REPUBLICAN PARTY OF CONNECTICUT *v.* DENISE W. MERRILL, SECRETARY OF THE STATE
(SC 19010)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh, Harper and Vertefeuille, Js.

*Argued September 12—officially released September 26, 2012**

Proloy K. Das, with whom was *Richard P. Healey*, for the appellant (plaintiff).

Gregory T. D'Auria, solicitor general, with whom were *Jane R. Rosenberg* and *Maura Murphy Osborne*, assistant attorneys general, and, on the brief, *George Jepsen*, attorney general, for the appellee (defendant).

Opinion

ROGERS, C. J. The primary issue to be resolved in this matter is the proper construction of General Statutes (Sup. 2012) § 9-249a.[1] The plaintiff, the Republican Party of Connecticut, brought a declaratory judgment action in which it sought a determination that, because its candidate for the office of governor in the 2010 election received the highest number of votes under the designation of the Republican Party line on the ballot, the defendant, Denise W. Merrill, the secretary of the state, was required to list the candidates of the Republican Party first on the ballots for the 2012 election pursuant to § 9-249a (a). The defendant contended in response that the action was barred by sovereign immunity and that, because the Democratic Party candidate for the office of governor in the aggregate received the highest number of votes in the 2010 election, the candidates of the Democratic Party should be listed first on the 2012 ballots. The trial court granted the joint request of the parties to reserve the following questions for the advice of the Appellate Court or this court, pursuant to General Statutes § 52-235 and Practice Book § 73-1: (1) "Is the [plaintiff's] complaint barred by sovereign immunity?"; and (2) "Does . . . § 9-249a require that the [plaintiff's] candidates for office be placed on the first line of the ballots for the November 6, 2012 election?"[2] After oral argument before this court, we ordered the parties to submit supplemental briefs on two questions, which we later reframed as follows:[3] "Did the plaintiff have an available administrative remedy in the present case? If so, did the plaintiff exhaust the administrative remedy?" Thereafter, on September 26, 2012, we issued a summary decision in the form of an order in which we stated that the answer to the two questions on which we had ordered supplemental briefs was "yes," the answer to the first reserved question was "no," and the answer to the second reserved question was "yes." We also indicated that a full written opinion would follow. This is that opinion.

The record reveals the following undisputed facts and procedural history. On July 26, 2012, Jerry Labriola, Jr., the chairman of the Republican Party, John McKinney, the Senate Republican leader, and Lawrence F. Cafero, Jr., the House of Representatives Republican leader (collectively, Republicans), in their capacities as party leaders as well as candidates for state office, sent a letter to the defendant in which they stated that Tom Foley, the Republican candidate for the office of governor in the 2010 election, had received 560,874 votes, all of which were on the Republican Party line, and Dannel Malloy, the Democratic candidate for the office of governor, had received 540,970 votes on the Democratic Party line and 26,308 votes on the party line for the Working Families Party. The Republicans also pointed out that, in the 2011 municipal elections, the Democratic

Party had been listed first on the ballots. The Republicans contended that, under § 9-249a, the Republican Party should have been listed first on the ballots in the 2011 election and it should be listed first on the ballots in the 2012 election because Foley had "polled the highest number of votes in the last-preceding election" for the office of governor on the Republican Party line. General Statutes § 9-249a (a). In support of their argument, the Republicans relied on a similar situation that had occurred in New York in 1995, when it was determined that the party whose candidate had received the most votes on the candidate's party line in the preceding election should be placed first on the ballot.

On July 27, 2012, the defendant responded to the Republicans' letter. The defendant stated that the Republicans had failed to "differentiate between the appearance of a candidate on the ballot by 'party' nomination and by nominating petition with a 'party designation.' Taking this crucial difference into account results in the conclusion reached by my office in 2011: the Democratic Party is listed on the first row on the ballot followed by the Republican Party listed on the second row. Governor Malloy was a candidate of only a single 'party' on the ballot in 2010, that of the Democratic Party. Ballot access by Governor Malloy on the Working Families Party line was achieved by nominating petition with 'party designation' in 2010."

Thereafter, the plaintiff brought this action for declaratory and injunctive relief seeking a judicial determination that § 9-249a required the defendant to place the candidates for the Republican Party on the first line of the ballots for the November 6, 2012 election and a mandatory injunction requiring the defendant to comply with the statute. The parties then jointly requested that the trial court submit the reserved questions to the Appellate Court and indicated that, upon the granting of the request, they would request an immediate transfer of the reserved questions to this court. The trial court granted the request and we transferred the reservation to this court.

After oral argument on the reserved questions before this court, we ordered the parties to submit supplemental briefs on the two additional questions we previously set forth, which we subsequently reframed. The defendant contended in its supplemental brief that the plaintiff was required to request a declaratory ruling pursuant to General Statutes § 4-176 (a)[4] and that its failure to do so deprived the trial court of subject matter jurisdiction. The plaintiff submitted a brief in which it contended, inter alia, that it had exhausted its administrative remedies when the Republicans submitted the July 26, 2012 letter to the defendant.

We agree with the plaintiff that it exhausted its administrative remedies. Accordingly, we treat this action as an administrative appeal, with respect to which the

state has waived its sovereign immunity by statute. On the merits of the plaintiff's statutory claim, we conclude that § 9-249a requires the defendant to list the plaintiff's candidates first on the ballot for the 2012 election.

I

We first address the question of whether the plaintiff exhausted its administrative remedies. As we have indicated, in her supplemental brief, the defendant contended that the plaintiff was required pursuant to § 4-176 to request from the defendant a declaratory ruling on the meaning and proper application of § 9-249a before the plaintiff could bring an action in the trial court. The plaintiff contends that it had no administrative remedy because, among other reasons, the power to interpret § 9-249a lies with the attorney general, pursuant to General Statutes § 3-125, not with the defendant. See footnote 16 of this opinion for the text of § 3-125. Alternatively, the plaintiff argues that it had, in fact, exhausted this administrative remedy. We conclude that the plaintiff was required to request a declaratory ruling from the defendant before it could seek redress in the trial court and that the Republicans' July 26, 2012 letter to the defendant constituted such a request.[5] We also conclude that the defendant's July 27, 2012 letter in response constituted a declaratory ruling. Accordingly, we conclude that the action is not barred by the exhaustion doctrine.

"The doctrine of exhaustion of administrative remedies is well established in the jurisprudence of administrative law. . . . Under that doctrine, a trial court lacks subject matter jurisdiction over an action that seeks a remedy that could be provided through an administrative proceeding, unless and until that remedy has been sought in the administrative forum. . . . In the absence of exhaustion of that remedy, the action must be dismissed." (Citation omitted; internal quotation marks omitted.) *Piteau* v. *Board of Education*, 300 Conn. 667, 678, 15 A.3d 1067 (2011); see also id., 684 ("[i]f the available administrative procedure . . . provide[s] the [plaintiff] with a mechanism for attaining the remedy that [he] seek[s] . . . [the plaintiff] must exhaust that remedy" [internal quotation marks omitted]).

Section 4-176 (a) provides in relevant part that "[a]ny person may petition an agency . . . for a declaratory ruling as to . . . the applicability to specified circumstances of a provision of the general statutes . . . ." An aggrieved party can appeal from a declaratory ruling to the Superior Court pursuant to General Statutes § 4-183. See General Statutes §§ 4-166 (3)[6] and 4-176 (h).[7] In addition, if an agency declines to issue a declaratory ruling, the person who requested the ruling may bring a declaratory judgment action pursuant to General Statutes § 4-175 (a).[8] The defendant is expressly authorized by statute to issue declaratory rulings. See General Statutes § 9-3.[9]

This court repeatedly has held that when a plaintiff can obtain relief from an administrative agency by requesting a declaratory ruling pursuant to § 4-176, the failure to exhaust that remedy deprives the trial court of subject matter jurisdiction over an action challenging the legality of the agency's action. See *Polymer Resources, Ltd.* v. *Keeney*, 227 Conn. 545, 557–58, 630 A.2d 1304 (1993) (plaintiff's claim for injunctive relief was barred by exhaustion doctrine when plaintiff failed to seek declaratory ruling from commissioner of department of environmental protection pursuant to § 4-176); *Housing Authority* v. *Papandrea*, 222 Conn. 414, 422 n.6, 610 A.2d 637 (1992) (principle that "procedures set forth in § 4-176 [a] must be exhausted before an action challenging the applicability of a regulation may be brought in the Superior Court applies with equal force to the plaintiff's challenge . . . to the commissioner's statutory authority" to engage in challenged conduct); *Housing Authority* v. *Papandrea*, supra, 424 ("[e]ven a claim that an administrative agency has exceeded its statutory authority or jurisdiction may be the subject of an administrative appeal" [internal quotation marks omitted]); *Savage* v. *Aronson*, 214 Conn. 256, 269, 571 A.2d 696 (1990) (request for declaratory ruling would have been available administrative remedy for purposes of exhaustion doctrine if plaintiff had claimed only that defendant's 100 day emergency housing limit conflicted with statutes, but action was not barred because plaintiffs could not have raised constitutional claims in petition for declaratory ruling); *Connecticut Mobile Home Assn., Inc.* v. *Jensen's, Inc.*, 178 Conn. 586, 588–89, 424 A.2d 285 (1979) (declaratory judgment action seeking determination that certain lease provisions violated state statute was barred by exhaustion doctrine when plaintiff failed to seek declaratory ruling from real estate commission pursuant to § 4-176, which confers on state agencies power to interpret statutes and regulations); see also *Liberty Mobile Home Sales, Inc.* v. *Cassidy*, 6 Conn. App. 723, 726, 507 A.2d 499 (1986) (plaintiff's declaratory judgment actions were barred by exhaustion doctrine when it failed to seek declaratory rulings on issue from department of consumer protection pursuant to § 4-176).[10] We conclude, therefore, that, prior to bringing an action in the trial court, the plaintiff in the present case was required to exhaust its administrative remedies by requesting a declaratory ruling from the defendant on the question of whether § 9-249a required the defendant to list the plaintiff first on the ballot in the 2012 election.[11]

We further conclude that the plaintiff exhausted its administrative remedies under § 4-176 because the July 26, 2012 letter to the defendant constituted a request for a declaratory ruling. This court previously has concluded that, under certain circumstances, a letter to a state agency by a person seeking a determination regarding the applicability of a statute to specific facts

may be treated as a petition for a declaratory ruling even if the person does not expressly invoke § 4-176. In *Cannata* v. *Dept. of Environmental Protection*, 239 Conn. 124, 680 A.2d 1329 (1996), the plaintiff landowners submitted a letter to the commissioner of environmental protection (commissioner) in which they requested a determination that the proposal to clear-cut their land was exempt from regulation by the defendant department of environmental protection (department) or, if it was not, that they were entitled to a permit authorizing them to clear-cut the land. Id., 126–27. They did not, however, expressly seek a declaratory ruling pursuant to § 4-176. The commissioner concluded that the land was not exempt from the department's regulations and the plaintiffs were not entitled to a permit. Id., 131. The plaintiffs appealed from the decision pursuant to § 4-183, and the department and the defendant attorney general moved to dismiss the appeal on the ground that the decision was not a final decision in a contested case pursuant to § 4-166 (2). Id., 131–32. The plaintiffs conceded that the decision was not a final decision in a contested case, but contended that it was a declaratory ruling and, therefore, was appealable pursuant to § 4-166 (3) (B). Id., 135. The trial court denied the motion to dismiss, concluding that "the plaintiffs had requested, and the commissioner had issued, a declaratory ruling . . . ." Id., 133.

On appeal, this court concluded that the plaintiffs' express request for a decision as to whether the proposed use of the land was exempt from regulation by the department fell "squarely within the purview of § 4-176 (a)." Id., 135. This court rejected the defendants' contention that the failure of the parties to comply with the notice requirements regarding declaratory rulings in the department's regulations meant that the plaintiffs' letter should not be treated as a declaratory ruling.[12] Id., 136–37. In addition, the court noted that "[t]he defendants have not claimed that the form or content of the plaintiffs' submission contravened any such requirement promulgated by the department." Id., 135 n.19; see also *Peruta* v. *Commissioner of Public Safety*, 128 Conn. App. 777, 785–86, 20 A.3d 691 (trial court's determination that plaintiff's e-mail to department of public safety could not be treated as petition for declaratory ruling was not clearly erroneous when plaintiff did not ask department of public safety to "apply or examine a regulation or statute with respect to a specified set of circumstances" and e-mail "lack[ed] any indication that [the plaintiff] sought any form of reasoned *analysis or decision* from the department" [emphasis in original]), cert. denied, 302 Conn. 919, 28 A.3d 339 (2011); cf. *Housing Authority* v. *Papandrea*, supra, 222 Conn. 432 n.16 (declining to treat letter from third party to defendant raising issues similar to those raised by plaintiff on appeal as petition for declaratory ruling from which plaintiff could have appealed, because

defendant's response to letter did not meet statutory requirements for declaratory ruling).

In the present case, the Republicans' July 26, 2012 letter to the defendant clearly sought a decision on the "applicability to specified circumstances of a provision of the [G]eneral [S]tatutes," as required by § 4-176 (a). In addition, it met all of the substantive requirements of the defendant's regulations governing declaratory rulings[13] because it was in writing, it clearly stated the substance and nature of the request, it identified the statute under which the inquiry was made, and it provided supporting data, facts and arguments. Specifically, the plaintiff clearly explained that the Republican Party had received the highest number of votes on the designated party line for the office of governor in the 2010 election and that it believed that that party should therefore be listed first on the ballot in the 2012 election, and it provided authority for that proposition. In addition, although the letter apparently did not contain the addresses and telephone numbers of the persons making the request, as required by the regulation, it clearly identified the authors as the Republicans, all of whom were presumably well-known to the defendant.

We are mindful that the plaintiff did not characterize the Republicans' letter as a request for a declaratory ruling in the proceedings before the trial court and continues to claim before this court that § 4-176 (a) does not provide an adequate remedy. Indeed, because the Republicans' letter sought written confirmation of the defendant's intended prospective application of the statute shortly before initiation of the present declaratory judgment action, the logical inference is that the plaintiff's intention was merely to obtain a statement of the defendant's position to support the plaintiff's entitlement to declaratory relief in the likely event that the defendant declined to change the ballot order for the 2012 election. See *Wilson* v. *Kelley*, 224 Conn. 110, 121, 617 A.2d 433 (1992) ("An action for declaratory judgment is a special proceeding . . . [that] requires the existence of an actual bona fide and substantial question in dispute which requires settlement between the parties. . . . [T]he declaratory judgment procedure may not be utilized merely to secure advice on the law . . . or to secure the construction of a statute if the effect of that construction will not affect a plaintiff's personal rights." [Citation omitted; internal quotation marks omitted.]). Nevertheless, the plaintiff's *intention* in filing the letter does not change the essential fact that, for purposes of exhaustion of administrative remedies, the letter meets all of the defendant's substantive requirements for a request for a declaratory ruling, nor does that intention bear on the defendant's election to respond to the letter in a manner bearing all of the hallmarks of a declaratory ruling. The letter clearly raised an actual controversy regarding the application of § 9-249a to the specific facts of this case, and the

Republicans clearly had taken the position that the defendant was violating the statute, thereby affecting their existing rights both as candidates and as party leaders. Thus, the letter cannot reasonably be characterized as a request either for an advisory opinion or for instructions.[14] We conclude, therefore, that, because the July 26, 2012 letter had all of the characteristics of a request for a declaratory ruling and met the statutory and regulatory requirements for such a request, as in *Cannata*, the letter constituted a request for a declaratory ruling.[15]

We also conclude that the defendant's July 27, 2012 letter in response constituted a declaratory ruling. The defendant gave no indication in the letter that her position that the Democratic Party should be listed first on the ballot pursuant to § 9-249a was anything other than a full and final disposition of the issue raised by the Republicans in their July 26, 2012 letter or that she might reconsider her position if they resubmitted the letter with an express request for a declaratory ruling. To the extent that the defendant claims that she might have given notice to other interested parties, conducted a hearing on the issue or requested an opinion from the attorney general pursuant to General Statutes § 3-125[16] if the Republicans had expressly characterized their letter as a request for a declaratory ruling, we are not persuaded. Those procedures are discretionary even when a formal request has been filed pursuant to § 4-176, and nothing prevented the defendant from doing any of those things if she thought that they were necessary for a considered determination of the meaning of § 9-249a.[17] We conclude, therefore, that, because the July 26, 2012 letter constituted a request for a declaratory ruling, and because the July 27, 2012 letter constituted a declaratory ruling, the plaintiff exhausted its administrative remedy pursuant to § 4-176.

Finally, we conclude that, under the circumstances of this case, we may treat this declaratory judgment action as an administrative appeal pursuant to § 4-183. See *Mario* v. *Fairfield*, 217 Conn. 164, 167 n.6, 585 A.2d 87 (1991) (treating declaratory judgment action as administrative appeal). The plaintiff has reaped no procedural advantage by bringing a declaratory judgment action and seeks the same remedy and relief that it would have been entitled to seek in an administrative appeal.[18] See *Stepney Pond Estates, Ltd.* v. *Monroe*, 260 Conn. 406, 422, 797 A.2d 494 (2002).[19] In addition, because the question before us is a pure legal question, the absence of an administrative record does not render the plaintiff's claim unreviewable. Accordingly, we conclude that it would elevate form over substance to require the plaintiff to initiate a new proceeding that in all material respects would be identical to this one.[20] Id. We conclude, therefore, that we have jurisdiction to address the merits of the second reserved question.

II

A

We begin our analysis of the second reserved question with the standard of review. The meaning of § 9-249a is a question of statutory interpretation over which our review is plenary.[21] "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z[22] directs us first to consider 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. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Internal quotation marks omitted.) *Bysiewicz* v. *DiNardo*, 298 Conn. 748, 765, 6 A.3d 726 (2010).

The present case concerns the order of candidates on a general election ballot. Specifically, it requires us to determine the order of parties on general election ballots when the current governor required the votes of a cross-endorsing party to prevail in the election contest. According to the plaintiff, the top line on the ballot is reserved for the party with the most votes on its party line in the preceding gubernatorial election. In contrast, the defendant contends that the party of the current governor should be placed first, regardless of whether the margin of victory was achieved through votes on a different line as a cross-endorsed candidate. We begin with the language of the statute. General Statutes (Sup. 2012) § 9-249a (a) provides: "The names of the parties shall be arranged on the ballots in the following order: (1) The party whose candidate for Governor polled the highest number of votes in the last-preceding election; (2) Other parties who had candidates for Governor in the last-preceding election, in descending order, according to the number of votes polled for each such candidate; (3) Minor parties who had no candidate for Governor in the last-preceding election; (4) Petitioning candidates with party designation whose names are contained in petitions approved pursuant to section 9-453o; and (5) Petitioning candidates with no party designation whose names are contained in petitions approved pursuant to section 9-453o."

"The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *DaimlerChrysler Services North America, LLC* v. *Commissioner of Revenue Services*, 274 Conn. 196, 203, 875 A.2d 28 (2005). As we explain in the following paragraphs, we conclude that the text and surrounding statutes allow for more than one reasonable interpretation of § 9-249a for the purposes of determining the order of parties on the ballot.

We begin by noting that the subject matter of the statute is the order of *parties* on election ballots, and the text of General Statutes (Sup. 2012) § 9-249a begins with the command: "The names of the *parties* shall be arranged on the ballots in the following order . . . ." (Emphasis added.) Section 9-249a thus appears primarily addressed to political parties, not candidates. It is therefore reasonable to conclude that the statute intends to measure party, not candidate, support. We recognize, however, that the plain language of the statute could be subject to reasonable contrary interpretations.

The defendant contends that "the statute focuses on the candidate's vote total, not the party's vote total," arguing that the placement of the word "polled" following the word "candidate" compels an interpretation of the statute whereby the party of the *candidate* with the most total votes has precedence on the ballots in the subsequent general election. Although we have held that referential words and phrases usually refer to the last antecedent, this instruction applies only to the extent that "no contrary intention appears" and the construction does not otherwise impair the meaning of the sentence. (Emphasis added; internal quotation marks omitted.) *Foley* v. *State Elections Enforcement Commission*, 297 Conn. 764, 786, 2 A.3d 823 (2010); see 2A N. Singer & J. Singer, Sutherland Statutory Construction (7th Ed. 2007) § 47:33, pp. 487–90. Here, the order of the words in § 9-249a is not sufficient to support the defendant's argument that the statute is clear and unambiguous on its face.

The defendant's interpretation, while plausible, does not overcome the statute's ambiguity. Most fatal to the defendant's view of the statute's plain meaning is the fact that the term "party" is not defined in § 9-249a, and has different meanings in related statutes. In her July 27, 2012 letter to the Republicans, the defendant relied on the definition of party provided in General Statutes § 9-372[23] to assert that "Governor Malloy was a candidate of only a single 'party' on the ballot in 2010, that of the Democratic Party." The Working Families Party appeared in the 2010 gubernatorial race pursuant to a nominating petition for then candidate Malloy with a "party designation" under General Statutes § 9-453.[24] The defendant argues that because the Working Fami-

lies Party was not a major or minor party under § 9-372 in 2010, all of the votes for Governor Malloy, who was listed on both the Democratic Party and the Working Families Party lines, must accrue only to the Democratic Party under § 9-249a.

The definitions in § 9-372, however, do not, by their own terms, apply to the ballot ordering statute. Indeed, § 9-249a is conspicuously absent from the list of statutes to which the definitions in § 9-372 apply.[25] "Unless there is evidence to the contrary, statutory itemization indicates that the legislature intended the list to be exclusive." (Internal quotation marks omitted.) *Commissioner of Environmental Protection* v. *Mellon*, 286 Conn. 687, 693, 945 A.2d 464 (2008). Consequently, invoking definitions from another section of title 9 of our General Statutes does not cure the ambiguity in the ballot ordering statute.[26]

In addition, another election statute, General Statutes § 9-453t,[27] allows the Working Families Party to be classified as a party during the 2010 election. Pursuant to § 9-372 (6), minor party status is determined on an office-by-office basis, according to the number of votes received by the party's candidate for that office in the preceding election.[28] The Working Families Party was not a "minor party" in the 2010 governor's race, but it had achieved "minor party" status for other offices on the 2010 ballot.[29] Indeed, the cross endorsement of Democratic Party candidate Malloy by nominating petition was possible only because the Working Families Party was "(1) . . . an existing minor party with the same party designation at the time of [the] nomination, and (2) . . . otherwise qualified to nominate candidates on the same ballot." General Statutes § 9-453t.[30] Thus, in 2010, the Working Families Party was a "minor party" for the purposes of § 9-453t, which permitted it to cross endorse a major party candidate, but not a "minor party" under the § 9-372 definition, which does not govern the section we are called on to interpret. Given the multiple plausible definitions of the crucial term "party," the statutory language does not have a plain meaning. We conclude that § 9-249a is not clear and unambiguous on its face and turn to extratexutal sources for guidance.

B

In seeking to determine the legislative intent behind an ambiguous statute, we turn to "the legislative history and circumstances surrounding [the statute's] enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Internal quotation marks omitted.) *Bysiewicz* v. *DiNardo*, supra, 298 Conn. 765. We conclude that these interpretive aids support the plaintiff's construction of the statute, under which the party whose candidate received the most votes for the office

of governor on its party line is entitled to the top line on the ballot in the succeeding election.

Most important to our analysis is the legislative history of § 9-249a and its predecessor statutes. It is undisputed that, before 1953, the ballot ordering statute directed that the party with the most support on its party line in a governor's race be given the top place in the next election. The defendant urges that subsequent changes in the language of the ballot ordering statutes were substantive, and changed the meaning of the statute so that the party of the candidate who received the most votes across all party endorsements is placed first. A review of the legislative history, however, shows that the 1953 revisions were merely organizational, and were not intended to change the meaning of the ballot ordering statute as it had been understood to award the top line to the party with the most support on its party line.

We turn to a review of the genealogy and legislative history of Connecticut's ballot ordering statutes. Before 1953, the relevant statutory language was set forth in General Statutes (1949 Rev.) § 1199, which provides in relevant part that "[t]he name of the political party polling the largest number of votes for governor shall be first, and the party polling the next largest number of votes for the same office shall be second, and so on. . . ." This language had been substantially similar since 1903, and was reenacted in various ballot ordering measures throughout the years.[31] The current wording of the statute dates to the 1953 revisions of our election statute. See Public Acts 1953, No. 368, § 214. The language of that provision, which survives in relevant part in § 9-249a, provided that "[t]he names of the political parties shall be arranged on the machine, either in columns or horizontal rows, in such order as the secretary of [the] state may determine, precedence being given to the party whose candidate for governor polled the highest number of votes at the last-preceding election for such office, and so on in descending order. . . ." Public Acts 1953, No. 368, § 214.

According to the defendant, this change is significant and compels the conclusion that the legislature intended to modify the meaning of the ballot ordering statute from one focused on a party's support to one focused on a candidate's support. We have already noted that the plain language of the statute is ambiguous and could support either party's construction. An examination of the legislative history, moreover, contradicts the defendant's assertion, and demonstrates that the 1953 revisions were not intended to change the meaning of the statute.

The 1953 revisions originated in a Special Act directing the secretary of the state to "prepare a revision of the sections of the [G]eneral [S]tatutes relating to elections, primaries, caucuses and conventions for the purpose of consolidating and clarifying the same

. . . ." 26 Spec. Acts 363, No. 521 (1951). The report of the then secretary of the state, Alice Leopold, to the legislature listed the proposed revisions alongside the current statutes. See A. Leopold, Proposed Revision of the Sections of the General Statutes Pertaining to Elections (1953). In the preface to the report, Leopold was careful to note that the proposed revisions dealt only with "clarification and recodification" of Connecticut's election laws.[32] Upon presenting the revisions to the General Assembly, Leopold appeared before the Joint Standing Committee and explained that "[t]his legislation is not a change in the meaning of any laws, it is a rearrangement and re-codification of the existing laws. We were empowered to make only that kind of change by the last [l]egislature. . . . We did not intrude into the [l]egislative field in making changes in meaning only reorganization." Conn. Joint Standing Committee Hearings, Elections, 1953 Sess., p. 34, remarks of Leopold. The legislature adopted the revisions with little debate. See Public Acts 1953, No. 368. This legislative history provides strong evidence that the legislature intended the meaning of the revised ballot ordering provisions to be consistent with the way the statute had previously been interpreted. "It is well established that testimony before legislative committees may be considered in determining the particular problem or issue that the legislature sought to address by legislation." (Internal quotation marks omitted.) *Castonguay* v. *Commissioner of Correction*, 300 Conn. 649, 664 n.15, 16 A.3d 676 (2011). Moreover, there is no indication that the legislature intended to change the existing meaning of the ballot ordering provision in the amended history of Public Acts 1953, No. 368, or any subsequent codifications.[33]

This conclusion is supported by an analysis of the statute in the context of contemporaneous elections. At the time that the revisions were adopted, the meaning of the ballot ordering statute was well settled. First, the plain meaning of the statutory text in General Statutes (1949 Rev.) § 1199, providing that "[t]he name of the political party polling the largest number of votes for governor shall be first," clearly directed that precedence be given to the party with the most votes. Any doubt as to the meaning of the statute was settled in 1939, when a controversy similar to the one now before us was raised as a result of the 1939 governor's race. In that election, the Republican candidate for the office of governor, Raymond E. Baldwin, received 358 fewer votes than his Democratic Party opponent, but was declared governor by a margin of 3046 votes due to his cross endorsement on the Union Party line.[34]

Subsequent to the election, then Secretary of the State Sara B. Crawford, sought the opinion of then Attorney General Francis A. Pallotti on the following question: "[D]ue to the fact that the [g]overnor was elected at the last general election by the combined

votes polled by two parties, which major party shall, therefore, be placed in the first column of election ballots to be used in coming elections?" Opinions, Conn. Atty. Gen. (March 21, 1939) p. 230. The attorney general was charged with interpreting General Statutes (1930 Rev.) § 587, which provided in relevant part that "[e]ach column shall be headed by the name of the party whose candidates are listed therein . . . precedence being given to the party which polled the highest number of votes for governor at the last preceding general election for such office, and so on. . . ."[35] In Pallotti's opinion, the legislature "intended that preference be given to that party which has polled more votes for its candidate as governor than the other parties did for their respective candidates. It did not intend that preference be given to a party, which did not poll the highest number of votes, but whose candidate was elected with the votes received as an indorsed candidate of another party." Opinions, Conn. Atty. Gen., supra, p. 232. Consequently, the party whose candidate lost the election, but who had received the most votes on its party line, was listed first in the subsequent presidential election. This language was retained in General Statutes (1949 Rev.) § 1199, the last version of the ballot ordering statute prior to the 1953 revisions.[36]

This genealogy clarifies the legislature's understanding of the language adopted in 1953 and preserved in the current revision of § 9-249a. Pallotti's 1939 opinion settled any questions arising from the application of the ballot ordering statute to races for the office of governor decided by the votes on a cross endorsing party's line. A review of the legislative history and genealogy reveals no evidence of legislative objection to this interpretation. Subsequently, when the legislature did change the language of the statute in 1953, the legislative history indicates that the legislature steered clear of the "controversy" associated with substantive change by limiting itself to reorganization. See Conn. Joint Standing Committee Hearings, supra, p. 34, remarks of Leopold. When viewed through the historical prism of the 1938 election, the circumstances surrounding the statutory revision lead us to conclude that the legislature did not intend to change the ballot ordering law in a way that would have reversed the prevailing understanding of the law.

This conclusion is also supported by our review of related election statutes. Although the 1953 revisions and their successor statutes changed the language of the ballot ordering statute for machine ballots,[37] the text of the statutes governing paper ballots remained the same as the pre-1953 versions, with the emphasis on "the party which polled the highest number of votes for governor at the last-preceding regular election . . . ." General Statutes (1958 Rev.) § 9-278; see also General Statutes (1958 Rev.) § 9-279 (using same language for ballot ordering of "split tickets"). Our analysis

of the legislative intent is guided by the presumption that the legislature "created a harmonious and consistent body of law . . . ." (Internal quotation marks omitted.) *In re Judicial Inquiry No. 2005-02*, 293 Conn. 247, 262, 977 A.2d 166 (2009). In light of this presumption, it would not be reasonable to assume that the 1953 revisions intended a substantive change in the provisions governing ballot ordering for machine ballots but not for paper ballots, such that the ordering of ballots and parties would be different depending on the method of casting one's vote. General Statutes (1958 Rev.) § 9-279 was repealed in 2011 due to new voting machine technology; see Public Acts 2011, No. 11-20, § 39; leaving § 9-249a as the only ballot ordering statute. Given the purely organizational purpose of the 1953 revisions, the fifty-eight year period during which the paper and machine balloting statutes coexisted without conflict is further evidence that the legislature intended the statutes from which § 9-249a was derived to measure party, not candidate, support.

Finally, the public policy underlying the election statutes also supports construing § 9-249a to give priority to the party receiving the most votes on its party line. The legislative history of the ballot ordering statute reveals that it was intended to completely remove the defendant's discretion in ordering the parties on the ballot. See Conn. Joint Standing Committee Hearings, Elections, 1976 Sess., p. 13, remarks of Henry Cohn (purpose of bill is to ensure that "there will be no question" as to how parties were listed on ballot); 19 S. Proc., Pt. 3, 1976 Sess., p. 1144, remarks of Senator Joseph Schwartz (bill provides for order of parties that did not participate in last gubernatorial election, "takes the authority away from the [s]ecretary of the [s]tate's [o]ffice").[38] The defendant's interpretation conflicts with this policy by leaving the ballot order uncertain whenever a gubernatorial candidate prevails as a result of votes cast on a cross endorsing party's line. For example, under the defendant's proposed construction, the decision to list the Democratic Party first on the 2012 ballot depends on combining all votes cast for Governor Malloy on both the Democratic Party and the Working Families Party lines and awarding them to the Democratic Party. This decision would require either an unjustified exercise of discretion or a questionable exporting of definitional terms from § 9-372 to § 9-249a, itself an exercise of discretion in the face of textual ambiguity. Moreover, if we agreed with the definition of the term "party" that the defendant applies to § 9-249a, the secretary of the state would be left without statutory guidance as to which party should be awarded the winning candidate's votes in cases where the cross endorsing major or minor party, as defined by § 9-372, was responsible for the outcome of a gubernatorial election. Although the secretary of the state could rationally assign the first line to the endorsing party with

the most votes, or the party in which the elected candidate is enrolled, such a choice would be a matter of discretion. The secretary of the state could even conceivably place the cross endorsing party with the least votes on the first line, subjecting the statute to an absurd or bizarre result. See *State* v. *Courchesne*, 296 Conn. 622, 710, 998 A.2d 1 (2010) ("it is axiomatic that those who promulgate statutes . . . do not intend to promulgate statutes . . . that lead to absurd consequences or bizarre results" [internal quotation marks omitted]). In contrast, an interpretation of the statute that gives the top line to the party with the most support on its party line in the previous gubernatorial election furthers the public policy goals of promoting certainty and limiting discretion.

We conclude that § 9-249a is an ambiguous statute, and that the legislative history, genealogy, and public policy all support a construction requiring the party whose candidate for governor polled the highest number of votes on that party's line be given precedence on the ballot in the subsequent general election. Because the Republican Party's gubernatorial candidate received more votes on his party's line in the 2010 election than Governor Malloy received on either the Democratic Party or the Working Families Party lines, we hold that § 9-249a directs the defendant to place the Republican Party at the top of the ballot in the 2012 general election.

In this opinion the other justices concurred.

* September 26, 2012, the date that we issued the decision in this case as an order, is the operative date for all substantive and procedural purposes.

[1] General Statutes (Sup. 2012) § 9-249a provides: "(a) The names of the parties shall be arranged on the ballots in the following order:

"(1) The party whose candidate for Governor polled the highest number of votes in the last-preceding election;

"(2) Other parties who had candidates for Governor in the last-preceding election, in descending order, according to the number of votes polled for each such candidate;

"(3) Minor parties who had no candidate for Governor in the last-preceding election;

"(4) Petitioning candidates with party designation whose names are contained in petitions approved pursuant to section 9-453o; and

"(5) Petitioning candidates with no party designation whose names are contained in petitions approved pursuant to section 9-453o.

"(b) Within each of subdivisions (3) and (4) of subsection (a) of this section, the following rules shall apply in the following order:

"(1) Precedence shall be given to the party any of whose candidates seeks an office representing more people than are represented by any office sought by any candidate of any other party;

"(2) A party having prior sequence of office as set forth in section 9-251 shall be given precedence; and

"(3) Parties shall be listed in alphabetical order.

"(c) Within subdivision (5) of subsection (a) of this section, candidates shall be listed according to the provisions of section 9-453r."

[2] The trial court reserved the questions to the Appellate Court and this court transferred the matter to itself pursuant to General Statutes § 51-199 (c) and Practice Book § 65-2.

[3] We have reframed the questions on which we ordered supplemental briefs to more accurately reflect the question presented in light of the arguments contained in the supplemental briefs. Cf. *Stamford Hospital* v. *Vega*, 236 Conn. 646, 648 n.1, 674 A.2d 821 (1996) (court may reframe certified question to render it more accurate in framing issues presented).

[4] General Statutes § 4-176 (a) provides: "Any person may petition an agency, or an agency may on its own motion initiate a proceeding, for a declaratory ruling as to the validity of any regulation, or the applicability to specified circumstances of a provision of the general statutes, a regulation, or a final decision on a matter within the jurisdiction of the agency."

[5] We reject the plaintiff's argument that it had no administrative remedy because the power to interpret § 9-249a lies with the attorney general, pursuant to § 3-125, not with the defendant. As we discuss in this opinion, this court has held repeatedly that a party is required to request a declaratory ruling from an agency if the agency has the power to grant the requested relief before the party may seek declaratory or injunctive relief in court. We never have suggested that the fact that an agency always may seek an opinion from the attorney general on a legal question that is the subject of a request for a declaratory ruling means that the party need not seek a ruling from the agency in the first instance.

[6] General Statutes § 4-166 (3) provides in relevant part: " 'Final decision' means . . . (B) a declaratory ruling issued by an agency pursuant to section 4-176 . . . ."

[7] General Statutes § 4-176 (h) provides in relevant part: "A declaratory ruling shall be effective when personally delivered or mailed or on such later date specified by the agency in the ruling, shall have the same status and binding effect as an order issued in a contested case and shall be a final decision for purposes of appeal in accordance with the provisions of section 4-183. . . ."

[8] General Statutes § 4-175 (a) provides: "If a provision of the general statutes, a regulation or a final decision, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff and if an agency (1) does not take an action required by subdivision (1), (2) or (3) of subsection (e) of section 4-176, within sixty days of the filing of a petition for a declaratory ruling, (2) decides not to issue a declaratory ruling under subdivision (4) or (5) of subsection (e) of said section 4-176, or (3) is deemed to have decided not to issue a declaratory ruling under subsection (i) of said section 4-176, the petitioner may seek in the Superior Court a declaratory judgment as to the validity of the regulation in question or the applicability of the provision of the general statutes, the regulation or the final decision in question to specified circumstances. The agency shall be made a party to the action."

[9] General Statutes § 9-3 provides: "The Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law and, unless otherwise provided by state statute, the secretary's regulations, declaratory rulings, instructions and opinions, if in written form, shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title, except for chapter 155 [elections and campaign financing], provided nothing in the section shall be construed to alter the right of appeal provided under the provisions of chapter 54 [Uniform Administrative Procedure Act]."

[10] Although there are a number of cases in which a plaintiff brought an action against a state official seeking declaratory or injunctive relief without first seeking a declaratory ruling from the relevant agency or otherwise exhausting administrative remedies, they provide little guidance on the jurisdictional issue before us in the present case because that issue was not raised. See, e.g., *Bysiewicz* v. *DiNardo*, 298 Conn. 748, 753–54, 6 A.3d 726 (2010) (after attorney general issued "formal opinion" on meaning and constitutionality of General Statutes § 3-124, plaintiff brought action seeking declaratory judgment that she met statutory criteria to run for office of attorney general or, in alternative, that statute was unconstitutional); *Butts* v. *Bysiewicz*, 298 Conn. 665, 670, 5 A.3d 932 (2010) (plaintiff brought action for injunctive relief claiming that secretary of state had authority under General Statutes § 9-388 to place his name on election ballot); *C. R. Klewin Northeast, LLC* v. *Fleming*, 284 Conn. 250, 254, 932 A.2d 1053 (2007) (plaintiff brought mandamus action against commissioner of public works, governor and state comptroller claiming that department of public works was required to pay plaintiff in accordance with settlement agreement pursuant to General Statutes § 3-7); *Nielsen* v. *Kezer*, 232 Conn. 65, 72, 652 A.2d 1013 (1995) (plaintiff brought mandamus action claiming that secretary of state's refusal to place plaintiff on ballot violated General Statutes §§ 9-390 and 9-407); *Unisys Corp.* v. *Dept. of Labor*, 220 Conn. 689, 696, 600 A.2d 1019 (1991) (plaintiff sought injunction to prevent department of labor from considering proposals to supply computer equipment when department allegedly had

violated competitive bidding requirement of General Statutes § 4a-57). In *Unisys Corp.*, the exhaustion doctrine was raised, and this court concluded that the challenged decision did not constitute a contested case under the Uniform Administrative Procedure Act, General Statutes § 4-166 et seq., and, therefore, the plaintiff could not have brought an administrative appeal. *Unisys Corp.* v. *Dept. of Labor*, supra, 693–94. The court did not consider, however, whether the plaintiff was required to request a declaratory ruling pursuant to § 4-176 before it could bring an action in the trial court.

[11] At oral argument before this court, the plaintiff argued that § 4-176 did not provide an adequate remedy because it was not seeking a ruling on the meaning of § 9-249a, but was seeking compliance with the statute. In its supplemental brief, the plaintiff abandoned this claim, presumably in recognition of our cases holding that "[e]ven a claim that an administrative agency has exceeded its statutory authority or jurisdiction may be the subject of an administrative appeal." (Internal quotation marks omitted.) *Housing Authority* v. *Papandrea*, supra, 222 Conn. 424; see also id., 422 n.6 (principle that "procedures set forth in § 4-176 [a] must be exhausted before an action challenging the applicability of a regulation may be brought in the Superior Court applies with equal force to the plaintiff's challenge in the present case to the [commissioner of housing's] statutory authority" to engage in challenged conduct); id., 423 ("a claim for injunctive relief does not negate the requirement that the complaining party exhaust administrative remedies").

[12] At the time that the plaintiff in *Cannata* submitted its letter to the commissioner of environmental protection, § 22a-3a-1 (c) (2) of the Regulations of Connecticut State Agencies provided in relevant part: "If the petition [for a declaratory ruling] is granted, the commissioner shall publish in the Connecticut Law Journal a notice granting the petition and the right of the public to comment thereon, and the petitioner shall send notice by certified mail of the substance of the petition and the right to comment thereon to all persons known by the petitioner to have an interest in the declaratory ruling." (Internal quotation marks omitted.) *Cannata* v. *Dept. of Environmental Protection*, supra, 239 Conn. 136 n.20.

[13] General Statutes § 4-176 (b) provides: "Each agency shall adopt regulations, in accordance with the provisions of this chapter, that provide for (1) the form and content of petitions for declaratory rulings, (2) the filing procedure for such petitions and (3) the procedural rights of person with respect to the petitions."

Section 3-77-22 of the Regulations of Connecticut State Agencies provides in relevant part: "(a) These rules set forth the procedure to be followed by the Secretary of the State in the disposition of requests for declaratory rulings as to the applicability of any statutory provision or of any regulation or order of the Secretary of the State.

"(b) Any interested person may at any time request a declaratory ruling from the Secretary of the State with respect to the applicability to such person of any statute, regulation or order enforced, administered, or promulgated by the Secretary of the State. Such request shall be in writing, signed by the petitioner or petitioner's attorney, and submitted by mail or hand delivered during normal business hours to the office of the Secretary of the State. In addition, such a request shall:

"(1) state clearly and concisely the substance and nature of the request;

"(2) identify the statute, regulation or order concerning which the inquiry is made;

"(3) identify the particular aspect thereof to which the inquiry is directed. The request for a declaratory ruling shall be accompanied by a statement of any supporting data, facts, and arguments that support the position of the person making the inquiry . . . .

"(c) The Secretary of the State may give notice to any person that such a declaratory ruling has been requested, and may receive and consider data, facts, arguments, and opinions from persons other than the person requesting the ruling.

"(d) The Secretary of the State may conduct a hearing pursuant to [General Statutes §§ 4-177 and 4-178] for the purpose of finding facts as the basis for a declaratory ruling. The Secretary of the State shall give notice of such hearing as shall be appropriate. The provisions of sections 3-77-14 through and including 3-77-19 of these regulations shall apply to such hearings.

"(e) If the Secretary of the State determines that a declaratory ruling will not be rendered, the Secretary of the State shall within thirty (30) days, after receipt of the petition notify the person so inquiring that the request has been denied. If the Secretary of the State renders a declaratory ruling,

a copy of the ruling shall be sent to the petitioner and to the petitioner's attorney, if any, and to any other person who has filed a written request for a copy with the Secretary of the State."

[14] In addition to declaratory rulings, the defendant is authorized to issue instructions and opinions pursuant to § 9-3. See footnote 9 of this opinion; see also Regs., Conn. State Agencies § 3-77-23 ("[t]he Secretary of the State may give, at his sole discretion, advisory opinions pursuant to [General Statutes §] 9-3").

[15] In *Cannata* v. *Dept. of Environmental Protection*, supra, 239 Conn. 135 n.18, this court stated that the determination of whether a document should be treated as a request for a declaratory ruling is a question of fact. This court also has stated, however, that, when a writing is clear and unambiguous, the determination of its meaning is a question of law. *19 Perry Street, LLC* v. *Unionville Water Co.*, 294 Conn. 611, 622–23, 987 A.2d 1009 (2010) (when court is construing contract, "[w]here a party's intent is expressed clearly and unambiguously in writing . . . the determination of what the parties intended . . . is a question of law" [internal quotation marks omitted]); cf. *Miller* v. *Egan*, 265 Conn. 301, 308, 828 A.2d 549 (2003) ("[t]he construction of a pleading is a question of law, over which we exercise plenary review"); *Miller* v. *Egan*, supra, 308 (when court is determining character of pleading, "[t]he vital test is to be found in the essential nature and effect of the proceeding"). By extension of these principles governing the construction of contracts and pleadings, we conclude that, because our focus in the present case is not on whether the Republicans had intended to invoke § 4-176 when they sent the July 26, 2012 letter to the defendant, but on whether the letter, which was clear and unambiguous on its face, had the essential nature and effect of a request for a declaratory ruling, the issue presents a question of law. There simply are no disputed issues of fact that, if resolved, could undermine our determination that the Republicans' letter had the character of a request for a declaratory ruling.

[16] General Statutes § 3-125 provides in relevant part: "The Attorney General . . . shall advise or give his opinion to the head of any executive department or any state board or commission upon any question of law submitted to him. . . ."

[17] The defendant suggests that, because the Republicans "waited until the last minute" to submit the July 26, 2012 letter, the plaintiff should not be allowed to complain if "mistakes [were] made and settled expectations undone . . . ." We disagree. Although we recognize the great difficulties that the defendant faces in timely administering the election process; see *Caruso* v. *Bridgeport*, 285 Conn. 618, 653, 941 A.2d 266 (2008) (recognizing "difficulties that [arise from] statutory time constraints on election contests and the magnitude and complexity of the election process"); she has pointed to no authority for the proposition that an agency decision that immediately and finally effects a person's statutory rights is immune from judicial review solely because the agency was under pressure to render the decision quickly. Moreover, if the defendant was uncertain which party should be listed first on the ballots for the 2012 election pursuant to § 9-249a and needed more time or information to make that determination, she could have said so. Upon reaching that conclusion, she could have then considered whether there was sufficient time before the deadline for printing the ballots to hear from all interested parties and to render a considered decision and, if not, what steps she should take. She could not bypass this process by rendering a decision that was preliminary and tentative for purposes of an administrative appeal and, at the same time, final and legally binding as to the placement of the political parties on the ballots for the 2012 election.

The defendant also points out that the plaintiff failed to make all of the arguments in the July 26, 2012 letter that it is now making to this court. Again, the defendant points to no authority for the proposition that the Republicans were required to include in their letter *all* of the arguments that would support their interpretation of § 9-249a. Once the issue was fairly before her, it was the defendant's responsibility to interpret § 9-249a based on all of the relevant considerations or, if she was unable to do so on the basis of the information provided, to request additional information or to seek an opinion from the attorney general pursuant to § 3-125.

[18] The defendant responded to the Republican's letter on July 27, 2012, and the plaintiff filed its complaint seeking declaratory and injunctive relief thirteen days later on August 9, 2012. Thus, the plaintiff filed the complaint within the forty-five day period for filing administrative appeals provided by § 4-183. See General Statutes § 4-183 (c) (1) (appeal must be brought within forty-five days after agency mails final decision).

[19] In *Stepney Pond Estates, Ltd.* v. *Monroe*, supra, 260 Conn. 422, this court stated, "[t]o conclude in this case that the fact that the plaintiff invoked [General Statutes] § 12-119 instead of bringing a common-law action in equity deprived the trial court of jurisdiction would be to exalt form over substance. Although the trial court technically did not have jurisdiction over a challenge to the imposition of a conveyance tax under § 12-119, the issues, the nature of the proceeding and the form of relief were precisely the same as they would have been had the plaintiff characterized its claim as a common-law action in equity. Accordingly, the plaintiff did not reap any procedural advantage or obtain any remedy or relief in the proceedings under § 12-119 that it would not have had had it brought a common-law action in equity . . . . Nothing would be gained by requiring the plaintiff to initiate a new proceeding that, in all respects except its characterization of the claim, would be identical to this one."

[20] Because the state has waived its sovereign immunity with respect to administrative appeals brought pursuant to § 4-183, we need not address the arguments raised by the defendant in her main brief that the plaintiff's action is barred by the doctrine of sovereign immunity, which claims were premised on the characterization of the plaintiff's complaint as an action for a declaratory judgment.

[21] The defendant urges that § 9-3 modifies our usual standard of review for statutory interpretation. See footnote 9 of this opinion for the text of § 9-3. In a recent election case, we held that § 9-3 does not entitle the defendant's decisions interpreting statutes to deference greater than the decisions of other agency heads, noting that the legislative history of that provision "indicates that [it] was intended to clarify that the secretary of [the] state, rather than the elections commission, has the final word on issues related to elections . . . ." *Bysiewicz* v. *DiNardo*, 298 Conn. 748, 781 n.29, 6 A.3d 726 (2010). We have held that "[i]t is well settled . . . that we do not defer to [an agency's] construction of a statute—a question of law—when . . . the [provisions] at issue previously ha[ve] not been subjected to judicial scrutiny or when the [agency's] interpretation has not been [time-tested]." (Internal quotation marks omitted.) *Foley* v. *State Elections Enforcement Commission*, 297 Conn. 764, 776, 2 A.3d 823 (2010). As we discuss later in this opinion, the defendant's interpretation of § 9-249a is not time-tested. Moreover, this case is the first time the statute has been subject to judicial construction.

[22] General Statutes § 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."

[23] General Statutes § 9-372 (5) defines a " '[m]ajor party' " as "(A) a political party or organization whose candidate for Governor at the last-preceding election for Governor received, under the designation of that political party or organization, at least twenty per cent of the whole number of votes cast for all candidates for Governor, or (B) a political party having, at the last-preceding election for Governor, a number of enrolled members on the active registry list equal to at least twenty per cent of the total number of enrolled members of all political parties on the active registry list in the state . . . ."

General Statutes § 9-372 (6) defines a " '[m]inor party' " as "a political party or organization which is not a major party and whose candidate for the office in question received at the last-preceding regular election for such office, under the designation of that political party or organization, at least one per cent of the whole number of votes cast for all candidates for such office at such election . . . ." We note that, under § 9-372 (6), the Working Families Party will be a minor party for purposes of the 2014 gubernatorial election, because it received approximately 2.29 percent of the vote on its party line in the 2010 gubernatorial election. The Working Families Party, however, is not a major or minor party for purposes of the 2012 presidential election.

[24] Placing a candidate on the ballot by nominating petition requires collection of signatures from qualified electors "equal to the lesser of (1) one per cent of the votes cast for the same office or offices at the last-preceding election . . . or (2) seven thousand five hundred." General Statutes § 9-453d. The defendant must approve the signatures for the candidate to appear on the ballot. General Statutes § 9-453o (b).

[25] General Statutes § 9-372 provides in relevant part: "The following terms,

as used in [chapter 153], chapter 157 and sections 9-51 to 9-67, inclusive, 9-169e, 9-217, 9-236 and 9-361, shall have the following meanings . . . ."

[26] The defendant also cites the omission of limiting language to support her construction of § 9-372. For example, the definitions of major and minor parties in both subdivisions (5) and (6) of § 9-372, respectively, use the phrase "under the designation of that political party" to qualify their numerical requirements for their respective party statuses. According to the defendant, when the legislature has intended to focus on the party as opposed to the candidate, it has used the phrase "under the designation of that party," and omission of similar language from § 9-249a indicates a clearly discernable legislative intention. While related statutes, however, may support the defendant's interpretation; see, e.g., *Saunders* v. *Firtel*, 293 Conn. 515, 527, 978 A.2d 487 (2009) ("when a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject . . . is significant to show that a different intention existed" [internal quotation marks omitted]); they do not provide sufficient guidance to make the plain meaning of the statute clear in the face of an ambiguous definition of a central term.

[27] General Statutes § 9-453t provides: "Notwithstanding any other provision of the general statutes or any special act, the nomination of a candidate by a major or minor party under this chapter, for any office shall disqualify such candidate from appearing on the ballot by nominating petition for the same office, unless (1) such petition is circulated by an existing minor party with the same party designation at the time of such nomination, and (2) the minor party is otherwise qualified to nominate candidates on the same ballot. Nothing in this section shall be construed to prohibit any candidate from appearing on the ballot as the nominee of two or more major or minor parties for the same office."

[28] See footnote 23 of this opinion for the statutory definition of the term minor party.

[29] In 2010, the defendant listed the Working Families Party in two categories, a "Minor Party for Certain Offices" and "Party Designations Used on Nominating Petition."

[30] Section 9-453t provides an exception to the general rule prohibiting a candidate nominated by a major or a minor party from appearing on the ballot by nominating petition. The exception is available only to minor parties otherwise qualified to nominate candidates on the same ballot, but who have not received minor party status for the purposes of the election for that particular office. See Public Acts 2007, No. 07-194, § 16.

[31] An abbreviated genealogy of the ballot ordering statutes prior to 1949 is instructive. Public Acts 1903, No. 207, § 5, provides in relevant part: "The name of the political party polling the largest number of votes for the head of the ticket shall come first, and that of the party polling the next largest number of votes for the same office shall come second, and so on. . . ."

A few years later, the legislature enacted No. 250, § 1, of the 1909 Public Acts, governing the order of candidates on paper ballots, which provides in relevant part: "Each column . . . shall be arranged in such order as the secretary [of the state] may direct, precedence, however, being given to the party which polled the highest number of votes for governor at the last preceding general election for such office, and so on."

Likewise, No. 262, § 5, of the 1909 Public Acts provided, with respect to the order of candidates on ballots voted by machine: "The name of the political party polling the largest number of votes for the head of the ticket shall come first, and that of the party polling the next largest number of votes for the same office shall come second, and so on. . . ."

Thereafter, the legislature enacted No. 33, § 576, of the 1919 Public Acts, which provides in relevant part: "Each column shall be headed by the name of such party, and shall be arranged in such order as the secretary [of the state] may direct, precedence being given to the party which polled the highest number of votes for governor at the last preceding general election for such office, and so on."

The 1930 revision of the General Statutes contained equivalent provisions for both paper and machine ballots. General Statutes (1930 Rev.) § 587 provides in relevant part: "Each column shall be headed by the name of the party whose candidates are listed therein, and shall be arranged in such order as the secretary [of the state] may direct, precedence being given to the party which polled the highest number of votes for governor at the last preceding general election for such office, and so on. . . ."

General Statutes (1930 Rev.) § 722, addressing machine ballots, provides in relevant part: "The name of the political party polling the largest number

of votes for governor shall be first, and the party polling the next largest number of votes for the same office shall be second, and so on. . . ."

These provisions remained the same in 1941, when the legislature addressed straight and split tickets. Significantly, the 1941 revisions were enacted following the 1938 gubernatorial election, in which the Republican candidate was elected only with the help of the Union Party, and the subsequent attorney general's opinion directing the secretary of the state to place the Democratic Party first in the 1940 general election. General Statutes (Cum. Sup. 1941) § 107f provides in relevant part: "The names of the parties shall be listed in the straight ticket section of each ballot in such order as the secretary [of the state] may direct, precedence being given to the party which polled the highest number of votes for governor at the last preceding general election for such office, and so on. The names of the candidates in the split ticket section shall be arranged in such order as the secretary may direct, precedence being given to the candidates of the party which polled the highest number of votes for governor at the last preceding general election for such office, and so on."

The subsequent 1949 statutory revision retained the same language. General Statutes (1949 Rev.) § 1199 provides in relevant part: "The name of the political party polling the largest number of votes for governor shall be first, and the party polling the next largest number of votes for the same office shall be second, and so on. . . ."

[32] The preface to Leopold's report also stated: "On two previous occasions [c]ommissions were appointed to submit recommendations for revising our election laws. These reports involved, to a considerable extent, substantive changes in our laws. Some of these were passed. Many of the problems, because of controversy or other difficulties, were not approved.

"Both [c]ommissions did splendid jobs. However, in light of their experience we have adopted the policy of separating substantive changes from clarification and recodification of our laws. This proposed revision deals only with the problem[s] of:

"1. Arranging the sequence of election laws into a logical pattern for easier reference,

"2. Clarification of obscure language,

"3. Elimination of inconsistencies,

"4. Deletion of obsolete sections.

"Any changes in meaning, substance, or policy will be processed separately through the proper legislative channels for individual and specific consideration by the General Assembly." A. Leopold, supra, preface.

[33] The most recent substantive change in the ballot ordering statute occurred in 1989, when the General Assembly enacted No. 87-382, § 24, of the 1987 Public Acts. The legislation did not affect the language at issue in the present case, but only the law governing the ballot placement of parties that did not have a gubernatorial candidate in the last election. See General Statutes § 9-249a (a) (3). As we discuss later in this opinion, the legislative history makes it clear that the statute was passed in order to take discretion away from the secretary of the state with respect to the placement of parties that had not participated in the last election.

[34] Governor Baldwin received 227,191 votes on the Republican Party line and 3046 votes on the Union Party line. Wilbur Cross received 227,549 votes on the Democratic Party line. Thus, Governor Baldwin was declared the winner by a total of 2688 votes. See Secretary of the State, Statement of Vote, General Election (November 8, 1938) p. 13.

[35] In reaching this conclusion, Pallotti relied in part on General Statutes (1930 Rev.) § 722, governing the placement of party names on voting machines, which provided in relevant part: "The names of the political parties shall be arranged on the machine, either in columns or horizontal rows, in the following order as determined by the number of votes received by each party in the last general election. The names of the political party polling the largest number of votes for governor shall be first, and the party polling the next largest number of votes for the same office shall be second, and so on. . . ."

[36] See footnote 31 of this opinion for the relevant text of General Statutes (1949 Rev.) § 1199.

[37] Number 368 of the 1953 Public Acts contained separate sections addressing machine and paper ballots. The language in § 9-249a, at issue here, derives from the section addressing machine ballots. See General Statutes (1958 Rev.) § 9-250; General Statutes (Rev. to 1975) § 9-250; General Statutes § 9-249a.

[38] The legislative history of No. 76-159, § 1, of the 1976 Public Acts reveals

the intent to remove any remaining discretion for ordering candidates from the secretary of the state. Previous versions of the statute were silent as to order in which parties without gubernatorial candidates in the last election should be listed.