IN THE
COURT OF APPEALS OF MARYLAND

September Term, 2005

No. 142

STEPHEN N. ABRAMS,

Appellant,

v.

LINDA H. LAMONE, et al.,

Appellees.

BRIEF OF APPELLEE THOMAS E. PEREZ

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STATEMENT OF THE CASE

1. Nature of the Case

Mr. Perez agrees with Mr. Abrams's first two sentences concerning the nature of the case but disagrees with his statement in the final sentence that "the issue at the core of this case" is whether "the Constitution contains no requirement that an Attorney General candidate be admitted to practice in Maryland – ever." The actual issue at the core of this appeal is whether the Circuit Court for Anne Arundel County correctly held that Mr. Perez was not required to have been admitted to or a member of the Maryland Bar for at least ten years to be eligible to run for the office of Attorney General of Maryland where he practiced law in Maryland for more than ten years. There is no issue in this case concerning whether a candidate for the office of Attorney General must be a member of the Maryland Bar because Mr. Perez has been a member of the Maryland Bar for approximately five years.[1]

[1] In addition, from a jurisdictional viewpoint, it is doubtful that Mr. Abrams, who is presently running for the office of State Comptroller as a Republican, has standing to pursue this lawsuit, as he is not eligible to vote in the upcoming Democratic Party Primary Election but nevertheless seeks to have Mr. Perez removed from the Democratic Party Primary ballot.

2. Course of the Proceedings

Mr. Perez agrees with Mr. Abrams's statement of the course of the proceedings, except denies that Mr. Abrams "provided copies of all filings to counsel for Respondents." In fact, Mr. Perez had not even retained counsel with regards to this matter at that point in time, and Mr. Perez was not served with Mr. Abrams's papers concerning his request for temporary restraining order until after the trial court denied Mr. Abrams's motion for temporary restraining order.

3. Disposition in the Circuit Court

Mr. Perez disagrees entirely with Mr. Abrams's purported description of the decision of the Circuit Court for Anne Arundel County. In that decision, the circuit court found: a) an attorney could "practice law in this State" without being admitted to or being a member of the Maryland Bar; b) that the "inescapable conclusion" was that the plain meaning of the term "practiced law in this State" did not require that an attorney have been admitted to or been a member of the Maryland Bar; and c) that, based on Mr. Perez's affidavit, Mr. Perez has practiced law for more than ten years in the State of Maryland.

The trial court based its decision on several Court of Appeals and Supreme Court decisions holding that an attorney, practicing federal law or in federal courts, can engage in the practice of law in a state without being admitted to or a member

of that state's bar. In addition, the trial court pointed out that in normal parlance, there is a difference in meaning between the terms "practicing law" and "admitted to the bar" such that the plain meaning of "practiced law" is not the same as being admitted to the bar. The trial court also noted that the difference in eligibility language between Article V, § 4, concerning the office of Attorney General, and Article V, § 10, concerning the office of State's Attorney, supported the conclusion that "practiced law in this State" was not synonymous with being admitted to the Maryland Bar. Finally, the trial court explained that the general practice and understanding of being admitted to the Maryland Bar was different in the mid-Nineteenth Century, because there was no uniform system of examination or admission to practice before the various courts, and these differences might help explain why the framers did not require admission to or membership in the Maryland Bar but rather required that an attorney have practiced law in Maryland.

QUESTION PRESENTED

1. Did the Circuit Court for Anne Arundel County correctly hold that Article V, § 4 of the Constitution of Maryland does not require that a candidate for the office of Attorney General have been admitted to the Maryland Bar for at least ten years?

STATEMENT OF FACTS

The following facts were set forth in detail in the Affidavit of Thomas E. Perez ("Perez Affidavit") that was submitted to the trial court and relied upon in the trial court's oral opinion.[2] Mr. Abrams did not present any evidence or facts to counter or dispute the Perez Affidavit, nor did Mr. Abrams request an opportunity to develop or discover any such facts. Consequently, the trial court accepted the Perez Affidavit and relied on it in granting summary judgment to Mr. Perez.

Appellee Thomas E. Perez is a citizen and qualified voter of the State of Maryland and has been a resident of the State of Maryland for more than ten years. He graduated from Harvard Law School in 1987, clerked for a federal judge in Colorado from August 1987 to March 1989, was admitted to the New York Bar in 1988, and has been practicing law continuously since 1989.

A. Mr. Perez's Employment As A Federal Civil Rights Prosecutor At The Department of Justice (1989-1995)

In April 1989, Mr. Perez joined the United States Department of Justice ("DOJ") in Washington, D.C. as a Trial Attorney in the Criminal Section of the

[2] Mr. Abrams did not prepare or file a record extract. Consequently, the Perez Affidavit, along with the other relevant parts of the record, will be included in the Record Extract being prepared and submitted by counsel for Appellee Board of Elections. In light of the fact that the undersigned will not have access to that Record Extract until after Appellee's Brief is due, Appellee will not include any specific page references to the Record Extract but will be prepared to submit a Supplemental Brief upon request by the Court.

Civil Rights Division. During the next five years, Mr. Perez served as a front-line prosecutor investigating, prosecuting and supervising criminal civil rights cases, including hate crimes and police misconduct. Mr. Perez handled approximately 42 Maryland legal matters during that time period, and he frequently worked with the United States Attorney's office in Maryland, directing the investigation of potential cases, discussing those cases with Assistant United States Attorneys and FBI agents, and making legal determinations about the merits of potential cases.

In approximately July 1994, Mr. Perez was promoted to the position of Deputy Chief of the Criminal Section, where he was responsible for supervising all civil rights investigations and litigation in Maryland (as well as several other states). Whenever any DOJ prosecutor wanted to pursue a civil rights case in Maryland, Mr. Perez would talk with the prosecutor and provide his legal analysis of the potential matter. Mr. Perez would then be responsible for reviewing and supervising any ensuing investigation and litigation, including discussing legal strategy, reviewing legal briefs and participating in the prosecution of the case.

Mr. Perez supervised approximately 49 Maryland legal matters as Deputy Chief of the Criminal Section. For example, during 1994 and 1995, Mr. Perez served as the first-line supervisor in the investigation and prosecution of a civil rights case arising from a cross burning in front of a house in Prince George's

County, Maryland. The case was ultimately tried in federal court in Maryland before United States District Judge Peter Messitte, and while Mr. Perez did not appear for the United States in court, he was actively involved in the case, participating in strategic discussions, reviewing the indictment and other legal documents, and taking an active role in directing the prosecution of the case.

To perform his legal work as a federal prosecutor in Maryland, Mr. Perez was not required to be admitted to the Maryland Bar because federal law authorizes DOJ attorneys, such as Mr. Perez, to practice law in Maryland (and other states), even if they have not been admitted to the Maryland Bar. *See* 28 U.S.C. § 517 (2005) (stating that DOJ attorneys "may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.") (emphasis added).

B. Mr. Perez's Employment Through DOJ As Special Counsel To The Senate Judiciary Committee (1995-1998)

In December 1995, Mr. Perez was assigned to work as Special Counsel to the Senate Judiciary Committee (he remained employed by DOJ). In his role as Special Counsel, Mr. Perez was one of the principal drafters of the Church Arson Prevention Act of 1996, which imposed new legal standards on each state, including Maryland, and he helped draft the Immigration Reform and Control Act

of 1996, which affected the legal rights of persons living in Maryland.

C. Mr. Perez's Employment As Deputy Assistant Attorney General For Civil Rights At The Department Of Justice (1998-1999)

In early 1998, Mr. Perez was promoted to the position of Deputy Assistant Attorney General for Civil Rights, where he was responsible for overseeing and supervising all litigation activities of the Criminal Section, the Education Section and the Employment Section. During the next year, until approximately February 1999, Mr. Perez supervised approximately 62 Maryland legal matters and was directly responsible for approving all grand jury investigations, all requests to investigate school districts and all employment discrimination investigations.

Once again, Mr. Perez's employment required him to undertake the practice of law in Maryland. For instance, Mr. Perez was directly involved in the federal investigation of the fatal shooting of a Korean resident of Baltimore by an African-American resident of Baltimore. The case originally resulted in an acquittal in state court, and Mr. Perez was actively involved in the subsequent federal investigation of the matter, for which he met on several occasions with former United States Attorney Lynn Battaglia and various Baltimore community representatives to discuss legal issues and strategy and testified at a field hearing of the U.S. Civil Rights Commission in Baltimore. Mr. Perez also oversaw or participated in numerous Maryland cases involving the use of race-conscious

strategies to preserve racial integration in public schools, including *Eisenberg v. Montgomery County Public Schools*, a federal litigation concerning the constitutionality of the student transfer policy of the Montgomery County School Board. Mr. Perez was directly involved in overseeing and reviewing the amicus brief filed by DOJ in federal court in Maryland.

D. Mr. Perez's Employment As Director Of The Office Of Civil Rights At The U.S. Department Of Health And Human Services (1999-2001)

In February 1999, Mr. Perez was appointed Director of the Office of Civil Rights ("OCR") at the United States Department of Health and Human Services ("DHHS"), where he was responsible for enforcing civil rights laws in the health and human service context across the country. Mr. Perez worked as a legal strategist, case supervisor, manager and policymaker and was ultimately responsible for supervising numerous Title VI and Americans With Disabilities Act ("ADA") cases in Maryland and several other states. For example, Mr. Perez oversaw OCR's legal review of Maryland's compliance with its Title VI and ADA obligations in connection with its administration of the Temporary Assistance to Needy Families ("TANF") program, resulting in Maryland's agreement to conduct training of case workers to ensure that potential TANF clients would be treated properly. These cases did not result in litigation, but the various investigations and

cases often resulted in compliance agreements with the State of Maryland.[3]

E. Mr. Perez's Employment As Assistant Professor Of Law/Director of Clinical Law Programs At University Of Maryland School of Law (2001-Present)

In April 2001, Mr. Perez joined the University of Maryland School of Law as Assistant Professor of Law and Director of Clinical Law Programs. Mr. Perez taught clinical law courses, where he and his students handled actual cases for low-income Maryland residents. For instance, Mr. Perez and his students represented low-wage workers fired from their jobs for advocating passage of a living wage ordinance that would have raised their hourly wage. Mr. Perez also taught non-clinical courses, conducted legal research and scholarship, and served in administrative functions. In 1993, Mr. Perez resigned his position as Director of Clinical Law Programs following his election to the Montgomery County Council. He recently was promoted from Assistant Professor of Law to Associate Professor of Law.

F. Mr. Perez's Admission To The State Bar Of Maryland

Mr. Perez took the Maryland lawyer's bar exam in August 2001 and was

[3] Similarly, in 1999, Mr. Perez commenced an investigation into Maryland's compliance with the Supreme Court's decision in *L.C. v. Olmstead* to ensure Maryland took the necessary steps to move eligible persons to community-based settings. Under Mr. Perez's leadership, OCR conducted 11 reviews of individual complaints from Maryland residents with disabilities, resulting in community placements for ten Maryland residents without resort to litigation.

admitted to the Maryland Bar later that year. Under Rule 13 of the Maryland Rules of Professional Conduct, experienced attorneys may qualify for admission with prior legal practice experience of ten years, or at least five of the ten years immediately prior to the filing of the petition. Mr. Perez qualified for admission under Rule 13, passed the lawyer's bar, and was admitted to the Maryland Bar.

G. Mr. Perez's Candidacy For The Office Of Attorney General

On May 8, 2006, Mr. Perez requested an advisory opinion from the Attorney General regarding the eligibility requirements for the office of Attorney General. On May 19, 2006, the office of the Attorney General issued an Opinion, 91 Opinions of Attorney General 99 (2006), finding that Mr. Perez had practiced law in Maryland for ten years and was therefore eligible to serve as Attorney General. On June 19, 2006, Mr. Perez filed his certificate of candidacy for the office of Attorney General with the State Board of Elections. The Complaint was filed on July 13, 2006 – nearly one month after Mr. Perez filed his certificate of candidacy and nearly two months after press reports publicized the issues concerning Mr. Perez's eligibility.

ARGUMENT

I. The Circuit Court Correctly Held That Article V, § 4 Does Not Require Mr. Perez To Have Been Admitted To The Maryland Bar For Ten Years To Be Eligible For The Office Of Attorney General.

A. Introduction

The Constitution of Maryland expressly provides, as set forth pursuant to Article V, § 4, that the "Qualifications of Attorney General" are as follows: "No person shall be eligible to the office of Attorney General, who is not a citizen of this State, and a qualified voter therein, and has not resided and practiced law in this State for at least ten years." Nowhere does Article V, § 4 of the Maryland Constitution – unlike other state constitutions or similar sections of the Maryland Constitution concerning the office of State's Attorney – expressly require that a candidate for Attorney General have been "admitted to" or been "a member of" the Maryland Bar. Nevertheless, Mr. Abrams argues that the Court should rewrite Section 4 to include such language, because he believes it "was necessarily implied" based on the "traditional view" of the term "practiced law in this State" that "must have" been held by the framers of the Maryland Constitution.

The Circuit Court for Anne Arundel County, however, agreeing with the recent opinion of the Attorney General of Maryland, soundly rejected Mr. Abrams arguments, because: 1) Mr. Abrams improperly attempted to restrict the plain

meaning of Section 4 by historical implication, rather than by actually determining the ordinary meaning of the words, which do not require admission to the Maryland Bar; 2) Mr. Abrams failed to take into account federal case law and statutes that authorized Mr. Perez to practice law in Maryland; and 3) Mr. Abrams misinterpreted the legislative history of Section 4 and did not correctly compare Section 4 with similar sections of the Maryland Constitution, such as Section 10.

Specifically, while Mr. Abrams speculates about what the framers "must have meant" when they used the term "practice law in this State," and how he believes the average lawyer today would understand those words, he fails to consider the plain meaning of the words actually used by the framers, whether viewed in a contemporary light or by their historical meaning, nor does he adequately explain why the framers intentionally omitted such language from Section 4, while including it in similar sections. Finally, Mr. Abrams tries to justify his personal speculation by arguing that any other understanding of Section 4 would leave the Attorney General unable to perform his duties – an argument that fails to take into account the fact that the Maryland Constitution expressly provides the powers that the Attorney General needs to perform his duties.

B. The Plain Meaning Of Article V, § 4 Does Not Require A Candidate To Have Been A Member Of The Maryland Bar To Have "Practiced Law In This State For At Least Ten Years."

It is a basic principle of constitutional interpretation that plain language should be given its plain meaning, because the plain language is the best source of the framers's intent. Therefore, if the plain meaning of a word or phrase is "clear," "consistent with its objective" and "unambiguous when construed according to its ordinary and everyday meaning, then we give effect to the statute as written," and the Court need not ponder the inevitable complexities and frequent contradictions of legislative intent.[4] *Mackey v. Compass*, 391 Md. 117, 141 (2006); *Walton v. Mariner Health*, 391 Md. 643, 664 (2006).

Consistent with these principles, the Court begins "with the plain language of the statute, and ordinary, popular understanding of the English language dictates interpretation of its terminology." *Deville v. State of Maryland*, 383 Md. 217, 223 (2004); *Hackley v. State of Maryland*, 141 Md. App. 1 (2005). In construing the plain language, "a court may neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute; nor may it construe the statute with forced or subtle interpretations that limit or extend its

[4] The same rules applicable to statutory construction are also applicable to the construction of constitutional language. *See Brown v. Brown*, 287 Md. 273, 277 (1980).

application." *Price v. State*, 378 Md. 378, 387 (2003); *County Council v. Dutcher*, 365 Md. 399, 416-17 (2001). Only when faced with ambiguity will courts "consider both the literal and or usual meaning of the words as well as their meaning in light of the objectives and purposes of the enactment. As our predecessors noted, 'We cannot assume authority to read into the Act what the Legislature apparently deliberately left out.'" *Price*, 378 Md. at 387-88 (2003).

The plain language of Article V, § 4 at the heart of this controversy[5] consists of the term "practiced law in this State." This Court has repeatedly defined and interpreted terms similar to "practiced law" in a broad, expansive manner. For example, the Court defined the term "practice of law" to mean "advising clients by applying legal principles to the client's problem is practicing law." *Kennedy v. Bar Ass'n of Montgomery County*, 316 Md. 646, 662 (1989). Similarly, the Court found that an attorney "practices law" by utilizing his legal education, training and experience to analyze client's problems, using federal, state, local or foreign law. *See Somuah v. Flachs*, 352 Md. 241, 262 (1998) (analyzing potential legal actions constitutes practice of law). In addition, this Court held that an attorney "engaged in activity constituting the practice of law in Virginia" by meeting and advising a

[5] Mr. Abrams does not contest the fact that Mr. Perez has "practiced law" for "at least ten years" but argues that any such practice could not have been "in this State" because Mr. Perez has only been a member of the Maryland Bar for approximately five years.

client. *Attorney Grievance Comm. v. Velasquez*, 380 Md. 651, 657 (2004).

The Attorney General of Maryland also applied a broad interpretation to the term "practice of law" finding that the Dean of the University of Maryland School of Law, who counseled and taught students, performed legal research and served as counsel to a nonprofit corporation, was engaged in the practice of law.[6] *See* 68 Opinions of the Attorney General 48 (1983). The Attorney General noted that Dean Kelly had "engaged in activities that involve both the application of your individual judgment to legal issues and participation in the framing of institutional responses to legal problems. Moreover, you have simultaneously held yourself out as a practicing attorney and have engaged in various professional activities." *Id.*[7]

Applying these decisions, it is apparent that the ordinary, plain meaning of the term "practiced law" means the act of analyzing problems and advising clients by applying legal principles, education, training and experience – regardless of whether or not an attorney is admitted to the Maryland Bar at the time the attorney

[6] Mr. Perez's legal experience has been immeasurably broader than Dean Kelly's experience, further demonstrating that Mr. Perez has practiced law in this State.

[7] This conclusion is consistent with court holdings from other states, which have also construed the term "practice of law" in a broad manner. *See Schenck v. Shattuck*, 439 N.E.2d 891 (Ohio 1982) (services as a master constituted the practice of law)*; Reyna v. Goldberg*, 604 S.W.2d 549 (Tex. Civ. App. 1980) (judge's briefing attorney and director of district attorney's association, with minimal outside practice, practiced law); *Riddle v. Roy*, 126 So.2d 448 (La. App. 1960) (military inductee engaged in practice of law by representing clients while on leave).

engages in such conduct. Such a conclusion is consistent with the fact that "constitutional and statutory provisions that impose restrictions on the eligibility of a person to hold public office are construed liberally in favor of the eligibility of the person to hold the office." 91 *Op. Atty. Gen.* 99, 103 (May 19, 2006) (*citing* 63C Am.Jur.2d Public Officers and Employees § 53 (2005) ("if there is any doubt or ambiguity in the applicable provisions, such doubt or ambiguity must be resolved in favor of eligibility"); 67 C.J.S. Officers § 23 (2004) ("courts have a duty to liberally construe words limiting the right of a person to hold office.")).

The Attorney General has also found, in light of the fact that the history of the "practiced law" requirement of Article V, § 4 is vague and inconclusive, that the requirement should be liberally construed to recognize the evolving responsibilities of the Attorney General and changes in legal practice. *See* 68 Opinions of the Attorney General 48, 56-57 (1983) ("as a practical matter, of course, the Attorney General is, more than ever, a manager and a policymaker"). *See also* Friedman, Dan, *The Maryland State Constitution: A Reference Guide* at 191 (2006) (noting the Attorney General has found "the fourth requirement, that the Attorney General have practiced law for ten years, is not constrained to the traditional practice of law as it existed in 1864 but should be understood to require involvement in any of the contemporary forms of lawyering that entail the

application of personal legal expertise to a range of issues."); 91 Opinions of Attorney General 99, 103 (language should be liberally construed and any doubt or ambiguity should be resolved in favor of eligibility).[8]

This Court has also noted that the phrase "practice of law" in Art. V, § 4 is "much less restricted than" the concept of "the practice of law" as set forth in Bar Admission Rule 13(c), which allows eligible attorneys to take an abbreviated examination for the Maryland Bar if they have engaged in "the practice of law" for a total of ten years or at least five of the ten preceding years – a professional experience requirement that the State Board of Law Examiners found that Mr. Perez satisfied through his federal legal work at DOJ and OCR. *See In the Matter of the Application of R.G.S.*, 312 Md. 626, 637 (1988) (relying on Attorney General's conclusion that the term "practiced law in this State for at least ten years" means something "quite different from (and much less restricted than) the meaning of "practice of law for purposes of Rule 14 or unauthorized practice.").

[8] *See also Kelly v. Cuyahoga County Board of Elections*, 639 N.E.2d 78, 79 (Ohio 1994) ("Words limiting the right of a person to hold office are to be given a liberal construction in favor of those seeking to hold office, in order that the public may have the benefit of choice from all those who are in fact and in law qualified."); *Sears v. Bayoud*, 786 S.W.2d 248, 251 (Tex. 1990) ("We have repeatedly recognized the principle that constitutional provisions which restrict the right to hold public office should be strictly construed against ineligibility."); *Gazan v. Heery*, 187 S.E. 371, 378 (Ga. 1936) ("Words limiting the right of a person to hold office are to be given a liberal construction in favor of those seeking to hold office").

Finally, this Court frequently relies upon dictionary definitions of constitutional language to determine the plain and ordinary meaning of the words. For example, in *Benson v. State of Maryland,* 389 Md. 615, 632-33 (2005), the Court discerned the plain meaning of various terms, including "charge," "levied" and "consent," by analyzing "credible sources from both the time of adoption . . . and our modern era" including dictionaries. *See also State Dep't of Assessments and Taxation v. Maryland-National Capital Park and Planning Comm'n,* 348 Md. 2, 14 (1997) ("in deciding what a term's ordinary and natural meaning is, we may, and often do, consult the dictionary."); *Georgia-Pacific Corp. v. Benjamin,* 2006 Md. LEXIS 478 (August 2, 2006) (relying on the Webster's Dictionary definition of the word "discover" to determine its ordinary meaning).

A review of present day dictionaries demonstrates that the term "practiced" or "practice" in relation to law has been defined to mean: "The carrying on or exercise of a profession, esp. of law, surgery or medicine," (*The Oxford English Dictionary* at 271, 2nd Ed., v. XII (Clarendon Press, 1989)), "To work at, esp. as a profession: *practice law*," (*The American Heritage Dictionary of the English Language* at 1028 (William Morris, Houghton Mifflin Co., 1979)), and "the exercise or pursuit of a profession or occupation, esp. law or medicine," (*Random House College Dictionary* at 1040 (Random House, 1980)). Nowhere do these

contemporary dictionaries state that such pursuit of a profession or occupation or work must be as a member of the Bar or any other professional organization.

Similarly, an analysis of historical dictionaries demonstrates that the term "practiced" or "practice" in relation to law was also used in a general sense, similar to the current dictionary usage and not specifically in reference to having been admitted to the Bar or any particular court. For instance, the term was defined to mean: "Exercise of any profession; as, *the practice of law*; To use or exercise any profession or art; as, *to practice law or medicine*; to exercise any employment or profession; A physician has *practiced* many years with success." Webster, Noah, *An American Dictionary of the English Language* at 853-54, v. II, part 1 (George and Charles Merriam, 1852). Similarly, the term was defined as: "Do habitually, not merely professionally: as, *to practice law or physic.*" Latham, Robert Gordon, *A Dictionary of the English Language* at 576-77 (1870). Even in a legal sense, the term's definition was: "In a popular sense, the business which an attorney or counselor does," (Bouvier, John, *Law Dictionary* at 443, 15th ed. (T. & J.W. Johnson, 1885), and: "The business which an attorney or counselor does." Bouvier, John, *Law Dictionary*, v. II, 2nd ed. (T. & J.W. Johnson, 1843).

Taken as a whole, these contemporary, historical and legal definitions demonstrate that the term "practiced law in this State" is concerned with whether a person was pursuing a career or employment as an attorney by engaging in the act of analyzing problems and advising clients in Maryland by applying legal principles, education, training and experience – regardless of whether or not that person was admitted to the Maryland Bar at the time the attorney engaged in such professional conduct in Maryland.

C. The Plain Meaning Of Article V, § 4 Is Determined By Current Usage Of The Words, Not Their Historical Context.

To circumvent the "inescapable conclusion" that the plain meaning of Article V, § 4 does not require Maryland Bar membership for ten years, Mr. Abrams argues that "plain meaning" must be derived by "implication" based on assumptions about the intentions of the framers of the Maryland Constitution. Put simply, even though the Maryland Constitution does not mention admission to or membership in the Maryland Bar when discussing eligibility for the office of Attorney General, Mr. Abrams contends that the Court should adopt "a traditional view of the meaning" of the words of Article IV, § 4 by "implying" words into Section 4 that do not appear in Section 4. Such an approach would be directly contrary to the principles of statutory interpretation espoused by this Court.

1. The Trial Court Properly Held That The Plain Meaning Of

"Practiced Law In This State" Should Not Be Historically Restricted But Should Take Into Account Contemporary Notions About The Ability To Practice Law In Maryland.

The primary problem with Mr. Abrams's argument is that this Court has repeatedly rejected such a small-minded and unrealistic approach to constitutional interpretation. Specifically, in *Norris v. Mayor & City Council of Baltimore*, 172 Md. 667 (1937), the Court considered whether voting machines could be lawfully used in State elections in light of the fact that Article I, § 1 of the Maryland Constitution provides that "All elections shall be by ballot." The opponents of voting machines argued that the term "ballot" could not possibly have been intended to permit the use of voting machines, because voting machines did not exist in 1867. The Court expressly rejected this "implied definition" view, holding that:

> The argument ignores the rule which above all others gives life to the written law and makes its use possible for the government and control of men in carrying on the actual business of life, and that is that, while the principles of the Constitution are unchangeable, in interpreting the language by which they are expressed it will be given a meaning which will permit the application of those principles to changes in the economic, social, and political life of the people, which the framers did not and could not forsee.

Norris, 175 Md. at 675-76. *See also Clauss v. Board of Education*, 181 Md. 513, 522-23 (1943) (Court rejected narrow interpretation of term "education" and found

it included the employment of repair men for school heating systems, stating that "the meaning of the Constitution is not restricted to the meaning of particular words employed as they were understood at the time of its adoption. . . . it is not to be supposed that the framers of the Constitution of 1867 did not expect the system of education then in force to be changed or improved. They could not, of course, foresee what changes were to come.").

More recently, the Court confirmed that it would interpret the Maryland Constitution in light of any "changes in the economic, social, and political life of the people" in modern society, rather than being bound to the meaning of the language at the time of adoption. *See McCarthy v. Board of Education of Anne Arundel County*, 280 Md. 634 (1977) (holding that a modern understanding of the term "education" encompasses the use of school buses to transport children to school); *Boyer v. Thurston*, 247 Md. 279, 291-92 (1967) ("Where the language of the Constitution is susceptible of a broader or even different meaning from the meaning generally used at the time of the adoption of the Constitution, our predecessors have held that the meaning of the Constitution is not restricted to the meaning of particular words as they were understood at the time of its adoption").

The Attorney General applied the same legal analysis, concluding that "in our view, the limitations that existed on legal practice in Maryland in the mid-

1860s should not govern how the constitutional provision is read in light of contemporary legal practice." 91 *Op. Atty. Gen.* at 106-07. The Attorney General noted that "at the time Article V, § 4 was adopted, admission to the Maryland bar was limited to free white male citizens of Maryland above the age of twenty-one years." *Id*. at 107, n. 10. To find, by implication, as Mr. Abrams argues, that the term "practiced law in this State" is limited to attorneys admitted to the Maryland Bar for ten years, even though "many well-qualified attorneys with significant relevant experience" have practiced law in Maryland without being members of the Maryland Bar for ten years, would be synonymous with excluding, by implication, African-American candidates from the office of Attorney General.

Not surprisingly, the trial court reached the same conclusion, holding it would be improper to look to the framer's implied understanding of the terms to find the framers meant to say something that they did not say. The trial court also noted that if it held that Attorney General candidates were required to be members of the Maryland Bar for ten years because that is what the framers understood in the mid-Nineteenth Century by the term "practiced law in Maryland," then a candidate would also "have to be a white male over the age of 21" because that requirement would also have been intended by the framers.

2. The Trial Court Correctly Found, Applying Contemporary Notions And Standards Of Legal Practice, That Mr. Perez

Was Authorized To Practice Law In The State Of Maryland.

The second problem with Mr. Abrams's argument is that, while he contends, in what the trial court labeled a "circuitous argument," that Mr. Perez could not have practiced law in Maryland because of the historical requirement that he be admitted to the Maryland Bar to practice law in Maryland, both the trial court and the Attorney General rejected that argument. To the contrary, they found Mr. Perez was authorized to practice law in Maryland, because federal prosecutors and attorneys are authorized, pursuant to federal statute and Maryland law, to practice law in Maryland without being admitted to the Maryland Bar.

The classic example of this situation arises when federal attorneys employed as Assistant United States Attorneys and Assistant Federal Public Defenders engage in the "practice of law" in Maryland by investigating potential criminal and civil actions, negotiating cases, entering into plea bargains and settlements, and litigating criminal and civil actions in federal and state courts even though they are not admitted to the Maryland Bar. They are allowed to do so because federal law specifically authorizes federal attorneys, including attorneys employed by the Department of Justice, such as Mr. Perez, to practice law in Maryland, even if they have not been admitted to the Maryland Bar. *See* 28 U.S.C. § 517 (2005) (stating that DOJ attorneys "may be sent by the Attorney General to any State or district in

the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.") (emphasis added). *See also* Rules of the United States District Court for the District of Maryland, Rule 701(1)(b) (providing that "attorney who is member of Federal Public Defender's Office, the Office of the United States Attorney for this District, or other federal government lawyer, is qualified for admission to the bar of this District if the attorney is a member in good standing of the highest court of any state").

Such federal statutes take precedence over state bar admission requirements. *See* United States Constitution, Supremacy Clause, Art. VI. *See also Sperry v. Florida*, 373 U.S. 379 (1963) (holding that individual not admitted to Florida Bar could lawfully "practice law" in Florida by preparing and prosecuting patent applications even though such conduct was contrary to Florida law). Thus, Mr. Perez, who was employed as a federal attorney at DOJ and DHH between 1989 and 2001, was authorized to practice law in Maryland, in state and federal court, in connection with his duties on behalf of the United States.[9]

[9] Not surprisingly, the Maryland Lawyers Act concedes that attorneys who are not Maryland Bar members may practice law in Maryland, stating: "*Except as otherwise provided by law*, a person may not practice . . . law in the State unless admitted to the Bar." Md. Code Ann., Business & Professions Article, § 10-601(a) (emphasis added). This Court has found accordingly, noting that an attorney not admitted to the Maryland Bar may maintain a legal practice in Maryland devoted to federal law. *See Kennedy*, 316 Md. at 662.

Not surprisingly, several courts, including this Court, have expressly stated that federal attorneys or attorneys admitted to federal court, who conduct legal work arising from or related to federal matters, are "practicing law" and are allowed to "practice law" in a state where they have not been admitted to the bar, even though that practice of law is limited to federal matters. *See Attorney Grievance Comm. v. Bridges*, 360 Md. 489, 506 (2000) (finding that respondent, who was not admitted to Maryland Bar but was admitted to federal bar, "practiced law in this State" by handling up to five "federal cases per year in Maryland." *Id*. at 506. *See also Attorney Grievance Comm. v. Johnson*, 363 Md. 598, 625 (2001) (advising Maryland clients about legal issues constituted practice of law in Maryland, even where such consultations related to federal court matters); *In re Peterson*, 163 B.R. 665 (Bkrtcy D. Conn. 1994) (holding that "an attorney who is not licensed by the State of Connecticut but who is authorized to practice before the bankruptcy court may . . . practice law in this state and even maintain an office here so long as the services rendered are limited to those reasonably necessary and incident to the specific matter pending in this court.").

3. The Fact That The Attorney General Was Historically Required To Personally Practice Law When Performing His Duties Does Not Change The Plain Meaning Of The Language.

Mr. Abrams attempts to circumvent this argument by arguing that the historical role of the Attorney General required membership in the Maryland Bar, because the Attorney General could not have personally performed his constitutional duties unless he was admitted to the Maryland Bar. The problem with such an argument, however, is that it fails to account for the fact that Article V, § 3 authorizes the Attorney General to practice law in Maryland, including investigating, commencing, prosecuting and defending cases and providing legal advice.[10] In light of the fact that the framers expressly set forth the "powers" and "duties" of the Attorney General, the legislature cannot restrict the Attorney General's ability to perform those duties or use those powers. Thus, Mr. Abrams's argument that the Attorney General would be required to comply with statutory limitations regarding the practice of law is baseless.

Moreover, Mr. Abrams's argument, if accepted, would result in an inherent inconsistency between the language of Article V, § 4 and the language of Article

[10] As Chief Justice Marshall pointed out in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177-78, 2 L. Ed. 60 (1803), "If then the courts are to regard the constitution; and the constitution is superior to any ordinary act of the legislature; the constitution, and not such ordinary act, must govern the case to which they both apply." *See also McCurdy v. Jessop*, 126 Md. 318, 323 (1915) (noting that where statute conflicts with constitutional provision, statute will be rendered inapplicable).

V, § 3. Mr. Abrams claims that the term "practiced law in this State" must, by implication, require membership in the Maryland Bar, because otherwise the Attorney General would have been unable to appear in state courts in Maryland. Under Section 3, however, the Attorney General is also required to appear in federal courts in Maryland; yet, there is no requirement that the Attorney General be admitted to the bar of the United States District Court for Maryland.

D. The Trial Court Correctly Found That Legislative Intent Further Supports The Conclusion That Mr. Perez Need Not Have Been A Member Of The Maryland Bar For Ten Years To Be Eligible For The Office Of Attorney General.

By applying the Court's previous definitions of the relevant words and by determining both contemporary and historical usage of those words, through dictionary definitions and common usage, it is apparent that the words of Article V, § 4 have an ordinary, plain meaning and are not ambiguous. To the extent the Court somehow finds that Section 4 is ambiguous, however, "then the job of this Court is to resolve that ambiguity in light of the legislative intent, using all of the resources and tools of statutory construction at our disposal." *Price v. State*, 378 Md. 378, 387 (2003). Those tools include the legislative history, case law and statutory function. *Comptroller v. Phillips*, 384 Md. 583, 591 (2005).

First, it is important to note that the framers specifically eliminated from the final version of the Maryland Constitution language requiring candidates for the

office of Attorney General to be admitted to the Maryland Bar. *See* 91 Opinions of Attorney General 99, 105 (explaining legislative history of Article V, § 4). The intentional failure to include such language contrasts strikingly with the language used by the framers in setting the eligibility requirements for other legal positions where they intended to impose such a specific requirement. *See Benson*, 389 Md. at 640 (relying on fact that the word "set" was originally reported from committee but later disappeared from the final version of the Maryland Constitution).

For example, the Maryland Constitution requires candidates for the office of State's Attorney to have "been admitted to practice law in this State." Maryland Constitution, Article V, § 10. Likewise, judicial candidates in Maryland are required to "have been admitted to practice law in this State." Maryland Constitution, Article IV, § 2.[11] The fact that the framers used the term "practiced law in this State" in setting the eligibility requirements for Attorney General rather than "admitted to practice law in this State" demonstrates that no such requirement was intended to apply to candidates for Attorney General.[12]

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[11] Candidates for the position of Orphans Court judge, however, are not constitutionally required to have been admitted to the Maryland bar or even to be lawyers. *See* Maryland Constitution, Article IV, § 40.

[12] The lack of express language requiring candidates for judge of the Orphans Court to be admitted to the Maryland bar or to be attorneys was relied upon by this Court in finding that non-attorneys are eligible to serve as Orphans Court judges. *See Kadan v. Board of Elections*, 273 Md. 406, 416 (1974) (contrasting the provision concerning the eligibility requirements of Orphans Court judges (Art. IV, § 40) with the provision relating to judges in general (Art. IV, §

Second, Mr. Abrams argues – with no factual support or citation – that the framers chose not to use language concerning membership or admission to the Maryland Bar because they believed it was "unnecessary" as such language was "necessarily implied" by the language used in Article V, § 4. Appellant's Brief at 22. If the framers had intended to impose such a requirement on Attorney General candidates, however, they – like the framers in numerous other states – could easily have used such express language.[13]

For example, the Georgia legislature stated that Attorney General candidates must "have been an active-status member of the State Bar of Georgia for seven years." Georgia Constitution, Art. V, § 3(b). Likewise, the Louisiana Constitution states that a person is not eligible for Attorney General unless the person has "been admitted to the practice of law in Louisiana for at least the 5 years preceding the candidate's election." Louisiana Constitution, Art. IV, § 2. Similarly, the Florida Constitution provides "the attorney general must have been a member of the

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2), the Court stated: "Not only is nothing said about their being lawyers, nothing is said about age.").

[13] The Court often compares constitutional provisions and statutes from various states when considering the intent and knowledge of the legislature or the framers. *See Trembow v. Schonfeld*, 2006 Md. LEXIS 343 (June 8, 2006) (comparing paternity statutes from all states to Maryland's statute); *Hackley v. State of Maryland*, 161 Md. App. 1, 16-17 (2005) (reviewing similar statutes from other states to determine if other states used the same or similar language).

Florida bar for the preceding five years." Florida Constitution, Art. IV, §5(b).[14] In light of the plain language used by the framers, and the fact that they, like legislators in other states, used more specific language when they wanted to impose stricter eligibility requirements, there is no basis for finding that Mr. Perez is required to have been admitted to the Maryland Bar for ten years.

Third, Mr. Abrams argues that it would be "absurd" to even consider the mere possibility that the framers may have thought that membership in the Maryland Bar for ten years was not a requirement for eligibility for the office of Attorney General. The reality, however, is that the framers in many states chose not to require state bar membership as an eligibility requirement for Attorney General. *See* Alabama Constitution, Art. V, § 132 (failing to place any state bar admissions or membership requirements on Attorney General candidates. *See also* Okalahoma Constitution, Art. V.; New York State Constitution, Art. IV, § 2, Art. V, § 1; Illinois Constitution, Art. V, § 3.

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[14] *See also* Connecticut Gen. Stat. Ann. § 3-124 (requiring that Connecticut Attorney General be "an attorney at law of at least ten years' active practice at the bar of this state."); Colorado Constitution, Art. IV, § 4 (requiring nominees for Supreme Court justice to have been licensed to practice law in Colorado for at least five years, and requiring Attorney General nominees to be licensed attorney in good standing); Code of Virginia § 24.2-501 (requiring nominees for Attorney General to have been admitted to the bar of the Commonwealth for at least five years directly preceding the election); New York Constitution, Art. VI, § 20(a) (stating that a person may not assume the office of justice of the supreme court "unless he has been admitted to practice law in this state at least ten years").

Fourth, the primary concern of the framers was that the person occupying the office of Attorney General have sufficient legal experience, in connection with Maryland, to perform the duties of Attorney General. In fact, the constitutional debates and historical materials from the 1860s show that the term "practiced law in this State for at least ten years" was intended to express "the framers' intention that the Attorney General be a person steeped in the law, of sufficient legal maturity to undertake the duties of the office." 68 *Op. Atty. Gen.* 48, 53-54 (1983).

To that extent, the legal work performed by Mr. Perez, especially in federal courts, is directly relevant to the responsibilities of Attorney General, because the Attorney General oversees the State's litigation efforts in the federal district court, the Fourth Circuit and various other administrative settings. Maryland Constitution, Art. V, § 3. There is simply no reason, beyond Mr. Abrams's rank speculation, to believe that the framers were more concerned with formal admission status rather than overall legal experience.

Finally, Mr. Abrams argues that the trial court's decision was erroneous because it incorrectly analyzed the system of court admissions prevailing in the mid-Nineteenth Century by failing to take into account an 1833 statute providing for "the admission of Attorneys to practice law in the several Courts of this state," by which attorneys were allowed to practice before all state courts after being

certified by a particular county court. Maryland Statutes, Chapter 268, Sess. Laws 1831 (1833). Mr. Abrams fails to acknowledge, however, that the trial court's consideration of that issue constituted dicta, because the trial court found that the plain meaning of Article V, § 4 did not require admission to the Maryland Bar. Of course, the existence of the 1833 statute actually lends credence to the trial court's decision, because it makes clear that the framers had language available to them in 1867 that they could have used in Section 4, as they did with respect to the office of State's Attorney, but they instead used broader language.

Moreover, Mr. Abrams misunderstands the trial court's historical analysis of the admissions practice. While he may be correct that there was an 1833 state statue providing that admission to one state court entitled an attorney to practice before all state courts, the trial court's real concern was the lack of any system of uniform standards relating to admissions to practice before particular courts. To that extent, the reality was that from 1867 to 1896, when the Maryland State Bar Association was founded, "there was no Maryland bench and bar in any formal sense . . . each county had its own fraternity of lawyers whose offices were clustered around the county courthouse, each lawyer having been admitted to practice by a local judge upon examination." Schneider, James F., *A Century of Striving for Justice* at 17 (The Maryland State Bar Association, 1996). There were

also "few law schools and no uniform standards for admission to the bar, except that in Maryland a lawyer had to be male and at least 21 years of age." *Id*. at 20.[15]

In fact, until the late 1800s, when the Court of Appeals adopted uniform rules regulating admissions to the Maryland Bar, Maryland attorneys typically applied to be admitted before the courts in each county, and attorneys applied separately to be admitted before the Court of Appeals – often only when they first appeared before the particular court. *See* Machen, Jr., Arthur W., *A Venerable Assembly* at 5, 11 (1991) (describing admissions process). Thus, Major Venable, one of the founding partners of Venable, LLP, graduated law school in 1868, was admitted to practice before the Supreme Bench of Baltimore City later that year, and "then hung up his shingle in Baltimore but, in accordance with prevailing custom in those days, was not admitted to practice before the Court of Appeals until his first appellate argument three years later." *Id*. Likewise, Edwin G. Baetjer graduated from law school in 1890 but was not admitted to the Court of Appeals until 1895. *Id*. at 6. The fact that these well-respected attorneys

[15] *See* Schneider, James F., *A Commemoration of the Centennial of the Bar Ass'n of Baltimore City* at 21 (1980) (Describing legal education and practice in the 1850s and 1860s as follows: "After a year or two of such practical training, the student lawyer was presented to the court by his sponsor who attested to his character and ability. In order to qualify to practice in those days, one had to be a white male at least twenty-one years of age. A brief oral inquisition of the most perfunctory kind by the presiding judge was all that was required for admission to the bar. (The favorite question of one judge related to the difference between rye and bourbon).").

"practiced law" for several years before being admitted to the Court of Appeals demonstrates that the framers may not have viewed the terms "practiced law" and "admitted to" the Maryland Bar in the same light. That conclusion would also be consistent with the fact that, while admission to one state court entitled an attorney, under the 1833 statute, to practice before another state court, there was no assurance that admission to one court was made on the same standards as admission to another court, or was done when an attorney began practicing law, so the framers likely determined that admission was not an important requirement for Attorney General – unlike the actual practice of law over a ten-year period.

While Mr. Abrams simply assumes that the framers could not have envisioned any situation where an attorney could have "practiced law in this State" without having been admitted to practice law in Maryland, it is apparent that such situations may have occurred on a frequent basis. For example, attorneys who practiced law in Maryland exclusively in federal court,[16] most likely involving admiralty law and minor federal crimes, could certainly have "practiced law" in Maryland but would not necessarily have been admitted to any particular court in

[16] The United States District Court for the District of Maryland was founded in 1789, and the federal courthouse was located in downtown Baltimore beginning in 1822, when it was located in the New Masonic Temple on St. Paul Street, later moving to the corner of Fayette Street and Guilford Avenue from 1865 to 1889. *See* Lewis, H.H. Walker, *The United States District Court for the District of Maryland* at 1, 14, 16 (1977, Maryland State Bar Association).

Maryland except for the federal court.[17] Similarly, attorneys who engaged in legal practice by advising clients and drafting legal documents, rather than appearing in court, such as tax and real estate attorneys, would have had no reason to be admitted to any state court in Maryland.[18] In fact, there would have been no reason for a law professor or a state or federal judge to be admitted to practice law before a state court, but such attorneys would plainly have been practicing law in Maryland – and would be strong potential candidates for the office of Attorney General. To simply conclude, like Mr. Abrams, that a broad term such as "practiced law in this State" must have been intended to be applied in an unnecessarily narrow manner to mean "admitted to practice law before all the state courts" fails to take into account the reality of legal practice in the mid-Nineteenth Century.

[17] The federal court in Baltimore required separate admission of attorneys upon which the attorneys signed the "roll of attorneys" which dated from 1790. Chestnut, W. Calvin, *A Federal Judge Sums Up* at 154 (Maryland State Bar Association, 1947).

[18] As Judge Schneider pointed out, "The preeminent position of the trial attorney began to yield to railroad and corporate counsel who seldom saw the inside of a courtroom. The attorneys who comprised the largest class were the real estate lawyers, known as conveyancers, who searched titles, drafted deeds and contracts of sale and presided at settlements." *See Centennial of the Bar Ass'n of Baltimore City* at 23.

II. The Circuit Court Correctly Held That Mr. Perez "Practiced Law In This State For More Than Ten Years" And Is Therefore Constitutionally Eligible For The Office Of Attorney General.

Mr. Abrams did not dispute the fact that during the past five years, between late 2001 and July 2006, Mr. Perez "practiced law in this State" because he was admitted to the Maryland Bar and taught students and performed legal services as an Associate and Assistant Professor at the University of Maryland School of Law. *See In the Matter of the Application of R.G.S.*, 312 Md. 626, 634 (1988) (finding that attorney serving as a full-time law professor was practicing law). It is also undisputed that Mr. Perez practiced law in Maryland from April 1989 through late 1995, and from early 1998 through January 2001 – a period of approximately nine years – when he was directly involved in pursuing and supervising legal investigations, prosecutions and litigation in Maryland on behalf of DOJ and OCR. Consequently, Mr. Perez has "practiced law in this State" for more than ten years and meets the eligibility requirements set forth in the Maryland Constitution.

A. Mr. Perez "Practiced Law" From April 1989 To The Present.

Like an assistant United States attorney or a federal public defender, Mr. Perez engaged in the practice of law in Maryland between 1989 and 2001 even though he was not admitted to the Maryland Bar. During his first five years as a federal prosecutor, Mr. Perez directed the investigation of potential cases,

discussed cases with Assistant United States Attorneys and FBI agents and made legal determinations about the merits of potential cases. Beginning in 1994, Mr. Perez also began supervising all civil rights investigations and litigation in the State of Maryland and providing his legal analysis of all potential matters in Maryland. Mr. Perez was responsible for reviewing and supervising any ensuing investigation and litigation, including discussing legal strategy, reviewing legal briefs and participating in the prosecution of the case.

In early 1998, Mr. Perez was promoted to the position of Deputy Assistant Attorney General for Civil Rights, where he was responsible for supervising all litigation activities of the Criminal, Education and Employment Sections, and approving all grand jury investigations, school district investigations and employment discrimination investigations, including all cases arising in Maryland. From 1999 to 2001, Mr. Perez oversaw numerous cases in Maryland in his capacity as Director of OCR. Consequently, during Mr. Perez's employment as a federal prosecutor at the Department of Justice, Mr. Perez engaged in the practice of law in Maryland by performing legal work in Maryland and by supervising attorneys performing legal work in Maryland.

Mr. Perez also practiced law in Maryland between 2001, when he was admitted to the Maryland Bar, and the present. In fact, the legal experience

engaged in by Mr. Perez since 2001 as an Assistant and Associate Professor of Law, including teaching law, supervising law students in court and actually preparing and litigating public interest lawsuits, is much more extensive than the experience found to constitute the "practice of law" in the 1983 Attorney General Opinion about the "practice of law" by Dean Kelly.

B. Mr. Perez's Broad And Diverse Practice Of Law Took Place "In Maryland" From April 1989 To The Present.

While it is true that Mr. Perez worked at the Department of Justice or at DHH in Washington, D.C. from 1989 to 2001, it is also undisputed that he physically performed substantial legal work in Maryland on a frequent basis as a federal prosecutor from April 1989 to 1995 and from 1998 to January 2001, and it is also undisputed that he regularly participated in, supervised and was responsible for legal work performed in Maryland during that time. In fact, Mr. Perez investigated and litigated civil rights cases in Maryland courts between 1989 and 2004, attended strategy and negotiation meetings in Maryland, met with potential and actual clients in Maryland, and testified before the U.S. Civil Rights Commission in Maryland.

Mr. Perez also practiced law in Maryland by supervising cases investigated and litigated in Maryland from 1994 to 1995 and from 1998 to 2001. *See* Maryland Rule 16-701(a) (providing, in the context of disciplinary matters, that

"attorney" includes those with "the obligation of supervision or control over another lawyer who engages in the practice of law in this State"). Mr. Perez may not have always been located in Maryland, but he was approving briefs to be filed in Maryland, and he was speaking with and directing federal attorneys performing legal services in Maryland. Such legal conduct constitutes the practice of law in Maryland, because the underlying legal work was filed or finalized in Maryland, and the impact of the legal work was directed to Maryland.[19]

This is consistent with the conclusion reached by the office of the Attorney General, which held that Mr. Perez's legal practice was "in the State" for purposes of Art. V, § 4, not because Mr. Perez could theoretically have been assigned to cases arising in Maryland and could have investigated the case and appeared in court for the case in Maryland, but because Mr. Perez, over a period of more than ten years, actually exercised responsibility over legal matters in Maryland, either by investigating and prosecuting cases or counseling agency clients in Maryland or by directly supervising attorney responsible for carrying out legal work in Maryland. 91 Op. Att. Gen. at 115-16.

CONCLUSION

[19] *See Riddle v. Roy*, 126 So.2d 448 (La. Ct. App. 1960) ("The fact that one may have been physically without the state does not prevent him from having practiced law within the state. . . .it is quite readily conceivable that one may not be in the State and nevertheless transact a tremendous amount of legal business in the State.").

Mr. Abrams argues that this Court should not "pass the buck" like Judge Hackner and the Attorney General and should avoid acting like a "super-legislature" by using "legal gymnastics" to decide this case, but paradoxically, it is Mr. Abrams who demands that this Court "imply" language into Article V, § 4 that the framers intentionally chose not to include. It is precisely such "super-legislating" that this Court has traditionally avoided, not withstanding Mr. Abrams circuitous and speculative arguments to the contrary. For these reasons, Mr. Perez respectfully requests that the judgment of the Circuit Court for Anne Arundel County that Mr. Perez is constitutionally eligible for the office of Attorney General be affirmed.

/s/

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TEXT OF PERTINENT CONSTITUTIONAL PROVISIONS, STATUTES, RULES AND REGULATIONS

Constitution of Maryland, Article IV, § 2:

> **Qualifications of Judges**. The Judges of all of the said Courts shall be citizens of the State of Maryland, and qualified voters under this Constitution, and shall have resided therein not less than five years, and not less than six months next preceding their election, or appointment, as the case may be, in the city, county, district, judicial circuit, intermediate appellate judicial circuit, or appellate judicial circuit for which they may be, respectively, elected or appointed. They shall be not less than thirty years of age at the time of their election or appointment, and shall be selected from those who have been admitted to practice Law in this State, and who are most distinguished for integrity, wisdom and sound legal knowledge.

Constitution of Maryland, Article IV, § 40:

> **Elections and qualification of judges; powers; compensation; vacancies; Montgomery and Harford counties excepted**. The qualified voters of the City of Baltimore, and of the several counties, except Montgomery County and Harford County, shall elect three Judges of the Orphans' Courts of Cities and Counties, respectively, who shall be citizens of the State, and residents, for the twelve months preceding, in the City or County for which they may be elected. They shall have all the powers now vested in the Orphans' Courts of the State, subject to such changes as the Legislature may prescribe. Each of the judges shall be paid such compensation as may be regulated by Law, to be paid by the City or Counties, respectively. In case of a vacancy in the office of Judge of the Orphans' Court, the Governor shall appoint, subject to confirmation or rejection by the Senate, some suitable person to fill the vacancy for the residue of the term.

United States Constitution, Art. VI:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, and Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Maryland Rules, Rule 16-701(a):

> (a) **Attorney**. "Attorney" means a person admitted by the Court of Appeals to practice law in this State. For purposes of discipline or inactive status, the term also includes a person not admitted by the Court of Appeals who engages in the practice of law in this State, or who holds himself or herself out as practicing law in this State, or who has the obligation of supervision or control over another lawyer who engages in the practice of law in this State.

Md. Code Ann., Business & Professions Article, § 10-601(a):

> (a) In general – Except as otherwise provided by law, a person may not practice, attempt to practice or offer to practice law in the State unless admitted to the Bar.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of August, 2006, a copy of the foregoing Appellee's Brief was sent by electronic mail in accordance with agreement of counsel and the instructions of this Court to Stephen N. Abrams, 2290 Dunster Lane, Rockville, Maryland 20854 (steveabr@comcast.net) and William Brockman, Assistant Attorney General, Office of the Attorney General, 200 Saint Paul Place, Baltimore, Maryland 21202 (wbrockman@aog.state.md.us).

/s/
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