BISHOP, J., with whom PALMER, J., joins, concurring. I agree with the majority's analysis concerning the plaintiff's standing to seek declaratory relief, as well as its analysis of the constitutionality of General Statutes § 3-124. I also agree that the plaintiff, Susan Bysiewicz, does not meet the statutory qualifications for the office of attorney general of the state of Connecticut because the trial testimony established that, in her role as the secretary of the state, she did not have clients with whom she had a confidential relationship and to whom she owed a personal duty of loyalty,[1] and her occasional use of legal knowledge to fulfill her responsibilities does not comprise the active practice of law. Because these conclusions resolve the question posed by the plaintiff's declaratory judgment action, I believe we need go no further in interpreting § 3-124. I write separately because I cannot join the majority's determination that § 3-124 also requires that a candidate for the position of attorney general have litigation experience.

I begin my analysis with the language of the statute itself. By its terms, § 3-124 requires that, to be eligible for office, a candidate for the office of attorney general must be "an attorney at law of at least ten years' active practice at the bar of this state." Although acknowledging that the language of the statute is not plain and unambiguous, the majority nevertheless concludes that the terms "attorney at law" and "at the bar of this state" mean that, to be eligible, a candidate must have litigation experience. The majority purports to reach this conclusion from the statutory language itself and also by reference to "the circumstances surrounding the enactment of § 3-124 and the legislative policy that it was designed to implement."

I agree with the majority that the language of § 3-124 is not plain and unambiguous. I also believe we are in agreement that the statute, by its terms, does not expressly require an eligible candidate to have litigation experience. The ambiguity in this regard arises from the statutory terms "attorney at law" and "at the bar of this state."

In the absence of plain language, we turn to our rules of statutory construction to discern the statute's meaning. "In seeking to determine [the meaning of the statutory language as applied to the facts of a case], General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general

subject matter . . . ." (Internal quotation marks omitted.) *Grady* v. *Somers*, 294 Conn. 324, 333, 984 A.2d 684 (2009). In determining legislative intent, however, "[w]e are not at liberty to speculate upon any supposed actual intention of the legislature. We are not at liberty to imagine an intent and bind the letter of the act to that intent; much less can we indulge in the license of striking out and inserting and remodeling with the view of making the letter express an intent which the statute in its native form does not express." (Internal quotation marks omitted.) *State* v. *Faatz*, 83 Conn. 300, 306, 76 A. 295 (1910).

Also, as the majority points out, it is an axiom of statutory interpretation that statutory limitations on eligibility to run for public office should be liberally construed, and any ambiguities should be resolved in favor of eligibility. See *Carter* v. *Commission on Qualifications of Judicial Appointments*, 14 Cal. 2d 179, 182, 93 P.2d 140 (1939). I diverge from the majority because it addresses an issue it need not and, in doing so, it disregards the canon it claims to embrace, namely, that election statutes should be construed liberally in favor of eligibility. Instead, the majority imports into the statute a restriction on eligibility that is neither implied nor expressed by the statute's language.[2]

In reaching its conclusion, the majority determines that the phrase attorney-at-law necessarily means an attorney who appears in court. The majority relies, in large part, on the definition of attorney-at-law set forth in the 1891 edition of Black's Law Dictionary (Black's). Then, Black's defined attorney-at-law as, inter alia, "[a]n advocate, counsel, official agent employed in preparing, managing, and trying cases in court." Black, Dictionary of Law (2d Ed. 1891). Although I do not disagree that Black's is a legitimate reference for an understanding of the term attorney-at-law in 1891, I find Black's definition less persuasive than the United States Supreme Court's near contemporaneous elucidation of the term.

In 1879, the Supreme Court provided an extensive definition of the term attorney-at-law. In *Savings Bank* v. *Ward*, 100 U.S. 195, 199, 25 L. Ed. 621 (1879), the court stated: "Persons acting professionally in legal formalities, negotiations, or proceedings by the warrant or authority of their clients may be regarded as attorneys-at-law within the meaning of that designation as used in this country; and all such, when they undertake to conduct legal controversies or transactions, profess themselves to be reasonably well acquainted with the law and the rules and practice of the courts, and they are bound to exercise in such proceedings a reasonable degree of care, prudence, diligence, and skill." This definition of the term attorney-at-law does not instruct, nor imply, that an attorney-at-law must be involved in litigation. To the contrary, the Supreme Court's definition had a broad sweep, expressly including attorneys

whose practices were transactional in nature and unrelated to controversies.

Additionally, during this same time period, in Connecticut, a commission consisting of judges of the Superior Court developed the first rules of practice resulting in the Practice Act of 1879 (act). The act set forth orders and rules, as well as general rules of practice. The act contained numerous forms illustrating the practice rules, including the manner in which certain claims might properly be pleaded. Relevant to the issue at hand, the sample forms provide examples of pleadings for a number of different actions involving attorneys-at-law as parties. Notably, the examples include a form for bringing an action against an "attorney-at-law" for negligence in examining title. Importantly, in using the term attorney-at-law, the judges of the Superior Court did not distinguish between attorneys who practiced in court, either bringing or defending against actions, and those who were involved in transactional work, in this instance, examining title to property. Thus, it appears that during the same time period as the passage of the statute in question, the United States Supreme Court and the judges of our state did not consider the term attorney-at-law to relate specifically or exclusively to courtroom practice.

In sum on this point, although we need not decide the precise boundaries of professional activities that could qualify as being conducted by an attorney-at-law for the purposes of this appeal, it is sufficient to note that, in 1891, the term attorney-at-law was not a designation limited to attorneys with courtroom experience. Thus, even if the legislature subjectively intended to require that the attorney general be a person with litigation experience, that intention was not articulated by the use of the term attorney-at-law in § 3-124.

I also disagree with the majority's conclusion that the term "practice at the bar" necessarily means courtroom experience. First, I believe that, in this regard, the majority misapplies this court's holding in *State Bar Assn.* v. *Connecticut Bank & Trust Co.*, 145 Conn. 222, 140 A.2d 863 (1958), to the facts of this case. In that case, this court examined the unauthorized practice of law statute[3] and noted that, prior to its revision, nonattorneys were explicitly prohibited only from "plead[ing] at the bar of any court of this State . . . ." General Statutes (1887 Rev.) § 784; see *State Bar Assn.* v. *Connecticut Bank & Trust Co.*, supra, 233–34; see also *Grievance Committee* v. *Dacey*, 154 Conn. 129, 137–38, 222 A.2d 339 (1966) (until 1927, unauthorized practice of law statute prohibited only pleading at bar of any court of this state, but did not forbid practice of law outside of court), appeal dismissed, 386 U.S. 683, 87 S. Ct. 1325, 18 L. Ed. 2d 404 (1967). The references in those cases to "pleading" and "at the bar of any court in this state," are readily distinguished from the

statutory language of § 3-124, which addresses "practice at the bar of this state," without reference either to "pleading" or "court." These linguistic differences between the unauthorized practice of law statute and § 3-124 make it plain that if the General Assembly had wished to require expressly that a candidate for attorney general have a litigation practice, it knew how to do so by making reference either to the word pleading or by specifying that such experience had occurred at the bar "of any court."

Contrary to the majority's assertion that the phrase "at the bar" refers to the courtroom, I believe that the trial court correctly concluded that the meaning of "at the bar" depends upon the context in which it is used. This was as true in the nineteenth century as it is today. For example, in 1873, this court held, in *Phelps* v. *Hunt*, 40 Conn. 97, 101 (1873), that an attorney's standing at the bar was a relevant consideration in determining the value of services that he had rendered and for which he had brought an action. There, the phrase "at the bar" referred to an attorney's standing among his peers and had no relation to the courtroom. Id.[4] Indeed, the phrases, "at the bar," "to the bar" and "of the bar" are often used interchangeably. I agree that the phrase "at the bar" refers to being in the courtroom when it is used in the context of "at the bar of the court" or "plead at the bar" or "argue at the bar."[5] Because the phrase "at the bar" also has been used in reference to an attorney's standing in the legal community, however, the term "at the bar," without specific reference to court or pleading, cannot reasonably be understood to connote courtroom practice.

Furthermore, as the trial court also pointed out, the phrase "at the bar" was, and still is, used in our rules of practice governing the admission of attorneys, without examination, from other states and without regard to the particular form or setting of their intended practice. Section 8 (a) of rule 1 of the 1908 Rules of the Superior Court provides in relevant part: "Any attorney and counselor in the highest court of original jurisdiction in another state may be admitted to examination before [the bar examining] committee, upon satisfactory proof to said committee that he is such attorney and counselor, a citizen of the United States, a resident of the state of Connecticut or intends to become such resident, twenty-one years of age, of good moral character, and that he has filed with the clerk of the Superior Court in the county where the examination is to be held a certificate from the clerk of the Superior Court . . . together with a certificate of good moral character signed by two members of the bar of this state of at least five years' standing at the bar . . . ." Subsection (b) of § 8 of the 1908 Rules of the Superior Court provides in relevant part: "[i]f any such attorney and counselor shall have practiced for three years in the highest courts of another state he may be admitted by the court

as an attorney, without examination . . . [so long as he provides] a certificate of good moral character signed by two members of the bar of this state of at least five years' standing at the bar . . . ."

Today, Practice Book § 2-16, the rule allowing out-of-state attorneys to practice in Connecticut, permits such practice, without examination, by "[a]n attorney who is in good standing at the bar of another state . . . upon special and infrequent occasion and for good cause shown upon written application presented by a member of the bar of this state . . . ." The interchangeable uses of the terms "at the bar" and "of the bar" undermine the majority's conclusion that the phrase "at the bar," without reference to the court or pleading, means courtroom practice.

I acknowledge that the majority's conclusion that the General Assembly intended for the attorney general to have litigation experience finds some support in the responsibilities ascribed to that office by General Statutes § 3-125, which was enacted as part of the same Public Act as was § 3-124. See Public Acts 1897, CXCI, §§ 2 and 3. It is a fair conclusion that the responsibilities set forth in § 3-125 relate, primarily, although not exclusively, to the representation of agencies of the state in matters in court. Although this assignment of responsibilities is some evidence that the legislature intended for the attorney general to be a person capable of handling litigation, I do not believe that the implication of § 3-125 is sufficiently clear to overcome the unrestrictive language of § 3-124, which does not require that the attorney general be an attorney with ten years of litigation experience.

In sum, I agree with the majority that the eligibility requirements set forth in § 3-124 contain some ambiguity as to whether, to be eligible, a candidate for attorney general must have ten years of active courtroom practice. Contrary to the majority, however, I do not think a reasonable reading of the statutory language leads to the conclusion that the term "attorney at law" or the phrase "at the bar" refer to the courtroom. Rather, I believe, they refer to one's membership and active participation in the legal profession of the state. As to the assignment of responsibilities set forth in § 3-125, enacted simultaneously with § 3-124, although the recitation of responsibilities evinces a legislative interest in having an attorney general competent to handle litigation, the implication of § 3-125 is insufficient to overcome the nonrestrictive language of § 3-124. Finally, given the ambiguity in § 3-124, I am aware of no prudential reason to disregard our jurisprudence which counsels in favor of liberally construing ambiguous election eligibility statutes so as to give the electorate the broadest choice. Accordingly, I respectfully concur.

[1] In this regard, I am in complete agreement with the distinction made by the majority in footnote 27 regarding the practice of law by prosecutors who, by the nature of their work, represent the state and not individuals

or entities to whom they owe an individualized duty of loyalty and confidentiality.

[2] There is a paucity of legislative history with respect to § 3-124, and the history that is available does not give any indication whether the legislature intended to require that the attorney general have litigation experience. There is some anecdotal evidence, however, that the impetus for the establishment of the position was to alleviate the expenses being incurred by the various state agencies in seeking legal advice. See Connecticut State Register and Manual (1934) p. 79; Hartford Courant, May 15, 1897, p. 12 and May 21, 1897, p. 6. Additionally, although there was no discussion regarding a requirement for litigation experience, there was discussion in the press regarding the attempt to ensure that the position should not be filled by either a "retained lawyer [or] a bright political hustler." Hartford Courant, May 12, 1897, p. 8, May 14, 1897, p. 8, and May 18, 1897, p. 12.

[3] General Statutes (1887 Rev.) § 784 provides: "The Superior Court may admit and cause to be sworn as attorneys, such persons as are qualified therefor, agreeably to the rules established by the judges of said court; and no other person than an attorney, so admitted, shall *plead* at the bar *of any court* of this State, except in his own cause; and said judges may establish rules relative to the admission, qualifications, practice, and removal of attorneys." (Emphasis added.)

[4] Similarly, this court, in *Stoddard* v. *Sagal*, 86 Conn. 346, 348, 85 A. 519 (1912), held that in an action brought by an attorney for legal fees, evidence of the attorney's "character and standing [at the bar] . . . the experience acquired, the degree of skill, [and] the faculty of using professional knowledge" was admissible to prove the value of his services. There, as in *Phelps* v. *Hunt*, supra, 40 Conn. 101, it is clear that this court's reference to the attorney's standing at the bar related to his reputation in the legal profession. See also *Slade* v. *Harris*, 105 Conn. 436, 444, 135 A. 570 (1927) ("one's standing at the bar") to the same effect.

[5] See *State* v. *Gethers*, 197 Conn. 369, 389 n.19, 497 A.2d 408 (1985) ("make any plea at the bar" [internal quotation marks omitted]); *State* v. *Avcollie*, 174 Conn. 100, 104, 384 A.2d 315 (1977) ("prisoner at the bar" [internal quotation marks omitted]); *O'Brien's Petition*, 79 Conn. 46, 49, 63 A. 777 (1906) ("[p]lead at the [b]ar"), overruled on other grounds by *In re Application of Dinan*, 157 Conn. 67, 72, 244 A.2d 608 (1968); *Allen* v. *Woodruff*, 63 Conn. 369, 374, 28 A. 532 (1893) ("argued at the bar").