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ZARELLA, J., concurring. I agree with the conclusion of the majority. I write separately, however, because I disagree with the majority that legislative history may be consulted when determining whether a statute that affects the substantive rights of the parties is to be given retrospective effect.

The majority begins its analysis of General Statutes § 4-160 (b) by acknowledging that, '' '[w]hether to apply a statute retroactively or prospectively depends upon the intent of the legislature in enacting the statute. . . . In order to determine the legislative intent, we utilize well established rules of statutory construction. Our point of departure is General Statutes § 55-3, which states: No provision of the general statutes, not previously contained in the statutes of the state, which imposes any new obligation on any person or corporation, shall be construed to have retrospective effect.' . . . *Andersen Consulting, LLP* v. *Gavin*, 255 Conn. 498, 517, 767 A.2d 692 (2001) . . . .'' (Citation omitted.) The majority also quotes *Reid* v. *Zoning Board of Appeals*, 235 Conn. 850, 670 A.2d 1271 (1996), for the proposition that ''[i]t is a rule of construction that legislation is to be applied prospectively *unless the legislature clearly expresses an intention to the contrary*.'' (Emphasis added; internal quotation marks omitted.) Id., 859 n.6. The majority then examines the language of § 4-160 (b) in the context of the statutory scheme that preceded its enactment and concludes that the statute constituted a substantive change in the law. Accordingly, in the absence of a clear expression of legislative intent to the contrary, the statute is presumptively prospective. I do not take issue with that portion of the majority's analysis.

I strongly disagree, however, with the reasoning that follows. The plaintiff, Vincent D'Eramo, argues that the legislative history of the statute contains a clear and unequivocal expression of the legislature's intent that the statute be given a retrospective effect. Although the majority ultimately rejects this argument, it affirms the legal principle on which the argument is based, namely, that the court may consider legislative history in determining legislative intent. Accordingly, in order to divine the intent of the legislature in the present case, the majority examines remarks made by the legislators at a hearing of the judiciary committee on Public Acts 1998, No. 98-76, and during the subsequent debate on the floor of the House of Representatives. I cannot agree that the legislative history, as expressed in the record of the legislative proceedings, should be consulted in determining whether a statute was intended to be given retroactive effect because such an approach flies in the face of well established legal principles that have guided

this court for nearly 200 years.

The notion that a statute is to be construed as having prospective effect unless it contains specific language to the contrary, without reference to the legislative history, is firmly rooted in the common law and was expressed clearly and forcefully in an early opinion of this court. See *Goshen* v. *Stonington*, 4 Conn. 209 (1822). In *Goshen*, Chief Justice Stephen Titus Hosmer declared that, ''by construction, if it can be avoided, no statute should have a retrospect, anterior to the time of its commencement . . . . This principle is founded on the supposition, that laws are intended to be prospective only. But *when a statute, either by explicit provision, or necessary implication, is retroactive, there is no room for construction* . . . .'' (Citations omitted; emphasis added.) Id., 220. Chief Justice Hosmer also cited English common law for the proposition that ''a statute is not to be *construed* as having a retrospect. . . . Such a construction ought never to be given, *unless the expression of the law imperiously requires it*. The cases of *Helmore* v. [*Shuter*, 89 Eng. Rep. 764, 2 Shower 16 (K.B. 1678)] . . . [and] *Couch* v. *Jeffries*, [98 Eng. Rep. 290, 4 Burrow 2460 (1769)] . . . were determined on this principle.''[1] (Citation omitted; emphasis altered.) *Goshen* v. *Stonington*, supra, 223.

Connecticut cases decided after *Goshen* reiterated the principle that the retroactive application of a statute must be expressed in strong and explicit language in the statute itself and cannot be inferred by construction. See, e.g., *Thames Mfg. Co.* v. *Lathrop*, 7 Conn. 550, 557 (1829) (''[A]cts of the legislature, although in certain cases an explicit provision may [be retrospective], by construction, can never have given to them a retrospective operation. . . . Where a new rule of law is declared, it never looks backwards, unless it is so enacted in the most unequivocal manner.'' [Citations omitted.]); *Plumb* v. *Sawyer*, 21 Conn. 351, 355 (1851) (''Although in some cases, statutes may have a retrospective effect, yet such a construction is never to be given to them, unless required in the most explicit terms. The presumption is, that all statutes are to operate prospectively, and were not made to impair vested rights.''); *Smith* v. *Lyon*, 44 Conn. 175, 178 (1876) (''One of the firmly established canons for the interpretation of statutes declares that all laws are to commence in the future and operate prospectively, and are to be considered as furnishing a rule for future cases only, unless they contain language unequivocally and certainly embracing past transactions. The rule is one of such obvious convenience and justice as to call for jealous care on the part of the court to protect and preserve it. Retroaction should never be allowed to a statute unless it is required by express command of the legislature or by an unavoidable implication arising from the necessity of adopting such a construction in

order to give full effect to all of its provisions.''); *Middletown* v. *New York, N. H. & H. R. Co.*, 62 Conn. 492, 497–98, 27 A. 119 (1893) (examining language of statute within context of entire statutory scheme, previous legislation and purpose of act and concluding that ''a rule of construction firmly imbedded in our law, and whose preservation we consider of the utmost importance . . . is, that all laws should be held to operate prospectively unless their language unmistakably gives them a retrospective operation. . . . There is nothing in the statute [at issue] that hints at the past in express terms, and certainly nothing authorizing us to infer that a retrospective application was intended by the legislature. The presumption is that all statutes are to operate prospectively.'' [Citations omitted.]).

The legislature later codified the common-law principle that statutes affecting substantive rights are intended to be prospective in their application. General Statutes (1875 Rev.) tit. 22, § 4, p. 551 (''[n]o provision of the General Statutes, not previously contained in the statutes of the State, which impose[s] new obligations on any person or corporation, shall be construed to have a retrospective effect''). The text of that statute survives to this day unchanged. See General Statutes § 55-3.

In the early twentieth century, cases continued to be decided in accordance with the complementary principles that statutes affecting substantive rights are intended to be prospective only and cannot be retroactively applied except by express provision or necessary implication. See, e.g., *Atwood* v. *Buckingham*, 78 Conn. 423, 426, 62 A. 616 (1905) (considering language of statute within context of broader statutory scheme and observing that ''the presumption is that statutes are intended to operate prospectively, and that they should not be construed as having a retrospective effect unless their terms show clearly and unmistakably a legislative intention that they should so operate''); *Massa* v. *Nastri*, 125 Conn. 144, 146–47, 3 A.2d 839 (1939) (''The general rule is that laws are to be interpreted as operating prospectively and considered as furnishing a rule for future cases only, unless they contain language unequivocally and certainly embracing past transactions. . . . The presumption is that statutes affecting substantive rights are intended to operate prospectively . . . .'' [Citation omitted; internal quotation marks omitted.]); *East Village Associates, Inc.* v. *Monroe*, 173 Conn. 328, 332–33, 377 A.2d 1092 (1977) (''Statutes should be construed retrospectively only when the mandate of the legislature is imperative. . . . In the absence of express directions for retroactive application of [the statute] . . . the inference is clear that the [statute] was intended to apply only prospectively.'' [Citations omitted; internal quotation marks omitted.]); *Hunter* v. *Hunter*, 177 Conn. 327, 332, 416 A.2d 1201 (1979) (''[t]he presumption is that statutes affecting substantive rights

are intended to operate prospectively, and to furnish a rule for future cases only, unless they contain language unequivocally and certainly embracing past transactions'' [internal quotation marks omitted]); *Nagle* v. *Wood*, 178 Conn. 180, 187–88, 423 A.2d 875 (1979) (''There is a general presumption that a statute affecting substantive rights is intended to apply prospectively only. . . . Statutes should be construed retrospectively only when the mandate of the legislature is imperative . . . [and there is] a clear legislative intent . . . .'' [Citations omitted; internal quotation marks omitted.]).

In 1984, however, we departed from these long-standing principles of statutory construction and embarked on a different path. In *Schieffelin & Co.* v. *Dept. of Liquor Control*, 194 Conn. 165, 479 A.2d 1191 (1984), we were required to determine whether Public Acts 1981, No. 81-367 (P.A. 81-367), which established certain procedures to be followed by out-of-state wholesalers when terminating liquor distributorships, applied to distributorships in existence at the time the act became effective or only to distributorships that came into existence after the effective date of the act. See id., 173. At the outset of our analysis, we noted that no statute affecting substantive rights shall be construed to have a retrospective effect under § 55-3 in the absence of unequivocal language to the contrary. Id., 174. Characterizing this principle as a ''rule of presumed legislative intent . . . rather than a rule of law''; id.; we then examined the language of P.A. 81-367, its legislative history and the preexisting statutory scheme, and concluded that the act applied to distributorships existing at the time it became effective. Id., 174–76.

Thereafter, we sometimes considered legislative history, in addition to statutory language, as a reliable indicator of legislative intent. See, e.g., *State* v. *Lizotte*, 200 Conn. 734, 742, 517 A.2d 610 (1986) (neither language nor legislative history supported conclusion that statute was intended to have retroactive effect); *Taylor* v. *Kirschner*, 243 Conn. 250, 253–55, 702 A.2d 138 (1997) (language, legislative history, objective and underlying policy of public act established that legislature intended statute to be applied retrospectively). But see *Darak* v. *Darak*, 210 Conn. 462, 468, 556 A.2d 145 (1989) (no '' 'clear and unequivocal' '' language in act to support inference in favor of retrospective application); *Miano* v. *Thorne*, 218 Conn. 170, 180, 588 A.2d 189 (1991) (no '' 'clear and unequivocal' '' language in statute to rebut presumption that legislature did not intend statute to apply retrospectively). More recently, we have declared that ''[w]e generally look to the statutory language *and* the pertinent legislative history to ascertain whether the legislature intended that the [statute] be given retrospective effect.'' (Emphasis added; internal quotation marks omitted.) *State* v. *Nowell*, 262 Conn. 686, 702, 817 A.2d 76 (2003); accord *Johnson* v. *Commissioner*

of Correction, 258 Conn. 804, 820, 786 A.2d 1091 (2002). This expression of governing legal principles not only elevates legislative history to a level of importance seemingly equal to that of the language of the statute itself but also improperly suggests that an examination of legislative history is generally undertaken when conducting such an analysis despite nearly 200 years of case law to the contrary.[2]

In my view, the time has come to reverse this recent trend of examining legislative history to determine the intent of the legislature when the substantive rights of the parties are affected. It should be self-evident that, in light of our continued reliance on the principle that no statute affecting substantive rights shall be construed to have a retrospective effect in the absence of an unequivocal expression of legislative intent to the contrary, it is impermissible to construe a statute's terms by seeking guidance from the legislative history. In *Goshen* v. *Stonington*, supra, 4 Conn. 209, Chief Justice Hosmer expressed, in the strongest possible terms, that the court should *avoid* construing a statute as having retrospective application when he referred to English case law providing that ''[s]uch a construction ought never to be given, *unless the expression of the law imperiously requires it*.'' (Emphasis added.) Id., 223. In other words, a statute may be construed to apply retrospectively when there is no express provision to that effect only if, by necessary or unavoidable implication, such a result is required. See id., 220.

Our case law also militates against the use of legislative history to determine whether a statute is to be given retrospective effect because, historically, there was no written record of public hearings prior to the early 1900s and no record of House and Senate debates prior to 1945. Consequently, this court's early expression of the applicable governing principles did not anticipate examination of the legislative history of a statute, as reflected in the legislative proceedings, to determine legislative intent because there was no recorded legislative history to examine.

Finally, it only stands to reason that the retrospective application of a statute should be expressed clearly in the words of the statute itself or the result of necessary or unavoidable implication. As the majority properly notes, ''the presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted. For that reason, the principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal human appeal.'' (Internal quotation marks omitted.)

Footnote 8 of the majority opinion, quoting *State* v. *Faraday*, 268 Conn. 174, 196, 842 A.2d 567 (2004).

Accordingly, I would dismiss the plaintiff's argument that the legislative history should guide us in this matter because § 4-160 (b) is presumptively prospective under the long held principles of statutory construction that have informed this court since at least 1822, and there is no reason to construe the statute otherwise in the absence of an express provision or necessary implication to the contrary.

[1] In *Helmore*, the court stated that it "believed the intention of the makers of [the disputed] statute was only to prevent for the future, and that it was a cautionary law; and if a motion were made in the House of Lords concerning it, they would all explain it so . . . ." *Helmore* v. *Shuter*, supra, 89 Eng. Rep. 765. In *Couch*, the court declared that the statute in question "ha[d] no proviso to save actions already commenced: and therefore it extend[ed] to such actions. The Court will not add such a proviso, when the Legislature [has] omitted it. The words [of the statute] are very strong . . . ." *Couch* v. *Jeffries*, supra, 98 Eng. Rep. 291.

[2] I also note that several recent cases espousing the principle that the legislative history may be consulted improperly rely on precedent that evolved in an entirely different context. For example, in *Johnson* v. *Commissioner of Correction*, supra, 258 Conn. 820, we cited cases in which the issue addressed by the court was whether the statute was intended to serve as clarifying legislation and, therefore, to be viewed as a declaration of the legislature's original intent. See *Andersen Consulting, LLP* v. *Gavin*, supra, 255 Conn. 521–23; *Oxford Tire Supply, Inc.* v. *Commissioner of Revenue Services*, 253 Conn. 683, 692–93, 755 A.2d 850 (2000). "[A] statutory amendment that construes and clarifies a prior statute operates as the legislature's declaration of the meaning of the original act. . . . To determine whether an act should be characterized as clarifying legislation, we look to the legislative history to determine the legislative intent." (Citations omitted; internal quotation marks omitted.) *Reliance Ins. Co.* v. *American Casualty Co. of Reading, Pennsylvania*, 238 Conn. 285, 289–90, 679 A.2d 925 (1996); see also *Andersen Consulting, LLP* v. *Gavin*, supra, 518; *Colonial Penn Ins. Co.* v. *Bryant*, 245 Conn. 710, 719, 714 A.2d 1209 (1998). The issue of clarification, however, was not raised in *Johnson*. Accordingly, *Johnson* improperly cited cases concerning the issue of clarification in support of the proposition that legislative history may be examined when determining whether a statute that is not alleged to be clarifying legislation was intended to be given retrospective effect.