *Ricks*, supra, 449 U.S. 256–57; see also *Haas* v. *Lockheed Martin Corp.*, 396 Md. 469, 507–508, 914 A.2d 735 (2007) (Battaglia, J. dissenting) ("I believe that the majority is wrong in rejecting the Supreme Court's *Ricks/Chardon* Rule because it fits tongue and groove with this Court's long adherence to the discovery rule, which provides that the statute of limitations begins to run when the plaintiff discovers, or through the exercise of due diligence, should have discovered, the injury, damages or potential claim. . . . We adopted the discovery rule because it provides adequate time for diligent plaintiffs to initiate an action while also ensuring fairness to defendants by encouraging the prompt filing of claims, suppressing stale or fraudulent claims, and avoiding inconvenience which may stem from delay." [Citations omitted.]). The *Ricks* court also observed that the alternative " 'final day of employment' " rule could discourage employers from giving employees a grace period to seek employment elsewhere. *Delaware State College* v. *Ricks*, supra, 260 n.12.

In following the *Ricks-Chardon* rule, many of our sister states have discussed public policy concerns in support of adopting the rule and disfavoring a contrary approach. In *Clarke* v. *Living Scriptures, Inc.*, 114 P.3d 602, 606 (Utah App. 2005), the Utah Court of Appeals explained that "[a] rule that extends the statute of limitations to the last date of employment, rather than the date the employee receives notice of termination, would discourage employers from providing post-termination benefits. See, e.g., [*Naton*] v. *Bank of* [*California*], 649 F.2d 691, 695 (9th Cir. 1981) ('[A] rule focusing on the date of termination of economic benefits might dissuade an employer from extending benefits to a discharged employee after the employee had ceased working.'); *Bonham* v. *Dresser* [*Industries, Inc.*], 569 F.2d 187, 191–92 (3d Cir. 1977) ('We would . . . view

with disfavor a rule that penalizes a company for giving an employee periodic severance pay or other extended benefits after the relationship has terminated rather than severing all ties when the employee is let go.') [cert. denied, 439 U.S. 821, 99 S. Ct. 87, 58 L. Ed. 2d 113 (1979)]." In *Hilmes* v. *Dept. of Industry, Labor & Human Relations*, 147 Wis. 2d 48, 53, 433 N.W.2d 251 (Wis. App. 1988), the Court of Appeals of Wisconsin emphasized that "[k]eying an 'occurrence' of discrimination to a time prior to termination can afford the employee an opportunity to prevent—rather than rectify—wage loss and other harmful effects of the discriminatory practice."

In *Turner* v. *IDS Financial Services, Inc.*, 471 N.W.2d 105, 108 (Minn. 1991), the Supreme Court of Minnesota determined that the date of notification was the correct measure. In so holding, the court explained that at the date of notification, the plaintiff "immediately attains a lame duck status and, prior to actual discharge, may well incur employment agency fees and sustain damages for 'mental anguish and suffering' . . . Put another way, if the discharged employee prior to the date of actual discharge obtains another job paying as well or better, we do not think the unfair discrimination claim is always or even usually gone." (Citation omitted.) Id.

In addition to the policy concerns weighing in favor of an adoption of the *Ricks-Chardon* rule, I am also concerned that an application of the majority's holding may lead to curious results in federal court. In *Bogle-Assegai* v. *State*, 470 F.3d 498, 500 (2d Cir. 2006), the plaintiff received a letter from her employer on March 29, 2001, informing her that her employment would be terminated effective April 12, 2001. On October 1, 2001, the plaintiff filed an administrative complaint with the EEOC and received a right to sue letter. Id. The plaintiff commenced an action against her employer, alleging, inter alia, discriminatory discharge in violation of Title VII and a violation of CFEPA. Id., 501. Relying on the March 29, 2001 date of notification, the Court of Appeals affirmed the District Court's dismissal of the plaintiff's Title VII claims on the grounds that 186 days had elapsed and therefore her administrative charge was not timely filed.[5] Id., 507. If I assume arguendo that this factual scenario were to arise in the wake of the majority's holding, and that the plaintiff's ancillary CFEPA claim had been otherwise properly filed, the federal court would be forced to engage in a schizophrenic application of the law, applying the date of termination on the state law claim and the date of notification on the federal law claim in determining whether to dismiss the action. Thus, the CFEPA claim would survive a motion to dismiss on the basis of the date of termination, yet the nearly identical Title VII claim would be subject to dismissal on the basis of the *Ricks-Chardon* rule.

Application of the majority's holding may cause equally significant uniformity problems in state court. Specifically, the court's ruling applies only in the context of termination from employment and does not clarify the application of § 46a-82 (e) to other forms of employment discrimination. If, for example, the alleged act is a discriminatory demotion, the court's departure from the *Ricks-Chardon* rule makes it entirely unclear whether the relevant filing limitations period would commence on the date of unequivocal notice of the demotion or on the date of the actual demotion.

Finally, I believe that the policy concerns raised in the majority opinion are issues that can be more appropriately addressed by the legislature. In examining the scope of our statutes, it is not the province of this court to usurp the legislative function. See *Mingachos* v. *CBS, Inc.*, 196 Conn. 91, 106, 491 A.2d 368 (1985). Although it is certainly the province of the court to consider policy matters when interpreting unclear statutes, the proper venue to consider countervailing policy concerns that arise in the context of establishing or effectively changing the duration of a limitations statute is in the legislature. See, e.g., *Sanders* v. *Officers Club of Connecticut, Inc.*, 196 Conn. 341, 353, 493 A.2d 184 (1985) ("[T]he plaintiff asks that we declare [the dram shop damages limitation statute] unconstitutional [inter alia] on the ground that the damage limitation in the statute flies in the face of the true intent of the legislature . . . . *It is settled in this state that changing the limitation is a matter for the legislature. If the damage limitation is inadequate, then the proper remedy is to increase the statutory limitation by legislative enactment rather than by overturning established judicial principles and precedents.*" [Citation omitted; emphasis added; internal quotation marks omitted.]); see also *Ledbetter* v. *Goodyear Tire & Rubber Co.*, supra, 127 S. Ct. 2170 ("[r]espectful of the legislative process that crafted [Title VII], we must give effect to the statute as enacted . . . and we have repeatedly rejected suggestions that we extend or truncate Congress' deadlines" [citation omitted; internal quotation marks omitted]). Here, the legislature has evinced its intent to be guided by federal law in this area, and there are clearly competing policy concerns surrounding the issue. See *Turner* v. *IDS Financial Services, Inc.*, supra, 471 N.W.2d 107 ("the competing [policy] arguments tend to counterbalance each other"). Thus, if the filing limitation period is inadequate, then the proper remedy is to increase the statutory limitation by legislative enactment rather than by overturning established federal judicial principles and precedents, to which, in this circumstance, we ought to accord great deference.[6] See generally *Sanders* v. *Officers Club of Connecticut, Inc.*, supra, 353.

Because I believe that, pursuant to the *Ricks-Char-*

don rule, the alleged act of discrimination occurred when the plaintiff, Peter J. Vollemans, Jr., received unequivocal notification of the termination of his employment, I would address the plaintiff's second claim that the trial court improperly concluded that there was no genuine issue of fact as to whether the plaintiff received unequivocal notice of the termination of his employment prior to November 13, 2002. In a footnote, the majority indicates that evidence that the plaintiff was informed on February 25, 2000, that his position would be eliminated, yet remained in the employ of the defendant, the town of Wallingford, for two years thereafter, coupled with the defendant's failure to submit evidence of an unequivocal notice, suggests that a genuine issue of material fact may exist as to whether the plaintiff received unequivocal notice of the defendant's final and official termination decision.

The United States Court of Appeals for the Second Circuit has held that the statute of limitations begins to run on the date the employee receives a definite notice of termination representing the employer's official position. *Smith* v. *United Parcel Service of America, Inc.*, 65 F.3d 266, 268 (2d Cir. 1995). In *O'Malley* v. *GTE Service Corp.*, 758 F.2d 818, 820 (2d Cir. 1985), the Second Circuit affirmed the trial court's granting of summary judgment, holding that where the plaintiff confirmed knowledge of his impending early retirement in two separate documents and the defendant employer issued an announcement that the plaintiff was retiring, the plaintiff's claim was time barred. In *Stone* v. *National Bank & Trust Co.*, 1996 U.S. Dist. LEXIS 7927, *46 (N.D.N.Y. June 6, 1996) the District Court discussed that a relevant factor in granting summary judgment on grounds that the plaintiff's claim was time barred included the plaintiff's retention of counsel in connection with negotiating a severance agreement.

Here, the plaintiff concedes that in November, 2002, he was aware that the defendant was going to terminate his employment. Further, the plaintiff cannot reasonably dispute that on or prior to November 13, 2002, he retained counsel to represent him related to this termination. Most importantly, on November 13, 2002, in a letter sent to the defendant by his attorney, the plaintiff, through his attorney, stated: "As you probably know, [the plaintiff's employment] is scheduled to terminate effective on or about December 31, 2002, with the closure of the Power Plant being proffered as the alleged justification for that termination." Thus, the plaintiff's retention of counsel and the content of the letter sent to his employer by his attorney makes it overwhelmingly clear that the defendant had given the plaintiff unequivocal notice of termination sometime prior to November 13, 2002. Compare *Smith* v. *United Parcel Service of America, Inc.*, supra, 65 F.3d 267 (finding notice equivocal in that plaintiff advised by employer only that he should "think about [his] future

with the company" and told he "wasn't carrying his weight" [internal quotation marks omitted]). Moreover, as the trial court properly noted in its memorandum of decision, the defendant's December 13, 2002 letter providing the plaintiff with "*final* notice" of termination was simply further evidence that the defendant had previously given the plaintiff definite notice of the termination of his employment. (Emphasis added.).

For these reasons, I would conclude, as the trial court did, that the defendant met its burden to prove that there are no genuine issues of material fact regarding its claim that the plaintiff's complaint, which he filed with the commission on human rights and opportunities on June 3, 2003, was untimely pursuant to § 46a-82 (e). Therefore, I would affirm the judgment of the trial court rendering summary judgment in favor of the defendant.[7]

Accordingly, I respectfully dissent.

[1] The majority acknowledges that in amending § 46a-82 (e), the legislature's intent to promote consistency with federal law was "[e]qually significant" to the legislature's concern for ensuring that potentially meritorious claims were not dismissed due to late filing; however, the majority declines to give equally significant weight to the legislature's clearly stated intent to align state law with federal law in this area. Seeking to discount the importance of that intent, the majority points out that the rule established by the United States Supreme Court in *Delaware State College* v. *Ricks*, 449 U.S. 250, 101 S. Ct. 498, 66 L. Ed. 2d 431 (1980), and *Chardon* v. *Fernandez*, 454 U.S. 6, 102 S. Ct. 28, 70 L. Ed. 2d 6 (1981), was enunciated after the 1975 amendment. The majority has cited nothing from the legislative history to support that federal court decisions related to the date of accrual of a discriminatory discharge claim were considered by the legislature in its adoption of the amendment. Thus, it is pure speculation to infer that the legislature would depart from its expressly stated intent in light of *Ricks* and *Chardon*.

[2] It is axiomatic that Connecticut is the final arbiter of its laws. Where, as here, our legislature has deliberately overlapped state law with federal law and has expressed its intent to be guided by federal law in this area, we are compelled to consider United States Supreme Court precedent to be particularly persuasive not simply because the decision emanated from that court, but because our Supreme Court has instructed us to do so. See *Commission on Human Rights & Opportunities* v. *Savin Rock Condominium Assn., Inc.*, supra, 273 Conn. 386 ("when the overlap between state and federal law is deliberate . . . federal decisions are particularly persuasive"). As discussed in this opinion, in resolving the issue before us, it is clear that the final arbiter should be the General Assembly and not this court.

[3] See *Stewart* v. *Booker T. Washington Ins.*, 232 F.3d 844 (11th Cir. 2000) (statute of limitations begins to run when employee informed her employment is being terminated); *Thomas* v. *Eastman Kodak Co.*, 183 F.3d 38 (1st Cir. 1999) (holding action for discrimination began to accrue when employee notified of layoff), cert. denied, 528 U.S. 1161, 120 S. Ct. 1174, 145 L. Ed. 2d 1082 (2000); *Joseph* v. *New York City Board of Education*, 171 F.3d 87 (2d Cir.) (stating action for discriminatory discharge begins to accrue when employee notified of employer's discriminatory decision), cert. denied, 528 U.S. 876, 120 S. Ct. 182, 145 L. Ed. 2d 154 (1999); *McCoy* v. *San Francisco City & County*, 14 F.3d 28, 29 (9th Cir. 1994) ("[t]he touchstone for determining the commencement of the limitations period is notice"); *Lever* v. *Northwestern University*, 979 F.2d 552 (7th Cir. 1992) (holding action for gender discrimination accrued from time professor informed she would not be given tenure), cert. denied, 508 U.S. 951, 113 S. Ct. 2443, 124 L. Ed. 2d 661 (1993); *English* v. *Whitfield*, 858 F.2d 957 (4th Cir. 1988) (holding discrimination claim brought under employee protection section of Energy Reorganization Act of 1974, 42 U.S.C. § 5851, time barred because action began to accrue upon employee's notification of termination); *Janikowski* v. *Bendix Corp.*, 823 F.2d 945 (6th Cir. 1987) (holding discrimination claim brought under Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., began to accrue upon employee's notification of termination); *Bronze Shields, Inc.*

v. *New Jersey Dept. of Civil Service*, 667 F.2d 1074 (3d Cir. 1981) (holding action for discrimination accrued when state civil service promulgated eligibility roster for policemen that gave notice to plaintiffs of discriminatory decision), cert. denied, 458 U.S. 1122, 102 S. Ct. 3510, 73 L. Ed. 2d 1384 (1982).

[4] See footnote 17 of the majority opinion.

[5] The District Court previously dismissed the plaintiff's state law claims on unrelated grounds, and that dismissal was not challenged on appeal. See *Bogle-Assegai* v. *State*, supra, 470 F.3d 509.

[6] I recognize the majority's valid concern that a six month filing limitation may lead to harsh results; see, e.g., *Ledbetter* v. *Goodyear Tire & Rubber Co.*, supra, 127 S. Ct. 2170; however, the proper way to avoid such results is with a legislative enactment. Indeed, many jurisdictions have adopted similar statutes with filing limitations periods beyond 180 days. See, e.g., Cal. Gov't Code § 12960 (d) (Deering 2006) (one year); D.C. Code Ann. § 2-1403.04 (a) (LexisNexis 2001) (one year); Fla. Stat. Ann. § 760.11 (1) (West 2005) (365 days); Mass. Ann. Laws ch. 151B § 5 (LexisNexis Cum. Sup. 2007) (300 days); Mich. Comp. Laws § 600.5805 (10) (LexisNexis 2004) (three years); Minn. Stat. Ann. § 363A.28 subd. 3 (West 2004) (one year); N.Y. Exec. Law § 297 (5) (McKinney 2005) (one year); N.C. Gen. Stat. Ann. § 1-52 (5) (LexisNexis 2005) (three years); Or. Rev. Stat. § 659A.820 (1) (2005) (one year); W. Va. Code Ann. § 5-11-10 (LexisNexis 2006) (365 days).

[7] Because I conclude that summary judgment was appropriate on this ground, I express no opinion as to the defendant's alternate claims.