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ROGERS, C. J., with whom PALMER and McDONALD, Js., join, concurring. I agree with and join in the conclusions of the majority opinion that an implied waiver of *Golding* review¹ pursuant to *State v. Kitchens*, 299 Conn. 477, 10 A.3d 942 (2011), does not preclude an appellate court from holding that there was plain error in a trial court's jury instruction, but that the instructions in this case were proper. I write separately to express my continued disagreement with the rule of *Kitchens* and my belief that that case was decided incorrectly and, therefore, should be overruled. See *State v. Bellamy*, 323 Conn. 400, 454–66, 147 A.3d 655 (2016) (Rogers, C. J., concurring). Although today's decision provides an important safeguard against convictions obtained with egregiously mischarged juries, the availability of plain error reversal is an inadequate substitute for regular appellate review of claims of constitutional error in jury instructions. As I explained in my concurrence in *Bellamy*, such review provides important benefits to criminal defendants and society as a whole, and it is questionable whether the efficiencies sought by *Kitchens* outweigh those benefits or even will be effectively achieved. *Id.*, 458–60. Moreover, it is much more difficult for a defendant to prevail within the narrow confines of the plain error doctrine than under *Golding*, and that doctrine, unlike *Golding*, does not appear to provide a hospitable framework for the advancement of claims that are novel or whose success is dependent on the overruling of existing precedent. See *id.*, 458 n.6 (Rogers, C. J., concurring). Accordingly, I concur in the judgment.

¹ See *State v. Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989).