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BORDEN, J., concurring. I agree with and join the majority opinion of the court. More specifically, I agree with the court that, based on the extratextual evidence of the meaning of General Statutes § 38a-336 (a) (2), ''there is no reason to require strict adherence to the twelve-point type requirement of [the statute] in the context of a commercial fleet policy . . . even though, contrary to the dictates of [the statute], the heading of the informed consent form in which the request appeared was printed in eight-point type rather than twelve-point type.''

I write separately, however, to point out the serious constitutional question, under the separation of powers doctrine, that General Statutes § 1-2z raises, a question implicated by the present case.[1] Sooner or later, this court will be required to face and to resolve that question.

Under § 1-2z, a court is barred from considering any extratextual source of the meaning of a statute if the court determines that, after examining its text and its relationship to other statutes, ''the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results . . . .'' It is important to note that, in the present case, the only language in the text of § 38a-336 (a) (2) that frees the majority to examine the rich sources of the statute's meaning—namely, its legislative genealogy, its legislative history, its purpose, and indeed our prior case law interpreting it—and thereby permits the majority to reach a correct interpretation of it, are the references to the insured's '' 'family' '' and the caution to the insured to consult with '' 'your insurance agent or another qualified advisor.' '' It is solely those references that render the meaning of the statutory language sufficiently ambiguous to permit the court to consult the extratextual sources and to reach the correct result in this case. This is a slender reed of ambiguity.

First, there is a very plausible argument that, despite the references relied upon by the majority for ambiguity, the relevant language is plain and unambiguous, and does not yield a bizarre or unworkable result.[2] Second, and more important, the question of the case would be precisely the same, but the answer undoubtedly different, if that slender reed were not present.

Consider, for example, if the mandatory language in § 38a-336 (a) (2), instead of including the cautionary references to '' 'your family' '' and to '' 'your insurance agent or another qualified adviser,' '' provided the following: ''WHEN YOU SIGN THIS FORM, YOU ARE CHOOSING A REDUCED PREMIUM, BUT YOU ARE ALSO CHOOSING NOT TO PURCHASE CERTAIN VAL-

UABLE COVERAGE WHICH PROTECTS YOU.'' In that event, the language of the statute would undoubtedly be plain and unambiguous, and the court would be deprived, by virtue of § 1-2z, of the opportunity of interpreting it, correctly, on the basis of the extratextual evidence of its meaning.[3] The result of that analysis would be that the use of the eight-point, rather than twelve-point, type would have invalidated the employer's choice of reduced coverage. Thus, that result would be mandated by § 1-2z, but would not be true to the legislature's intent in enacting § 38a-336 (a) (2), as the majority persuasively demonstrates. This example, however, illustrates the potential constitutional infirmity of § 1-2z.

A statute will not violate the separation of powers ''simply because it affects the judicial function.'' (Internal quotation marks omitted.) *State* v. *McCahill*, 261 Conn. 492, 505, 811 A.2d 667 (2002). A statute will violate the separation of powers, however, ''if: (1) it governs subject matter that not only falls within the judicial power, but also lies exclusively within judicial control; or (2) it significantly interferes with the orderly functioning of the [court's] judicial role.'' (Internal quotation marks omitted.) Id., 505–506. In my view, there is a serious question whether § 1-2z violates either or both of these precepts.

It can be seriously argued that § 1-2z, because of its breadth, potentially applying to almost every case of statutory interpretation that we encounter, governs a subject matter lying exclusively within the judicial power, the task of interpreting statutes. Under the doctrine of the separation of powers, there is authority that the interpretation of statutes falls exclusively within the judicial sphere. ''Statutory interpretation is a quintessentially judicial function . . . .'' *D'Eramo* v. *Smith*, 273 Conn. 610, 619, 872 A.2d 408 (2005). ''[T]he broad division between the power of the courts and the power of the legislature can be drawn as follows: It is the province of the legislative department to define rights and prescribe remedies: *of the judicial to construe legislative enactments*, determine the rights secured thereby, and apply the remedies prescribed.'' (Emphasis added; internal quotation marks omitted.) *Caldor, Inc.* v. *Thornton*, 191 Conn. 336, 343, 464 A.2d 785 (1983), aff'd, 472 U.S. 703, 105 S. Ct. 2914, 86 L. Ed. 2d 557 (1985), quoting *Atwood* v. *Buckingham*, 78 Conn. 423, 428, 62 A. 616 (1905). ''[T]he legislature makes, the executive executes, *and the judiciary construes the law*.'' (Emphasis added; internal quotation marks omitted.) *Norwalk Street Ry. Co.'s Appeal*, 69 Conn. 576, 594, 37 A. 1080 (1897), quoting *Wayman* v. *Southard*, 23 U.S. 1, 46, 6 L. Ed. 253 (1825). This principle finds its root in one of the most basic tenets of American law. ''It is emphatically the province and duty of the judicial department to say what the law is.'' *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed. 60 (1803).

It also can be seriously argued that § 1-2z significantly interferes with the orderly function of our judicial role, because it may, in a given case, prohibit us from performing our judicial task of statutory interpretation in a way that accurately determines the meaning of a statute, and because it requires us to spend significant amounts of time and energy engaging in lengthy debates over whether statutory language is ambiguous, even where we ultimately agree on the outcome of the case. See, e.g., *Genesky* v. *East Lyme*, 275 Conn. 246, 881 A.2d 114 (2005) (compare majority opinion with concurring opinion); *State* v. *Miranda*, 274 Conn. 727, 878 A.2d 1118 (2005) (compare per curiam opinion with concurring opinion of Justice Borden).

Under either scenario, it seems to me that § 1-2z directs us, as judges, on how to *think* about the process of statutory interpretation and, in that respect, may overstep the boundary between the legislative and judicial functions. Of course, I have not attempted in this concurrence to spell out any other arguments either supporting or challenging the constitutionality of § 1-2z. Finally, I have not reached any conclusion about that question. I have simply tried to indicate that, in my view, there is a serious question about the constitutionality of § 1-2z that this court should consider at some appropriate time.

[1] In his concurring opinion, Justice Zarella criticizes me for issuing this concurrence, suggesting that it is ''unwarranted'' for a justice of this court to employ a concurring opinion to note that there may be a serious constitutional question, on the basis of the separation of powers doctrine, regarding § 1-2z. I reject that notion. In my view, noting that a statute may raise a serious question under the separation of powers provision in the context of a concurring opinion is no less warranted than doing so in a bar journal article; see, e.g., P. T. Zarella & T. A. Bishop, ''Judicial Independence at a Crossroads,'' 77 Conn. B.J. 21 (2003) (questioning constitutionality, on basis of separation of powers, of several Connecticut statutes); or doing so by way of a scholarly lecture. See, e.g., E. A. Peters, ''Getting Away from the Federal Paradigm: Separation of Powers in State Courts,'' 81 Minn. L. Rev. 1543 (1997) (same).

[2] Without belaboring the point, that argument would contend the following: the term ''family'' appears only in the language of § 38a-336 (a) (2) that must be included in the mandatory notification portion of an informed consent form, and does not appear elsewhere in the body of the statute, which details the various notice requirements. It simply is not reasonable to presume that the legislature's use of the term ''family'' was intended to trump the clear and straightforward directive of § 38a-336 (a) (2) that the informed consent form ''shall contain a heading in twelve-point type'' with the mandatory language. In other words, the statutorily mandated language of the heading itself does not affect the threshold requirement that the heading must appear, in twelve-point type, on *all* informed consent forms. Indeed, § 38a-336 (a) (2) contains no suggestion that it applies only to personal automobile insurance policies, or that it does not apply to corporate or commercial fleet automobile insurance policies. It is far more likely that the legislature chose to mandate the use of the term ''family'' merely because of the large number of individuals with families who purchase insurance, and not because the legislature intended that one or more of the requirements of § 38a-336 (a) (2) should be read out of that provision when a corporation or other sophisticated insured is involved. Finally, this interpretation does not yield a bizarre or unworkable result. Section 38a-336 (a) (2) is essentially a strict liability statute, and the legislature undoubtedly was aware that, in certain cases, inequities might result from its operation. The fact that a commercial insured, like the employer here, may take advantage of it is neither bizarre nor unworkable. All an insurer has to do to comply with the statute is to use

the mandated twelve-point type for all potential insureds.

In addition, the majority reasons that ''the wording of the heading strongly suggests that its cautionary language *was designed* to protect individual consumers of insurance and not corporations insured under commercial fleet policies.'' (Emphasis added.) It could be argued that § 1-2z bars such reasoning because it involves a determination of the statute's *purpose*, which is not stated in its text and is, therefore, extratextual evidence of its meaning. I agree with the majority's mode of analysis, however, because in this instance the purpose of the statute may be inferred from its text and, therefore, is not barred from our consideration by § 1-2z.

[3] The fact that we have already construed § 38a-336 (a) (2) using its legislative history and purpose does not, however, remove the constraints imposed by § 1-2z, as the majority implicitly acknowledges. None of that purpose or history is contained in the text of § 38a-336 (a) (2) and, therefore, we presumably are barred by § 1-2z from considering it in the absence of ambiguity. Indeed, this same analytical method has previously been employed by a majority of this court. See *Genesky* v. *East Lyme*, 275 Conn. 246, 279 n.5, 881 A.2d 114 (2005) (*Borden, J.*, concurring) (noting that majority, in determining whether heart and hypertension statute is ambiguous, assumed that § 1-2z prohibits consideration of maxim that workers' compensation legislation is remedial and to be construed broadly). Furthermore, for purposes of considering the question of the constitutionality of § 1-2z, the point is the same: even if we had not previously interpreted the statute, we nonetheless would be barred by § 1-2z from considering any extratextual sources of its meaning, including its purpose and its legislative history.