

Developments and current issues in Purchasing/Procurement

Presented by Kenneth B. Povodator

Cheryl Terry Enterprises, Ltd. v. Hartford

What is it?

What does it mean?

What does it mean to me? (“I would never do anything like that!”)

What can I do?

“Post-Rowland” — legislative action

Actual changes

Public Act No. 04-102

Public Act No. 04-141

Public Act No. 04-245

Not yet

(“Why should I care, if it has not been enacted?”)

House Bill No. 5501

Substitute Bill No. 5023

Strategies

Common sense¹

Available tools

§7-148w of the Connecticut General Statutes

new legislation (above)

Attachments:

Cheryl Terry Enterprises, Ltd. v. Hartford (excerpt)

Selected anti-trust statutes

House Bill No. 5501

Substitute Bill No. 5023

§7-148w of the Connecticut General Statutes

¹ “Common sense is not so common.” (Voltaire)



General Assembly

FILE NO. 299

**February Session,
2004**

House Bill No. 5501

House of Representatives, March 29, 2004

The Committee on Government Administration and Elections reported through REP. O'ROURKE of the 32nd Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT LIMITING CAMPAIGN CONTRIBUTIONS TO CANDIDATES FOR MUNICIPAL OFFICE BY PERSONS AND POLITICAL COMMITTEES ASSOCIATED WITH LARGE MUNICIPAL CONTRACTORS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 9-333n of the general statutes, as amended by section 14 of public act 03-241, is repealed and the following is substituted in lieu thereof (*Effective July 1, 2004*):

(a) No individual shall make a contribution or contributions in any one calendar year in excess of five thousand dollars to the state central committee of any party, or for the benefit of such committee pursuant to its authorization or request; or one thousand dollars to a town committee of any political party, or for the benefit of such committee pursuant to its authorization or request; or one thousand dollars to a political committee other than (1) a political committee formed solely to aid or promote the success or defeat of a referendum question, (2) an exploratory committee, (3) a political committee established by an organization, or for the benefit of such committee pursuant to its authorization or request, or (4) a political committee formed by a slate of candidates in a primary for the office of justice of the peace of the same town.

(b) No individual shall make a contribution to a political committee established by an organization which receives its funds from the organization's treasury.

With respect to a political committee established by an organization which has complied with the provisions of subsection (b) or (c) of section 9-333p, and has elected to receive contributions, no individual other than a member of the organization may make contributions to the committee, in which case the individual may contribute not more than five hundred dollars in any one

calendar year to such committee or for the benefit of such committee pursuant to its authorization or request.

(c) In no event may any individual make contributions to a candidate committee and a political committee formed solely to support one candidate other than an exploratory committee or for the benefit of a candidate committee and a political committee formed solely to support one candidate pursuant to the authorization or request of any such committee, in an amount which in the aggregate is in excess of the maximum amount which may be contributed to the candidate.

(d) Any individual may make unlimited contributions or expenditures to aid or promote the success or defeat of any referendum question, provided any individual who makes an expenditure or expenditures in excess of one thousand dollars to promote the success or defeat of any referendum question shall file statements according to the same schedule and in the same manner as is required of a campaign treasurer of a political committee under section 9-333j, as amended.

(e) Any individual acting alone may, independent of any candidate, agent of the candidate, or committee, make unlimited expenditures to promote the success or defeat of any candidate's campaign for election, or nomination at a primary, to any office or position, provided any individual who makes an independent expenditure or expenditures in excess of one thousand dollars to promote the success or defeat of any candidate's campaign for election, or nomination at a primary, to any such office or position shall file statements according to the same schedule and in the same manner as is required of a campaign treasurer of a candidate committee under section 9-333j, as amended.

(f) (1) As used in this subsection and subsection (f) of section 9-333j, as amended, (A) "investment services" means investment legal services, investment banking services, investment advisory services, underwriting services, financial advisory services or brokerage firm services, and (B) "principal of an investment services firm" means (i) an individual who is a director of or has an ownership interest in an investment services firm to which the State Treasurer pays compensation, expenses or fees or issues a contract, except for an individual who owns less than five per cent of the shares of an investment services firm which is a publicly traded corporation, (ii) an individual who is employed by such an investment services firm as president, treasurer, or executive or senior vice president, (iii) an employee of such an investment services firm who has managerial or discretionary responsibilities with respect to any investment services provided to the State Treasurer, (iv) the spouse or a dependent child of an individual described in this subparagraph, or (v) a political committee established by or on behalf of an individual described in this subparagraph.

(2) No principal of an investment services firm shall make a contribution to, or solicit contributions on behalf of, an exploratory committee or candidate committee established by a candidate for nomination or election to the office of

State Treasurer during the term of office of the State Treasurer who pays compensation, expenses or fees or issues a contract to such firm.

(3) Neither the State Treasurer, the Deputy State Treasurer, any unclassified employee of the office of the State Treasurer acting on behalf of the State Treasurer or Deputy State Treasurer, any candidate for the office of State Treasurer, any member of the Investment Advisory Council established under section 3-13b nor any agent of any such candidate may solicit contributions on behalf of an exploratory committee or candidate committee established by a candidate for nomination or election to any public office, a political committee or a party committee, from a principal of an investment services firm, except that the prohibition in this subsection shall not apply to an incumbent State Treasurer who establishes an exploratory committee or candidate committee for any public office other than State Treasurer.

(4) No member of the Investment Advisory Council appointed under section 3-13b shall make a contribution to, or solicit contributions on behalf of, an exploratory committee or candidate committee established by a candidate for nomination or election to the office of State Treasurer.

(5) The provisions of this subsection shall not restrict an individual from establishing an exploratory or candidate committee for the individual's own campaign or from soliciting contributions for such committees from persons not prohibited from making contributions under this subsection. -- 09--00--0333--nK;;;;; -->

(g) (1) As used in this subsection, "municipal office" means the office of chief executive officer of a town, city or borough or any other elected office of a municipality.

(2) If a municipality awards a contract or contracts which, separately or in the aggregate, have a value of one hundred thousand dollars or more to a business, (A) no individual who is an owner, partner, director or officer of said business, or a manager of said business who has substantial policy or decision-making authority concerning the administration of the contract, and no political committee organized by said business, shall (i) make a contribution or contributions in excess of one hundred dollars (I) to, or for the benefit of, the campaign of any candidate for nomination or election to a municipal office in said municipality or the campaign for nomination or election to a non-municipal office by a person holding a municipal office in said municipality, (II) to an exploratory committee formed by a person holding a municipal office in said municipality, (III) to a political committee under subparagraph (B) of subdivision (3) of section 9-333a, as amended, which is established by any said candidate or said candidate's agent or in consultation with or at the request or suggestion of said candidate or agent or which is controlled by said candidate or agent, or (IV) to a town committee for said municipality, or (ii) solicit contributions on behalf of the candidate or exploratory committee established by any said candidate, and (B) no candidate for nomination or election to a municipal office in said

municipality or committee or agent of said candidate shall solicit contributions, on behalf of the candidate or exploratory committee established by said candidate or on behalf of any political committee or party committee, from (i) any individual who is an owner, officer, director, partner or such a manager of said business, (ii) any individual who is an owner, officer, director or partner of a subcontractor of said business for such contract or a manager of said subcontractor who has substantial policy or decision-making authority concerning the administration of the subcontract, (iii) the spouse of any such individual or a dependent child of any such individual who resides in the individual's household, or (iv) a political committee established by said business or subcontractor.

(3) Each municipality shall keep a list of (A) businesses to which the municipality has awarded a contract or contracts of one hundred thousand dollars or more, and (B) all subcontractors under said contracts. Said list shall be subject to disclosure under the Freedom of Information Act and shall be available to the State Elections Enforcement Commission. Each contract awarded by a municipality shall include the provisions of subparagraph (A) of subdivision (2) of this subsection as a condition of the contract. Each business to which a municipality has awarded a contract or contracts of one hundred thousand dollars or more and each subcontractor under said contract shall maintain a list of such business' or subcontractor's owners, partners, directors, officers and managers with substantial policy or decision-making authority related to the administration of such contracts and shall provide such list to the State Elections Enforcement Commission upon request.

Sec. 2. Section 9-333w of the general statutes is amended by adding subsection (g) as follows (*Effective July 1, 2004*) :

(NEW) (g) The campaign treasurer of an exploratory committee or candidate committee established by a candidate for nomination or election to a municipal office, as defined in subdivision (1) of subsection (g) of section 9-333n, as amended by this act, which sponsors any written, typed or other printed communication for the purpose of raising funds shall include in such communication a statement concerning the contribution limit set forth in subsection (g) of section 9-333n, as amended by this act.

This act shall take effect as follows:	
Section 1	<i>July 1, 2004</i>
Sec. 2	<i>July 1, 2004</i>

GAE *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

This bill reduces to \$100 the contribution limit to candidates for municipal office from individuals whose business has contracts with their respective municipality valued at \$100, 000 or more. The bill also prohibits candidates running for municipal office from soliciting campaign contributions from individuals whose business has been awarded a contract worth \$100, 000 or more.

The bill also requires each municipality to keep a list of contractors and their subcontractors who do business worth \$100, 000 or more with the municipality. There will be a minimal workload increase for each municipality to keep a list of these businesses, which is not expected to have a fiscal impact.

OLR Bill Analysis

HB 5501

AN ACT LIMITING CAMPAIGN CONTRIBUTIONS TO CANDIDATES FOR MUNICIPAL OFFICE BY PERSONS AND POLITICAL COMMITTEES ASSOCIATED WITH LARGE MUNICIPAL CONTRACTORS

SUMMARY:

This bill reduces to \$100 the limit on campaign contributions by businesses that have large municipal contracts (large contractors) , their subcontractors, or their political committees (known as PACs) to candidates for municipal office in the awarding municipality, people who are currently holding office there but running for other office, or the town committee. A large contractor has municipal contracts with a separate or aggregate value of \$100, 000 or more.

The bill bans the contractors or their PACs from soliciting others to contribute to the covered candidates' campaigns. It also bans the covered candidates from soliciting campaign contributions for their own or anyone else's campaign, or for a party or political committee from large contractors, or their subcontractors, families, or PACs.

The bill requires municipalities to keep a list of large contractors and their subcontractors. It requires the contractors and their subcontractors to keep a list of their owners, partners, directors, officers, and managers with substantial policy or decision-making authority related to the administration of the contracts. Municipalities and contractors must provide their lists to the State Elections Enforcement Commission upon request. The municipalities' lists are a public record, disclosable to the public under the Freedom of Information Act. Lastly, the bill requires (1) municipalities to make the contribution limit a condition of large contracts and (2) candidates for municipal office to include it in their printed campaign contribution solicitations.

EFFECTIVE DATE: July 1, 2004

CONTRIBUTIONS

The bill lowers the maximum contribution to \$100 candidates for municipal office and people who are currently holding office there but running for other office. Currently, individuals can give candidates for (1) municipal office up to \$1,000, (2) governor up to \$2,500, and (3) other state offices up to \$1,500. And business PACs can give unlimited contributions to town committees, up to \$250 to exploratory committees, and up to \$2,000 to other PACs. "Municipal office" is the office of the chief executive officer of a town, city, or borough, or any other elected municipal office.

The new, lower limit applies to an owner, partner, director, officer, or manager of a business with municipal contracts with a separate or aggregate value of \$100,000 or more and any PAC the business establishes. Managers are covered only if they had substantial policy or decision-making authority concerning the contract's administration.

SOLICITATIONS

The bill bans candidates for municipal office and people who are currently holding office there but running for other office from soliciting a campaign contribution from large contractors; the owner, officer, director, partner, or specified manager of any subcontractor working with the contractor; the contractor's or subcontractor's spouse and dependent children living in the household; or the contractor's or subcontractor's business PAC. To be covered, the manager must have had substantial policy or decision-making authority concerning the contract's administration.

BACKGROUND

Related Bill

SB 434, also favorably reported by the Government Administration and Elections Committee, reduces campaign contribution limits by businesses with large municipal contracts to candidates for municipal office.

COMMITTEE ACTION

Government Administration and Elections Committee
Joint Favorable Report

Yea 17 Nay 0

[TOP](#)



General Assembly

Substitute Bill No. 5023

February Session, * _____ HB05023APP ____ 042004 _____ *

2004

AN ACT CONCERNING MUNICIPAL ETHICS CODES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective July 1, 2004*) As used in sections 1 to 7, inclusive, of this act:

(1) "Business" means any entity through which business for profit or not-for-profit is conducted, including a corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization or self-employed individual.

(2) "Business with which he or she is associated" means a business of which a public official or public employee or a member of his or her immediate family is a director, officer, owner, employee, compensated agent or holder of stock which constitutes five per cent or more of the total outstanding stock of any class.

(3) "Confidential information" means information, whether transmitted orally or in writing, which is obtained by reason of the public position or office held and is of such nature that it is not, at the time of transmission, a matter of public record or public knowledge.

(4) "Financial interest" means any interest with a monetary value of one hundred dollars or more or which generates a financial gain or loss of one hundred dollars or more in a calendar year.

(5) "Gift" means anything of value, including entertainment, food, beverage, travel and lodging given or paid to a public official or public employee to the extent that consideration of equal or greater value is not received. A gift does not include:

(A) A political contribution otherwise reported as required by law or a donation or payment as described in subdivision (9) or (11) of subsection (b) of section 9-333b of the general statutes;

- (B) Services provided by persons volunteering their time for a political campaign;
 - (C) A commercially reasonable loan made on terms not more favorable than loans made in the ordinary course of business;
 - (D) A gift received from (i) an individual's spouse, fiance or fiancée, (ii) the parent, brother or sister of such spouse or such individual, or (iii) the child of such individual or the spouse of such child;
 - (E) Goods or services which are provided to the municipality or district and facilitate governmental action or functions;
 - (F) A certificate, plaque or other ceremonial award costing less than one hundred dollars;
 - (G) A rebate or discount on the price of anything of value given in the ordinary course of business without regard to the recipient's status;
 - (H) Printed or recorded informational material germane to governmental action or functions;
 - (I) Items of nominal value, not to exceed ten dollars, containing or displaying promotional material;
 - (J) An honorary degree bestowed upon a public official or public employee by a public or private university or college;
 - (K) A meal provided at an event or the registration or entrance fee to attend such an event, in which the public employee or public official participates in said person's official capacity;
 - (L) A meal provided in the home by an individual who resides in the municipality or district; or
 - (M) Gifts in-kind of nominal value not to exceed twenty-five dollars tendered on gift-giving occasions generally recognized by the public including Christmas, Hanukkah, birthdays, the birth or adoption of a child, weddings, confirmations or bar or bat mitzvahs, provided the total value of such gifts in any calendar year do not exceed fifty dollars.
- (6) "Immediate family" means any spouse, child or dependent relative who resides in the individual's household.
- (7) "Individual" means a natural person.
- (8) "Municipality" means a town, city or borough.

(9) "Official responsibility" means the direct administrative or operating authority, whether intermediate or final and whether exercisable personally or through subordinates, to approve, disapprove or otherwise direct government action.

(10) "Person" means an individual, sole proprietorship, trust, corporation, union, association, firm, partnership, committee, club or other organization or group of persons.

(11) "Personal interest" means an interest in any action taken by the municipality or district in which an individual will derive a nonfinancial benefit or detriment but which will result in the expenditure of municipal funds.

(12) "Public employee" means a person employed, whether full or part time, by a municipality or a district.

(13) "Public official" means an elected or appointed official, whether paid or unpaid or full or part time, of a municipality or political subdivision thereof, or a district, including candidates for the office and shall also include a district officer elected pursuant to section 7-327 of the general statutes.

(14) "District" means a district established pursuant to section 7-324 of the general statutes.

(15) "Paid consultant" means a person, firm or corporation hired by a municipality or district to provide services to the municipality or district for a fee.

Sec. 2. (NEW) (*Effective July 1, 2004*) (a) Notwithstanding the provisions of any special act, municipal charter or ordinance, not later than January 1, 2006, each municipality and district shall adopt a code of ethical conduct for its public officials, public employees and paid consultants. Each such code of ethical conduct shall include the provisions set forth in sections 3 to 5, inclusive, of this act or stricter ethical provisions for such public officials, public employees and paid consultants.

(b) Any municipality or district that adopted a code of ethical conduct before July 1, 2004, shall not be required to adopt a new code of ethical conduct under subsection (a) of this section. However, if any such existing code of ethical conduct does not include the provisions set forth in sections 3 to 5, inclusive, of this act or stricter ethical provisions for the municipality's or district's public official, public employees and paid consultants, the municipality or district shall, not later than January 1, 2006, amend its code of ethical conduct to include the provisions set forth in said sections 3 to 5, inclusive, or stricter ethical provisions for such persons.

Sec. 3. (NEW) (*Effective July 1, 2004*) Each code of ethical conduct adopted by a municipality or district under subsection (a) of section 2 of this act shall include the following or stricter provisions for the municipality's or district's public officials and public employees:

(1) No public employee or public official shall engage in or participate in any business or transaction, including outside employment with a private business, or have an interest, direct or indirect, that is incompatible with the proper discharge of the employee's or official's responsibilities in the public interest or that would tend to impair the employee's or official's independent judgment or action in the performance of the employee's or official's responsibilities.

(2) (A) No public employee or public official shall solicit or accept any gift from any person that, to the employee's or official's knowledge, is interested in any pending matter within such individual's official responsibility.

(B) If a prohibited gift is offered, the employee or official shall refuse it, return it, pay the donor the full value of the gift or donate it to a nonprofit organization, provided the employee or official does not take the corresponding tax deduction or credit. Alternatively, the gift may be deemed to be a gift to the municipality or district, provided it remains in the municipality's or district's possession permanently.

(3) (A) A public employee or public official shall refrain from voting upon or otherwise participating in any matter on behalf of the municipality or district if the employee or official, a business with which he or she is associated, or a member of his or her immediate family, has a financial or personal interest in the matter, including, but not limited to, the sale of real estate, material, supplies or services to the municipality or district.

(B) If such participation is within the scope of the public employee's or public official's official responsibility, the employee or official shall provide written disclosure, which sets forth in detail the nature and extent of such interest.

(C) Notwithstanding the prohibition in subparagraph (A) of this subdivision, a public employee or public official may vote or otherwise participate in a matter that involves a determination of general policy if the employee's or official's interest in the matter is shared with a substantial segment of the population of the municipality or district.

(4) In addition to the restrictions in subdivision (3) of this section, a public employee who serves on any governmental body of a municipality or district shall not vote or participate on any matter involving, for the department or program employing such public employee, (A) collective bargaining, (B) compensation or benefits, (C) personnel policies and procedures, (D) the budget, other appropriation or capital funding, or (E) employment, compensation, benefits or performance of personnel, unless such public employee is permitted to vote or participate pursuant to the provisions of a municipal charter or home rule ordinance.

(5) (A) Except for a public official who receives no compensation for service to the municipality or district other than per diem payments and reimbursement of expenses,

no public employee or public official shall appear on behalf of private interests before any board, agency or committee of the municipality or district.

(B) Except for a public official who receives no compensation for service to the municipality or district other than per diem payments and reimbursement of expenses, no public employee or public official shall represent private interests against the interest of the municipality or district in any litigation to which the municipality or district is a party.

(6) Nothing in this section shall prohibit or restrict a public employee or public official from appearing before any board or commission of the municipality or district on the employee's or official's own behalf, or from being a party in any action, proceeding or litigation brought by or against the public employee or public official to which the municipality or district is a party.

(7) No public employee or public official shall disclose confidential information concerning municipal affairs, nor shall a public employee or public official use such information for the financial interests of the employee or official or others.

(8) No public employee or public official shall request or permit the use of municipally-owned vehicles, equipment, facilities, materials or property for personal convenience or profit, except when such are available to the public generally or are provided as municipal policy for the use of such public employee or public official in the conduct of official business.

(9) No public employee or public official, or a business with which he or she is associated, or a member of his or her immediate family shall enter into a contract with the municipality or district unless the contract is awarded through a process of public notice and competitive bidding.

(10) No public employee or public official may use the employee's or official's position or office for the financial benefit of the employee or official, a business with which he or she is associated or a member of his or her immediate family.

(11) No public employee or public official shall accept a fee or honorarium for an article, appearance or speech, or for participation at an event, in the employee's or official's official capacity.

(12) No public employee or public official, or member of such individual's immediate family or business with which he or she is associated, shall solicit or accept anything of value, including, but not limited to, a gift, loan, political contribution, reward or promise of future employment based on any understanding that the vote, official action or judgment of the public employee or public official would be or had been influenced thereby.

(13) No public employee, public official or candidate for elected office of a municipality or district shall engage in political activity while on municipal or district duty or within any period of time during which such person is expected to perform services for which such person receives compensation from the municipality or district, or utilize municipal or district funds, supplies, vehicles or facilities for the purpose of any such political activity.

Sec. 4. (NEW) (*Effective July 1, 2004*) Each code of ethical conduct adopted by a municipality or district under subsection (a) of section 2 of this act shall include the following or stricter provisions for the municipality's or district's paid consultants:

(1) No paid consultant of a municipality or district shall represent a private interest in any action or proceeding against the interest of the municipality or district that is in conflict with the performance of said person's duties as a consultant.

(2) No paid consultant may represent anyone other than the municipality or district concerning any matter in which the consultant participated personally and substantially as a consultant to the municipality or district.

(3) No paid consultant shall disclose confidential information learned while performing the consultant's duties for the municipality or district nor shall the consultant use such information for the financial interests of the consultant or others.

Sec. 5. (NEW) (*Effective July 1, 2004*) Each code of ethical conduct adopted by a municipality or district under subsection (a) of section 2 of this act shall include the following or stricter provisions for the municipality's or district's former public officials and public employees:

(1) No former public employee or public official shall appear for compensation before any municipal or district board or agency in which the employee or official was formerly employed at any time within a period of one year after termination of the employee's or official's service with the municipality or district.

(2) No former public employee or public official shall represent anyone other than the municipality or district concerning any particular matter in which the employee or official participated personally and substantially while in municipal service.

(3) No former public employee or public official shall disclose or use confidential information acquired in the course of and by reason of the employee's or official's official duties, for financial gain for himself or herself or others.

(4) No former public employee or public official who participated substantially in the negotiation or award of a municipal or district contract obliging the municipality or district to pay an amount of one hundred thousand dollars or more, or who supervised the negotiation or award of such a contract shall accept employment with a party to the

contract other than the municipality or district for a period of one year after such contract is signed.

Sec. 6. (NEW) (*Effective July 1, 2004*) Not later than January 1, 2006, each municipality and district that has not established an agency to investigate allegations of unethical conduct, corrupting influence or illegal activities against public officials, public employees and paid consultants of the municipality or district, pursuant to section 7-148h of the general statutes, as amended by this act, shall establish a procedure for investigating and deliberating on such allegations. Two or more municipalities or districts may jointly establish such procedure.

Sec. 7. (NEW) (*Effective July 1, 2004*) Not later than January 1, 2006, each municipality and district that has not required public officials and public employees to disclose their financial interests shall establish a policy for such disclosure. Such policy shall list the offices or positions for which such disclosure shall be required and shall set forth the scope and manner of such disclosure.

Sec. 8. (NEW) (*Effective July 1, 2004*) (a) Not later than January 15, 2006, each municipality and district shall submit a report to the State Ethics Commission stating whether the municipality or district has complied with each of the applicable requirements of sections 2 to 7, inclusive, of this act.

(b) Not later than March 1, 2006, the State Ethics Commission shall submit a report to the joint standing committee of the General Assembly having cognizance of matters relating to ethics. Said report shall (1) indicate the status of the compliance of each municipality and district with the applicable requirements of sections 2 to 7, inclusive, of this act, and (2) if any municipality or district has not complied with any such requirement, make recommendations for securing such compliance, including, but not limited to, proposed legislation.

Sec. 9. (NEW) (*Effective July 1, 2004*) In each odd-numbered year, the State Ethics Commission shall conduct training on ethical issues affecting public officials and public employees of municipalities and districts.

Sec. 10. Subdivision (10) of subsection (b) of section 7-148 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2004*):

(10) (A) Make all lawful regulations and ordinances in furtherance of any general powers as enumerated in this section, and prescribe penalties for the violation of the same not to exceed one hundred dollars, unless otherwise specifically provided by the general statutes. Such regulations and ordinances may be enforced by citations issued by designated municipal officers or employees, provided the regulations and ordinances have been designated specifically by the municipality for enforcement by citation in the same manner in which they were adopted and the designated municipal

officers or employees issue a written warning providing notice of the specific violation before issuing the citation;

[(B) Adopt a code of ethical conduct;]

[(C) (B) Establish and maintain free legal aid bureaus;

[(D) (C) Perform data processing and related administrative computer services for a fee for another municipality;

[(E) (D) Adopt the model ordinance concerning a municipal freedom of information advisory board created under subsection (f) of section 1-205 and establish a municipal freedom of information advisory board as provided by said ordinance and said section.

Sec. 11. Section 7-148h of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2004*):

[(a)] Any town, city, district, as defined in section 7-324, or borough may, by charter provision or ordinance, establish a board, commission, council, committee or other agency to investigate allegations of unethical conduct, corrupting influence or illegal activities levied against any official, officer or employee of such town, city, district or borough. The provisions of subsections (a) to (e), inclusive, of section 1-82a shall apply to allegations before any such agency of such conduct, influence or activities, to an investigation of such allegations conducted prior to a probable cause finding, and to a finding of probable cause or no probable cause. Any board, commission, council, committee or other agency established pursuant to this section may issue subpoenas or subpoenas duces tecum, enforceable upon application to the Superior Court, to compel the attendance of persons at hearings and the production of books, documents, records and papers.

[(b) Notwithstanding the provisions of any special act, municipal charter or ordinance to the contrary, an elected official of any town, city, district or borough that has established a board, commission, council, committee or other agency under subsection (a) of this section, has an interest that is in substantial conflict with the proper discharge of the official's duties or employment in the public interest and of the official's responsibilities as prescribed by the laws of this state, if the official has reason to believe or expect that the official, the official's spouse or dependent child, or a business with which he is associated, as defined in section 1-79, will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of the official's official activity. Any such elected official does not have an interest that is in substantial conflict with the proper discharge of the official's duties in the public interest and of the official's responsibilities as prescribed by the laws of this state, if any benefit or detriment accrues to the official, the official's spouse or dependent child, or a business with which he, his spouse or such dependent child is associated as a member of a profession, occupation or group to no greater extent than to any other member of such

profession, occupation or group. Any such elected official who has a substantial conflict may not take official action on the matter.]

This act shall take effect as follows:	
Section 1	<i>July 1, 2004</i>
Sec. 2	<i>July 1, 2004</i>
Sec. 3	<i>July 1, 2004</i>
Sec. 4	<i>July 1, 2004</i>
Sec. 5	<i>July 1, 2004</i>
Sec. 6	<i>July 1, 2004</i>
Sec. 7	<i>July 1, 2004</i>
Sec. 8	<i>July 1, 2004</i>
Sec. 9	<i>July 1, 2004</i>
Sec. 10	<i>July 1, 2004</i>
Sec. 11	<i>July 1, 2004</i>

GAE *Joint Favorable Subst.*

PD *Joint Favorable*

APP *Joint Favorable*

§ 35-25

General Statutes

TITLE 35 Trade Regulations, Trademarks and Collective and Certification Marks

Chapter 624 Connecticut Antitrust Act

35-25 Definitions

Sec. 35-25. Definitions.

As used in this chapter, unless the context indicates otherwise:

(a) "Commodity" means any goods, merchandise, wares, produce, chose in action, patents, trade marks, land articles of commerce, or any other tangible or intangible property, real, personal, or mixed, for use, consumption, enjoyment, or resale;

(b) "Person" means any individual, proprietorship, corporation, limited liability company, firm, partnership, incorporated and unincorporated association, or any other legal or commercial entity;

(c) "Trade or commerce" means intrastate as well as interstate trade or commerce.

(1971, P.A. 608, S. 2; P.A. 75-567, S. 2, 80; P.A. 95-79, S. 133, 189.)

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§ 35-26

General Statutes

TITLE 35 Trade Regulations, Trademarks and Collective and Certification Marks

Chapter 624 Connecticut Antitrust Act

35-26 Restraint of trade or commerce unlawful

Sec. 35-26. Restraint of trade or commerce unlawful.

Every contract, combination, or conspiracy in restraint of any part of trade or commerce is unlawful.

(1971, P.A. 608, S. 3.)

§ 35-27

General Statutes

TITLE 35 Trade Regulations, Trademarks and Collective and Certification Marks

Chapter 624 Connecticut Antitrust Act

35-27 Monopolization or attempt to monopolize unlawful

Sec. 35-27. Monopolization or attempt to monopolize unlawful.

Every contract, combination, or conspiracy to monopolize, or attempt to monopolize, or monopolization of any part of trade or commerce is unlawful.

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§ 35-28

General Statutes

TITLE 35 Trade Regulations, Trademarks and Collective and Certification Marks

Chapter 624 Connecticut Antitrust Act

35-28 Acts unlawful when purpose or effect is restraint of trade or commerce

Sec. 35-28. Acts unlawful when purpose or effect is restraint of trade or commerce.

Without limiting section 35-26, every contract, combination, or conspiracy is unlawful when the same are for the purpose, or have the effect, of: (a) Fixing, controlling, or maintaining prices, rates, quotations, or fees in any part of trade or commerce; (b) fixing, controlling, maintaining, limiting, or discontinuing the production, manufacture, mining, sale, or supply of any part of trade or commerce; (c) allocating or dividing customers or markets, either functional or geographical, in any part of trade or commerce; or (d) refusing to deal, or coercing, persuading, or inducing third parties to refuse to deal with another person.

(1971, P.A. 608, S. 5.)

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§ 35-29

[General Statutes](#)

[TITLE 35 Trade Regulations, Trademarks and Collective and Certification Marks](#)

[Chapter 624 Connecticut Antitrust Act](#)

35-29 Acts unlawful where effect is substantial lessening of competition or creation of monopoly

Sec. 35-29. Acts unlawful where effect is substantial lessening of competition or creation of monopoly.

Every lease, sale or contract for the furnishing of services or for the sale of commodities, or for the fixing of prices charged therefor, or for the giving or selling of a discount or rebate therefrom, on the condition or understanding that the lessee or purchaser shall not deal in the services or the commodities of a competitor or competitors of the lessor or seller, shall be unlawful where the effect of such lease or sale or contract for sale or such condition or understanding may be to substantially lessen competition or tend to create a monopoly in any part of trade or commerce and where such goods or services are for the use, consumption or resale in this state.

(1971, P.A. 608, S. 6.)

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§ 35-30

[General Statutes](#)

[TITLE 35 Trade Regulations, Trademarks and Collective and Certification Marks](#)

[Chapter 624 Connecticut Antitrust Act](#)

35-30 Application of chapter

Sec. 35-30. Application of chapter.

This chapter applies to every contract, combination, or conspiracy in restraint of any part of trade or commerce or every contract, combination or conspiracy to monopolize, or every attempt to monopolize, or every monopolization of any part of trade or commerce when any part thereof was entered into or effectuated in whole or in part in this state.

(1971, P.A. 608, S. 7; P.A. 75-567, S. 3, 80.)

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§ 35-31

General Statutes

TITLE 35 Trade Regulations, Trademarks and Collective and Certification Marks

Chapter 624 Connecticut Antitrust Act

35-31 Exceptions

Sec. 35-31. Exceptions.

(a) Nothing contained in this chapter shall be construed to forbid the existence or operation of labor, agricultural, or horticultural organizations instituted for the purpose of mutual help, and not having capital stock and not conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof. Such organizations, or the members thereof, shall not be held or construed to be illegal combinations or conspiracies or monopolies in restraint of trade, under the provisions of this chapter.

(b) Nothing contained in this chapter shall apply to those activities of any person when said activity is specifically directed or required by a statute of this state, or of the United States.

(c) Nothing contained in this chapter shall be construed to prevent persons engaged in the production of agricultural products as farmers, planters, dairymen or growers from acting together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling and marketing in interstate and foreign commerce, such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes; provided, such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements: (i) That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or, (ii) that the association does not pay dividends on stock or membership capital in excess of eight per cent per annum, and, (iii) that the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members.

(1971, P.A. 608, S. 8; P.A. 75-567, S. 4, 80; P.A. 77-604, S. 21, 84.)

§ 35-34

General Statutes

TITLE 35 Trade Regulations, Trademarks and Collective and Certification Marks

Chapter 624 Connecticut Antitrust Act

35-34 Injunctive relief

Sec. 35-34. Injunctive relief.

The state or any person, including, but not limited to, a consumer, may sue for injunctive relief, both temporary or permanent, against threatened loss or damage to its property or business by any violation of this chapter. In such actions the court shall follow the rules and principles governing the granting of injunctive relief. If the court issues an injunction, the plaintiff shall recover a reasonable attorney's fee together with costs, as determined by the court.

(1971, P.A. 608, S. 11; P.A. 75-567, S. 7, 80.)

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§ 35-35

General Statutes

TITLE 35 Trade Regulations, Trademarks and Collective and Certification Marks

Chapter 624 Connecticut Antitrust Act

35-35 Treble damages for injury to business or property

Sec. 35-35. Treble damages for injury to business or property.

The state, or any person, including, but not limited to, a consumer, injured in its business or property by any violation of the provisions of this chapter shall recover treble damages, together with a reasonable attorney's fee and costs.

(1971, P.A. 608, S. 12; P.A. 75-567, S. 8, 80.)

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§ 35-38

General Statutes

TITLE 35 Trade Regulations, Trademarks and Collective and Certification Marks

Chapter 624 Connecticut Antitrust Act

35-38 Civil penalties for violations

Sec. 35-38. Civil penalties for violations.

In any action instituted by the Attorney General, any individual who has been held to have violated this chapter shall forfeit and pay to the state a civil penalty of not more than twenty-five thousand dollars. Any other person who has been held to have violated any of the provisions of this chapter shall forfeit and pay to the state a civil penalty of not more than two hundred fifty thousand dollars.

(1971, P.A. 608, S. 15; P.A. 73-668, S. 2; P.A. 75-567, S. 10, 80.)

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§ 35-39

General Statutes

TITLE 35 Trade Regulations, Trademarks and Collective and Certification Marks

Chapter 624 Connecticut Antitrust Act

35-39 Liability of legal or commercial entity for acts of agents

Sec. 35-39. Liability of legal or commercial entity for acts of agents.

A corporation, association, firm, partnership, proprietorship, or any other legal or commercial entity is liable under this chapter for the acts of its officers, directors, representatives or agents, acting within the scope of their actual or apparent authority, whether they are acting on their own behalf or for their own benefit, or acting for the corporation, association, firm, partnership or proprietorship or in their representative capacity. Proof of the acts of any such officer, director, representative, or agent shall be received as prima facie proof as the acts of the corporation, association, firm, partnership or proprietorship, itself.

(1971, P.A. 608, S. 16; P.A. 75-567, S. 11, 80.)

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§ 35-40

General Statutes

TITLE 35 Trade Regulations, Trademarks and Collective and Certification Marks

Chapter 624 Connecticut Antitrust Act

35-40 Limitation of actions

Sec. 35-40. Limitation of actions. Accrual of cause of action for continuing violation.

Any action under sections 35-34 and 35-35, shall be forever barred unless commenced within four years after the cause of action shall have accrued. For the purpose of this section, a cause of action for a continuing violation is deemed to accrue at any time during the period of the violation.

(1971, P.A. 608, S. 17; P.A. 75-508, S. 6, 7.)

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§ 35-41

General Statutes

TITLE 35 Trade Regulations, Trademarks and Collective and Certification Marks

Chapter 624 Connecticut Antitrust Act

35-41 Suspension of statute of limitations

Sec. 35-41. Suspension of statute of limitations.

If any proceeding or action is commenced by the Attorney General for any violation of the provisions of this chapter, the running of the statute of limitations with respect to every cause of action arising under sections 35-34 and 35-35, and based in whole or in part on any matter complained of in the proceeding or action, shall be suspended during the pendency thereof, and for one year thereafter. If the running of the statute of limitations is suspended, the cause of action shall be forever barred unless commenced either within the period of suspension, or three years after the cause of action shall have accrued.

(1971, P.A. 608, S. 18; P.A. 75-567, S. 12, 80.)

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§ 35-44b

General Statutes

TITLE 35 Trade Regulations, Trademarks and Collective and Certification Marks

Chapter 624 Connecticut Antitrust Act

35-44b Judicial construction of Connecticut Antitrust Act

Sec. 35-44b. Judicial construction of Connecticut Antitrust Act.

It is the intent of the General Assembly that in construing sections 35-24 to 35-46, inclusive, the courts of this state shall be guided by interpretations given by the federal courts to federal antitrust statutes.

(P.A. 92-248, S. 2.)

Supreme Court of Connecticut.
CHERYL TERRY ENTERPRISES, LTD.

v.

CITY OF HARTFORD.

No. 17067.

Argued May 19, 2004.

Decided Aug. 31, 2004.

(270 Conn. 619)

KATZ, J.

In *Cheryl Terry Enterprises, Ltd. v. Hartford*, 262 Conn. 240, 242, 811 A.2d 1272 (2002), the plaintiff, Cheryl Terry Enterprises, Ltd., appealed from the judgment of the trial court setting aside the jury's verdict for the plaintiff on its antitrust claim against the defendant, the city of Hartford. We concluded therein that the plaintiff had not appealed from a final judgment because the trial court had not yet resolved the plaintiff's remaining claim for permanent injunctive relief. The case thereafter was reclaimed to the trial list and, following additional hearings and briefing from the parties, the trial court denied the plaintiff's request for a mandatory injunction. Thereafter, the plaintiff appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to [General Statutes § 51-199\(c\)](#) and [Practice Book § 65-1](#).

In the present appeal, the plaintiff claims that the trial court improperly: (1) set aside the jury's verdict on its antitrust claim on the ground that, under our decision in *Lawrence Brunoli, Inc. v. Branford*, 247 Conn. 407, 722 A.2d 271 (1999), the plaintiff, an unsuccessful lowest bidder in a municipal bidding process, lacked standing to bring an antitrust claim against the defendant; (2) determined that it could effectively repeal Connecticut's antitrust statute in cases involving municipal bidding; (3) set aside the jury's verdict on the plaintiff's antitrust claim on the ground that the plaintiff had failed to present sufficient proof of damages; (4) directed a verdict for the defendant on the plaintiff's equal protection claims; and (5) failed to award the plaintiff mandatory injunctive relief.

We conclude that the trial court improperly set aside the verdict on the ground that the plaintiff lacked standing to bring an antitrust claim for damages against a municipality arising out of the municipal bidding process. We conclude further that the trial court improperly set aside the verdict on the ground that the plaintiff had not proved its damages to a reasonable certainty. In light of that conclusion, we need not address the plaintiff's claim that the trial court improperly granted the defendant's motion for a directed verdict on its equal protection claims. Finally, we conclude that the trial court properly denied the plaintiff's request for injunctive relief. Accordingly, we reverse in part the judgment of the trial court.

The relevant facts and procedural history are set forth in our opinion in *Cheryl Terry Enterprises, Ltd. v. Hartford*, *supra*, 262 Conn. 240, 811 A.2d 1272. "The plaintiff is a school bus company based in Hartford. The president of the company, Cheryl Terry, has worked in the school transportation business for more than thirty years. The plaintiff was one of three vendors who had submitted sealed bids to the defendant in response to an invitation to bid for a proposed five year contract to provide bus transportation services for the Hartford public schools,

commencing with the 1998-1999 school year. The plaintiff's bid was lower than either of the other vendors, Laidlaw Transit, Inc. (Laidlaw), and Dattco, Inc. (Dattco). Despite being the highest bidder, Laidlaw was awarded the five year contract. "After Laidlaw was awarded the contract, the plaintiff brought the action underlying this appeal, claiming violations of its equal protection rights and state antitrust law.... The plaintiff also claimed that, by awarding the contract to an entity other than the lowest responsible bidder, the defendant violated § 2-548 of the Hartford municipal code. The plaintiff's complaint alleged a violation of the Connecticut Antitrust Act (act); [General Statutes § 35-24](#) et seq.; in that it was not awarded the contract due to a conspiratorial agreement between a [labor] union and the defendant, with the purpose of obtaining a union contract. The plaintiff sought temporary and permanent injunctive relief relating to the contract, monetary damages and equitable relief. At trial, the defendant acknowledged that the plaintiff's bid was the lowest submitted, but it maintained that the plaintiff was not awarded the contract because the defendant had been informed that the plaintiff had a pending labor case with the National Labor Relations Board, and because its bid did not conform to the specifications of the bid request. Terry testified, however, that the plaintiff had 'fully complied with each and every material term of [the] defendant's bid specifications'

"Thereafter, the trial court held a hearing on the plaintiff's motion for a temporary restraining order. On August 4, 1998, subsequent to the completion of the hearing, but prior to the issuance of the trial court's decision, the defendant executed its contract with Laidlaw. The trial court issued a decision denying the plaintiff's motion for a temporary restraining order on August 7, 1998.

"After a trial on the plaintiff's equal protection and state antitrust claims, the trial court granted the defendant's motion for a directed verdict as to the plaintiff's equal protection claims, and submitted to the jury only the claim alleging an antitrust violation. Ultimately, the jury returned a verdict for the plaintiff in the amount of \$500,000 on that claim. The defendant then filed a motion to set aside the verdict. The trial court granted this motion and, thereafter, set aside the verdict for the plaintiff. The trial court reserved the question as to whether Laidlaw was a necessary party on the injunction portion of the claim and noted that it would hold a hearing on the plaintiff's request for permanent injunctive relief ab initio if it were to decide that Laidlaw was indeed a necessary party. The court ultimately determined that Laidlaw was a necessary party and that it should be joined as a party within thirty days of that order. Prior to a resolution of the claim for permanent injunctive relief, [however] the plaintiff appealed from the judgment of the trial court setting aside the verdict on its antitrust claim." [\[FN5\] Cheryl Terry Enterprises, Ltd. v. Hartford, supra, 262 Conn. at 243-45, 811 A.2d 1272.](#)

As we noted previously, we dismissed the plaintiff's first appeal, concluding that the plaintiff had not appealed from a final judgment because the claim for injunctive relief had not been determined. *Id.*, at 242, 811 A.2d 1272. Due to the trial court's subsequent resolution of the plaintiff's remaining claim for injunctive relief, we now address the merits of the plaintiff's claims.

We address the plaintiff's first two claims together because they are interrelated. The plaintiff claims that the trial court improperly granted the defendant's motion to set aside the verdict on the ground that *Lawrence Brunoli, Inc. v. Branford*, supra, 247 Conn. 407, 722 A.2d 271, precludes a plaintiff from pursuing a statutory antitrust claim for damages against a municipality arising out of a municipal bidding process. The defendant contends that the trial court properly found that, under *Lawrence Brunoli, Inc.*, the plaintiff lacked standing to pursue its antitrust claim, and, therefore, that the trial court lacked subject matter jurisdiction. We agree with the plaintiff.

The following additional facts are relevant to our resolution of this claim. Prior to trial, the plaintiff was warned by the trial court that it would allow the antitrust claim to go to the jury because the court was unprepared to rule on its ultimate viability, but that the court would "closely examine that issue if the jury were to return a verdict in the plaintiff's favor." Ultimately, the jury did return a verdict in the plaintiff's favor, and awarded the plaintiff \$500,000 in damages. The defendant filed a motion to set aside the verdict, claiming, inter alia, that the court lacked subject matter jurisdiction to award damages on the antitrust claim. The trial court agreed, and granted the defendant's motion to set aside the verdict.

"The trial court's subject matter jurisdiction is a matter of law and, therefore, our review is plenary. If a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause.... A determination regarding a trial court's subject matter jurisdiction is a question of law." *Cadle Co. v. D'Addario*, 268 Conn. 441, 446, 844 A.2d 836 (2004).

In its memorandum of decision on the defendant's motion to set aside the verdict, the trial court analyzed the act and determined that "it seems clear that a municipality can be sued under [the] act." We agree. The act provides, inter alia, that "[e]very contract, combination, or conspiracy in restraint of any part of trade or commerce is unlawful." *General Statutes* § 35-26. For purposes of the act, " 'person' " is defined broadly as "any individual, proprietorship, corporation, limited liability company, firm, partnership, incorporated and unincorporated association, or any other legal or commercial entity" *General Statutes* § 35-25(b). We consistently have stated that a municipality is a legal entity that can sue and be sued. See, e.g., *Murphy v. Ives*, 151 Conn. 259, 264, 196 A.2d 596 (1963) ("[t]owns have no sovereign immunity, and are capable of suing and being sued ... in any action" [internal quotation marks omitted]). Therefore, the plain language of the statutory definition of "person" is broad enough to include municipalities, such as the defendant in the present case.

This broad definition of "person" is then utilized by the legislature to define both who may be liable for anticompetitive behavior, and who has standing to recover damages for such behavior. In regard to standing, *General Statutes* § 35-35 provides in relevant part that "any person ... injured in its business or property by any violation of the provisions of this chapter shall recover treble damages, together with a reasonable attorney's fee and costs." See also *General Statutes* § 35-34 ("any person ... may sue for injunctive relief, both temporary or permanent, against threatened loss or damage to its property or business by any violation of this chapter").

Conversely, the legislature also has used that same broad definition of "person" to define any individual or entity that may be liable under the act for anticompetitive behavior. See, e.g., [General Statutes § 35-38](#) ("[a]ny ... person who has been held to have violated any of the provisions of this chapter shall forfeit and pay to the state a civil penalty of not more than two hundred fifty thousand dollars"); [General Statutes § 35-39](#) ("[a] corporation, association, firm, partnership, proprietorship, or any other legal or commercial entity is liable under this chapter for the acts of its ... agents"). Indeed, the only express limitation on the act's applicability is set forth in [General Statutes § 35-31](#), which contains four classes of exceptions from liability under the act. None of these exceptions is applicable to the facts of the present case. See also [Mazzola v. Southern New England Telephone Co.](#), 169 Conn. 344, 355, 363 A.2d 170 (1975) ("[§ 35-31] exceptions are to be strictly construed"). Thus, although the legislature has excluded certain organizations and activities from liability under the act, it has not excluded municipalities, or the municipal bidding process, from its provisions. See [Doucette v. Pomes](#), 247 Conn. 442, 457, 724 A.2d 481 (1999) ("[u]nless there is evidence to the contrary, statutory itemization indicates that the legislature intended [a] list to be exclusive" [internal quotation marks omitted]). Although the defendant may be correct that there are significant public policy reasons to exclude the municipal bidding process from the act, that is a change that must be made by the legislature, not this court. See [State v. Hanson](#), 210 Conn. 519, 529, 556 A.2d 1007 (1989) ("It is axiomatic that the court itself cannot rewrite a statute to accomplish a particular result. That is the function of the legislature." [Internal quotation marks omitted.]); see also [State v. Luurtsema](#), 262 Conn. 179, 202, 811 A.2d 223 (2002) (rejecting argument imputing temporal requirement to restraint element of kidnapping statute). In sum, we conclude that the trial court properly determined that a municipality can be sued for violations of the act.

Despite having reached this conclusion, however, the trial court granted the defendant's motion to set aside the judgment, determining that in light of our decision in [Lawrence Brunoli, Inc. v. Branford](#), *supra*, 247 Conn. at 416, 722 A.2d 271, the act was "effectively repealed" in actions arising from the municipal bidding process because "[t]o allow antitrust damages here would be repugnant to the public benefit purposes of the municipal competitive bidding laws and would not therefore comport with the similar objectives of the antitrust laws to benefit the public, not competitors, and lead to results the legislature could not have intended." We disagree.

To begin with, we already have concluded that the trial court properly determined that the definition of "persons" subject to liability under the act is broad enough to include municipalities. Once the trial court made this determination, it should have denied the defendant's motion to set aside the verdict, and declined to apply the policy reasons set forth in [Lawrence Brunoli, Inc.](#), in order to alter the plain language of the act. [State v. Hanson](#), *supra*, 210 Conn. at 529, 556 A.2d 1007.

Moreover, [Lawrence Brunoli, Inc.](#), readily is distinguishable from the present case. In [Lawrence Brunoli, Inc.](#), the plaintiff, an unsuccessful bidder in a municipal bidding contest, alleged impropriety in the contract awarding process and brought a breach of contract action for money damages against the town of Branford. [Lawrence Brunoli, Inc. v. Branford](#), *supra*, 247 Conn. at 408, 722 A.2d 271. Specifically, the plaintiff alleged fraud, corruption or favoritism on the part of the defendant in awarding the contract. *Id.*, at 410, 722 A.2d 271. The trial court dismissed the action for lack of subject matter jurisdiction on the ground that the plaintiff lacked

standing to assert a claim for money damages and was, therefore, limited to an action for injunctive relief. *Id.* The issue on appeal to this court was "whether the [trial] court [had] subject matter jurisdiction over a claim for damages, rather than for injunctive relief, allegedly resulting from fraud, corruption or favoritism in the award of a contract that is subject to competitive municipal bidding requirements." *Id.*, at 408, 722 A.2d 271. We answered that question in the negative, concluding that, "as a matter of law, an unsuccessful bidder to a municipal contract has no standing to assert a cause of action for money damages for failure of the municipality to follow its competitive bidding laws, regardless of whether the plaintiff alleges fraud, corruption or favoritism" in the bidding process. *Id.*, at 411, 722 A.2d 271. We began our analysis by noting that because the plaintiff only had bid on the contract, and was not awarded the contract, it lacked standing to bring a common-law breach of contract action. *Id.*, at 411-12, 722 A.2d 271. Accordingly, we concluded that "[i]f an unsuccessful bidder has standing to bring a claim against a municipality ... such standing must be derived from a source other than its bid submitted in response to an invitation to bid. That source is the municipal bidding statutes themselves." [FN10] *Id.*, at 412, 722 A.2d 271. Because the statutes expressly did not confer standing for money damages, and our prior case law had limited relief in such actions to injunctive relief, we considered whether the policy considerations underlying the bidding statutes were best served by continuing to limit the remedy to injunctive relief. *Id.*, at 412-16, 722 A.2d 271. We concluded that they were, and, accordingly, affirmed the judgment of the trial court. *Id.*, at 416, 722 A.2d 271.

Our decision in *Lawrence Brunoli, Inc.*, was limited to actions based on common-law breach of contract claims or the municipal bidding statutes. In the present case, the plaintiff did not assert a common-law breach of contract action, nor an action for injunctive relief under the municipal bidding statutes, but, rather, sought relief under the act. We simply were not called upon in *Lawrence Brunoli, Inc.*, to address whether an unsuccessful lowest bidder had standing to bring an action under the act. Furthermore, as we stated in that case, "[i]f an unsuccessful bidder has standing to bring a claim against a municipality ... such standing must be derived from a source other than its bid submitted in response to the invitation to bid." *Id.*, at 412, 722 A.2d 271. As we noted previously, the legislature expressly has conferred standing on a broad range of individuals under the act, including unsuccessful bidders in a municipal bidding process. Thus, an independent source of standing, which was absent in *Lawrence Brunoli, Inc.*, exists in the present case. Put another way, in *Lawrence Brunoli, Inc.*, we were attempting to discern whether, in the absence of a direct conferral of standing by the legislature in the municipal bidding statutes, this court should recognize a right to standing for money damages. See *id.*, at 412-16, 722 A.2d 271. To the contrary, in the present case the legislature has conferred standing to a broad class of persons that includes a municipality, and this court cannot now limit that standing in a manner contrary to the plain language of the act.

[6] Finally, we note that the policy considerations supporting our decision in *Lawrence Brunoli, Inc.*, are rendered inapplicable to the present case due to the legislature's broad conferral of standing under the act, which is based on several important principles, including, the protection of the public from anticompetitive behavior and the promotion of competition in the marketplace. See, e.g., *Shea v. First Federal Savings & Loan Assn. of New Haven*, 184 Conn. 285, 294, 439 A.2d 997 (1981) ("[b]oth federal and Connecticut antitrust law attempt to promote competition in the marketplace"). Put another way, although this court was hesitant to expose

taxpayers to the additional costs of money damages in *Lawrence Brunoli, Inc.*, the legislature has not expressed a similar hesitation within the language of the act. Indeed, as the plaintiff correctly contends, it would be incongruous to allow a municipality to bring an action against contractors under the act for anticompetitive behavior, yet preclude those same contractors from bringing an action against a municipality that has engaged in anticompetitive behavior. The trial court's reliance on *Lawrence Brunoli, Inc.*, therefore, was misplaced.

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