

**IN THE COURT OF APPEALS
OF MARYLAND**

September, 2006 Term
Docket No. 432

NIKOS S. LIDDY,

Appellant,

v.

LINDA H. LAMONE, et al.,

Appellees.

On Appeal from the Circuit Court for Anne Arundel County
(Ronald A. Silkworth, Judge)
Pursuant to Election Law § 12-202 and a Petition for Writ of Certiorari

BRIEF OF APPELLANT

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BRIEF OF APPELLANT

STATEMENT OF THE CASE

This case presents a challenge to the qualifications of Douglas F. Gansler (hereinafter "Appellee Gansler") as a candidate for the Office of Attorney General. On October 20, 2006, Nikos Stanford Liddy (hereinafter "Appellant Liddy"), a Maryland resident and registered Maryland voter, filed a civil action under Election Law § 12-202, *et seq.* requesting, *inter alia*, a preliminary injunction to remove Appellee Gansler's name from the ballot in the 2006 gubernatorial election. *See* Plaintiff's Verified Complaint at

7. Appellant Liddy contended that, because Appellee Gansler had not practiced law in the State of Maryland for the ten years required by Art. V, § 4 of the Maryland State Constitution, Appellee Gansler was not qualified to hold office as Attorney General and hence not eligible to be on the ballot in the 2006 gubernatorial election. *See* Plaintiff's Verified Complaint at 7.

On October 25, 2006, the Honorable Judge Ronald A. Silkworth of the Circuit Court for Anne Arundel County, Maryland, held a trial and hearing to determine the merits of Appellant Liddy's claim. At this hearing, Appellant Liddy presented evidence in the form of testimony from himself and Appellee Gansler. Appellant Liddy testified that he first learned of Appellee Gansler's lack of qualifications for the Office of Attorney General during the week of October 16, 2006 and that he prepared the *pro se* complaint, using knowledge and ability obtained in a business law class. (E. 32, 34.)

Upon being questioned about his qualifications, Appellee Gansler testified that he had not practiced substantive or procedural Maryland law for at least ten years. Appellee Gansler testified that he has been licensed to practice law in Maryland for 17 years, (E. 58-59.), but he also related that he had only actually practiced law in Maryland for eight years as State's Attorney of Montgomery County. (E. 49, 79.) Appellee Gansler further noted that he had practiced law as a private attorney in two law firms in the District of Columbia while he was licensed as a member of both the Maryland Bar and the District of Columbia Bar (E. 61, 79), and that he had been involved in several community groups in Montgomery County prior to his service as State's Attorney. (E. 71-72; 73-74.) Moreover, Appellee Gansler specifically testified that, apart from his eight years as State's Attorney, he had never practiced substantive Maryland law. (E. 80.)

On October 27, 2006, the Circuit Court for Anne Arundel County issued a memorandum opinion ruling that Appellee Gansler held the necessary qualifications to hold the Office of Attorney General of Maryland. *See* Circuit Court Memorandum Opinion. In that memorandum, the Court recounted Appellee Gansler's testimony, but the Court made *no* specific factual findings regarding Appellee's legal background or history as an attorney. In ruling on Appellee Gansler's background and qualifications, the Court held that Appellee Gansler's prior informal, non-legal assistance to community groups contributed to his "practice of Law" under Art. V, § 4 of the Constitution, stating that "even if you are not officially acting as counsel, if the activity in which you are participating is benefiting from your legal knowledge, skills and abilities ... then the 'practice of Law' has an independent value that qualifies as experience." *See* Circuit Court Memorandum Opinion at 22. Having held that Appellee Gansler's legal experience apart from his eight years as State's Attorney constituted the "practice of Law" under the Maryland Constitution, the Court entered an order in favor of Appellees.

On October 30, 2006, Appellant Liddy filed a petition for writ of certiorari in this Court and requested review by this Court and the Court of Special Appeals. *See* Notices of Appeal and Petition for Writ of Certiorari.

QUESTIONS PRESENTED

- I. Whether the Circuit Court erred in holding that a candidate for the Office of Attorney General possesses the necessary qualifications for the office under Art. V, § 4 of the Maryland Constitution, where the candidate has not practiced substantive law in the State for at least ten years.
- II. Whether the Circuit Court lawfully addressed the merits of this challenge to the qualifications of a candidate for the Office of the Attorney General?

STATEMENT OF THE FACTS

Appellant Liddy is a registered voter of the State of Maryland who intends to vote in this year's 2006 gubernatorial election. (E. 33.) Liddy recently learned of the candidacy of Appellee Gansler for the office of Attorney General, and he found Gansler's legal experience lacking the requirements set forth by the Maryland Constitution. (E. 32.) According to Appellant Liddy, he learned of Mr. Gansler's lack of qualifications for the Office of Attorney General by visiting several websites on the Internet. "I did some research on the Internet ... there are multiple web pages that you can search upon to find information." (E. 36-37.)

After considering Appellee Gansler's proffered legal qualifications for the Office, Liddy came to the conclusion that Mr. Gansler was not qualified under the Maryland State Constitution to be Attorney General because Gansler had not practiced law within the State of Maryland for ten years. (E. 37.) Liddy testified at trial that he came to this conclusion based upon his independent research of Maryland news and campaigns. (E. 38.) Accordingly, Appellant Liddy filed the instant civil action.

Appellee Gansler has been a licensed attorney in the State of Maryland for 17 years. (E. 57.) During that time, Appellee has been a private attorney in the District of Columbia, an employee of the U.S. Department of Justice in the District of Columbia, and the State's Attorney for Montgomery County. (E. 56-83.) In addition, Appellee Gansler has acknowledged that he has not practiced substantive Maryland law for ten years. (E. 80.) According to Appellee Gansler, although he has been licensed to practice law in Maryland for 17 years, he has only practiced substantive law in Maryland during the time for which he has served as State's Attorney (less than eight years).

When Appellee Gansler was asked at trial about his substantive Maryland law experience and how that relates to his alleged qualifications for Attorney General, he responded: “Substantive Maryland law is where I get tied up. I did not – I think for – well, I had not been in a Maryland courtroom prior to those eight years [as State’s Attorney]. That is, as far as I remember... .” (E. 80.) When asked about specific instances during which he practiced substantive Maryland law, Appellee Gansler did not want to respond, stating: “I guess I don’t feel comfortable answering that, but I think for your purposes, I would say there are none.” (E. 80.) Appellee Gansler also testified about community-based activities in which he has participated. (E. 72-79.) He stated that he was a member of a committee that included non-lawyers and performed the same activities as those non-lawyer members of the committee.¹ (E. 74.)

At the conclusion of his testimony, Appellee Gansler alleged, *inter alia*, that he was engaged in the practice of Maryland law while playing basketball with friends and colleagues.²

ARGUMENT

I. ART. V, § 4 OF THE MARYLAND CONSTITUTION REQUIRES BOTH LICENSURE AND THE APPLICATION OF MARYLAND SUBSTANTIVE LAW FOR A PERIOD OF TEN YEARS.

The qualifications for Attorney General set forth in Art. V, § 4 of the Maryland Constitution include two necessary elements. First, an individual must have held a license to practice law in the State for a period of ten years. Second, a prospective

¹ When questioned about his activities on the committee, Appellee Gansler responded that his work was similar to that being performed by non-lawyers. Appellee Gansler also stated that those non-lawyer members of the committee were not engaged in the practice of law while performing similar work.

Attorney General candidate must have applied substantive Maryland law for the same length of time. Both elements must be present, and the application of substantive Maryland law must involve the representation of an identifiable client.

A. The State Constitution requires that a candidate for Attorney General practice substantive and procedural law in the State of Maryland for a period of at least ten years.

The Office of the Attorney General of Maryland requires the actual practice of law in the State of Maryland for ten years in order to ensure that the Attorney General has sufficient schooling, skill, and knowledge to perform the duties of the Office.³ Art. V, § 4 of the Maryland Constitution states that “[n]o 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.” The purpose of that requirement is clear in that the Framers of the Constitution wanted an Attorney General sufficiently schooled in the practice and procedure of Maryland law. *See* 68 Md. Op. Atty. Gen. 48 (1983) (hereinafter "Kelly Opinion"). This constitutional provision must be at the forefront of the Court’s analysis.

The duties of the Attorney General under the Constitution shed considerable light on why the Framers of the Constitution would require a candidate for Attorney General to have practiced substantive law in Maryland for ten years. Art. V, § 3 of the Constitution delineates the duties of the Attorney General of Maryland, and all of those duties require the actual practice of substantive and procedural law in the State as contemplated by the 10-year practice requirement.

² This statement by Appellee Gansler was not accompanied by any reference to a specific time, place, or identifiable client.

³ Appellant does not contest that Appellee Gansler has held a license to practice law in Maryland for the requisite number of years to qualify for Attorney General. However, Appellant does contest that Mr. Gansler possesses all of the constitutional requirements (e.g., practice requirements) to qualify for the office.

The first and foremost duty of the Attorney General is to “[p]rosecute and defend on the part of the State all cases pending in the appellate courts *of the State ...*” Md. Const., Art. V, § 3(a)(1)[emphasis added]. The remaining duties of the Attorney General similarly require practice before state courts and knowledge of the State’s substantive and procedural law. Art. V, § 3(a)(2), for example, is particularly insightful. Under that provision, the Attorney General shall investigate, commence, prosecute, and defend all civil or criminal suits “in any of the Federal Courts or in any *Court of this State*” and shall defend *the State* before any administrative or quasi legislative bodies created by the State. Md. Const., Art. V, § 3(a)(2)[emphasis added]. The remaining duties of the Attorney General also require sufficient knowledge of substantive Maryland law and procedure, as the Attorney General may be directed from time to time by the General Assembly or Governor to aid in a State’s Attorney’s prosecution or grant an opinion to the General Assembly, Governor, Comptroller, Treasurer, or any State’s Attorney on any matter. Md. Const., Art. V, § 3(a)(3)-(4).

In setting forth these duties and the corresponding time requirements, the Framers evidenced their intent to establish a constitutional office requiring an individual with sufficient familiarity of the law of the State of Maryland and actual practice therein. When read alongside the 10-year time requirement set forth in Art. V, § 4, the duties of the Attorney General enumerated in Art. V, § 3 make it clear that the Framers wanted the Attorney General of Maryland to be sufficiently steeped in Maryland substantive law and procedure to exercise the weighty duties of that Office. The Framers illustrated that intent in requiring ten years practice of law in *the State* as a qualifying minimum to

become Attorney General. Md. Const., Art. V, § 4.

Appellee Gansler's testimony demonstrates that he does not possess the requirements for Attorney General under the Constitution. Although Appellee Gansler's testimony conclusively illustrates that he has practiced Maryland substantive law for the eight years during which he has served as the State's Attorney of Montgomery County, such practice of law, in and of itself, is insufficient to demonstrate that he has satisfied the constitutional requirements for the Office of Attorney General. Mr. Gansler testified at trial that, apart from his work as State's Attorney, he had not engaged in the practice of substantive or procedural law in Maryland. (E. 80.)

Simply put, without the necessary experience in Maryland substantive law and procedure for the requisite ten years to be able to prosecute cases on behalf of the State in state courts and to advise the General Assembly, the Governor, the Comptroller, and the State in general, the Attorney General cannot fulfill the constitutional duties set forth in Art. V, § 3. Because Appellee Gansler does not possess the necessary ten years practice in Maryland substantive and procedural law, he does not possess the necessary qualifications to assure fulfillment of the duties of the Attorney General as set forth by the State Constitution.

B. The interpretation of Art. V, § 4 of the Maryland Constitution presents a legal issue of first impression and any prior interpretations of similar language related to the phrase "practice of Law" are inapplicable and non-binding on this Court.

A review in the Court of Appeals of Maryland constitutes a legal issue of first impression where that issue has not been previously determined by a prior decision in the Court of Appeals. The primary question presented in this appeal constitutes a legal issue of first impression in that the requirements set forth in Art. V, § 4 of the Maryland Constitution have not been interpreted by any appellate court in the State. The mere

mention of suggestions of interpretation in prior appellate court opinions does not constitute legal precedent and, while informative, cannot be considered binding when reviewed by this Court. *See Warren v. Baltimore Transit Company*, 220 Md. 478, 484 (Md. 1959).

The interpretations used as authority by the Circuit Court for its holding that Appellee Gansler meets the qualifications set forth in Art. V, § 4 are non-binding, inapplicable, and easily distinguishable from the facts surrounding this appeal.

As detailed *infra*, the circumstances surrounding cases argued by Appellees to constitute precedent in this matter are, in fact, *dicta* in a former Court of Appeals decision citing a non-binding Attorney General's Opinion. Moreover, the non-binding opinions set forth in the Kelly Opinion regarding Art. V, § 4 were irrelevant to the holding of the Court of Appeals decision in which they are referenced.

II. THE LOWER COURT'S LEGAL CONCLUSIONS REGARDING THE INTERPRETATION OF ART. V, § 4 OF THE MARYLAND CONSTITUTION AND APPLICATION OF THE FACTS THERETO WERE ERRONEOUS.

This appeal of the Circuit Court's legal conclusion that Appellee Gansler is constitutionally qualified to become Attorney General is to be heard by the Court of Appeals based on a *de novo* standard of review. "When the trial court's order 'involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions are legally correct under a *de novo* standard of review.'" *Garfink v. Cloisters at Charles, Inc.*, 392 Md. 374, 383 (2006)[quoting *Gray v. State*, 388 Md. 366, 375 (2005)].

In ruling that Appellee Gansler is constitutionally eligible to become Attorney General, the Circuit Court relied primarily on a 1983 Attorney General's opinion (referred to hereinabove as the "Kelly Opinion"). *See* 68 Md. Op. Atty. Gen. 48 (1983). Although the Kelly Opinion deals with the issue of constitutional qualification for a prospective Attorney General candidate, it involves facts different from the facts surrounding this appeal. Moreover, the Kelly Opinion is non-binding on this Court and, at a maximum, must be viewed as instructive.

Opinions from the Attorney General may prove instructive, but are not binding on Maryland Courts. *See Maryland Auto. Ins. Fund v. Lumberman's Mut. Cas. Co.*, 148 Md. App. 690, 702 (2002). In fact, Attorney General's opinions, including the Kelly Opinion, are subject to inquiry and correction by the Court of Appeals. The Court of Appeals may inquire as to the correctness of the Attorney General's opinion and construction. *See Schmidt v. Beneficial Finance Co. of Frederick*, 285 Md. 148, 158 (1979). The Kelly Opinion construed the requirements of Art. V, § 4 based on the fact-specific issue of whether Michael Kelly's work as Dean of the University of Maryland School of Law constituted the "practice of Law" for the purpose of his eligibility to run for the Office of Attorney General. *See* 68 Md. Op. Atty. Gen. 48 (1983). While the Kelly Opinion's conclusions regarding Dean Kelly's qualifications may be instructive for this Court, any opinions related to the interpretation of Art. V, § 4 are non-binding and subject to inquiry and correction.

The Circuit Court committed error in misconstruing the language of the Kelly Opinion and relying upon that language when applying Appellee Gansler's testimony to an interpretation of the requirements set forth in Art. V, § 4. In reaching the conclusion that Dean Kelly was constitutionally qualified to become Attorney General, the Kelly

Opinion states that any interpretation of Art. V, § 4 must include more than the traditional notion of practicing law as it was understood when the Constitution was drafted. *Id.* However, that statement was made in the context of our constantly evolving legal world, not as an indication that the qualifications to become Attorney General should be less than those necessary for licensure.

The Kelly Opinion does, however, give some insight on the legislative intent behind the requirements set forth in Art. V, § 4 of the Maryland Constitution. The 10-year time requirement is noted as an expression of the Framers' intention that the Attorney General be a person steeped in the law and of sufficient legal maturity to undertake the duties of the office. *Id.* The Kelly Opinion recognized that the practice of law is constantly evolving. *Id.* It is because of this fluidity and frequent change that the Attorney General must be adequately experienced in the application of Maryland substantive law and procedure. As discussed *supra*, Appellee Gansler's own testimony belies any contention that he has practiced Maryland substantive law for the requisite 10-year period of time.

The Circuit Court committed additional error in equating Appellee Gansler's qualifications with those of Dean Kelly (who was determined to have met the Art. V, § 4 qualifications). Unlike Appellee Gansler, Dean Kelly had ample practice and experience in Maryland substantive law and procedure. Dean Kelly had identifiable clients and, *inter alia*, served as general counsel for the Rouse Company. *Id.* He worked on the Mayor's Coordinating Council on Criminal Justice and often represented individuals and institutions throughout the State of Maryland. *Id.* All of these listed activities required

analysis and application of Maryland substantive law. In contrast, Appellee Gansler's testimony shows, at a maximum, his analysis and application of Maryland substantive law and procedure was for approximately eight years as State's Attorney for Montgomery County. (E. 79-80.). He was part of an NAACP Criminal Justice Committee which met monthly to refer individuals to attorneys who would act on their behalf. (E. 73-74.) However, his testimony was contradictory in his assertion that non-attorney members of the committee were not practicing law when performing the same duties as those he argues constitute the practice of law for him. (E. 73-74.) Furthermore, he stated that he prepared wills for his family, yet he failed to detail the breadth and substance of legal work involved. (E. 76.) Based on any reasonable interpretation or analysis of the Kelly Opinion, Appellee Gansler's qualifications pale in comparison to those of Dean Kelly and, accordingly, he does not have the experience necessary to meet the constitutional requirements to become Attorney General of Maryland.

In further support of its ruling, the Circuit Court notes that the Kelly Opinion was cited favorably in *Matter of R.G.S.*, 312 Md. 626, 637 (1988). However, the *R.G.S.* decision did not require an interpretation of Art. V, § 4 and any reference to the Kelly Opinion is irrelevant to the issues presented in this appeal.

Rather than the constitutional requirements to become Attorney General at issue in this appeal, the *R.G.S.* matter dealt with a University of Baltimore law professor who sought leave to take the abbreviated attorney's exam for admission to the Maryland Bar. *Id.* at 628. The Kelly Opinion is cited and referenced, but only to the extent that the phrase "practice Law" may have different meanings in different contexts. *Id.* at 637. It is well settled that, "...language...must be read in the context of the opinion as a whole and is limited in its applicability to the facts of the case there decided." *Warren v. Baltimore*

Transit Company, 220 Md. at 484. Because of the legal and factual differences between the *R.G.S.* decision and this appeal, any favorable reference to the Kelly Opinion does not increase its persuasiveness or create binding precedent with regard to the Court's interpretation of Art. V, § 4.

III. BECAUSE THE CIRCUIT COURT, IN A NON-JURY TRIAL, DENIED APPELLEES' MOTIONS FOR JUDGMENT AND APPELLEES' FAILED TO PUT ON ANY EVIDENCE IN DEFENSE, APPELLANT MET HIS BURDEN AND WAS ENTITLED TO JUDGMENT ON THE MERITS.

At the trial of this matter, Appellant's case-in-chief relied solely upon the testimony of Appellant Liddy and Appellee Gansler. Although Appellee Gansler submitted an affidavit in support of dispositive motions, said affidavit was not moved into evidence and is not a part of the trial record for purposes of this appeal. *See* Circuit Court Memorandum Opinion at 2.

Immediately subsequent to Appellant's case-in-chief, Appellees moved for judgment, arguing that Appellant had failed to meet his burden and show a *prima facie* case on the merits. (E. 85.) After argument on behalf of all parties, the Circuit Court ruled that, based on the aforementioned testimony, Appellant had met his burden and shown a *prima facie* case based on the allegations set forth in his Verified Complaint, namely that Appellee Gansler's qualifications did not meet those set forth in Art. V, § 4 of the Maryland Constitution. (E. 99.)

With the exception of stipulations related solely to Appellee State Board of Elections' administration and management of the current election, Appellees put forth no evidence in defense of Appellant's allegations regarding Appellee Gansler's lack of qualifications. (E. 99.)

Because the trial in this matter was heard by Judge Silkworth without a jury, the Circuit Court's denial of Appellees' motions for judgment at the close of Appellant's case included the application of the facts to the law at issue absent any inferences made in favor of the non-moving party. Accordingly, the Circuit Court's denial of motions for judgment at the close of Appellant's case necessarily included an interpretation of the constitutional requirements at issue as well as determination of whether the evidence put forth by Appellant met the burden necessary to show Appellee Gansler's failure to meet said requirements.

In a non-jury trial, where one party has moved for judgment, the court is allowed as the trier of fact to determine facts and render judgment thereon. *See Pahanish v. Western Trails, Inc.*, 69 Md.App. 342 (1986). In addition, the court is not compelled to make any evidentiary inferences in favor of the party against whom the motion for judgment is made. *See* Md. Rule 2-519(b).

When the Circuit Court denied Appellees' motions for judgment, it also rendered judgment that the testimony offered in Appellant's case-in-chief proved the allegations set forth in Appellant's Verified Complaint, namely that Appellee Gansler has not practiced law in Maryland for ten years as that phrase is used in Art. V, § 4 of the Maryland Constitution. In denying motions for judgment at the end of Appellant's case, the Circuit Court weighed evidence including Appellant Liddy's testimony as well as Appellee Gansler's testimony.⁴

Due to Appellee Gansler's failure to put forth any evidence in defense, the aforementioned testimony is the only evidence upon which the Circuit Court could have made its final ruling. Given the Circuit Court's prior judgment in favor of Appellant

based on the exact same evidence weighed at the end of the trial, it is contradictory for the Circuit Court to have ruled in favor of Appellee Gansler when no additional evidence was put forth in his defense.

IV. THE CIRCUIT COURT WAS CORRECT IN RULING THAT APPELLANT'S LAWSUIT IS NOT BARRED BY EITHER THE APPLICABLE STATUTE OF LIMITATIONS OR THE DOCTRINE OF LACHES.

In the Circuit Court's Memorandum Opinion, Judge Silkworth opines regarding the denial of various dispositive motions filed by Appellees. Despite the pre-trial agreement that this lawsuit would be heard on the merits, Appellees sought dismissal based on, *inter alia*, insufficient pleadings, the statute of limitations, and the doctrine of laches. Judge Silkworth made factual findings regarding the credibility of Appellant's testimony regarding *when* he became aware of the constitutional ineligibility at issue in this litigation. Specifically, Judge Silkworth found it credible that Appellant Liddy was an "independent young thinker" who became aware of this potential disqualification on or about Monday, October 15, 2006. Memorandum Opinion, 14. Such findings must only be overturned by this Honorable Court if they are deemed clearly erroneous. *See Cottman v. State*, 165 Md. App. 679, 691 (2005) (quoting *McMillan v. State*, 325 Md. 272, 281-282 (1992)).

Although Appellant does not appeal the Circuit Court's denial of Appellees' dispositive motions, this brief will address any potential issues in anticipation of Appellees' arguments given the fact that all parties' briefs are being filed simultaneously.

⁴ As noted on page 2 of the Circuit Court's memorandum opinion, Appellee Gansler's affidavit was not moved into evidence and is thus, not a part of the record for purposes of this appeal.

In addition to the arguments discussed *infra*, Appellants adopt the applicable language and analysis of Judge Silkworth's opinion as if incorporated fully herein.

A. The Circuit Court was correct in ruling that Appellant's lawsuit was not barred by any applicable statutes of limitations.

Appellees argued that, based on Md. Code Ann., *Election Law* § 12-202(b)(2), the applicable statute of limitations required that Appellant filed a complaint within three (3) days of the certification of the September 12, 2006 primary election.⁵ (E. 10.) Based on that argument, Appellant would not have filed within the time limits proscribed.

However, the Circuit Court agreed with Appellant's argument that the applicable time limit for the filing of this litigation is set forth in Md. Code Ann., *Election Law* § 12-202(b)(1). (E.99.) That limitation requires that the lawsuit must have been filed within ten (10) days of Appellant's knowledge of the act or omission which may affect the outcome of the upcoming general election. Moreover, Judge Silkworth's opinion holds that the act or omission challenged by Appellant's Complaint is Gansler's candidacy despite potential ineligibility rather than any prior certification of him as a candidate.

Accordingly, given the Circuit Court's factual finding that Appellant gained knowledge of the potential disqualification on or about October 15, 2006, the filing of Appellant's Verified Complaint on October 19, 2006 was within the applicable ten (E. 10.) day statute of limitations.

The Circuit Court's opinion regarding the "act or omission" actually challenged by Appellant is based on the plain language of Appellant's Verified Complaint. In conjunction with the credibility of Appellant's statements regarding when he gained knowledge of Appellee Gansler's constitutional ineligibility, the Circuit Court was correct

⁵⁵ At trial, all parties agreed to a stipulation confirming September 26, 2006 as the date on which the primary election results were certified. (E. 48-49.)

in ruling that Appellant's Complaint was not barred by any applicable statutes of limitations.

B. The Circuit Court was correct in ruling that Appellant's lawsuit was not barred by the doctrine of laches.

During trial, Appellees argued that Appellant's claims were barred by the doctrine of laches. (E. 89.) Appellees argued that the State Board of Elections and Maryland voters would be prejudiced by any ruling on the merits this close to the election.

The Circuit Court agreed with Appellant's argument that constitutional interpretation outweighs any laches defense. The Court correctly cited the Court of Appeals in *Ross v. State Board of Elections*, holding that laches may be inappropriate in a situation such as this one. 387 Md. 649, 671 (2005).

The Circuit Court held that neither Appellee Gansler nor Appellee State Board of Elections would be prejudiced by a judgment for Appellant. There are other remedies available to the State to notify voters about ineligibility, and Appellee Gansler cannot be prejudiced if he is not initially eligible to be on the ballot. Memorandum Opinion, 14-15. Finally, the Circuit Court opined that the State Board of Elections has the responsibility of ensuring that constitutional eligibility of potential candidates for office, not Appellant, and therefore cannot be barred by such a public policy rationale. *Id.* at 15.

CONCLUSION

For the foregoing reasons, Appellant Nikos Stanford Liddy respectfully requests that this Honorable Court overturn the Circuit Court's ruling and hold that Appellee Gansler is not constitutionally qualified to obtain the Office of Attorney General in that he has not practiced law in Maryland for ten years as that phrase is use in Art. V, § 4 of the State Constitution.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 31st day of October, 2006, a copy of
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