IN THE CIRCUIT COURT OF ANNE ARUNDEL COUNTY

STEPHEN N. ABRAMS,	:	
Plaintiff,	:	
v.	:	Case No. C-06-115383
LINDA H. LAMONE, et al.,	:	
Defendants.	:	

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AFFIDAVIT OF ANDREW M. DANSICKER

I, Andrew M. Dansicker, under penalty of perjury, declare as follows:

1. I am over the age of eighteen, am competent to testify and have personal knowledge of the facts stated herein, all of which are true.

2. I am an attorney at Schulman, Treem, Kaminkow, Gilden & Ravenell, P.A., where I represent Thomas E. Perez in the above-captioned lawsuit filed by Plaintiff Stephen N. Abrams.

3. The following exhibits are attached to the Affidavit of Andrew Dansicker: a) Exhibit A is a true and accurate copy of the letter from Thomas E. Perez to the Office of the Attorney General, dated May 8, 2006; b) Exhibit B is a true and accurate copy of the Washington Post article, dated May 8, 2006; c) Exhibit C is a true and accurate copy of the Perez Opinion, dated May 19, 2006; and d) Exhibit D is a true and accurate copy of the Baltimore Sun article, dated May 20, 2006.

I SOLEMNLY SWEAR AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE MATTERS SET FORTH IN THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

Executed this 25th day of July 2006.

Andrew M. Dansicker

IN THE CIRCUIT COURT OF ANNE ARUNDEL COUNTY

STEPHEN N. ABRAMS,	*	
Plaintiff,	*	
v.	*	Case No. C-06-115383
LINDA H. LAMONE, et al.	*	
Defendants.	*	

* * * * * * * * * * * *

MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS LINDA H. LAMONE, THE STATE ADMINISTRATOR OF ELECTIONS, THE STATE BOARD OF ELECTIONS, AND THOMAS E. PEREZ'S MOTION TO DISMISS; OPPOSITION OF DEFENDANT THOMAS E. PEREZ'S MOTION FOR SUMMARY JUDGMENT; AND SUPPORT FOR PLAINTIFF STEPHEN N. ABRAMS' CROSS-MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

The Maryland Constitution requires that a candidate for Attorney General must have "practiced Law in this State for at least ten years." Article V, Section 4. But, according to Mr. Perez, who has been admitted to the Maryland Bar for five years, the Maryland Constitution does not require "that candidates for Attorney General must have been admitted to the Maryland Bar for any particular length of time, **or that such candidates have ever been admitted to the Maryland Bar**." Memorandum of Law in Support of Defendant Thomas E. Perez's Motion to Dismiss and/or Motion For Summary Judgment, at 10 ("Perez Memorandum").

This contention is absurd on its face. Mr. Perez's argument finds no support in common sense, in the ordinary meaning of the language of the Maryland Constitution, in the plain intent of the framers of the Maryland Constitution, or in any other legal authority. The ordinary

meaning that most Maryland lawyers would, without a thought, ascribe to the phrase "practiced Law in this State" is exactly the meaning that it does have, by necessary implication: bar admission in Maryland for at least ten years is a sine qua non requirement.

The sole issue before the Court is whether Mr. Perez has "practiced Law in this State for at least ten years."[1] By his own admission, Mr. Perez did not seek and was not admitted to the Maryland Bar until 2001, leaving him five years short of the Constitutional requirement. Thus, Plaintiff does not challenge the fact that Mr. Perez is a former federal prosecutor, an accomplished civil rights litigator, a consumer and health care advocate, a respected law professor, and a member of the Montgomery County Council. Although, like all politicians, Mr. Perez might embellish just a bit all that he has done, those accomplishments are not relevant to the meaning and intent of the Constitutional requirement to run for Attorney General.

ARGUMENT

I. MR. PEREZ IS NOT CONSTITUTIONALLY ELIGIBLE FOR THE OFFICE OF THE ATTORNEY GENERAL.

A. Principles of Constitutional Interpretation

1. The Practice of Law in Maryland Has an Ordinary Meaning that Necessarily Implies Admission to the Maryland Bar

The cardinal rule of Constitutional interpretation is that courts should give a word or phrase its ordinary meaning. Only if there is some uncertainty or ambiguity does a court consider the intentions of the framers and other relevant sources to determine what the intent and purpose of the language was. Here, both the ordinary meaning of "practiced Law in this State"

[1] For purposes of this Motion, Plaintiff does not dispute that Perez can satisfy the Constitutional requirements that he is "a citizen of this State," "a qualified voter" in Maryland, and has "resided . . . in this State for at least ten years." Md. Const. Art. V, § 4. Likewise, Plaintiff does not dispute that Perez has "practiced Law" for at least ten years. But he has not "practiced Law **in this State** for at least ten years."

and the intent and purpose of the language are perfectly clear: an Attorney General candidate must, at a minimum, have been a member of and under the disciplinary jurisdiction of the Maryland Bar for at least ten years.

In Brown v. Brown, 287 Md. 273, 277-78 (1980), the Court of Appeals set forth clear principles governing the interpretation of the Maryland Constitution:

> Generally speaking, the same rules that are applicable to the construction of statutory language are employed in interpreting constitutional verbiage. . . . Accordingly, it is axiomatic that the words used in the enactment should be given the construction that effectuates the intent of its framers . . .; such intent is first sought from the terminology used in the provision, with each word being given its ordinary and popularly understood meaning . . . ; and, if the words are not ambiguous, the inquiry is terminated, for the Court is not at liberty to search beyond the Constitution itself where the intention of the framers is clearly demonstrated by the phraseology utilized. . . . . If an examination of the language, however, demonstrates ambiguity or uncertainty, we look elsewhere to learn the provision's meaning, keeping in mind the necessity of ascertaining the purpose sought to be accomplished by enactment of the provision. . . . [I]t is permissible to inquire into the prior state of the law, the previous and contemporary history of the people, the circumstances attending the adoption of the organic law, as well as broad considerations of expediency. The object is to ascertain the reason which induced the framers to enact the provision in dispute and the purpose sought to be accomplished thereby, in order to construe the whole instrument in such way as to effect that purpose. . . . The Court may avail itself of any light that may be derived from such sources, but it is not bound to adopt it as the sole ground of its decision.

Brown v. Brown, 287 Md. at 277-78 (internal citations and quotations omitted). See also Fish Market Nominee Corp. v. G.A.A., Inc., 337 Md. 1, 8 (1994)(reviewing and summarizing the principles set forth in Brown).

Although Plaintiff does not take issue with Mr. Perez's cases on the subsidiary interpretive principle that eligibility requirements should be liberally construed, Mr. Perez conveniently omits any mention of the more fundamental, controlling canons of constitutional interpretation set forth in Brown. Furthermore, Mr. Perez offers no support for the plainly incorrect suggestion that a rule of liberal construction can override a constitutional provision's

ordinary meaning and the clear intent of the provision. As the Brown court explained, the first obligation is to give a Constitutional provision "its ordinary and popularly understood meaning."[2] Here, there is an ordinary, popular understanding of what it means to have "practiced Law in this State," an understanding that is confirmed by how that phrase is used elsewhere in Maryland law. To construe this provision as not requiring, by necessary implication, membership in the Maryland bar would be to engage in the type of "forced or subtle interpretation[]" that the Court of Appeals has expressly disapproved. Price v. State, 378 Md. 378, 387 (2003)(emphasis added).

Further confirmation that practicing law in Maryland ordinarily means, at a minimum, admission to the Maryland Bar can be found in the language and interpretation of Maryland statutes and rules governing the unauthorized practice of law. Section 10-206(a) of the Business Occupations and Professions Articles provides: "(a) Except as otherwise provided by law, before an individual may **practice law in the State**, the individual shall: (1) be admitted to the Bar; and

[2]The Court of Appeals has forcefully restated the ordinary meaning rule numerous times in the last several years. See Walton v. Mariner Health of Maryland, Inc., 391 Md. 643, 664 (2006)("Our long-standing rule is that if the language used in the statute is clear, unambiguous, and consistent with its objective, the words will be accorded their ordinary meaning."); Mohan v. Norris, 158 Md. App. 45, 57 (2004)("If the language of a statute is clear and unambiguous, stating a definite and plain meaning, we ordinarily will not look beyond it to determine legislative intent; we simply apply the statute as it reads."); Pelican Nat. Bank v. Provident Bank of Maryland, 381 Md. 327, 335 (2004)("The quest to ascertain legislative intent requires examination of the language of the statute as written and if, given the plain and ordinary meaning of the words used, the meaning and application of the statute is clear, we end our inquiry."); Dimensions Health Corp. v. Maryland Ins. Admin., 374 Md. 1, 17 (2003)("If the provision, so read, is clear, 'no construction or clarification is needed or permitted, it being the rule that a plainly worded statute must be construed without forced or subtle interpretations designed to extend or limit the scope of its operation.'")(quoting Tucker v. Fireman's Fund Ins. Co., 308 Md. 69, 73 (1986))

(2) meet any requirement that the Court of Appeals may set by rule."[3] (Emphasis added.) A similar prohibition of unauthorized practice of law is found in the Maryland Rules of Professional Conduct. *See* MPRC Rule 5.5.[4]

While the unauthorized practice laws do not apply of their own force to the Constitutional eligibility requirement, those statutes and rules confirm that the ordinary meaning of "practiced Law in this State" necessarily implies bar admission in this State. In a very recent case, the Supreme Court used this approach of "cross-checking" ordinary meaning by considering a term's usage in other law that did not itself govern the issue. In *S.D. Warren Co. v. Maine Bd. of Environmental Protection*, the Court observed:

> In resort to common usage under § 401, this Court has not been alone, for the Environmental Protection Agency (EPA) and FERC have each regularly read "discharge" as having its plain meaning and thus covering releases from hydroelectric dams.") . . . Warren is, of course, entirely correct in cautioning us that because neither the EPA nor FERC has formally settled the definition, or even set out agency reasoning, these

[3] None of the exceptions in § 10-206 apply to Mr. Perez's practice. Subsection (b) enumerates exceptions to the general rule. *See* § 10-206(b)(1)-(2)(summary ejectment proceedings under certain circumstances); § 10-206 (b)(3)(certain insurance litigation); § 10-206 (b)(4)(employees and agents of corporations and partnerships on behalf of the entity in certain cases); § 10-206 (b)(5)(representation of county employees in grievances). Subsections (c) and (d) provide exceptions for patent attorneys and in-house counsel, respectively, under specified circumstances. As discussed below, Mr. Perez was not authorized by any other law, state or federal, that would fit under this exception

[4] Rule 5.5 provides, in relevant part:

> (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
>
> (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
>
> > (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
> >
> > (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

> expressions of agency understanding do not command deference from this Court. . . . . **But even so, the administrative usage of "discharge" in this way confirms our understanding of the everyday sense of the term.**

2006 WL 1310684, *4 (U.S.)(emphasis added).

In short, because the phrase "practiced Law in this State" has a well-understood, common, and ordinary meaning that includes a threshold requirement of admission to the Maryland Bar, that meaning should be adopted, and there should be no need for further analysis. Nonetheless, the evidence of the framers' intent is consistent with the ordinary meaning.

2. The Framers of the Maryland Constitution Clearly Intended and Understood that the Term "Practiced Law in this State for at Least Ten Years" Necessarily Implied Bar Membership for at Least Ten Years.

Even if meaning and content of the phrase "practice law in this State" were ambiguous or uncertain, the next step in the analysis would not be to construe the provision in favor of eligibility under a rule of liberal construction, but rather, as Brown holds, to "ascertain the reason which induced the framers to enact the provision in dispute and the purpose sought to be accomplished thereby, in order to construe the whole instrument in such way as to effect that purpose." Brown v. Brown, 287 Md. at 277-78,

In 1867, when the requirements of Article V, Section 4, were adopted, only attorneys admitted to practice law in Maryland could engage in the practice of law "in this State." As of 1867, the courts of the state were required to regulate the admission of attorneys "to practice law in this state." Ch. 268, Sess. Laws 1831 (Passed Mar. 10 1833). The court's duty was to "examine said applicant, touching his qualification for admission as an attorney." Id. This requirement for admission was longstanding -- dating from 1715. *See* Annotations, Revised Code of the Public General Laws, 1879, §1. The authority to allow the courts to admit attorneys

licensed in other states to practice law in Maryland was first enacted in 1831. Id. § 5. At that time, the law was amended to allow attorneys licensed in foreign states to "practice law in the State," but only if first admitted to practice by the state courts. Ch. 268 Sess. Laws 1831, § 5. Thus, as of 1867, the phrase "practice law in the State" necessarily included the requirement that the person be admitted by the state courts to practice. Both as a matter of fact and of law, the clear understanding of the drafters of the constitution was that only those admitted to practice by the courts of the Maryland could be said to "practice law in the State."

Any different interpretation cannot be reconciled with other Sections of Article V and the historical role of the Attorney General. Article V, Section 3 of the Maryland Constitution, in both its 1867 and current form, vests the Attorney General with constitutional obligations to appear in the courts of Maryland. At the time that this section was adopted, the Attorney General had to fulfill these duties personally; the Constitution expressly prohibited the Attorney General from hiring assistants to whom he could have delegated the duty of appearing in the state courts of Maryland. As a 1983 Opinion of Attorney General Sachs explained:

> The duties of the Attorney General included the personal conduct of litigation and the personal rendering of advice. Article V, s 3 of the Constitution of 1864. Most significantly, Article V, s 3 expressly prohibited the Attorney General from hiring assistants: "[The Attorney General] shall not . . . have power to appoint any agent, representative, or deputy, under any circumstances whatever." Precisely the same prohibition was included in Article V, s 3 of the Constitution of 1867.

See 68 Md. Op. Atty. Gen. 68 (1983)(the "Kelly Opinion"). Not until 1913 was Article V amended in 1913 to enable the Attorney General, for the first time, to "appoint such number of deputies or assistants as the General Assembly may from time to time by law prescribe." See Kelly Opinion at 5 ("The happy notion that the Attorney General could, alone, attend to all of the State's legal business did not survive the complications of this century.").

Thus, before 1913, the Attorney General could not have performed – because he could not have done so personally – his constitutional duty to appear in Maryland courts if he was not admitted of the Maryland Bar. Those duties are specified in the 1867 version of Article V, § 3. The same section that prohibited the Attorney General from hiring assistants, mandated that the Attorney General represent Maryland in the state courts. Section 3 stated that:

> It shall be the duty of the Attorney General to prosecute and defend, on the part of the State, all cases, which, at the time of his appointment and qualification, and which thereafter may be depending *in the Court of Appeals*, or in the Supreme Court of the United States, by or against the State, or wherein the State may be interested . . . .

(Emphasis added). The 1867 version of Article V, § 3 also provided that:

> [W]hen required by the Governor, or the General Assembly, [the Attorney General] shall aid any States Attorney in prosecuting any suit, or action brought by the State *in any Court of this State*; and he shall commence and prosecute, or defend, any suit or action *in any of said Courts*.

These appearances by the Attorney General in the state courts were obligatory and could not be made by assistants.

In summary, Section 3 required the Attorney General to appear in state court, and under the law existing at the time of the Constitutional requirement's adoption, he could not have done so without being admitted to the Maryland Bar. But, because no provision of the Maryland Constitution expressly requires the Attorney General to be admitted to the Bar, the requirement must have been understood to be implied in "practice of Law in this State" – and such practice, as a member of the Maryland Bar must, as the next phrase requires, have been for "at least ten years." Accordingly, as discussed below, it would have been redundant and superfluous to include express language stating that an Attorney General candidate must be admitted to the Maryland Bar in light of the requirement was that the candidate have "practiced Law in this State for at least ten years."

B. The Contrast Between the Constitutional Requirements for State's Attorney and the Requirement for Attorney General Further Demonstrates That An Attorney General Candidate Must Have Been a Member of the Bar for at Least Ten Years.

The only textual argument that Mr. Perez advances in support of his radical proposition that an Attorney General candidate need not be member of the Maryland Bar is the distinction between the Constitutional requirement for State's Attorneys or judges, which expressly require bar admission, and the language of the Attorney General requirement, which does not. From this contrast, Mr. Perez erroneously concludes that there is no requirement that "candidates for Attorney General must have been admitted to the Maryland Bar for any particular length of time, **or that such candidates have ever even been admitted to the Maryland Bar.**"

Mr. Perez points out that the language of the Attorney General requirement contrasts with the language "used by the framers" in setting the eligibility requirements for the Office of State's Attorney, which merely requires the candidate to have "been admitted to practice law in this State," Article V, Section 10, and for judicial candidates, who are required to "have been admitted to practice law in this State." Article IV, Section 2. To his credit, Mr. Perez forthrightly acknowledges that the difference between the Attorney General's requirement and those for State's Attorney and judge raises questions about the framers' intent in using the different language: "[T]he fact that the framers used the term 'practice 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." Perez Memorandum at 10 (emphasis added); see also id. ("The framers' failure to include such [bar admission] language" in the Attorney General requirement "was

apparently an intentional decision"). But Mr. Perez plainly misreads what the framers' intent was in using the language they did in the Attorney General requirement.

The fact that the requirement of the Attorney General's admission to practice is not expressly stated demonstrates not an intentional deletion of the bar admission requirement, but rather that the framers believed that express language would be superfluous, because to "practice law in this State for at least ten years" necessarily meant bar membership for ten years. It is clear from the history of the adoption of Article V, Section 4 that the framers understood that it was unnecessary to provide expressly that the Attorney General be admitted to the Maryland Bar for ten years, because they assumed that the requirement was necessarily implied in the language that they did use. The framers could have provided, but chose not to provide, that a candidate for Attorney General merely must be admitted to the Maryland bar at the time of candidacy **and** must have practiced law for ten years. In fact, such language was reported out of committee for floor debate, but revised to set forth the present language.

As reported out of committee, the proposed language for Article V, § 4 (with the blanks to be filled in by the Convention as a whole) was: "No person shall be eligible for the office of Attorney General, who has not been admitted to practice the law in the State, and who has not practiced the law for __ years, and who has not resided for at least __ years in the State[.]" See Kelly Opinion at 9 n.3 (quoting Proceedings of the State Convention of Maryland to Frame a New Constitution 503 (1864)). The final language of Section 4, in substance, merged the first two clauses of the committee language: instead of requiring admission "in this State" **and** practice of law "for __ years," the final language combined the two clauses (and specified 10-years): "practiced Law in this State for at least ten years." In merging the admission and length-of-practice requirements, the Convention surely did not intend to remove the bar-admission

requirement, as Mr. Perez contends, but rather understood that there was no need to make explicit that the Attorney General candidate, having "practiced Law in this State for at least ten years," would have been admitted to the Maryland bar for all of those ten or more years. The framers could hardly have imagined any other construction.

The interpretation offered by Mr. Perez – that an Attorney General candidate need not be admitted to the Maryland Bar -- would lead to an absurd result and thus should be rejected if a more reasonable interpretation exists. See Comptroller v. John C. Louis Co., 285 Md. 527, 539, 404 A.2d 1045 (1979) ("[A]n interpretation should be given which will not lead to absurd . . . results."). For example, it would have been absurd for the framers to have required the State's Attorneys of the counties and Baltimore City to be admitted to the Maryland Bar, but not to require this of the top lawyer for the entire State of Maryland. Moreover, if, as Mr. Perez argues, bar membership is not encompassed within the Section 4 requirement, the Attorney General would have to become a member of the bar before his name could appear on state court filings on behalf of the state, as is customary. Under Mr. Perez's interpretation, the Maryland Attorney General would have to sit for the Maryland bar exam at some point to appear on such pleadings.

C. Mr. Perez's Reliance on Federal Law That Allegedly "Allowed" Him to Practice in Maryland Is Misplaced.

Against the plain language of Section 4 and the clear evidence and indications of the framers' intent, Mr. Perez claims, incorrectly, that he was "allowed" to practice law in Maryland for at least ten years. Setting aside the obvious point that the language of Section 4 does not envision meeting the requirement by being "allowed" to practice law in Maryland, it is simply not true that, as Mr. Perez claims, "attorneys employed by the Department of Justice . . . are allowed to practice law in Maryland without being admitted to the Maryland Bar." Perez

Memorandum at 2 (emphasis in original). The authorities that Mr. Perez cites do not support this bold assertion.

Mr. Perez relies heavily on 28 U.S.C. § 517, which provides that "[t]he Solicitor General, or any officer of the Department of Justice, 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." This provision, however, says absolutely nothing about whether a Justice Department attorney may enter an appearance in a state court absent special admission by the court. Rather, the provision has been applied to authorize the United States to file amicus briefs, as a matter of right, in federal and state courts, see, e.g., In re Austrian and German Holocaust Litigation, 250 F.3d 156 (2d Cir.2001), or to intervene in any case, state or federal, where the United States' interest is implicated, see, e.g., Texas v. New Mexico, 462 U.S. 554, 562 (1983) (United States intervened to protect its interest in the Pecos River).

Mr. Perez also cites the Local Rules of the United States District Court for the District of Maryland, Rule 701(1)(b), which provides that an "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." (Emphasis added.) The language of the Local Rule belies Mr. Perez's argument: the Rule says nothing about admission to practice law in Maryland but expressly states that federal government lawyers are admitted to the "bar of this District," i.e., the United States District Court of Maryland, if they belong to the highest court in any "state." Thus, the Local Rule recognizes the distinction between admission to a federal court's bar and admission to a state bar. The Maryland Court of Appeals has likewise

drawn a bright-line distinction between membership in the bar of a federal jurisdiction and membership in the Maryland bar: the fact that one is a member of the bar of the United States District Court of Maryland does not authorize an attorney to appear in Maryland state courts. See Kennedy v. Bar Ass'n of Mont. Co., 561 A.2d 200 (Md. 1988); Att'y Grievance Comm'n of Maryland v. Harris-Smith, 737 A.2d 567 (Md. 1999). Moreover, "the Constitution does not require that because a lawyer has been admitted to the bar of one State, he or she must be allowed to practice in another." Leis v. Flynt, 439 U.S. 438 (1979).

Mr. Perez also claims that, under the Supremacy Clause of the United States Constitution, "federal law trumps Maryland law requiring admission to the Maryland Bar to practice law in Maryland." This is wrong. The Supremacy Clause applies only when there is a conflict between federal and state law, and no such conflict exists in this case. The case that Mr. Perez cites in support of his Supremacy Clause argument, Sperry v. Florida, 373 U.S. 379 (1983), is inapposite.

In Sperry, the petitioner was registered to prosecute patent applications and patent assignments before the United States Patent Office, but was not a lawyer and was not admitted to practice law either in Florida, where his office was located, or in any other jurisdiction. The Supreme Court of Florida concluded that petitioner's conduct, including holding himself out as a patent "attorney," constituted the unauthorized practice of law, which the State could prohibit, notwithstanding any federal statute or the Constitution of the United States.

The Supreme Court held that Florida's unauthorized practice law must yield "**when incompatible with federal legislation**." Sperry, 373 U.S. at 384 (emphasis added). Federal patent law expressly permitted practice before the Patent Office by non-lawyers; therefore, "by virtue of the Supremacy Clause, Florida may not deny to those failing to meet its own

qualifications the right to perform the functions within the scope of the federal authority." The Court held:

> A State may not enforce licensing requirements which, though valid in the absence of federal regulation, give 'the State's licensing board a virtual power of review over the federal determination' that a person or agency is qualified and entitled to perform certain functions, or which impose upon the performance of activity sanctioned by federal license additional conditions not contemplated by Congress. 'No State law can hinder or obstruct the free use of a license granted under an act of Congress.' (quoting Pennsylvania v. Wheeling & Belmont Bridge Co., 13 How. 518, 566, 14 L.Ed. 249.)

Id. at 385.

In contrast to Sperry, the Maryland Constitution's requirement that an Attorney General practice law as a member of the Maryland Bar for at least ten years is not incompatible with federal law. If Mr. Perez had been a member of the Maryland Bar and a federal government lawyer from 1996 to the present, rather than a member of New York bar from between 1996 and 2001, his legal experiences combined with his ten-year membership in the Maryland Bar would qualify him as a candidate for Maryland Attorney General. Likewise, nothing about Maryland's Bar admission requirements conflicted with his duties as a federal government lawyer; as stated, he could have been a member of the Maryland, rather than New York bar, when he was with the federal government. There is no merit to the argument that the Supremacy Clause could trump a Maryland's Constitutional requirement for Maryland's Attorney General, where, as here, there is no conflict between federal law and Maryland law.

II. THE ADVISORY OPINION ISSUED TO MR. PEREZ SHOULD NOT BE ACCORDED ANY WEIGHT IN THIS PROCEEDING BECAUSE IT WAS OBTAINED IN A MANNER NOT AVAILABLE TO AN ORDINARY CITIZEN SEEKING DETERMINATION OF HIS OR HER QUALIFICATIONS TO RUN FOR THE OFFICE OF ATTORNEY GENERAL

Mr. Perez, through his counsel, correctly notes that, like Mr. Perez, I am a "sophisticated politico." Perez Memorandum, 19 n.16. I am also an attorney who was admitted to the

Maryland Bar in 1974. However, I do not count a former Attorney General of the State of Maryland among my political sponsors or advisors. I can tell you that it would not have occurred to me to seek an individual opinion from the Attorney General's office if I had a question regarding my eligibility to run for a state office based on statutory or constitutional qualification requirements. Nor, I submit, would it have occurred to an ordinary citizen seeking determination of his or her qualifications to run for the office of Attorney General.

Republican and Democratic Party Candidates are provided a document "Filing Instructions, Principal Political Party Candidates (Republican and Democratic Parties) to appear on the Maryland 2006 Gubernatorial Primary Election Ballot [Exhibit] by the State Board of Elections. Part of that document is a spreadsheet that lists the Requirements and Qualifications for each office sought. Candidates are required to certify to the State Board of Elections when they file that they meet those qualifications.

If I thought I needed a legal clarification of whether I met the qualification to run, I would have first asked the State Board of Elections for the determination. I submit so would any reasonable ordinary citizen when confronted with the same question. And, since I was required to certify that I met the qualifications to the State Board of Elections, I would have assumed that the State Board of Elections had both the responsibility and ability to determine my qualification. The State Board clearly had the standing to seek an opinion from the Attorney General in this matter but did not. One of the reasons they did not is because Mr. Perez didn't give them a chance. He went directly to the Attorney General's office.

I am currently a member of the Board of Education of Montgomery County. As such, I fit the definition of "officer or employee of an agency of the state of Maryland." In fact, just recently our Board of Education has been the beneficiary of a favorable determination by the

Attorney General of a dispute we have had with another state agency, the Montgomery County Council, on a jurisdictional question. See 91 Opinions of the Attorney General 145 (2006).

I respectfully take issue with footnote 8 in the Perez Attorney General opinion which discussed policies governing Attorney General opinions based on requests from private individuals. [Exhibit C, Affidavit of Andrew M. Dansicker] I strongly suggest it is in error.

In the footnote, the writer suggests that the request that resulted in the Kelly Opinion was posed by the Dean of the University of Maryland School of Law in a personal capacity. In discussions with the Attorney General's Office regarding a Public Information Request I had submitted, I asked for a copy of Dean Kelly's letter. I was told and have no reason to doubt that the 1983 letter send by the Dean has probably been destroyed.

Nowhere in the Kelly Opinion is there any statement regarding how, and in what capacity, the request for the opinion was made. Thus, objectively, both the current Attorney General's office and I should only be able to rely on how the Kelly Opinion is addressed to determine the status of the requestor.

That opinion is addressed to the Dean at the Law School address. The question being asked, although of personal interest to the Dean, involved an interpretation of his work as a State employee and would also have been of interest to any other faculty member of the law school, all employees of a state agency. Thus, it is not unreasonable to conclude that the Kelly Opinion was obtained properly by the head of an agency of the state. Such a conclusion is reinforced by the fact that it was being requested in 1983, three years prior to the next gubernatorial election. No such ambiguity exists with Mr. Perez' request. His letter was sent by him in his individual capacity and used his home address.

In addition, the exception stated in the footnote raises an interesting question. Although both the Kelly request and the Perez request are treated as "necessarily posed in a personal capacity," it is unclear that a member of the general public seeking a clarification of whether they were eligible to run for Attorney General or any other office would know that this process was available to them. In both cases, the request seems to be the result of knowledge of inside information about a process that can be used. The Kelly Opinion may or may not have been filed as a private request. We only know that the current Attorney General's office believes it must have been. We also have reason to believe or at least speculate that the only reason Mr. Perez may have known about this exceptional procedure is because his mentor and campaign patron, Stephen Sachs, probably advised him about it; among other things, throughout the Perez Opinion, there are repeated references to the opinions of "Attorney General Sachs" as opposed to the more generic description of an opinion of an "Attorney General. I strongly believe that "equal justice under the law" cited by Senator Kennedy in the recent Alito Senate hearings applies equally to civil actions as it does to criminal actions. Access to processes, even advisory ones in administrative proceedings, should be judged on the same standard.

III. PLAINTIFF ABRAMS' COMPLAINT IS TIMELY AND IN COMPLIANCE WITH ELECTION LAW § 12-202.

Plaintiff filed this Complaint on July 13, 2006 based on the following facts and understanding of Maryland Election Law: I did not "know" who had filed for the position of Attorney General until July 5, 2006, the first business day after the filing deadline. While Counsel for Defendants Ms. Lamone and the State Board of Elections suggests that the Washington Post and Baltimore Sun stories in May regarding the Attorney General's opinion that Defendant Perez obtained should have started the clock ticking, he acknowledges that Mr.

Perez had not officially filed his candidacy papers until June 19, 2006. It is hard to imagine how anyone could construe a statute which imposes a ten-day window from the date when the moving party knew of the occurrence of the violation, to begin counting before the first date when the violation could have occurred, i.e., June 19, 2006. In fact, with regard to the State Defendants, it is unclear whether Mr. Perez's filing started the clock ticking, or whether the clock start once the Board certified Mr. Perez's name for placement on the ballot, which could have occurred, at the earliest on July 13, the deadline for a candidate to withdraw a certificate of candidacy. Furthermore, it is presumptuous of Counsel to assume that I did, in fact, have actual knowledge that Mr. Perez filed on June 19, 2006. I was out of the country most of the month of June, returning on July 3, 2006. I did not check the on line filing listings of the State Board of Elections until July 5, 2006. I filed this complaint on July 13, 2006, which is within 10 days of my July 5 actual knowledge of the Perez filing for candidacy. [Exhibit].

IV. CONTRARY TO DEFENDANTS LAMONE AND STATE BOARD OF ELECTIONS' ASSERTION, PLAINTIFF ABRAMS HAS DILIGENTLY ADVANCED THIS COMPLAINT.

Counsel for Defendants argues that my following the guidance of the clerk's office of the civil cases somehow reflects an effort on my part to move this case along in an expedited manner. Because I am acting as my own counsel in this case, I am precluded from serving defendants myself. I was told to obtain and did obtain the services of a private process server who performed service on all defendants on Tuesday, July 18, 2006. However, all defendants were provided a copy of the complaint and supporting documents for the Temporary Restraining Order prior to my filing with this Court on July 13, 2006. Furthermore, Defendant Perez was quoted in news articles on July 14 and 15, 2006 as being aware of the order shortening the time to respond. I can only assume that the defendants Lamone and the State Board had similar

"public" awareness. Despite Defendant's Perez's public statement of his desire to resolve this issue as quickly as possible and despite Defendants Lamone and State Board's Counsel's argument that time was of the essence to them, neither Defendant Perez nor Defendants Lamone and the State Board filed their answers with this Court until the last of the 5 days ordered, a date that was **12 days** after they received courtesy copies of the pleadings.

V. DEFENDANTS LAMONE AND STATE BOARD'S FAILURE TO EXERCISE NORMAL DUE DILIGENCE IN DETERMINING WHETHER DEFENDANT PEREZ MEETS THE ADDITIONAL QUALIFICATION OF PRACTICING LAW IN MARYLAND FOR 10 YEARS IS MORE RESPONSIBLE FOR ANY POSSIBLE DISENFRANCHISEMENT OF VOTERS OVERSEAS THAN IS PLAINTIFF'S TIMELY FILING OF A CHALLENGE TO HIS CANDIDACY.

Plaintiff respectfully suggests that laches requires some showing of prejudice. The state defendants have alleged none. Moreover, EL Section 9-207(d)(2) expressly allows for corrections in circumstances like this. The law anticipates just this contingency, that corrections be made when a court finds a candidate does not meet the qualifications for the position. Moreover, the assertion of laches rings especially hollow here, where all Defendants had courtesy copies pleadings for fully 12 days before they filed their responses. I respectfully submit that that the State Defendants and their counsel should be more concerned that the candidates appearing on the ballot in fact be qualified, than with complaining about the administrative tasks necessary to accomplish that important goal.

CONCLUSION

For the foregoing reasons, Plaintiff Abrams respectfully requests that the Court grant his Cross-Motion for Summary Judgment and deny the Defendants Motions to Dismiss and/or For Summary Judgment.

July 28, 2006

Respectfully submitted,

_____
Stephen N. Abrams

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of July, 2006, a copy of the foregoing Memorandum of Law in Opposition to Defendants Linda H. Lamone, the State Administrator of Elections, the State Board of Elections, and Thomas E. Peres's Motion to Dismiss; Opposition of Defendant Thomas E. Perez's Motion for Summary Judgment; and Support for Plaintiff Stephen N. Abrams' Cross-Motion for Summary Judgment was sent by electronic mail in accordance with agreement of counsel to:

Andrew M. Dansicker, Esq.
Adansicker@stkgrlaw.com
Attorney for Defendant Perez

And

William Brockman
wbrockman@aog.state.md.us
Attorney for Defendants Lamone and State Board of Elections

_____
Stephen N. Abrams, Esq.

IN THE CIRCUIT COURT OF ANNE ARUNDEL COUNTY

STEPHEN N. ABRAMS, *

Plaintiff, *

v. * Case No. C-06-115383

LINDA H. LAMONE, et al. *

Defendants. *

* * * * * * * * * * * *

AFFIDAVIT OF PLAINTIFF STEPHEN N. ABRAMS

I, Stephen N. Abrams, under penalty of perjury, declare as follows:

1. I am over the age of eighteen, am competent to testify and have personal knowledge of the facts stated herein, all of which are true.

2. I am an attorney and member of the Maryland Bar and represent myself in the above-captioned lawsuit.

3. I am a citizen of the State of Maryland, and I reside at 2290 Dunster Lane, Rockville, Maryland, where I have lived since 1974. I am a qualified voter in Maryland.

4. I did not know until July 5, 2006 that Mr. Thomas E. Perez had filed a certificate of candidacy for the office of Attorney General.

5. From May 30, 2006 until the evening of June 13, 2006 I was absent from Maryland in order to attend the wedding of a friend's son in Egypt. I was in Maryland from the evening of June 13, 2006 until the evening of June 26, 2006 at which time I departed for London, England. I returned to Maryland from London, England the afternoon of July 3, 2006.

6. I had no personal knowledge during the period June 19, 2006 through June 26, 2006 that Mr. Perez had filed for the office of Attorney General on June 19, 2006. I saw no news article in the Washington Post, Washington Times, Gazette newspapers or the Baltimore Sun during the period June 19, 2006 through June 26, 2006 that reported that Mr. Perez had formally filed nor did I check with the State Board of Elections either in person or on-line to see who filed for Attorney General or the Comptroller race during the above-referenced period.

7. On July 5, 2006, two days after my return from London, England to Maryland and the first business day after the July 4 holiday, I checked the State Board of Elections on line and first became aware that Mr. Perez had formally filed the papers required for his Attorney General candidacy. During the following days I began the preparation of this suit, enjoyed a three-day vacation with my family in Atlantic City, New Jersey, and returned to Maryland on July 11, 2006.

8. On July 12, 2006, I completed my preparation of my suit papers. That evening I placed several telephone calls to Mr. Perez' residence and was able to speak with him at approximately 10 p.m. During that conversation I informed him of my intention to file the following day and asked how to get him copies of my documents as quickly as possible. Mr. Perez gave me the home telephone number of his Montgomery Council staff member, Dan Parr. I called Mr. Parr and was given his home FAX number. I sent 3 FAX transmissions to Mr. Parr's number and each time received a message indicating a pager jam on Mr. Parr's machine. Early the following morning, I called Mr. Parr again, obtained his email address and sent by email a copy of the complaint; motion for TRO; my affidavit in support of the TRO; and a proposed order. A copy of that email is attached.

9. On the morning of July 13, 2006, while I was driving from Rockville to Annapolis, Mr. Perez telephoned me on my cell phone in an attempt to persuade me not to file this suit. I rejected his suggestion and drove directly to the State Board of Elections, where I hand-delivered two sets of the suit papers, one for Ms. Lamone and the other for the State Board as an entity. I then proceeded to the Anne Arundel Circuit Court where I filed this action and appeared before Judge Loney. Judge Loney denied my request for a TRO but did order defendants to shorten the time for response to five days after service. I took the proposed order for temporary restraining order on which Judge Loney hand-wrote that he denied the request but ordered defendants instead to respond within 5 days after service back to the civil clerk's office where summons were prepared. (A copy of which is attached as Exhibit 1). I was advised that because I was both the plaintiff and the attorney of record in this action, I was not allowed to serve the summons myself. Instead, I was told to use either a private process server or service by the Sheriff's office.

10. On Friday, July 14, 2006, I was away from Maryland on business. On Monday, July 17, 2006, I delivered the summons and a copy of the complaint for each defendant to Exigent Services, Inc. in Bethesda, Maryland. Exigent Services, Inc. completed service on all three defendants on Tuesday, July 18, 2006.