{RAFTOPOL *v.* RAMEY—CONCURRENCE}

ZARELLA, J., with whom VERTEFEUILLE, J., joins, concurring. I agree with part I of the majority opinion addressing the jurisdictional claim of the defendant, the department of public health (department). I also agree with the conclusion in part II affirming the trial court's order directing the department to issue a replacement birth certificate, pursuant to General Statutes § 7-48a, naming the plaintiff and intended parent, Shawn Hargon, as a parent of the children born under the gestational agreement to which he is a party.[1] I write separately, however, because I believe that when the tools of statutory construction are properly applied, there is no ambiguity in § 7-48a and related statutes as to whether Hargon's lack of a biological relationship to the children precludes a judge of the Superior Court from ordering that he be named as a parent on the replacement birth certificate. I also write separately because I believe that, to the extent that the majority finds it necessary to examine the legislative history of § 7-48a, it overlooks certain parts of that history and reaches certain conclusions that the legislative history does not support. Furthermore, the majority improperly examines the statute's legislative history *after* determining that precluding an intended parent with no biological relationship to the child from being named on the replacement birth certificate could lead to a bizarre result, thus introducing conflicting law into our deeply rooted precedent on statutory construction, which *never* has allowed for an examination of the legislative history after a determination has been made that construing a statute in any other manner could lead to a bizarre result. The majority's reliance on the legislative history, even after finding that there is only one plausible interpretation of the statute, also ignores the clear mandate of General Statutes § 1-2z not to consider extratextual evidence of the meaning of the statute *except* when more than one plausible interpretation exists. See *Ziotas v. Reardon Law Firm, P.C.*, 296 Conn. 579, 587, 997 A.2d 453 (2010). Finally, I do not think it wise to send the legislature a lengthy laundry list of unresolved questions pertaining to gestational agreements, together with pointed references to statutes enacted by other jurisdictions indicating how those questions might be resolved. Such an uninvited request, the scope of which, to my knowledge, far exceeds any prior call for legislative action by this court, is not essential to a resolution of the issues in this case and represents an inappropriate intrusion into the legislative domain. I discuss each point in turn.

I

The majority concludes that the meaning of § 7-48a is ambiguous with respect to whether Hargon, who has no biological relationship to the children, may be named as a parent on the replacement birth

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[1] I presume, as does the majority, that the gestational agreement is valid.

certificate. The majority reaches this conclusion because there is no definition of the terms "birth mother" or "gestational agreement" in § 7-48a, and no language in any related statute indicating that a person identified as an intended parent in a gestational agreement with no biological ties to the unborn child may be named as a parent in a replacement birth certificate without first adopting the child. I disagree.

"The principles that govern statutory construction are well established. 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 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.) *Mickey* v. *Mickey*, 292 Conn. 597, 613-14, 974 A.2d 641 (2009).

General Statutes § 7-48a, concerning the filing of birth certificates and replacement birth certificates, provides: "On and after January 1, 2002, each birth certificate shall be filed with the name of the birth mother recorded. *If the birth is subject to a gestational agreement, the Department of Public Health shall create a replacement certificate in accordance with an order from a court of competent jurisdiction not later than forty-five days after receipt of such order or forty-five days after the birth of the child, whichever is later.* Such replacement certificate shall include all information required to be included in a certificate of birth of this state as of the date of the birth. When a certified copy of such certificate of birth is requested by an eligible party, as provided in section 7-51, a copy of the replacement certificate shall be provided. The department shall seal the original certificate of birth in accordance with the provisions of subsection (c) of section 19a-42. Immediately after a replacement certificate has been prepared, the department shall transmit an exact copy of such certificate to the registrar of vital statistics of the town of birth and to any other registrar as the department deems appropriate. The town shall proceed in accordance with the provisions of section 19a-42."

(Emphasis added.)

The language of the statute is plain and unambiguous. The term "subject to" in § 7-48a is defined, inter alia, as "governed or affected by . . . ." Black's Law Dictionary (6th Ed. 1990). The statute thus must be construed to mean that a birth "subject to" a gestational agreement is governed by its provisions. It follows that when a gestational agreement provides in clear and unequivocal language that a carrier shall bear a child for persons identified therein as the child's intended parents, the department shall create a replacement birth certificate upon an order from a court of competent jurisdiction in accordance with the terms of the agreement, even if one of the intended parents is not biologically related to the child.

This conclusion is confirmed by a reading of General Statutes § 19a-42, to which § 7-48a refers and which the majority completely ignores. General Statutes § 19a-42, regarding the amendment of vital records, provides in relevant part: "(a) . . . Amendments [to birth certificates] related to parentage or gender change shall result in the creation of a replacement certificate that supersedes the original, and shall in no way reveal the original language changed by the amendment. . . .

"(c) . . . The original certificate in the case of parentage or gender change shall be physically or electronically sealed and kept in a confidential file by the department and the registrar of any town in which the birth was recorded, and may be unsealed for viewing or issuance only upon a written order of a court of competent jurisdiction. The amended certificate shall become the public record. . . ."

Section 7-36 defines the terms used in §§ 7-48a and 19a-42. General Statutes § 7-36 (10) specifically defines "[a]mendment," in part, as meaning to "create a replacement certificate of birth for matters pertaining to parentage and gender change . . . ." General Statutes § 7-36 (13) defines "[p]arentage" as "includ[ing] matters relating to adoption, gestational agreements, paternity and maternity . . . ."

Reading these statutes together, they clearly provide that an amendment to a birth certificate for a birth governed by a gestational agreement shall result in a replacement birth certificate that supersedes the original. There is no qualifying language in §§ 7-48a, 19a-42, 7-36 (10) or 7-36 (13), limiting the persons who may be named as parents in a replacement birth certificate to intended parents who are biologically related to the child. If the legislature had intended to impose such a restriction it easily could have done so. See, e.g., *Dept. of Public Safety* v. *Freedom of Information Commission*, 298 Conn. 703, 729, 6 A.3d 763 (2010); see also *Windels* v. *Environmental Protection Commission*, 284 Conn. 268, 299, 933 A.2d 256 (2007) (legislature knows how to convey its intent expressly).

There is also no language in any other related statute suggesting that a person named as an intended parent in a gestational agreement must be biologically related to the child in order to be named as a parent in a replacement birth certificate. "[W]e are not permitted to supply statutory language that the legislature may have chosen to omit." (Internal quotation marks omitted.) *Dept. of Public Safety* v. *Freedom of Information Commission*, supra, 729; see also *Connecticut Light & Power Co.* v. *Dept. of Public Utility Control*, 266 Conn. 108, 119, 830 A.2d 1121 (2003).

The majority's conclusion that § 7-48a is ambiguous because it fails to define birth mother or gestational agreement ignores or overlooks the principle of statutory interpretation that, "[w]hen a statute does not provide a definition, words and phrases in a particular statute are to be construed according to their common usage. . . . To ascertain that usage, we look to the dictionary definition of the term." (Internal quotation marks omitted.) *Potvin* v. *Lincoln Service & Equipment Co.*, 298 Conn. 620, 633, 6 A.3d 60 (2010); see also *Picco* v. *Voluntown*, 295 Conn. 141, 148, 989 A.2d 593 (2010); *Board of Selectmen* v. *Freedom of Information Commission*, 294 Conn. 438, 449-50, 984 A.2d 748 (2010); *Fairchild Heights, Inc.* v. *Amaro*, 293 Conn. 1, 9, 976 A.2d 668 (2009). The majority also overlooks General Statutes § 1-1 (a), which similarly provides that, "[i]n the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly."

Because the term gestational agreement is a technical term that describes a certain type of contract, we turn to Black's Law Dictionary for guidance. Black's Law Dictionary contains no definition of gestational agreement but defines a "surrogate-parenting agreement" as, inter alia, "[a] contract between a woman and typically an infertile couple under which the woman provides her uterus to carry an embryo throughout pregnancy; [especially], an agreement between a person (the intentional parent) and a woman (the surrogate mother) providing that the surrogate mother will (1) bear a child for the intentional parent, and (2) relinquish any and all rights to the child . . . ." Black's Law Dictionary (9th Ed. 2009). "Gestational surrogacy" is further defined as "[a] pregnancy in which one woman (the genetic mother) provides the egg, which is fertilized, and another woman (the surrogate mother) carries the fetus and gives birth to the child." Id. Black's Law Dictionary distinguishes "gestational surrogacy" from "traditional surrogacy," by defining the latter as "[a] pregnancy in which a woman provides her own egg, which is fertilized by artificial insemination, and carries the fetus and gives birth to a child for another person." Id. These definitions, when read in concert, establish that a gestational agreement, as

opposed to a traditional surrogacy agreement, means an agreement between a surrogate mother, who is not the egg donor, and the intended parents, who may or may not be biologically related to the unborn child because of infertility or other reasons, by which the surrogate mother agrees to bear the child for the intended parents and relinquishes any and all rights to the child following its birth. In other words, there simply is no question that a person identified in a gestational agreement as an intended parent who is not biologically related to a child may be named as a parent in a replacement birth certificate, because infertility, which prevents one of the intended parents from having a biological relationship to the child, is the reason why gestational agreements were devised in the first place.[2]

The agreement in the present case, which is variously described therein as the "agreement," "carrier agreement," "gestational surrogacy arrangement" and "gestational carrier agreement," fits precisely within this framework. The agreement identifies the plaintiff, Anthony Raftopol, as the natural father and Hargon, who is not biologically related to the children, as the "adopting parent,"[3] and states that the two are living together as lifetime partners and wish to take the children carried by the gestational carrier, the defendant Karma A. Ramey,[4] into their home.[5] The agreement further

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[2]I note that traditional surrogacy agreements also incorporate the principle that one of the intended parents is not biologically related to the child because the surrogate mother under such arrangements donates her own egg due to the infertility of the intended parent. The only exception to the rule that at least one of the intended parents named in a gestational or a traditional surrogacy agreement is not biologically related to the unborn child would seem to be a situation wherein a woman is unable to carry and give birth to a child for medical reasons and the egg of the intended mother and the sperm of the intended father are used to create an embryo that is then implanted in the gestational carrier's uterus.

[3]Although the agreement describes Hargon as the "adopting parent," its language indicates an understanding by the parties that Hargon's adoption of the children would occur by operation of the gestational agreement itself, and that he would adopt the children by more traditional means only "if necessary . . . ." See following text citing agreement's language.

[4]Although Ramey was named in the action as a defendant, she no longer is a party to this appeal.

[5]The gestational surrogacy agreement, entitled "Carrier Agreement," provides in relevant part: "The adopting parent [Hargon] and natural father [Raftopol] are living together, as lifetime partners, both are over the age of eighteen . . . years, and both are desirous of entering into the following agreement. The adopting

provides that Ramey, who is not the egg donor, desires to facilitate placement of the children with Raftopol and Hargon and will fully cooperate to achieve this goal by consenting to "the entry of an order after the child is born, placing the names of the natural father and the adopting parent on the birth certificate, and the award of custody to the natural father and adopting parent, and if necessary . . . to a second parent adoption of the child by the adopting parent." Accordingly, it could not be more clear under the terms of the parties' agreement that the court may order the department to issue a replacement birth certificate pursuant to § 7-48a naming Hargon as one of the parents, despite the fact that he has no biological relationship to the children.

II

To the extent that the majority finds § 7-48a ambiguous and examines the legislative history, I disagree with its analysis. The majority's exclusive focus is on two earlier versions of the statute *before* the present language on gestational agreements was added in 2008. The majority thus fails to discuss the most relevant portion of the statute's legislative history. In addition, I disagree with the majority's conclusion that the only legislative intent that can be gleaned from the legislative history is that § 7-48a allows a biological parent who is not the birth parent to be declared the parent of the child and to be listed on the replacement birth certificate without the requirement of an adoption. In fact, I cannot divine how the majority reaches this conclusion, especially after conceding that there is evidence in the legislative history that supports the opposite conclusion.

A

The legislative history of § 7-48a can be understood only in conjunction with the legislative history of § 19a-42. Public Acts 2001, No. 01-163 (P.A. 01-163) proposed the enactment of a new section to chapter 7, concerning vital records, as well as major changes to the then existing § 19a-42 regarding the amendment of vital records. As originally proposed in Raised Bill No. 6569, what ultimately became § 7-48a of the General Statutes included the following language on gestational agreements: "On receipt of a certified copy of an order of a court of competent jurisdiction approving a gestational agreement, the department shall prepare a new birth certificate for the child born of the agreement. The new birth certificate shall include all the information required to be set forth in a certificate of birth of this state as of the date of

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parent and natural father desire to take into their home the child or children . . . as their own whom is/are carried by the carrier and is/are biologically related to the natural father. The carrier wishes to facilitate the child's placement with the adopting parent and natural father and will fully cooperate to achieve this goal."

birth, except that the intended parent or parents under this agreement shall be named as the parent or parents." [6] Raised Bill No. 6569, January 2001 Sess., § 27 (a). The language on gestational agreements, however, was eliminated in Substitute House Bill No.

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[6]The complete version of the proposed bill provided as follows: "Sec. 27. (NEW) (a) On receipt of a certified copy of an order of a court of competent jurisdiction approving a gestational agreement, the department shall prepare a new birth certificate for the child born of the agreement. The new birth certificate shall include all the information required to be set forth in a certificate of birth of this state as of the date of birth, except that the intended parent or parents under this agreement shall be named as the parent or parents.

"(b) Immediately after a new certificate of birth has been prepared, an exact copy of the certificate, together with a copy of the order of the court approving a gestational agreement, shall be electronically or manually transmitted by the department to the registrar of vital statistics of each town in this state in which the birth of the person is recorded. The new birth certificate, the original certificate of birth on file and the copy of the order of the court shall be filed and indexed pursuant to such regulations as the commissioner shall adopt, in accordance with chapter 54 of the general statutes, to carry out the provisions of this section and to prevent access to such records of birth and court order, except as provided in this section. Any person, except the intended parent or child born of the agreement, who discloses any information contained in such records, except as provided in this section, shall be fined not more than five hundred dollars or imprisoned not more than six months, or both.

"(c) When a certified copy of the birth certificate of a child born of a gestational agreement is requested by a person authorized to receive such copy pursuant to section 7-51 of the general statutes, as amended by this act, a copy of the new certificate of birth, as prepared by the department in accordance with the applicable provisions of section 19a-42 of the general statutes, as amended by this act, shall be provided. Access to or issuance of a certified copy of the original birth certificate to any person, including the intended parent or parents of the child or the child born of the gestational agreement, if over eighteen years of age, shall be permitted only upon a written order signed by a judge of the probate court for the district in which the gestational agreement was approved, or another court of competent jurisdiction. The original certificate so issued shall be marked with a notation by the issuer that the original certificate of birth has been superseded by a replacement certificate of birth as on file." Raised Bill No. 6569, January 2001 Sess., § 27 (a).

6569, January Sess. 2001, as amended by House Amendment Schedules A and B,[7] which simply provided: "On and after January 1, 2002, each birth certificate shall contain the name of the birth mother, except by the order of a court of competent jurisdiction." P.A. 01-163, § 28. See also General Statutes (Rev. to 2003) § 7-48a. Accordingly, the provision subsequently enacted by the legislature contained no language concerning gestational agreements and, following its incorporation in the General Statues as § 7-48a, was entitled, "Birth certificate to contain name of birth mother." General Statutes (Rev. to 2003) § 7-48a Significantly, there was no explanation in the newly enacted statute as to when the statutory exception to naming the birth mother on the birth certificate would apply.

This explanation was instead contained in an amendment to § 19a-42 included in P.A. 01-163. Proposed changes to § 19a-42, on vital records, in both the raised and substitute bills, provided in relevant part that "[o]nly the commissioner [of the department][8] may amend birth certificates to reflect changes concerning parentage or gender change. Amendments related to parentage or gender change shall result in the creation of a replacement [birth] certificate that supersedes the original, and shall in no way reveal the original language changed by the amendment. . . ." Raised Bill No. 6569, January 2001 Sess., § 31 (a); Substitute House Bill No. 6569, January 2001 Sess., § 32 (a). Section 2 of the raised and substitute bills also added language to General Statutes § 7-36 pertaining to title 7 and § 19a-42, that defined "[a]mendment" in relevant part as meaning to "create a replacement certificate of birth for matters pertaining to parentage and gender change," and "[p]arentage" as "includ[ing] matters relating to adoption, gestational agreements, paternity and maternity . . . ." Raised Bill No. 6569, January 2001 Sess., § 2; Substitute House Bill No. 6569, January 2001 Sess., § 2.

Thus, the exception in § 7-48a to the naming of the birth mother in a birth certificate was in fact described in the amendments that same year to §§ 19a-42 and 7-36, which provided that a replacement birth certificate superseding the original shall be created when the birth certificate is amended pursuant to changes in parentage and

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[7]The language in Substitute House Bill No. 6569 was changed as follows: "Sec. 28. (NEW) On and after January 1, 2002, each birth certificate shall contain the name of the birth mother, except by the order of a court of competent jurisdiction." Substitute House Bill No. 6569, January 2001 Sess., § 28, as amended by House Amendment Schedules A and B.

[8]In 2005, the department adopted § 19a-41-8 (b) of the Regulations of Connecticut State agencies clarifying, inter alia, that "[o]nly the commissioner shall make amendments pertaining to adoption, gestational agreements, or maternity *upon receipt of a court order* . . . ." (Emphasis added.)

gender, such as those arising from a gestational agreement. Accordingly, the majority's first mistake in interpreting the legislative history is its conclusion that the legislature omitted more specific language on gestational agreements in the original version of § 7-28a because it rejected the notion of parenthood created solely by intent or because it wanted the courts to decide what additional information could be ordered to place on birth certificates. As has been demonstrated, this conclusion is mistaken because it completely overlooks the crucial fact that the legislature actually provided for the creation of replacement birth certificates pursuant to gestational agreements in 2001, first, by permitting an exception in § 7-48a to the rule that a birth certificate must be filed with the name of the birth mother, and, second, by amending § 19a-42 in the same public act to permit the issuance of replacement birth certificates pursuant to gestational agreements, among other reasons. For purposes of this case, the other significant fact about the legislative history of §§ 7-28a and 19a-42 in the year 2001 is that the legislature imposed no restriction, biological or otherwise, on the naming of a parent in a replacement birth certificate who is identified as the intended parent in a valid gestational agreement.

B

I also disagree with the majority's conclusion that the legislative history of Public Acts 2004, No. 04-255, in which the legislature amended § 7-48a to include language on replacement birth certificates, is ambiguous. Section 7-48a was greatly expanded in 2004 to include the following provision on replacement birth certificates: "On and after January 1, 2002, each birth certificate shall contain the name of the birth mother, except by the order of a court of competent jurisdiction, and be filed with the name of the birth mother recorded. Not later than forty-five days after receipt of an order from a court of competent jurisdiction, the Department of Public Health shall create a replacement certificate in accordance with the court's order. Such replacement certificate shall include all information required to be included in a certificate of birth of this state as of the date of the birth. When a certified copy of such certificate of birth is requested by an eligible party, as provided in section 7-51, a copy of the replacement certificate shall be provided. The department shall seal the original certificate of birth in accordance with the provisions of subsection (c) of section 19a-42. Immediately after a replacement certificate has been prepared, the department shall transmit an exact copy of such certificate to the registrar of vital statistics of the town of birth and to any other registrar as the department deems appropriate. The town shall proceed in accordance with the provisions of section 19a-42." General Statutes (Rev. to 2005) § 7-48a.

This new language evidently was intended to correct whatever ambiguity had been created by the absence of language in the original

statute regarding when to apply the exception to the rule that each birth certificate shall contain the name of the birth mother. By referring to the fact that such an exception would result in the creation of a replacement birth certificate and by expressly referring to § 19a-42 regarding the procedures to be followed in issuing such a certificate, the revised language made explicit the connection between §§ 7-28a and 19a-42 that had merely been implied when the legislature adopted § 7-28a and the amendment to § 19a-42 in 2001, although the amended language still did not make direct reference to gestational or other surrogacy agreements.

Representative Donald B. Sherer, who introduced the amendment to his fellow House members, likewise indicated his understanding of the substantive connection that the legislature had established in 2001 between §§ 7-28a and 19a-42 when he explained that, "[a] number of years ago . . . this legislature changed the birth certificate registration law to permit a court of [competent jurisdiction], being the Superior Court, to find parentage in accordance with the biological relationship to a child rather than the birth mother, if she wasn't the biological mother.

"And over the course of the years, there's been some confusion as to how to effectuate the birth certificate. So the language in this amendment pretty much clarifies what to do. It says that after the court orders parentage, that within [forty-five] days after the presentation of the court order, the [department] will issue a replacement birth certificate and the original birth certificate with all the required statistical information would remain confidential." 47 H.R. Proc., Pt. 14, 2004 Sess., pp. 4456-57. In response to a subsequent question as to whether the new provision would make it easier for some individuals to adopt without going to [P]robate [C]ourt, Representative Sherer added: "There's been a difficult situation where, due to the . . . parents not being the birth parents, the only way to obtain a new birth certificate would be to go to [P]robate [C]ourt and basically adopt their own child, which no one really thinks is the right thing to do." 47 H.R. Proc., supra, p. 4459.

Representative Sherer's comments, when read in the proper context, are not ambiguous. In his first comment, in which he referred to previous changes in the law on vital records to permit a finding of parentage on the basis of the biological relationship of a mother who was not the birth mother, he clearly was referring to the enactment of § 7-48a, and to changes in §§ 19a-42 and 7-36 enacted in 2001, allowing the amendment of birth certificates to reflect changes in parentage or gender such that an egg donor who was not the birth mother in a surrogacy arrangement could be named in a replacement birth certificate as the parent of the child. Similarly, Representative Sherer was clearly referring in his second comment to changes in the relevant statutes allowing any parent in a surrogacy

arrangement who was not the birth parent to obtain a replacement birth certificate without going to Probate Court to adopt the child. By implication, this would include intended parents identified in gestational agreements who have no biological relationship to the child. Although there is nothing in Representative Sherer's comments relating directly to gestational agreements, his comments do not suggest that a person identified as an intended parent in a gestational agreement may not be named on the replacement birth certificate unless biologically related to the child. Accordingly, I would disagree with the majority that Representative Sherer's comments are ambiguous, except to the extent that they imply that a person named as a parent in a gestational agreement who has a biological relationship to the child also may be named as a parent on the replacement birth certificate.

C

In addition, the majority inexplicably fails to examine the most important part of the legislative history, namely, the 2008 amendment in which the legislature added the language on gestational agreements to the statute. As previously discussed, prior to 2008, § 7-48a contained no language referring to gestational agreements. In 2008, however, language was proposed in Public Acts 2008, No. 08-184 "clarifying" that § 7-48a was intended to apply to gestational agreements. Notably, there was no discussion of this amendment during debate in the House or Senate, most likely because the amendment was part of a much larger bill on a variety of other matters relating to public health. J. Robert Galvin, however, the commissioner of the department (commissioner), testified before the joint standing committee on public health on March 3, 2008, that "[t]he revised language [of the statute] makes clear that . . . § 7-48a pertains to the births that are subject to a gestational agreement. Without this revision, it is difficult to interpret this statute." Conn. Joint Standing Committee Hearings, Public Health, Pt. 2, 2008 Sess., p. 545. What the commissioner apparently meant was that the statute at that time merely provided for the issuance of a replacement birth certificate pursuant to an order from a court of competent jurisdiction without directly describing the circumstances under which the court could make such an order.[9]

The Office of Fiscal Analysis (OFA) and the Office of Legislative Research (OLR) provided the legislature with reports on the proposed revision consistent with the commissioner's testimony.

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[9]As previously discussed, these circumstances were described in § 19a-42, which provides for the issuance of replacement birth certificates to reflect changes in parentage or gender change, with parentage being defined as matters pertaining to adoption, gestational agreements, maternity or paternity. General Statutes §§ 7-36 (10) and 7-36 (13).

In its report, the OFA stated that the amendment "clarifies law regarding the issuance of replacement birth certificates for births subject to a gestational agreement. This results in no fiscal impact." Office of Fiscal Analysis, Connecticut General Assembly, HB-5701 An Act Concerning Revisions to Statutes Pertaining to the Department of Public Health (2008), § 1. The OLR bill analysis similarly explained in relevant part that "[t]he bill appears to limit the replacement certificate requirement to births that are subject to a gestational agreement." Office of Legislative Research, Connecticut General Assembly, Bill Analysis HB 5701 An Act Concerning Revisions to Statutes Pertaining to the Department of Public Health (2008) § 1. Even more specific was the Summary of 2008 Public Acts published by the OLR and made available to the public[10] following passage of legislation during the General Assembly's regular and special sessions that year. The summary explained that "[t]he act limits the replacement certificate requirement to births that are subject to a gestational agreement, which is one between a woman and a couple that obligates the woman, often referred to as a surrogate mother, to carry the child for the intended parents." Office of Legislative Research, Connecticut General Assembly, Summary of 2008 Public Acts (2008) p. 239. Although all three publications acknowledged that they did not represent the intent of the General Assembly, the OFA and OLR reports were available to the legislature when it was considering the revised language,[11] and all three consistently construed the new language in § 7-48a as a "clarification" of the then existing statute, which did not define the circumstances under which a replacement birth certificate could be issued except indirectly by reference to § 19a-42. Furthermore, none of the three publications described any qualifications or limitations regarding who could be named on a replacement birth

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[10]A "Notice to Users" at the beginning of the summary states that the OLR encourages dissemination of the summaries by photocopying, reprinting in newspapers or other means and that they are intended to be "handy reference tools . . . ." Office of Legislative Research, Connecticut General Assembly, Summary of 2008 Public Acts (2008) p. i.

[11]"As we previously have recognized, the "fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either house thereof for any purpose. . . . Although the comments of the office of legislative research are not, in and of themselves, evidence of legislative intent, they properly may bear on the legislature's knowledge of interpretive problems that could arise from a bill." (Internal quotation marks omitted.) *Butts* v. *Bysiewicz*, 298 Conn. 665, 688 n.22, 5 A.3d 932 (2010).

certificate, and none even remotely suggested that the legislature intended to *preclude* an intended parent in a gestational agreement who has no biological relationship to the child from being named as a parent on a replacement birth certificate.

Accordingly, the only conclusion that can be drawn from an examination of this legislative history is that a person named as an intended parent in a valid gestational agreement may also be named as a parent in a replacement birth certificate, regardless of whether or not that person has biological ties to the child. Trial courts that have considered the legislative history of the 2008 amendment have reached the same conclusion. See, e.g., *Griffiths* v. *Taylor*, Superior Court, judicial district of Waterbury, Docket No. FA 08-4015629 (June 13, 2008) (concluding that "the legislature contemplated that a [judge of the] Superior Court would have the authority, under § 7-48a, to enter a judgment on the validity of a gestational agreement and that where there is a valid agreement, the court may then order the [department] to issue a replacement birth certificate with the names of the intended parents on it"); see also *Cassidy* v. *Williams*, Superior Court, judicial district of Litchfield, Docket No. FA 08-4006951-S (July 9, 2008).

When the 2008 amendment is examined in the context of the *entire* legislative history of § 7-48a, it becomes easier to understand why the current revision of the statute is completely consistent with the language on gestational agreements that was omitted in 2001, with each subsequent version of the statute after that time, and with the language in § 19a-42, to which § 7-48a has referred since 2004. It is also clear that the legislature has never contemplated a statutory limitation, such as the requirement of a biological relationship to the child, that would in any way restrict the category of persons named in a valid gestational agreement who also may be named in a replacement birth certificate under § 7-48a. Consequently, even if I agreed with the majority that it is necessary to examine the legislative history because there are ambiguities in the statute—which I do not—such an examination supports the conclusion that the legislature intended replacement birth certificates issued pursuant to valid gestational agreements to contain the names of the intended parents, regardless of their biological relationship to the child.

III

The majority attempts to resolve the perceived ambiguity in § 7-48a and the legislative history by turning to the principle of statutory interpretation that "we construe a statute in a manner that will not . . . lead to absurd results." (Internal quotation marks omitted.) *Kelly* v. *New Haven*, 275 Conn. 580, 616, 881 A.2d 978 (2005). The majority concludes that "[a] reading that construes §7-48a to mean that only a biological intended parent gains parental status absent adoption proceedings, when examined in relation to the artificial insemination statutes, leads to the not very remote

possibility [and absurd result] of a child who comes into the world with no parents—a parentless child." Although I agree that we could apply the principle that we construe a statute to avoid absurd results in affirming the trial court's judgment, the majority applies the principle in complete disregard of our well established law on statutory interpretation, and, in so doing, significantly weakens the plain meaning rule.

As previously stated, and recognized by the majority, this court is required to follow §1-2z in seeking the meaning of a statute. Specifically, "[t]he 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.*" (Emphasis added.) General Statutes § 1-2z. As also recognized by the majority, "[t]he test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Ziotas* v. *Reardon Law Firm, P.C.*, supra, 296 Conn. 587; see also *Tayco Corp.* v. *Planning & Zoning Commission*, 294 Conn. 673, 686, 986 A.2d 290 (2010) ("[W]e construe a statute in a manner that will not thwart its intended purpose or lead to absurd results. . . . We must avoid a construction that fails to attain a rational and sensible result that bears directly on the purpose the legislature sought to achieve." (Internal quotation marks omitted.).

From this it is evident that the principle that a statute should not be construed in such a manner as to lead to an absurd or bizarre result leaves no room for an examination of the legislative history when the court concludes that there is only one reasonable or plausible interpretation of the statute, namely, the one that the court is adopting. In other words, it is necessary and permissible to examine the legislative history for the purpose of discerning the legislative intent only when there is *more* than one plausible interpretation of the statute or when the only seemingly plausible interpretation would lead to an absurd result. See *Ziotas* v. *Reardon Law Firm, P.C.*, supra, 296 Conn. 587. Accordingly, when the majority consults the legislative history *after* determining that construing § 7-48a to preclude intended parents with no biological relationship to the child from being named on the replacement birth certificate would lead to an absurd result, it disregards the plain meaning rule and the analytical procedure that is traditionally invoked when the court concludes that interpreting a statute in any other manner would lead to an absurd result, thus unwisely injecting inconsistent reasoning and uncertainty into our precedent concerning statutory interpretation.

The majority justifies its approach, which it fails to bolster

with any precedential support, by stating that "the mere fact . . . that the department's proposed interpretation of § 7-48a leads to an absurd result does not necessarily lead to the conclusion, based on the plain language of the statute, that § 7-48a confers parental status on Hargon by virtue of the gestational agreement" because "many ambiguities" remain. The majority describes these ambiguities as "the nature and scope of 'an order from a court of competent jurisdiction,' the types of gestational agreements that would give rise to such an order, whatever it may be [and] who may be an intended parent, just to name a few." I find this rationale inadequate for two reasons. First, it embodies the internal contradiction that a statute may remain ambiguous with respect to the question before the court, even though there can be only one reasonable interpretation of the statutory language in the factual context presented. Second, the so-called "ambiguities" identified by the majority have absolutely no relevance to the issue before this court. It is abundantly clear that the issue to be decided in this particular case does not involve the "nature and scope" of the trial court's order, whether the gestational agreement into which the parties entered is the type of agreement that could give rise to such an order or whether Hargon was the intended parent named in the gestational agreement, but, rather, the very narrow issue of whether Hargon may be named on the replacement birth certificate even though he has no biological ties to the children born thereunder. Thus, it is whether a biological relationship is required between Hargon, the intended parent, and the children, and not any other issue, that is presented to this court on appeal, and the majority's ruminations as to other "ambiguities" in the statute have nothing at all to do with our decision in this case. In fact, the majority expressly recognizes the futility and lack of relevance of examining the statute's legislative history when it concludes, after doing so, that the legislative history is "inconclusive" as to whether the statute was intended to allow a non-biological intended parent to be named on a replacement birth certificate, but, nevertheless, it does not matter that the legislative history is inconclusive because the majority has "already rejected, on the basis of [its] plain language analysis, the department's contention that only biological intended parents may acquire legal parentage solely by virtue of a valid gestational agreement." If this is in fact an accurate summation of the majority's plain meaning analysis, which I believe it is, then the majority must concede that the legislative history has no relevance and should not have been consulted after it determined that there was only one plausible interpretation of the statute. Accordingly, the majority's reason for examining the legislative history after concluding that there is only one reasonable interpretation of the statute, *insofar as it relates to the question on appeal,* is repudiated by the majority itself and makes no sense whatsoever.

IV

My final comment pertains to the last part of the majority opinion, which provides the legislature with a detailed road map indicating how the law on gestational agreements should be further clarified. The majority makes much of the fact that "the legislature is the appropriate body to craft specific rules and procedures governing gestational agreements," and that it is not the role of the courts to advise the legislature. The majority nonetheless states that "this appeal highlights the fact that our existing statutes addressing parentage do not address the public policy concerns raised by modern assisted reproductive technology." After observing that "[i]t is decidedly not the role of this court to make the public policy determinations necessary to establish the specific rules and procedures governing the validity of gestational agreements or set the standards for valid gestational agreements," the majority proceeds to "take this opportunity to highlight some of the issues [involving key public policy determinations] that remain unresolved in our current statutory scheme." The majority then provides approximately four pages of citations to statutes enacted by our sister states and to various provisions in the Uniform Parentage Act concerning issues relating to gestational agreements for the purpose of instructing the legislature as to matters that require clarification. Although I believe it is appropriate for this court to convey to the legislature that clarification or additional guidance regarding the definition of gestational agreements and related matters would be helpful, I have never seen an opinion of this court go so far in attempting to construct a legislative agenda. Accordingly, I view this extraordinary step as excessive.

For the foregoing reasons, I concur only in the result reached by the majority in part II of its opinion.