HARPER, J., concurring in part and dissenting in part. In determining that the named plaintiff, Electrical Contractors, Inc. (ECI),[1] has standing under Connecticut's competitive bidding statutes, the majority opinion departs from the narrowly circumscribed doctrine of standing established by our past cases dealing with these statutes. Our subject matter jurisdiction in this area is inherently limited, and the majority's expansion of that jurisdiction disregards both our own precedent, particularly this court's clear and controlling holding in *Connecticut Associated Builders & Contractors* v. *Hartford*, 251 Conn. 169, 181, 740 A.2d 813 (1999), and the lawmaking authority of the legislature. I further disagree that ECI has adequately briefed its claim under the Connecticut Antitrust Act. General Statutes § 35-24 et seq. Accordingly, I respectfully dissent from these holdings.

I

I agree with the majority that, under settled case law, the question of whether ECI has standing to allege a violation of the competitive bidding statutes turns on whether its claim meets the following standard: ECI "had to establish a colorable claim that: (1) [it] either (a) had submitted a bid or (b) would have submitted a bid but for the alleged illegalities in the bidding process and the precluded bid was functionally equivalent to the project specifications; and (2) *the alleged illegalities amounted to fraud, corruption, favoritism or acts undermining the objective and integrity of the competitive bidding process*." (Emphasis added.) *Connecticut Associated Builders & Contractors* v. *Hartford*, supra, 251 Conn. 181.

As our case law demonstrates, to fulfill this test's second prong, a plaintiff must make a colorable claim that the bidding process—from the development of project specifications and bidding rules to the application of these to bidders—was tainted by procedural impropriety. The court held that standing was appropriate in *Spiniello Construction Co.* v. *Manchester*, 189 Conn. 539, 545, 456 A.2d 1199 (1983), for example, because the defendant allegedly had accepted an irregular bid based on an oral rule addendum communicated only to one bidder, precluding other bidders from competing on equal terms. Conversely, in *Ardmare Construction Co.* v. *Freedman*, 191 Conn. 497, 499, 505, 467 A.2d 674 (1983), this court concluded that the plaintiff lacked standing to challenge the rejection of its lowest bid for failure to include a handwritten signature on the bid document because the signature requirement—however arbitrary or detrimental to the plaintiff—was uniformly applied and there was no showing of fraud

or favoritism. This court reiterated the decisive significance of procedural irregularity in *Unisys Corp.* v. *Dept. of Labor*, 220 Conn. 689, 696, 600 A.2d 1019 (1991), when it determined that an evidentiary hearing was required to determine whether the plaintiff's claim implicated such irregularities. There, the plaintiff had alleged that the state favored one vendor over others by using information it received from that vendor to draft requests for proposals that could be fulfilled only by that vendor and by providing information relevant to the requests exclusively to that vendor. Id., 691. The court concluded that this result—a single source bid specification—was not inherently illegal but that it would be invalid if it were *intended* to benefit the specific vendor rather than the public. We held that the plaintiff was entitled to an evidentiary hearing to determine whether it had standing under this standard. Id., 695–96. In *Connecticut Associated Builders & Contractors* v. *Hartford*, supra, 251 Conn. 169, the court concluded that unsuccessful bidders lacked standing to challenge the legality of a project labor agreement. The court concluded, inter alia, that the issue of standing turned not on whether some bidders were effectively excluded but on whether the bidding process was applied consistently and in good faith. Id., 189.

Here, ECI's long list of grievances; see footnote 23 of the majority opinion; fails to allege *any* of the features of procedural impropriety we previously have considered significant. There is no claim of informational asymmetry such that some bidders knew more than others, no claim that the defendants, the city of Hartford, the state department of education and its commissioner, and four other entities,[2] engaged in secret communications with any bidders, no suggestion that the defendants applied rules differently to some bidders than to others, no claim that officials acted in bad faith. Instead, ECI premises its complaint on the fact that all bidders, "union" and "nonunion" alike, were subjected equally to the same bidding terms and requirements and that the defendants did not exempt ECI from that process. Rather than procedural irregularity, which ECI effectively requests rather than protests, ECI's central complaint appears to be based on the ultimate economic harm it allegedly will sustain because the project labor agreement requirements put it at a competitive disadvantage, effectively precluding it from being a successful bidder on public contracts. To tether this complaint to the purposes of the competitive bidding statutes, ECI further alleges that by requiring bidders to perform all project work with union labor under the terms of a project labor agreement, nonunion contractors, whose business models are based on maintaining a labor supply outside of the union system, are disadvantaged in their ability to successfully bid and thereafter perform. As a result, ECI argues, the project labor agreement decreases competition for the project and

increases the project's costs to the public.

As the trial court properly recognized, this claim is essentially identical to one this court rejected in *Connecticut Associated Builders & Contractors* v. *Hartford*, supra, 251 Conn. 169, a case in which ECI also was a plaintiff as a subcontractor to the named plaintiff. In that case, we explained: "The crux of the association's claim is that its general contractor members were precluded from participation in the bid process because the project labor agreement requirement imposed costs upon nonunion general contractors that made it economically unfeasible for them to bid. As a result, the association argues, general contractors and the association have standing to challenge the project labor agreement as a specification that . . . arbitrarily and anticompetitively limits access to the bidding process. The association contends that limiting the number of potential bidders violates not only the integrity of competitive bidding but also injures the general public by driving up the cost of government funded projects." Id., 187.

Our reasoning in that case for concluding that such a claim did not provide a basis for standing bears repeating, as it applies with equal force to the present case: "Even assuming that the project labor agreement requirement might increase the project's cost, we know of no requirement in the competitive bidding statutes that propels cost considerations to the top of the list of appropriate considerations for public contract specifications. If cost alone were the determinative factor of appropriate bid criteria, disappointed bidders or nonbidders would have virtually unlimited opportunities to litigate project specifications on the ground of alternate designs, materials, safety requirements and so on. Such litigation would involve courts in comparative cost assessments that would severely impair the discretion of governmental bodies entrusted with the responsibility for governmental construction projects. It is neither unusual nor unfair for project specifications to give some potential bidders an economic advantage over others because of factors such as the bidder's expertise, specialization and reliability.

"The claim made by the [named plaintiff] . . . is much more sweeping than the one that we recognized in *Unisys Corp.* v. *Dept. of Labor*, supra, 220 Conn. 690–91. The objection to the specification in *Unisys Corp.* was not that [equipment from the defendant International Business Machines Corporation] would be more expensive, but that vendors of functionally equivalent hardware or software had been excluded from the bidding process. Id., 691, 695. Our focus was not on the possibility that a particular specification might limit the number of eligible bidders, but on whether the specification necessarily had an adverse impact on the integrity of the bidding *process*. See id., 696.

"As the trial court observed, the record . . . demonstrates a nondiscriminatory decision by the city to use a project labor agreement, in the public interest, to avoid delays in the project and to recruit and maintain the necessary workforce. The court reasonably determined that the city's legitimate business decision fell within the bounds of the discretion afforded to the city by our competitive bidding statutes.[3]

"In conclusion, we reiterate our adherence to the boundaries of the standing principles established in our existing competitive bidding case law. . . . The determinative factor [under that case law] . . . was not whether some bidders had been precluded from the bidding process but *whether the requirements in that process had been applied consistently and in good faith*. . . . That, essentially, is what has occurred in the present case as well." (Citations omitted; emphasis added.) *Connecticut Associated Builders & Contractors* v. *Hartford*, supra, 251 Conn. 187–89.

The reasoning and conclusions articulated in *Connecticut Associated Builders & Contractors* dictate the result here, and I am unconvinced by the majority's attempts to distinguish the present case from it and to diminish its precedential effect. The majority emphasizes that the court in *Connecticut Associated Builders & Contractors* did not reach the merits of the plaintiffs' claim, but that fact is irrelevant; the court in that case properly did not reach the merits because it lacked jurisdiction. The court articulated at length the reasons why it lacked subject matter jurisdiction to consider the merits given the limited basis for standing in this area, and these reasons equally should preclude reaching the merits of the claim in the present case. Like the plaintiffs in *Connecticut Associated Builders & Contractors*, ECI has failed to make any colorable factual showing of *procedural* impropriety. Although ECI has proffered arguably relevant evidence regarding the ultimate financial consequences of the project labor agreement, as the plaintiffs in *Connecticut Associated Builders & Contractors* v. *Hartford*, supra, 251 Conn. 187 n.12, apparently did not, evidence of a problematic outcome is alone inadequate for purposes of showing procedural impropriety under our settled case law and under the reasoning of that case.

The subsequent enactment of prequalification requirements under General Statutes § 4a-100, moreover, does nothing to disturb the court's reasoning in *Connecticut Associated Builders & Contractors*. That statute has absolutely no bearing on what may be included in the specifications of a public project, such as a project labor agreement,[4] and it creates no new basis for standing in relation to the competitive bidding laws. Indeed, to the extent this statute relates to standing at all, it would seem to *limit* the field of prospective bidders who could satisfy the first prong of the standing

test to those who are prequalified for the project, not to expand the scope of the second prong of that test.

I further disagree with the majority's characterization of the comprehensive discussion of this issue in *Connecticut Associated Builders & Contractors*, which constituted one of the two grounds on which the court in that case concluded that it lacked subject matter jurisdiction, as "nothing more than dicta." The court declared at the outset of its analysis that "the plaintiffs did not establish that the general contractor members of the association had met *either part* of this test." (Emphasis added.) *Connecticut Associated Builders & Contractors* v. *Hartford*, supra, 251 Conn. 186. The two prongs of our test in *Connecticut Associated Builders & Contractors* are both threshold jurisdictional requirements that must be met for a plaintiff to have standing to pursue a hearing on the merits, and the trial court in the present case plainly held that neither was satisfied.[5] Sensible jurisprudence and weighty authority strongly support the proposition, consistent with this court's past practice,[6] that "when two independent reasons are given to support a judgment, the ruling on neither is obiter [dictum], but each is the judgment of the court and of equal validity with the other." [7] (Internal quotation marks omitted.) *California* v. *United States*, 438 U.S. 645, 689 n.10, 98 S. Ct. 2985, 57 L. Ed. 2d 1018 (1978).

Nonetheless, even if this discussion were dicta, the reasoning expressed therein would retain its persuasive force. The claim dealt with in *Connecticut Associated Builders & Contractors* v. *Hartford*, supra, 251 Conn. 178, "raise[d] no new issues of principle with respect to the requirements of standing, either in general or in the particular context of competitive bidding." Rather, the court simply applied established principles developed in previous cases.[8] As I discuss in greater detail in the following discussion, these prior cases carved out an exceptional basis for standing as a vehicle for challenging fraudulent or corrupt official actions, but they also placed strict limits on that standing. The majority exceeds these limits, contravening not only our own precedent but legislative authority as well. The majority's concern with advancing the cost saving goals of competitive bidding laws may be well founded, but it is for the legislature—not the courts—to determine who may enforce those statutes and how. The following outline of the constitutional framework of standing in general and the historical development of our unusual standing jurisprudence with respect to competitive bidding illustrates how the majority's conclusion runs afoul of these significant principles.

The question of standing deals not only with a party's right to seek relief, but also with the fundamental authority of the court to consider an issue: "[i]f a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause." (Internal

quotation marks omitted.) *Gold* v. *Rowland*, 296 Conn. 186, 207–208, 994 A.2d 106 (2010). This limit on judicial authority is, as the United States Supreme Court has recognized, "a constitutional principle that prevents courts of law from undertaking tasks assigned to the political branches." *Lewis* v. *Casey*, 518 U.S. 343, 349, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996). We similarly have noted that "subject matter jurisdiction is, with certain constitutional exceptions . . . a matter of statute, not judicial rule making." (Internal quotation marks omitted.) *Batte-Holmgren* v. *Commissioner of Public Health*, 281 Conn. 277, 286, 914 A.2d 996 (2007); see Conn. Const., amend. XVIII ("[t]he powers of government shall be divided into three distinct departments, and each of them confided to a separate magistracy").

In keeping with these principles, we have ordinarily recognized two grounds upon which a plaintiff may properly have standing to challenge government action: classical, or common-law, aggrievement and statutory aggrievement—standing conferred by statute. As the majority recognizes, ECI plainly does not have standing on either of these grounds. With respect to competitive bidding statutes, however, this court has taken the unusual step of establishing a quasi-statutory basis for standing that invokes the public oriented goals of competitive bidding laws but that is not specifically grounded in the statutory text. For many years prior to creating this new source of standing, this court had recognized that the competitive bidding statutes "are for the purpose of inviting competition, to guard against favoritism, improvidence, extravagance, fraud and corruption in the awarding of municipal contracts, and to secure the best work or supplies at the lowest price practicable, and are enacted for the benefit of property holders and taxpayers, and not for the benefit or enrichment of bidders, and should be so construed and administered as to accomplish such purpose fairly and reasonably with sole reference to the public interest." (Internal quotation marks omitted.) *Austin* v. *Housing Authority*, 143 Conn. 338, 345, 122 A.2d 399 (1956). Under this traditional rubric, this court determined that disappointed bidders did not inherently have statutory standing; *Joseph Rugo, Inc.* v. *Henson*, 148 Conn. 430, 435, 171 A.2d 409 (1961); and in doing so the court noted that "[c]ourts will only intervene to prevent the rejection of a bid when the obvious purpose of the rejection is to defeat the object and integrity of competitive bidding." Id., 434.

In *Spiniello Construction Co.* v. *Manchester*, supra, 189 Conn. 543–45, this court held for the first time that even though public bidding laws create no cause of action for disappointed bidders, such a bidder had standing to pursue a claim that a town had violated these laws by accepting a conditional combined discount bid based on an oral addendum known only to one bidder, precluding other bidders from competing

on equal terms. In so holding, we reasoned that "[t]here is a growing trend for courts to permit one who has been aggrieved by a refusal to award a public contract pursuant to lowest responsible bidder provisions to also vindicate the public interest by challenging such arbitrary or capricious action by governmental officials."[9] Id., 545. The court later emphasized the limits of this holding, explaining that: "In *Spiniello Construction Co.* v. *Manchester*, [supra, 539], we recognized that our prior decisions had the effect of preventing judicial review of potentially meritorious claims concerning the implementation and execution of competitive bidding statutes. We also acknowledged the fact that the group most benefited by the statute—the public—had no effective means of protecting their interests. . . . Thus, we held that where fraud, corruption or acts undermining the objective and integrity of the bidding process existed, an unsuccessful bidder did have standing under the public bidding statute. We limited the scope of our holding in order to strike the proper balance between fulfilling the purposes of the competitive bidding statutes and preventing frequent litigation that might result in extensive delay in the commencement and completion of government projects to the detriment of the public." (Citations omitted.) *Ardmare Construction Co.* v. *Freedman*, supra, 191 Conn. 504–505.

I am uncertain of the source of authority underlying the court's decision in *Spiniello Construction Co.*[10] Nonetheless, there and in subsequent cases we properly have cleaved to the long-standing principle that "[c]ourts will only intervene to prevent the rejection of a bid when the obvious *purpose* of the rejection is to defeat the object and integrity of competitive bidding." (Emphasis added.) *Joseph Rugo, Inc.* v. *Henson*, supra, 148 Conn. 434. Thus, in denying standing in *Ardmare Construction Co.* v. *Freedman*, supra, 191 Conn. 497, the court explained the factors that led to a different result than in *Spiniello Construction Co.*: "There, the municipality had imparted information to one bidder that it had not provided other bidders. . . . Thus, parity of information no longer existed among the bidders as envisioned by the statute. In this case . . . [t]he construction company which received the contract award was not given any special advantage over the plaintiff in submitting its bid, nor was it privy to any secret information. . . . The [commissioner of administrative services (commissioner)] did not apply its requirement inconsistently or in a discriminatory fashion. Nor was there any proof that the commissioner was acting in bad faith." (Citation omitted.) Id., 505–506. The question of whether standing was appropriate, the court concluded, turned not on the inherent logic or illogic of the underlying bidding terms but on the presence of inconsistency or discrimination in the *process* of crafting and applying those terms.

In *Unisys Corp.* v. *Dept. of Labor*, supra, 220 Conn.

696, the court reiterated the significance of procedural irregularities, noting that "[requests for proposals] are not necessarily illegal merely because the specifications of the [requests] can be met by only one vendor. . . . [M]ore must appear in order to render the specifications and the contract based thereon illegal . . . . [A]n objectionable and invalidating element is introduced when specifications are drawn to the advantage of one manufacturer not for any reason in the public interest but, rather, to insure the award of the contract to that particular manufacturer." (Internal quotation marks omitted.) Id. As this court later underscored in *Connecticut Associated Builders & Contractors* v. *Hartford*, supra, 251 Conn. 188, "[o]ur focus [in *Unisys Corp.*] was not on the possibility that a particular specification might limit the number of eligible bidders, but on whether the specification necessarily had an adverse impact on the integrity of the bidding process." The court in *Unisys Corp.* v. *Dept. of Labor*, supra, 695–96, drew no ultimate conclusion as to standing, holding only that these allegations raising specific claims of information disparity involving one particular competitor were sufficient to warrant an evidentiary hearing.[11]

As I previously have noted, in *Connecticut Associated Builders & Contractors* v. *Hartford*, supra, 251 Conn. 169, this court reaffirmed these limits on jurisdiction. The court announced: "In conclusion, we reiterate our adherence to the boundaries of the standing principles established in our existing competitive bidding case law. . . . The determinative factor, we held [in *Ardmare Construction Co.*], was not whether some bidders had been precluded from the bidding process but whether the requirements in that process had been applied consistently and in good faith. . . . That, essentially, is what has occurred in the present case as well." (Citations omitted.) Id., 188–89.

I find troubling the majority's abandonment of these "boundaries of the standing principles established in our existing competitive bidding case law"; id., 188; that plainly underlie the reasoning of *Connecticut Associated Builders & Contractors* and its predecessors. ECI complains not about procedural corruption but, rather, about discriminatory effect. As we explicitly held in *Unisys Corp.*, however, even the most extreme form of discriminatory effect—a purchase order designed to be fulfilled only by a *single* possible bidder—does not alone create a basis for standing. ECI has failed to allege anything more than an unequal effect of an evenhanded process, and to permit standing on that basis would be an exercise of power we do not properly possess. I am mindful that cost control undoubtedly is an important goal of the competitive bidding statutes. But it is for the legislature to determine which costs are subject to challenge under the statutes and by whom.

II

ECI's claim to standing under Connecticut's antitrust statutes does not suffer from the significant statutory and jurisprudential barriers discussed in part I of this concurring and dissenting opinion. In sharp distinction to the plain absence of a private cause of action under the competitive bidding statutes, "the legislature expressly has conferred standing on a broad range of individuals under the [Connecticut Antitrust Act (act)], including unsuccessful bidders in a municipal bidding process."[12] *Cheryl Terry Enterprises, Ltd.* v. *Hartford*, 270 Conn. 619, 632, 854 A.2d 1066 (2004). Moreover, General Statutes § 35-28 explicitly forbids every "contract, combination, or conspiracy . . . [that] are for the purpose, or have the *effect*, of" violating the act. (Emphasis added.) The act thus clearly confers standing on disappointed bidders to pursue a theory of liability based on harmful effects.

Nonetheless, I would conclude that ECI's claim is inadequately briefed and that we should withhold judgment on this complex issue until it is properly presented to us. The act implicates both state and federal legislative schemes; see *Vacco* v. *Microsoft Corp.*, 260 Conn. 59, 72–73, 793 A.2d 1048 (2002) ("[t]he legislature amended the [act] in 1992 to make explicit its intent that the judiciary shall interpret the [act] in accordance with the federal courts' interpretation of federal antitrust law"); and it contains important exceptions pertaining to, among other things, organized labor. See General Statutes § 35-31. The trial court's memorandum of decision did not articulate that court's reasons for denying standing on this claim, and ECI's appellate brief does little more than identify the relevant statutes and point to three unilateral acts by the defendant city of Hartford: imposing the project labor agreement on all bidders for the project, imposing the project labor agreement on nonunion workers and refusing to award the contract to ECI. ECI also identifies this court's holding in *Cheryl Terry Enterprises, Ltd.* v. *Hartford*, supra, 270 Conn. 623, in which we accorded standing to a disappointed low bidder who claimed that "it was not awarded the contract due to a conspiratorial agreement between a [labor] union and the defendant [city], with the purpose of obtaining a union contract." ECI, however, does not point to any such conspiratorial agreement either in its complaint at the trial court or in its brief on this issue.[13] "It is well-settled that an individual or corporation cannot alone contract, combine, or conspire to violate the antitrust laws. Thus, 'a violation of [§] 35-28 . . . requires a plurality of actors.' *Shea* v. *First Federal Savings & Loan Association of New Haven*, 184 Conn. 285, 306, [439 A.2d 997] (1981) . . . ." (Citations omitted.) *McKeown Distributors, Inc.* v. *Gyp-Crete Corp.*, 618 F. Sup. 632, 645 (D. Conn. 1985). Although a number of contracts and agreements are likely relevant to this litigation, it is unclear which, if any, we should consider as the basis for ECI's claim.

While I would leave open the question of whether a colorable claim of an antitrust violation could be made out from the allegations in ECI's complaint, nonetheless it is improvident to reach any such conclusion on the basis of the underdeveloped record and the lack of adequate attention to this issue by the parties.

Accordingly, I respectfully dissent from these holdings.

[1] See footnote 1 of the majority opinion for a listing of the individual plaintiffs named in this case.

[2] See footnotes 3 and 4 of the majority opinion for a complete listing of the defendants in this case.

[3] In the present case, there is evidence in the record supporting the legitimacy of this decision. The record reflects that project labor agreements had yielded successful results in other projects in the state. Moreover, regardless of whether conditions are such that this particular project labor agreement will yield the same result, it cannot be said that the objective of the defendant city of Hartford in requiring this project labor agreement is antithetical to the purpose of the competitive bidding statutes.

[4] The majority's approach to cost appears to conflate two distinct levels of cost consideration: first, the specifications of a project—a building's location, its size, the specific construction materials, the time to completion, permissible levels of noise or pollution, etc.—dictate in broad terms what a project will cost. After those specifications are set, the competitive bidding process allows a public entity to find the contractor who will satisfactorily perform the prespecified project at the lowest price. Section 4a-100 plays a role in determining who may participate in this second level bidding process, but it is wholly unrelated to the initial development of project specifications at the first level. ECI here seeks to challenge not the process of submitting bids but the legitimacy of a mandated specification of the project itself, namely, that contractors abide by a project labor agreement. ECI expressly refused to comply with this specification, and consequently it was by definition not the lowest bidder on the project specified by the defendants. ECI's claim in the present case essentially asks us to nullify that specification in order to render its low bid compliant on the ground that the specification increases the project's cost. Not only is this claim unrelated to § 4a-100, but the court in *Connecticut Associated Builders & Contractors* already has spoken directly to this issue: "[W]e know of no requirement in the competitive bidding statutes that propels cost considerations to the top of the list of appropriate considerations for *public contract specifications*. If cost alone were the determinative factor of appropriate bid criteria, disappointed bidders or nonbidders would have *virtually unlimited opportunities to litigate project specifications on the ground of alternate designs, materials, safety requirements and so on.*" (Emphasis added.) *Connecticut Associated Builders & Contractors* v. *Hartford*, supra, 251 Conn. 187–88.

The potentially absurd results invited by the majority's undifferentiated emphasis on cost may be illustrated by considering a hypothetical challenge under the competitive bidding statutes to a public project based on material, rather than labor, costs. Suppose a public entity solicits bids to construct a building with a slate roof, rather than an asphalt shingled roof. The decision to specify the roofing materials is made on the basis of desired longevity, aesthetic preference, or arbitrary whim. Slate is much more difficult to work with than asphalt, and only a subset of contractors possess the skill and access to materials needed to work with slate efficiently. Other contractors, who out of habit, aesthetic preference, or chance do not typically work with slate, are therefore, as ECI here complains, placed at a significant competitive disadvantage because of the specified material input. Under the logic of the majority opinion, if a "non-slate" contractor were to submit a low bid, conditional on being allowed to construct the roof from asphalt, and the bid were rejected, the disappointed noncompliant bidder would have standing to bring an action based on a claimed violation of competitive bidding laws by asserting that requiring slate roofs would decrease competition and increase the costs to the public. This is plainly nonsensical and inconsistent with the limited grounds of standing permitted under existing Connecticut legislation. There might be reason to doubt the wisdom of insisting on a slate roof, particularly if the decision is the product of arbitrary

whim, and there may be cause for questioning the mandated use of arguably more expensive union labor. But under the present constitutional division of power, in the absence of a colorable claim of procedural corruption, these are judgments to be made by the legislature, not by this court.

[5] For this reason, I am not swayed by the majority's citation to *Statewide Grievance Committee* v. *Rozbicki*, 211 Conn. 232, 558 A.2d 986 (1989). In the present case, both prongs of the test in *Connecticut Associated Builders & Contractors* speak equally to subject matter jurisdiction, whereas *Rozbicki* refers to a discussion of the merits *following* a finding that jurisdiction was lacking.

[6] See, e.g., *Roth* v. *Weston*, 259 Conn. 202, 789 A.2d 431 (2002) (announcing two-pronged jurisdictional test and concluding, after thorough analysis, that neither prong was met in that case).

[7] See also, e.g., *Woods* v. *Interstate Realty Co.*, 337 U.S. 535, 537, 69 S. Ct. 1235, 93 L. Ed. 1524 (1949) ("where a decision rests on two or more grounds, none can be relegated to the category of obiter dictum"); *United States* v. *Title Ins. & Trust Co.*, 265 U.S. 472, 486, 44 S. Ct. 621, 68 L. Ed. 1110 (1924) ("where there are two grounds, upon either of which an appellate court may rest its decision, and it adopts both, the ruling on neither is obiter [dictum], but each is the judgment of the court and of equal validity with the other" [internal quotation marks omitted]); *United States* v. *Bueno*, 585 F.3d 847, 850 n.3 (5th Cir. 2009) ("[t]his circuit follows the rule that alternative holdings are binding precedent and not obiter dicta" [internal quotation marks omitted]); *Bravo* v. *United States*, 532 F.3d 1154, 1162 (11th Cir. 2008) (providing "[t]hat [an] alternative holding counts because in this circuit additional or alternative holdings are not dicta, but instead are as binding as solitary holdings"); *Pyett* v. *Pennsylvania Building Co.*, 498 F.3d 88, 93 (2d Cir. 2007) ("[a]n alternative conclusion in an earlier case that is directly relevant to a later case is not dicta; it is an entirely appropriate basis for a holding in the later case"); *United States* v. *Fulks*, 454 F.3d 410, 434–35 (4th Cir. 2006) (stating that alternative conclusion in prior case that bears directly on subsequent case cannot be dismissed as dicta); *Natural Resources Defense Council, Inc.* v. *Nuclear Regulatory Commission*, 216 F.3d 1180, 1189 (D.C. Cir. 2000) ("where there are two grounds, upon either of which an appellate court may rest its decision, and it adopts both, the ruling on neither is obiter [dictum], but each is the judgment of the court, and of equal validity with the other" [internal quotation marks omitted]); *United States* v. *Rohde*, 159 F.3d 1298, 1302 n.5 (10th Cir. 1998) ("[The] alternate holding [was] not dicta. . . . Were this panel inclined to engage in the business of labeling as dicta one of the two alternative grounds . . . it would then confront [the] defendant's failure to demonstrate why that label ought not adhere to the alternative which is innocuous to her theory, rather than to the alternative which undermines it."); *Parsons* v. *Federal Realty Corp.*, 143 So. 912, 920 (Fla. 1932) ("A ruling in a case fully considered and decided by an appellate court is not dictum merely because it was not necessary, on account of one conclusion reached upon one question, to consider another question the decision of which would have controlled the judgment. Two or more questions properly arising in a case under the pleadings and proof may be determined, even though either one would dispose of the entire case upon its merits, and neither holding is a dictum, so long as it is properly raised, considered, and determined."); *QOS Networks, Ltd.* v. *Warburg, Pincus & Co.*, 294 Ga. App. 528, 532–33, 669 S.E.2d 536 (2008) ("A ruling is not dictum merely because the disposition of the case is or might have been made on some other ground. Where a case presents two or more points, any one of which is sufficient to determine the ultimate issue, but the court actually decides all such points, the case is an authoritative precedent as to every point decided, and none of such points can be regarded as having merely the status of a dictum."); *State* v. *Preciose*, 129 N.J. 451, 461, 609 A.2d 1280 (1992) ("[r]ather than treating that discussion of the merits as dicta, we consider it an alternative holding").

[8] Even while dismissing the reasoning of *Connecticut Associated Builders & Contractors* as mere dicta, the majority invokes that case to justify its holding in the present case: "One need only examine the reasons why the court in *Connecticut Associated Builders & Contractors* concluded that the [named plaintiff] did *not* have standing to understand why ECI in the present case does." (Emphasis in original.) While the majority's assertion nicely demonstrates that it really is possible to have one's cake and eat it too, the argument suffers from a fundamental logical flaw: simply because one set of reasons leads to a particular result, it does not follow that the absence of this reasoning compels a different result. Indeed, it is only by

ignoring all past precedent that the majority is able to suggest that the specific reasoning articulated in *Connecticut Associated Builders & Contractors* represents the *only* basis on which standing is properly denied.

[9] This court's decision in *Spiniello Construction Co.* appears to have been influenced by the adoption of an "injury in fact" basis for standing in the federal courts following the enactment of the federal Administrative Procedure Act, 5 U.S.C. § 500 et seq., which in turn was applied to claims challenging federal bidding statutes. Our decision cited several federal court decisions in support of our conclusion. See, e.g., *Scanwell Laboratories, Inc.* v. *Shaffer*, 424 F.2d 859, 865 (D.C. Cir. 1970) (explaining in case addressing public bidding statute, "[t]he law of standing was greatly modified by the passage of the Administrative Procedure Act"); id., 872 ("the Administrative Procedure Act applies to all situations in which a party who is in fact aggrieved seeks review, regardless of a lack of legal right or specific statutory language"). This court has long recognized, however, that "[t]he Connecticut counterpart to [the relevant provision of the Administrative Procedure Act] . . . is much more limited in scope." *Ardmare Construction Co.* v. *Freedman*, supra, 191 Conn. 503. The narrower language of our own Uniform Administrative Procedure Act; General Statutes § 4-166 et seq.; plainly does not confer on courts the authority to adopt an "injury in fact" standing analysis, and we have not adopted a similarly expansive standard for standing to bring claims under any other statutory scheme.

[10] This court has held that as a matter of formal authority, where "subject matter jurisdiction is created by statute . . . we have no power to enlarge or circumscribe it." *Ambroise* v. *William Raveis Real Estate, Inc.*, 226 Conn. 757, 763, 628 A.2d 1303 (1993); id. (time window for statutorily created right of appeal not subject to judicial modification).

[11] The majority, in footnote 17 of its opinion, notes that evidentiary hearings are atypical in motions to dismiss and expresses some doubt regarding whether a hearing was appropriate here. While I agree with the majority's general statement of law, this court has stated with respect to competitive bidding statutes: "Although the plaintiffs were not required to prove the merits of their claim, they did have the lesser burden of establishing a colorable claim. . . . Under the test for standing set forth in *Unisys Corp.*, *Ardmare Construction Co.* and *Spiniello Construction Co.*, the trial court was *required* to conduct an evidentiary hearing to decide whether the plaintiffs had established a colorable claim that the project labor agreement requirement had undermined the integrity or objectives of the competitive bidding process." (Citation omitted; emphasis added.) *Connecticut Associated Builders & Contractors* v. *Hartford*, supra, 251 Conn. 182.

[12] General Statutes § 35-35, for example, provides in relevant part that "*any person . . . injured* in its business or property by any violation of the provisions of this chapter shall recover treble damages . . . ." (Emphasis added.)

[13] In its complaint, ECI does allege that "[u]nlike its union contractor competitors, ECI never participated in the collective bargaining agreements and negotiations that resulted in . . . the [project labor agreement] . . . ." It is unclear, however, what significance this allegation has for purposes of the antitrust claim. As the majority notes, ECI "[does] not challenge the legality of the [project labor agreement] or the process by which it was negotiated, but, rather, the fact that it was included in the mandatory bid specifications with which all prospective bidders, union and nonunion alike, were required to comply."