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ZARELLA, J., concurring in part and dissenting in part. I agree with and join the majority opinion except for part I F, with respect to which I join part I of Chief Justice Sullivan's dissenting opinion.¹ I emphasize that I find particularly troubling the majority's failure to perform an analysis, under *State v. Geisler*, 222 Conn. 672, 684–85, 610 A.2d 1225 (1992), of the defendant's state constitutional claim that there is a gap in General Statutes (Rev. to 1997) § 53a-46a (f) that must be filled by a requirement that the trial court instruct the jury that it must be persuaded beyond a reasonable doubt that the aggravating factors outweigh the mitigating factors in order to impose the death penalty. The majority performs such an analysis in connection with the defendant's alternative claim that § 53a-46a (f) violates the state constitution inasmuch as it does not require the aggravating factors to outweigh the mitigating factors beyond a reasonable doubt. Accordingly, it is clear that the majority recognizes that *Geisler* is applicable in death penalty cases. I must presume, therefore, that the majority abandons that analysis when considering the claim pertaining to the purported constitutional gap in the statute and, instead, relies on a vague standard that focuses on the special nature of the death penalty because it recognizes that that claim also would fail under *Geisler*.

Citing *State v. Floyd*, 217 Conn. 73, 89, 584 A.2d 1157 (1991), the majority asserts that a *Geisler* analysis is not required because the majority is merely identifying, rather than resolving, a constitutional question. See footnote 32 of the majority opinion. In my view, *Floyd* does not support this argument. In *Floyd*, this court concluded that General Statutes (Rev. to 1991) § 53a-176b was capable of a narrow construction that passed constitutional muster and, therefore, declined to *decide* whether a broader reading of that provision would render it constitutionally infirm. *State v. Floyd*, *supra*, 89–95. The court reached that conclusion, however, only after engaging in a thorough analysis of the defendant's constitutional claims that provided context for the court's conclusion that a broader reading would place the statute in constitutional jeopardy. See *id.*, 79;² see also *Roth v. Weston*, 259 Conn. 202, 232–33, 789 A.2d 431 (2002) (concluding after lengthy constitutional analysis that literal construction of statute would raise serious constitutional questions); *State v. Metz*, 230 Conn. 400, 424, 645 A.2d 965 (1994) (same). In all of these cases, this court declined to *decide* whether a broad reading of the statute under review would render the statute unconstitutional. It did not, however, decline to engage in a constitutional analysis to determine whether such a reading would raise constitutional questions.

The majority concedes that “a *Geisler* analysis is necessary in order to determine whether our state constitution affords greater protection than the federal constitution” Footnote 32 of the majority opinion. That is precisely what the majority does, however, when it states that, “under our state constitution, our overarching concern for *consistency and reliability* in the imposition of the death penalty extends to the ultimate decision of whether to impose or to decline to impose that penalty.” (Emphasis in original.) Part I F of the majority opinion. The fact that the majority refrains from deciding whether § 53a-46a (f) is unconstitutional in the absence of the instructional requirement that it nevertheless superimposes on the statute does not, in my view, excuse it from providing, in the first instance, a justification for the imposition of that requirement in accordance with *Geisler*.

¹ I also join footnote 1 of the Chief Justice’s dissenting opinion. I do not join part II of the Chief Justice’s dissenting opinion, however.

² In *Floyd*, this court stated that it would “consider in turn the factors that may constitute a seizure under the fourth amendment or a deprivation of privacy or liberty without due process of law under the fourteenth amendment, and we examine the balancing tests that must be applied to determine whether a violation of constitutional norms has occurred. We then turn to [General Statutes (Rev. to 1991)] § 53a-167b to determine whether it can be construed to incorporate the relevant constitutional commands.” *State v. Floyd*, supra, 217 Conn. 79. Thus, the court clearly identified the relevant constitutional demands before determining whether the statute was questionable in light of those demands.