KATZ, J., concurring. The issue in the present case is whether General Statutes § 14-164c (e)[1] waives the state's sovereign immunity for purposes of an action brought by the plaintiff, Envirotest Systems Corporation, a provider of vehicle emission inspection facilities for the state, against the defendant, the commissioner of motor vehicles, for an alleged breach of a contract executed pursuant to the defendant's authority under that statute. Although I agree with the majority's ultimate conclusion that § 14-164c (e) does not waive the state's sovereign immunity either expressly or by force of necessary implication, I write separately to express two concerns. First, the majority adopts an approach that contradicts both the analytical framework established by General Statutes § 1-2z and our long-standing precedent regarding sovereign immunity by concluding that, if there is an ambiguity in the statute as to whether there has been a waiver of sovereign immunity, the court cannot consult extratextual sources to ascertain whether the legislature intended to waive immunity by necessary implication. Second, the majority's approach essentially eviscerates the possibility of a waiver of sovereign immunity on the basis of a necessary implication. I would apply our established analytical framework to reach the conclusion that the legislature neither expressly nor impliedly waives sovereign immunity regarding emissions inspection contracts under § 14-164c (e).

I begin with my disagreement with the majority's approach as it applies to the question of ambiguity. I first note that § 1-2z provides: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." The legislature has provided no exception in § 1-2z for statutes implicating questions of a waiver of sovereign immunity. Therefore, we must presume that the legislature intended for such statutes to be construed under the same rules of construction applicable to every other statute, wherein an ambiguity in the text permits resort to extratextual sources. Indeed, we have applied § 1-2z, or an analytical framework consistent with § 1-2z, to other statutes requiring a strict construction, like statutes implicating waivers of sovereign immunity.[2]

By precluding recourse to a traditional and accepted tool of statutory analysis that even predates § 1-2z, the majority deviates from the framework we have set forth

in our prior treatment of claims of waiver of sovereign immunity. See *Lyon* v. *Jones*, 291 Conn. 384, 395–96, 968 A.2d 416 (2009); *Rivers* v. *New Britain*, 288 Conn. 1, 10, 950 A.2d 1247 (2008); *Dept. of Transportation* v. *White Oak Corp.*, 287 Conn. 1, 8–10, 946 A.2d 1219 (2008); *DaimlerChrysler Corp.* v. *Law*, 284 Conn. 701, 711–12, 937 A.2d 675 (2007); *C. R. Klewin Northeast, LLC* v. *Fleming*, 284 Conn. 250, 258–59, 932 A.2d 1053 (2007); *184 Windsor Avenue, LLC* v. *State*, 274 Conn. 302, 311–12, 875 A.2d 498 (2005); *First Union National Bank* v. *Hi Ho Mall Shopping Ventures, Inc.*, 273 Conn. 287, 291, 869 A.2d 1193 (2005); *Martinez* v. *Dept. of Public Safety*, 263 Conn. 74, 81–82, 818 A.2d 758 (2003). The mere fact that resort to legislative history rarely has been necessary to determine the immunity question does not undermine the plethora of case law acknowledging its availability as a tool of construction when needed.

For example, prior to the adoption of § 1-2z, in *Mahoney* v. *Lensink*, 213 Conn. 548, 555, 569 A.2d 518 (1990), the issue was "whether [General Statutes] § 17-206k, in providing a statutory remedy for those persons aggrieved by violations of any specific provisions of the patients' bill of rights . . . constitutes an abrogation of sovereign immunity so as to authorize a voluntary patient in a state mental facility to sue the state or its commissioners." Acknowledging that this question required a strict construction of the statute, the court concluded that a waiver was compelled by necessary implication. Id., 555–56. Although the court concluded that the necessary implication arose from the text of related provisions, which included references to " 'any public . . . facility' "; id., 558; the court extensively examined the legislative history to confirm this construction. Id., 559–62. Indeed, the fact that the lion's share of the court's analysis focused on this history indicates that it was integral to the court's conclusion and not mere dicta.

As further examples of this approach after the enactment of § 1-2z and consistent with the limitations therein, in both *Dept. of Transportation* v. *White Oak Corp.*, supra, 287 Conn. 11–16, and *First Union National Bank* v. *Hi Ho Mall Shopping Ventures, Inc.*, supra, 273 Conn. 292–94, we examined extratextual sources in order to determine whether the legislature had waived sovereign immunity by necessary implication regarding certain specific claims. In both cases, the court first determined that the statute at issue was ambiguous and then examined the legislative history to reach its conclusion that there was insufficient support for the plaintiff's contention that the legislature had waived sovereign immunity by necessary implication with respect to the claims raised. *Dept. of Transportation* v. *White Oak Corp.*, supra, 10–11, 14; *First Union National Bank* v. *Hi Ho Mall Shopping Ventures, Inc.*, supra, 291–92, 294. Although those two cases

concerned statutes that granted clear waivers of sovereign immunity of unclear scope, the nature of our inquiry was fundamentally the same as if it were whether the statute granted any waiver. In either circumstance, we employ the same rules of strict construction to determine whether the statutory terms, applied to the particulars of the claim at issue, effectuate a waiver of sovereign immunity.[3] Compare *First Union National Bank* v. *Hi Ho Mall Shopping Ventures, Inc.*, supra, 293 (citing rule of strict construction to determine scope of waiver), with *Rivers* v. *New Britain*, supra, 288 Conn. 11 (noting general rule of strict construction given to statute to determine waiver of sovereign immunity).

My second, related concern with the majority's approach in this case is that it eviscerates our established jurisprudence regarding sovereign immunity by, in essence, precluding any finding of waiver by necessary implication. For more than a century, we have held that sovereign immunity may be waived by either "clear intention to that effect . . . disclosed by the use of express terms *or by force of a necessary implication*." (Emphasis added; internal quotation marks omitted.) *Dept. of Transportation* v. *White Oak Corp.*, supra, 287 Conn. 9; accord *Lyon* v. *Jones*, supra, 291 Conn. 397; *C. R. Klewin Northeast, LLC* v. *Fleming*, supra, 284 Conn. 258; *Struckman* v. *Burns*, 205 Conn. 542, 558, 534 A.2d 888 (1987); *Murphy* v. *Ives*, 151 Conn. 259, 262–63, 196 A.2d 596 (1963); *State* v. *Kilburn*, 81 Conn. 9, 11, 69 A. 1028 (1908); *State* v. *Hartford*, 50 Conn. 89, 90–91 (1882). This precedent establishes that the state can waive sovereign immunity by a necessary implication that need not derive from express waiver language in the text. The majority, however, essentially conflates the two ways in which to waive immunity, relying on a quote in a footnote in *Mahoney* that we have not since repeated for the proposition that a necessary implication must arise solely and unambiguously from the text of the statute. See *Mahoney* v. *Lensink*, supra, 213 Conn. 558 n.14 ("We have construed 'necessary implication' *in the context of the construction of a testator's intent in a* will to mean '[t]he probability . . . must be apparent, and not a mere matter of conjecture; but . . . necessarily such that from the words employed an intention to the contrary cannot be supposed.' *Weed* v. *Scofield*, 73 Conn. 670, 678, 49 A. 22 (1901)." [Emphasis added.]). It is ironic that, in *Mahoney*, we relied in part on legislative history to determine that a waiver by necessary implication did arise.

Despite our established framework, the majority in the present case adopts the view set out in the concurring opinion in *Miller* v. *Egan*, 265 Conn. 301, 336–37, 828 A.2d 549 (2003) (*Zarella, J.*, concurring). In that concurring opinion, Justice Zarella posited: "When a statute does not contain any language giving rise to a necessary implication of waiver . . . consideration of

extratextual sources either will be a fool's errand leading to material supportive of nonwaiver, or will lead to some evidence of waiver notwithstanding the lack of textual support. . . . If the waiver is neither expressly contained in the statute nor a necessary implication derived from the text of the statute, then there is no waiver, regardless of the existence of anything to the contrary in extratextual sources." (Citations omitted.) Id., 336–38. The majority in the present case now adopts the approach utilized by the concurrence in *Miller* by concluding that any ambiguity, by definition, eliminates the possibility of waiver by necessary implication and precludes resort to extratextual sources. Because this approach contravenes the framework that has been set forth in our case law and that is stated as a matter of legislative intent in § 1-2z, I disagree with the majority's approach.

I would resolve the present case under our established framework for the analysis of claims regarding waiver of sovereign immunity and for the construction of statutes. Here, as the majority points out, "[n]one of the language of [§ 14-164c (e)] alludes to liability, lawsuits or dispute resolution." To the extent that the plaintiff claims that the fact that the statute allows a state agent to enter into a contract gives rise to a waiver of sovereign immunity by necessary implication, such a claim previously was rejected by this court in *184 Windsor Avenue, LLC* v. *State*, supra, 274 Conn. 302. In that case, we reasoned that, if the mere fact that the state enters into a contract with another party were enough to give rise to a waiver of sovereign immunity, there would have been no reason for the state expressly to have waived its immunity by statute as to some state contracts; id., 311; and not others. See id., 312–13 ("Accordingly, we cannot construe [General Statutes] § 4-61 beyond its express public works exceptions [for waivers of sovereign immunity] because to do so would render them superfluous, as well as violate the maxim that the legislature's inclusion solely of public works contracts necessarily implies the exclusion of other contracts, including the plaintiff's lease with the state. . . . Thus, in the absence of a statutory waiver of sovereign immunity, the plaintiff may not bring suit against the state for claims arising out of the lease without authorization from the claims commissioner to do so." [Citation omitted.]); see also *Barde* v. *Board of Trustees*, 207 Conn. 59, 66, 539 A.2d 1000 (1988) (explaining that even constitutional claim relating to state contract cannot "supersede the state's sovereign immunity . . . when the alternative procedure available through the claims commissioner, which might have provided the relief sought, has been ignored"). The legislature demonstrated its concurrence with this strict approach to waiver of immunity in the context of contract claims when it revisited § 14-164c subsequent to our decision in *184 Windsor Avenue, LLC*; see Public Acts 2007, No.

07-167, § 35; but did not add any language to indicate that it intended to waive sovereign immunity for the contracts therein. See *State* v. *Salamon*, 287 Conn. 509, 525, 949 A.2d 1092 (2008) ("[l]egislative concurrence is particularly strong [when] the legislature makes unrelated amendments in the same statute" [internal quotation marks omitted]). Therefore, I agree with the majority's conclusion, but disagree with its reasoning.

Accordingly, I respectfully concur.

[1] See footnote 1 of the majority opinion for the text of § 14-164c (e).

[2] See, e.g., *State* v. *Cote*, 286 Conn. 603, 614–15, 945 A.2d 412 (2008) (citing § 1-2z in connection with "strict construction" of penal statutes); *Martel* v. *Metropolitan District Commission*, 275 Conn. 38, 57, 881 A.2d 194 (2005) (citing § 1-2z in connection with "strict construction" of statutes in derogation of common law); see also *St. Joseph's Living Center, Inc.* v. *Windham*, 290 Conn. 695, 707, 718–19 n.30, 966 A.2d 188 (2009) (citing strict construction rule applied to statutes implicating tax exemption and relying in part on legislative history); *Kelo* v. *New London*, 268 Conn. 1, 24–25, 843 A.2d 500 (2004) (considering legislative history when strict construction given to eminent domain statutes), aff'd, 545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005); *Mack* v. *Saars*, 150 Conn. 290, 294–95, 188 A.2d 863 (1963) (noting that text and legislative history examined when strict construction given to statute that was both in derogation of common-law right and penal in nature).

[3] I further would note that a distinction between an inquiry into whether a statute *grants* waiver in a particular case and an inquiry into whether a particular claim falls within the *scope* of a granted waiver is unsound because our analysis of sovereign immunity waiver always has sought to determine whether statutory terms relevant to a claim, applied to the particulars of that claim. See, e.g., *Rivers* v. *New Britain*, supra, 288 Conn. 9–10 ("[although General Statutes] § 7-163a was intended to authorize the promulgation of municipal ordinances that shift the responsibility for the removal of ice and snow on public sidewalks to abutting private landowners, we conclude that § 7-163a does not relieve the municipality of its duty of care or liability with respect to the accumulation of snow and ice on a public sidewalk when the state is the abutting landowner").