Desperately Seeking Susan:
Ripeness, Intervention and Aggrievement in *Bysiewicz v. DiNardo*

By Daniel J. Klau, Esq.
of
McElroy, Deutsch, Mulvaney & Carpenter, LLP

There is nothing like a high profile election case to distract a lawyer's attention from billable work. When *Bush v. Gore* was litigated, the author cannot recall logging a single hour of billable time for over a month. While Secretary of State Susan Bysiewicz's recent lawsuit concerning her qualifications to serve as Attorney General was not quite as dramatic, it presented a similar mix of law and politics that was both gripping and legally fascinating.

As of the publication of this article, we now know the Connecticut Supreme Court's conclusions and its reasoning regarding the two central issues in *Bysiewicz v. DiNardo*[1] [hereinafter "*Bysiewicz*"]: 1) Bysiewicz did not satisfy the "ten years of active practice of law" requirement of General Statutes § 3-124;[2] and 2) § 3-124 is not unconstitutional insofar as it establishes qualifications for serving as Attorney General beyond those expressly enumerated in the Connecticut Constitution.[3]

However, this article does *not* address *those* issues. Rather, the article examines three jurisdictional arguments: one that the trial court addressed somewhat "after-the-fact," and two that *could* have been raised in the case—both at the trial and appellate level—but were not raised at either level, apparently for tactical reasons. The first issue is whether the case was "ripe" for adjudication or whether Bysiewicz was really asking the court to issue an improper advisory opinion concerning her qualifications. The second is whether the Connecticut

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Republican Party had *standing* to intervene in the lawsuit. The third is whether the Republican Party was *aggrieved* by the Superior Court's final judgment, such that it had standing to appeal.

As explained below, the author disagrees with the trial and Supreme courts' conclusions that the case was ripe for adjudication when Bysiewicz declared her candidacy for Attorney General. Regardless, the trial court should have addressed that issue at the beginning of the case, not after discovery, including videotaped depositions, and two days of trial. As to the second issue, even if the case was ripe the Republican Party did not have standing to intervene. Third, even if the Republican Party had standing, the trial court's final judgment did not "aggrieve" the party. Consequently, the Republican Party lacked standing to appeal, the Supreme Court did not have jurisdiction to hear the appeal, and its judgment is void.[4]

Two preliminary disclosures are in order. First, by its very nature the *Bysiewicz* case required the parties' highly competent, indeed esteemed, counsel to consider the *political* ramifications of potential legal strategies. It is not the author's intention to second-guess or criticize those judgments. It is the author's intention, however, to examine certain legal arguments that might have been raised but for the presence of political considerations.

Second, although the author is a registered Democrat, he hopes that readers will accept this article as an unbiased effort to examine some key jurisdictional issues in the case that did not receive judicial attention, not as a veiled criticism of the Republican Party's litigation tactics. The author's position on these issues would be the same if the *Bysiewicz* case had involved a Republican candidate seeking a declaratory judgment.

I. *The Trial And Supreme Court Proceedings.*

On January 13, 2010, after previously having campaigned for governor, Bysiewicz declared herself a candidate for the Democratic Party nomination for Attorney General. Soon after her announcement, a question arose, first in the blogosphere[5] and then in the mainstream media, about whether she met the statutory qualifications for Attorney General. The question was whether her work as Secretary of State since she was elected in 1998 constituted the "active practice of law," as nothing in the state constitution requires the Secretary of State to be an attorney.

Seeking to quell any doubts, Bysiewicz—a graduate of Yale College and Duke University Law School and a former corporate attorney in private practice—asked Attorney General Blumenthal for an opinion on her qualifications under the statute and whether the statute was constitutional. The Attorney General responded by issuing a formal opinion on February 2, 2010, stating that the requirement that the Attorney General be an attorney of at least ten years active practice at the bar of this state is constitutional and that the term "active practice" means more than simply being a member of the Connecticut Bar with an active status.[6] The Attorney General deferred on the question whether Bysiewicz personally satisfied the statutory requirements of § 3-124. Such a conclusion, he said, "must be left to judicial determination pursuant to established judicial procedures."[7]

On February 22, 2010 Bysiewicz commenced a declaratory judgment action in Hartford Superior Court, naming as defendants Nancy DiNardo, in her official capacity as Chair of the Connecticut Democratic Party, the Connecticut Democratic Party itself, and the Office of the Secretary of State, in its official capacity as the Commissioner of Elections. She also provided written notice to a number of potentially interested parties, including, in particular, the state

Republican Party. Of the noticed parties, only the Republican Party filed a motion to intervene (on March 3, 2010). The motion was filed with the express consent of all parties. The trial court (Sheldon, J.) granted the motion on March 5, 2010.

At a scheduling conference on March 10, 2010, the trial court established deadlines for closing the pleadings, conducting discovery, trial, and for filing and hearing argument on "a motion to dismiss for lack of subject-matter jurisdiction which the Republican Party disclosed the initial intention to pursue."[8] Significantly, in what the author believes was a critical decision in the case, the Republican Party then decided not to file a motion to dismiss and, instead, to raise its jurisdictional argument by way of special defense. Nevertheless, the trial court adhered to an extended trial date (in mid-April) that would "allow counsel additional time for the completion of discovery."[9]

The Republican Party took full advantage of that discovery period, taking several days of videotaped depositions of the Secretary of State that soon became public and which many believe cast her in a less-than-favorable light.

The trial court received evidence at trial on April 14 and 15, 2010. On April 20 and 22, the court heard oral argument on the merits of Bysiewicz's statutory and constitutional arguments. It also heard argument on the Republican Party's subject matter jurisdiction defense, which asserted that Bysiewicz lacked standing and that the case was not ripe.

On May 5, 2010, having burned a considerable amount of midnight oil, the trial court issued a comprehensive and erudite opinion. The court first concluded that Bysiewicz had standing to seek a declaratory judgment and that the matter was ripe for adjudication. In short, the court had subject matter jurisdiction over the case. Judge Sheldon wrote, "[i]n light of the

facts in this case, which have reached a point where final adjudication of the question presented is possible, the harsh alternatives, and the remedial purpose of the declaratory judgment statute, the Court is of the opinion that the present matter is exactly the kind of controversy for which the declaratory judgment statute was designed."[10] On the merits, the court held that Bysiewicz satisfied the statutory qualifications for Attorney General. Because of that decision, the court declined to reach and decide Bysiewicz's alternative challenge to the constitutionality of § 3-124.

An expedited appeal by the Republican Party to the Supreme Court followed. In another apparently tactical decision, the party did *not* identify the trial court's subject matter jurisdiction ruling as an issue on appeal. Nevertheless, the Supreme Court asked all of the parties to submit supplemental briefs on that issue. Moreover, none of the original parties questioned the Republican Party's right to intervene below or to appeal. *In short, the Supreme Court's jurisdiction to hear the Republican Party's appeal was never questioned.*

On May 18, 2010, the Supreme Court heard oral argument in a packed courtroom. In an extraordinary turn of events, after oral argument concluded Justice Norcott, who was presiding in the absence of Chief Justice Rogers (because she was out of the country), asked counsel to remain in the courtroom, sending a clear message to everyone in attendance that a ruling from the bench was likely. After deliberating for about an hour, the justices returned to the bench. Justice Norcott read the Court's ruling to a silent, and then stunned, crowd:

> (1) the trial court correctly determined that the plaintiff has standing and the issues before the court were ripe for adjudication; (2) the trial court improperly determined that the plaintiff satisfied the requirements of General Statutes § 3-124; and (3) we conclude that General Statutes § 3-124 is constitutional. Accordingly, the judgment of the trial court is reversed and the case is remanded to the trial court with direction to render a declaratory judgment that the plaintiff fails to satisfy the requirements of

> General Statutes § 3-124. A written opinion will follow. This is the unanimous decision of the Court.[11]

So ended Susan Bysiewicz's quest for Attorney General.

II. *Standing, Ripeness and Subject Matter Jurisdiction.*

With this factual and procedural background, we turn to the first issues this article considers, namely, whether the case was ripe when filed and whether trial court should have addressed the question of subject matter jurisdiction at the outset of the case, even though the Republican Party decided not to press its intended motion to dismiss and, instead, made a "tactical decision to challenge subject matter jurisdiction by interposing a special defense. . . ."[12]

From a political perspective, the Republican Party's tactical decision made perfect sense. Getting the case dismissed on jurisdictional grounds would have been a solid "base hit," but using the case as an opportunity to depose and discredit Bysiewicz would have been a political home run. That tactical decision, however, should not have influenced the timing of the trial court's decision on its jurisdiction. "[O]nce the question of lack of jurisdiction of a court is raised, it must be disposed of no matter in what form it is presented . . . *and the court must fully resolve it before proceeding further with the case*."[13] That is, under well-settled law the trial court should have addressed the jurisdictional issue immediately.

The reader may assert "no harm, no foul" because the trial court (and the Supreme Court) eventually concluded that jurisdiction existed. That is true in *this* case, but the assertion misses the author's point. Courts are not tools of the litigants. Although the parties may have personal reasons for wanting to avail themselves of the benefits of being in court (e.g., the right to issue subpoenas, conduct discovery, obtain "judicial imprimatur" of their actions,

etc.), none of these reasons *create* subject matter jurisdiction. Whatever a litigant's personal motives for filing a lawsuit (or intervening in one), a court has no discretion to allow the suit to proceed until and unless it is satisfied that jurisdiction actually exists. Indeed, this legal proposition is so clearly established that, even in cases where the parties agree that jurisdiction exists, the law imposes on the trial court the obligation to raise and resolve the issue *sua sponte*.[14]

Additionally, although the Supreme Court agreed with the trial court's conclusion that Bysiewicz had standing and that her case was ripe for adjudication and, therefore, that the court had subject matter jurisdiction,[15] that conclusion is not self-evident and a contrary result is not difficult to justify. In resolving the standing issues, the trial court and the Supreme Court found two arguments particularly persuasive. First, a declared candidate for office should not be forced to bear the time and expense of running for office without knowing whether he or she could be ousted from office upon succeeding.[16] Second, existing common law remedies, particularly a *quo warranto* action, which are available only after an election, would cause voter confusion and considerable disruption to the electoral process.[17]

These arguments have merit, but there are counter-arguments. When a candidate seeks office, he or she assumes many risks, including the risk that she will raise and spend a lot of money yet still lose the election. It is arguable whether the additional risk that she may win, yet have her qualifications to hold office challenged, is qualitatively different from the risk associated with running for elective office generally.

As a pragmatic matter, the author agrees with the trial court's assessment that a declaratory judgment action is preferable to a post-election *quo warranto* action. However,

that one legal alternative is "messier" than another does not mean, in and of itself, that jurisdiction exists for the "cleaner" alternative. As the Connecticut Supreme Court recently explained, a declaratory judgment action "is not . . . a procedural panacea for use on all occasions, but, rather, is limited to solving justiciable controversies. . . . Invoking [the declaratory judgment statute][18] does not create jurisdiction where it would not otherwise exist. Implicit in [the statute] is the notion that a declaratory judgment must rest on some cause of action that would be cognizable in a nondeclaratory suit. . . . To hold otherwise would convert our declaratory judgment statute and rules into a convenient route for procuring an advisory opinion on moot or abstract questions . . . and would mean that the declaratory judgment statute and rules created substantive rights that do not otherwise exist. . . ."[19]

To be sure, the Supreme Court addressed this latter issue in its opinion, citing its 1932 decision in *Sigal v. Wise* for the proposition that even if the legal right at issue is contingent upon a future event, a declaratory judgment action is appropriate if a present determination of the matter will serve a "very real practical need *of the parties* for guidance in *their* future conduct."[20] "One great purpose [of a declaratory judgment action] is to enable *parties* to have their differences authoritatively settled in advance of any claimed invasion of rights . . . ."[21] However, *Sigal v. Wise* involved a contract dispute between *two* parties—a lessor and a lessee—whose interests as contracting parties were plainly adverse. By contrast, Bysiewicz was an *individual* seeking to eliminate doubts about her *own* personal legal situation. The two cases could not be more different.

Notwithstanding the foregoing, in every draft of this article prior to October 26, 2010, the author hesitantly agreed with the trial and Supreme Court that the *pragmatic* arguments in

favor of jurisdiction were, on balance, stronger than the arguments against jurisdiction. However, on October 26, 2010, Martha Dean, the Republican nominee for Attorney General, filed a lawsuit challenging the qualifications of George Jepsen, the Democratic nominee. She based her suit on the Supreme Court's holding in *Bysiewicz* that the phrase "active practice of law" in § 3-124 requires a person seeking the office of Attorney General to have trial experience. That lawsuit, filed less than a week before the election, convinced the author to change his opinion. The suit is an unabashed attempt to use the court system for partisan political purposes.

Additional *legal* reasons for the author's opinion that Bysiewicz's declaratory judgment action was not ripe will become clear to the reader in Part IV below. Whatever the resolution of this issue, however, the trial court should have addressed the subject matter jurisdiction question at the very beginning of the case.

III. The Republican Party's Motion to Intervene

Assuming Bysiewicz's case was ripe, the next issue is whether the Republican Party had standing to intervene, an issue the trial court barely touched upon and the Supreme Court did not address at all. Again, tactical and political factors appear to have driven the litigation surrounding this issue more than legal considerations.

As noted, the Republican Party filed its motion to intervene with the express consent of all parties and without filing a supporting memorandum of law. The motion did not specify whether the party sought intervention as a matter of right or permissively. Two days later the trial court granted the motion, stating only that all parties consented.[22] The court's order

contained no mention of the legal standards governing intervention or why the Republican Party's motion satisfied the relevant standards.[23]

Like its tactical decision to refrain from pressing its jurisdictional argument until after trial, the Republican Party's decision to seek intervenor status in the case makes perfect sense from a political perspective: among other benefits, such status would allow it to take discovery of Bysiewicz and challenge her qualifications to serve as Attorney General in a very public forum. Bysiewicz's decision to consent to the party's intervention also makes political sense. Had she opposed the Republican Party's motion, she would have exposed herself to charges that her declaratory judgment action was a sham—a collusive lawsuit with "friendly" defendants: the Democratic Party and her own office.

The relevant issue, however, is whether the Republican Party satisfied the legal requirements for intervention. For the following reasons the party did not meet the standard for intervention as of right, and the case for permissive intervention, while stronger, is questionable.

The Connecticut Supreme and Appellate courts have articulated the standards governing intervention in several important cases, most recently *Kerrigan v. Comm'r of Public Health, et al.*[24] For the purposes of this article, the critical inquiry for intervention as of right is whether "the proposed intervenor has a *direct and immediate* interest that will be affected by the judgment."[25] "An applicant for intervention has a right to intervene . . . where the applicant's interest is of such direct and immediate character that the applicant will either gain or lose by the direct legal operation and effect of the judgment."[26] By contrast, "[a] person or entity does

not have a sufficient interest to qualify for the right to intervene merely because an impending judgment will have *some* effect on him, her, or it."[27]

The Republican Party did not have the required "direct and immediate" interest. To the contrary, its interest was indirect, remote, speculative and contingent upon Bysiewicz winning the Democratic nomination *and* the general election.[28] Unlike Bysiewicz—who the trial court held had standing because she faced the *immediate* prospect of investing time and large sums of money in a campaign under a cloud of uncertainty about her qualifications—the Republican Party faced no such immediate prospect.

Whether the Republican Party should have been granted permissive intervention is a much closer question. Two important factors in resolving a permissive intervention request are the adequacy of representation of the proposed intervenor's interests by other parties, and the intervenor's interest in the controversy.[29] The first factor supports the Republican Party's motion to intervene. It is difficult to imagine that any of the named defendants would have brought the same level of zealous advocacy to the case as the Republican Party. The second factor, however, is neutral at best and arguably weighs against intervention. We have already noted that the Republican Party lacked a direct and immediate interest in the case for the purpose of intervention as of right. What, then, was the nature of the party's interest? Its tactical decisions suggest that its interest was to wreak havoc with the Bysiewicz campaign. This is not a criticism of the party or of its counsel. After all, the party is a partisan political organization. However, the author questions whether that interest is an appropriate one for a court to grant permissive intervention. As the United States Supreme Court has stated, "[t]he exercise of judicial power . . . can so profoundly affect the lives, liberty, and property of those

to whom it extends . . . that the decision to seek review must be placed in the hands of those who have a direct stake in the outcome. It is not to be placed in the hands of 'concerned bystanders,' who will use it simply as a 'vehicle for the vindication of value interests.'"[30]

On balance, the author believes that the case for permissive intervention is weak, although it probably would not have been an abuse of discretion for the trial court to have granted a motion for permissive intervention.[31] Nor would it have been an abuse of discretion for the court to have denied permissive intervention. Unfortunately, the record does not reveal whether the trial court even considered the relevant legal factors. As noted, they were not presented in the Republican Party's motion to intervene, the party did not file a supporting memorandum of law, and the trial court did not articulate its reasoning beyond stating that all parties consented to the motion. And, although the Supreme Court could have addressed the issue *sua sponte*, it did not.

IV. The Republican Party Lacked Standing To Appeal Because It Was Not Aggrieved By The Trial Court's Judgment.

Although sequentially the last issue addressed in this article, the most interesting question to the author is whether the Connecticut Supreme Court had appellate jurisdiction to hear the Republican Party's appeal. The author believes that the Court did not have jurisdiction.

Having reviewed the appellate briefs and attended the oral argument, the author cannot find any indication that the parties brought this issue to the Supreme Court's attention. The Supreme Court's opinion is silent on the issue as well. It is difficult to believe, however, that the parties' failure to raise this issue was a product of inadvertence or neglect. Rather, it is more likely that none of the parties wanted to raise the issue. Given the trial court's ruling that

Bysiewicz satisfied the statutory requirements for Attorney General, the Republican Party would not have been very satisfied with an appellate ruling that the Court lacked jurisdiction to hear the case. Rather, the Republican Party wanted the Supreme Court to overrule the trial court *on the merits*; that is, the party wanted the Supreme Court to hold that Bysiewicz was unqualified to serve as Attorney General. And a challenge by Bysiewicz to the Republican Party's appellate standing would have been impolitic, to say the least, particularly in light of her prior consent to the party's intervention motion. When it comes to subject matter jurisdiction, however, what the parties want or believe is irrelevant. The parties cannot bestow jurisdiction on a trial or appellate court by consent or agreement.

Given the Republican Party's intervenor status in the trial court, the reader might well ask why the party's right to appeal an adverse decision is not obvious. The answer is that "[m]ere status as a party or a participant in the proceedings below does not in and of itself constitute *aggrievement* for the purposes of appellate review."[32] General Statutes § 52-263 governs appellate review of trial court judgments. It provides in relevant part: "[i]f either party is *aggrieved* by the decision of the court or judge . . . he may appeal to the court having jurisdiction from the final judgment of the court. . . ."[33] Similarly, Practice Book § 61-1 provides that "an *aggrieved* party may appeal from a final judgment . . . ."[34] Simply put, "aggrievement, in essence, is appellate standing. Where a party lacks standing to appeal, the court is without subject matter jurisdiction."[35]

The Republican Party was not aggrieved by the trial court's judgment. The traditional test for aggrievement has two prongs: "first, the party claiming aggrievement must demonstrate a specific personal and legal interest in the subject matter of the decision, as

distinguished from a general interest shared by the community as a whole; second, the party claiming aggrievement must establish that this specific personal and legal interest has been *specially and injuriously* affected by the decision."[36] This test is very similar to the standard governing intervention as of right. Not surprisingly, the outcomes should be comparable. The impact of the trial court's judgment on the Republican Party was contingent, speculative and remote.[37] It depended upon Bysiewicz winning the Democratic nomination and the general election. Although the polls might have predicted both outcomes, the existence of appellate jurisdiction should not turn on whether a candidate is polling well or poorly at the time she seeks a declaratory judgment concerning her qualifications to hold the office she seeks.

This conclusion creates a dilemma. Who, if not the Republican Party, would have had standing to appeal the trial court's judgment? Why should Bysiewicz have been able to appeal a judgment adverse to her, but not the Republican Party? These are important questions to which the author offers the following admittedly tentative answers. First, the case law does not demand symmetry. Just because one party may be able to appeal a judgment does not mean that every party has that right. That is particularly true in cases in which an *intervenor* seeks to appeal.[38] Second, the very existence of the dilemma suggests that the declaratory judgment action was not ripe for adjudication. Perhaps the way to resolve the dilemma is to hold that no action considering a candidate's qualifications to hold office should be allowed in court until the case has truly become "adversarial," which won't occur until after an election is held and a losing candidate questions the winning candidate's qualifications. Granted, this approach is less pragmatic and messier than a declaratory judgment action. But, this approach

also neatly resolves the ripeness, standing, intervention and aggrievement issues that this article addresses.

In short, the Republican Party's appeal was not properly before the Supreme Court. If the Supreme Court did not have jurisdiction over the appeal, its judgment is void.[39] This conclusion may be of little solace to Susan Bysiewicz, but it could figure prominently in a subsequent case in which a litigant relies upon the Supreme Court's decision in *Bysiewicz v. DiNardo*.

IV. Conclusion

By their nature, election cases tend to elevate political considerations over legal judgments. Legal arguments, particularly jurisdictional ones, are often not raised for political reasons. Moreover, election cases typically occur under great time pressure, forcing courts to act without the benefit of time to think, especially about the existence of lurking jurisdictional issues that the parties fail to bring to the court's attention.

Bysiewicz v. DiNardo was just such a case. It was a "perfect storm" of conflicting political and legal considerations that masked very important jurisdictional issues. Had those issues actually been raised and addressed promptly, the outcome of the case might have been very different. The author respectfully suggests that the courts, both trial and appellate, need to be particularly attuned to jurisdictional questions in future cases like *Bysiewicz v. DiNardo*, lest they become unwitting participants in partisan political battles.

Daniel J. Klau is an attorney in the Hartford office of McElroy, Deutsch, Mulvaney & Carpenter, LLP. He graduated from Boston University School of Law, summa cum laude*, in*

1990. Immediately following law school he served as law clerk to Chief Justice Ellen A. Peters of the Connecticut Supreme Court. His practice includes appellate and First Amendment litigation. He is an adjunct professor at the University of Connecticut School of Law, where he teaches privacy law, and he is a supervising attorney for the Yale Law School Media Freedom and Information Practicum.

[1] ___ A.2d ____, 2010 WL 4157584 (May 18, 2010). Although the official release date of the decision is May 18, 2010, the Supreme Court actually released its slip opinion on October 22, 2010.

[2] General Statutes § 3-124 provides in relevant part that the Attorney General must be "an attorney at law of at least ten years' active practice of the bar of this state." Conn. Gen. Stat. § 3-124.

[3] In particular, Bysiewicz argued that § 3-124 contravened Article Sixth, § 10 of the state constitution. As amended by Articles II and XV thereof, Article Sixth, § 10 provides: "Every elector who has attained the age of eighteen years shall be eligible to any office in the state, but no person who has not attained the age of eighteen shall be eligible therefor, except in cases provided for in this constitution."

[4] *In re DeLeon J.*, 290 Conn. 371, 376 (2009) "[S]ubject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it, and a judgment rendered without subject matter jurisdiction is void. . .")

[5] Attorney Ryan McKeen first raised the issue in a January 13, 2010 post to his webblog, "aconnecticutlawblog.com."

[6] *See* Office of the Attorney General, Formal Opinion No. 2010-001.

[7] *Id.*

[8] *Bysiewicz v. DiNardo*, 2010 Conn. Super. LEXIS 1149, * 12 (May 5, 2010).

[9] *Id.* at *13.

[10] *Id.* at *38.

[11] *See* Order (dated May 18, 2010) in *Bysiewicz v. DiNardo, et al.*, No. SC 18612 (available at: http://jud.ct.gov/external/supapp/Bysiewicz_051810.pdf)

[12] *Bysiewicz*, 2010 Conn. Super LEXIS 1149 at *17.

[13] *Id.* at *16 (emphasis supplied) (citing *Milford Power Co., LLC v. Alstom Power, Inc.*, 263 Conn. 616, 624-24 (2003)).

[14] *E.g.*, *Paradigm Contract Mgmt. Co. v. St. Paul Fire & Marine Ins. Co.*, 293 Conn. 569, 577 (2009) ("[i]t is hornbook law that the parties cannot confer subject matter jurisdiction on a court by consent, waiver, silence or agreement"); *Soracco v. Williams Scotsman, Inc.*, 292 Conn. 86, 91 (2009) ("Moreover, concerns regarding subject matter jurisdiction implicate the court's fundamental authority and may properly be raised and decided by the court sua sponte."); *Ajadi v. Comm'r of Corr.*, 280 Conn. 514, 533 (2006) ("Subject matter jurisdiction

involves the authority of the court to adjudicate the type of controversy presented by the action before it. . . . [A] court lacks discretion to consider the merits of a case over which it is without jurisdiction . . . . The subject matter jurisdiction requirement may not be waived by any party, and also may be raised by a party, or by the court sua sponte, at any stage of the proceedings, including on appeal."); *Pinder v. Pinder,* 42 Conn. App. 254, 258 (1996) ("When the absence of jurisdiction is brought to the attention of the court, cognizance of that fact must be taken and the matter determined before it can proceed further in the case. In whatever manner such an issue comes to the attention of a court, it must be addressed, even if the court must act sua sponte in order to do so.").

[15] *Bysiewicz v. DiNardo*, ___ A.2d ___, 2010 WL 4157584, *3-5.

[16] *Id.* at *5; *Bysiewicz*, 2010 Conn. Super. LEXIS 1149 at *22 (citing with approval *Schiavone v. DeStefano*, 48 Conn. Sup. 521, 524 (2001)).

[17] *Bysiewicz*, ___ A.2d ____, 2010 WL 4157584, *5; *Bysiewicz*, 2010 Conn. Super. LEXIS 1149 at 37.

[18] Conn. Gen. Stat. § 52-29. *See also* Practice Book § 17-54.

[19] *Costantino v. Skolnick*, 294 Conn. 719, 745 (2010) (internal citations and quotations omitted).

[20] *Bysiewicz*, ___ A.2d ___, 2010 WL 4157584, *3 (emphasis supplied) (citing *Sigal v. Wise*, 114 Conn. 297, 302-302 (1932)).

[21] *Id.* (emphasis supplied).

[22] The legal relevance of that consent is questionable. *See Polymer Resources, Ltd. v. Keeney*, 32 Conn. App. 340, 351 (1993) ("While the attorney general welcomed FRCE as a party and agreed that the trial court should have admitted FRCE's motion to intervene, we are not bound by such concessions."); *but see State Bd. of Educ. v. Waterbury*, 21 Conn. App. 67, 74 n.7, (1990) ("We also find it significant that the state plaintiffs here do not oppose the appellants' motion to intervene.")

[23] *See Bysiewicz v. DiNardo*, HHDCV106008194S (Order dated March 5, 2010) (docket entry no. 106.86).

[24] 279 Conn. 447 (2006). *See also In re Baby Girl B*, 224 Conn. 263 (1992); *Horton v. Meskill*, 187 Conn. 187 (1982); *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 60 Conn. App. 134 (2000).

[25] *Kerrigan*, 279 Conn. at 457 (emphasis supplied).

[26] *Id.*

[27] *Id.* (emphasis supplied)

[28] *See Polymer Resources, Ltd.*, 32 Conn. App. at 351 (although resolution claim "might theoretically have an effect on" proposed intervenor, such "interest in the impending judgment was not sufficiently direct or personal to require intervention"); *Doe v. The Roman Catholic*

Diocesan Corp. aka The Roman Catholic Archdiocese of Hartford, et al., (X10) WY07401841S, 2008 Conn. Super. LEXIS 77, *5 (Jan. 16, 2008) (denying intervention where movant's interest was contingent and indirect.)

[29] *Kerrigan*, 279 Conn. at 461. The other factors include the timeliness of the intervention, the delay in the proceedings or other prejudice that intervention may cause to existing parties, and the necessity for or value of the intervention in resolving the controversy. *Id.*

[30] *Diamond v. Charles*, 476 U.S. 54, 62 (1986).

[31] *E.g.*, *Kerrigan*, 279 Conn. at 461 (reviewing trial court's decision on motion for permissive intervention under abuse of discretion standard); *In re Baby Girl B*, 224 Conn. at 277 ("questions of permissive intervention are committed to the sound discretion of the trial court").

[32] *Windham Taxpayers Assoc. v. Windham*, 234 Conn. 513, 523 (1995). *Accord Diamond,* 476 U.S. at 63 ("But status as a 'party' does not equate with status as an appellant.")

[33] Conn. Gen. Stat. § 52-263 (emphasis supplied).

[34] Practice Book § 61-1 (emphasis supplied).

[35] *Hunt v. Guimond*, 69 Conn. App. 711, 714-15 (2002). *Accord Jolly, Inc. v. Zoning Bd. Of Appeals*, 237 Conn. 184, 192 (1996); *Windham*, 234 Conn. at 523-24; *Beckish v. Manafort*, 175 Conn. 415, 419 (1978); *In re Carissa K, et al.*, 55 Conn. App. 768, 774 (1999).

[36] *Windham*, 234 Conn. at 523 (emphasis supplied). *See also Hunt*, 69 Conn. App. at 715 (citing *Gladysz v. Planning & Zoning Comm'n*, 256 Conn. 249, 255-56 (2001)).

[37] *See In re Joint Eastern and Southern District Asbestos Litigation*, 78 F.3d 764, 779 (2d Cir. 1996) (intervenor has standing to appeal only if it suffered an actual or imminent injury, not a conjectural or hypothetical one).

[38] *Compare Diamond*, 476 U.S. at 64 (mere status as intervenor, whether permissive or as of right, does not confer appellate standing); *In re Joint Eastern and Southern District Asbestos Litigation*, 78 F.3d at 779 (same). Interestingly, in *Diamond*, as here, the trial court granted the motion to intervene without explanation: "The District Court did not indicate whether the intervention was permissive or as of right, and it did not describe how [the proposed intervenor's] interests in the litigation satisfied the requirements of *Federal Rule of Civil Procedure 24* for intervenor status." 476 U.S. at 58.

[39] *See, supra,* n.4.