IN COURT OF APPEALS OF MARYLAND

STEPHEN N. ABRAMS,	*	
Petitioner,	*	
v.	*	Case No. 142 September Term, 2005
LINDA H. LAMONE, et al.	*	
Respondents.	*	

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

ON APPEAL FROM THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY, MARYLAND
(Honorable Paul A. Hackner, presiding)

BRIEF OF PETITIONER

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STATEMENT OF THE CASE

1. Nature of the Case

In this case, Petitioner challenges whether Thomas E. Perez, who has filed a certificate of candidacy for Attorney General of Maryland, meets the requirement found in Article V, § 4 of the Maryland Constitution, that a person seeking that office must have "practiced Law in this State for at least ten years." It is undisputed that Mr. Perez was not admitted to the Maryland Bar until 2001. Accordingly, the issue at the core of this case is whether the constitutional language includes, by necessary implication, the requirement that the candidate for Attorney General have been admitted to practice law in Maryland or whether, as Mr. Perez argued below, the Constitution contains no requirement that an Attorney General candidate be admitted to practice in Maryland – ever.

2. Course of the Proceedings

On July 13, 2006, Petitioner Stephen N. Abrams, a registered voter in Maryland, filed this action in Circuit Court for Anne Arundel County under Election Law Article ("EL" or "Election Law") §§ 12-202(b).[1] The Complaint sought declaratory and injunctive relief against Linda H. Lamone, in her official capacity as the State Administrator of Elections; the State Board of Elections (the "State Board"); and Thomas E. Perez. Specifically, the Complaint requested a declaration that Mr. Perez was not eligible for the office of Attorney General of Maryland in the 2006 election and an injunction against Ms. Lamone and the State Board prohibiting them from placing Mr. Perez's name on the ballot submitted to the voters in the upcoming election. The Complaint also requested an injunction ordering Mr. Perez to withdraw his certificate of candidacy for Attorney General of Maryland.

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[1] The Complaint was also filed pursuant to Election Law 9-209(b). The trial court found this ground not to be applicable, and that finding is not challenged here.

Before filing, Petitioner gave notice to Respondents that he would be seeking a temporary restraining order, and provided copies of all filings to counsel for Respondents. The Circuit Court, through Judge Michael E. Loney, denied the motion for temporary restraining order but found that "the Complaint raise[d] substantial and important issues on the merits that warrant a full adversary hearing." [Appx. at Attachment 1.]

On July 25, 2006, the Respondents filed dispositive motions. The State Board and Ms. Lamone stated that their "sole interest" was "ensuring an expeditious and orderly administration of the election process" and moved to dismiss, arguing that the claim was barred by limitations and laches. [Record from below.] Mr. Perez filed a "Motion to Dismiss and/or Motion for Summary Judgment." In support of his motions, Mr. Perez argued that 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." [Record from below.] (Memorandum of Law in Support of Defendant Thomas E. Perez, at 10 ("Perez Memorandum")). Petitioner filed a single Opposition and Cross-Motion for Summary Judgment against all Respondents.

3. <u>Disposition in the Circuit Court</u>

The circuit court held a hearing on the motions on July 31, 2006, and issued its ruling from the bench. The court denied the State Board's and Ms. Lamone's Motion to Dismiss, because Petitioner had sued within 10 days of the act or omission – the closing of the filing deadline – or, alternatively, within 10 days of his actual knowledge of Mr. Perez's filing of a certificate of candidacy. With regard to laches, the court saw no basis for finding either delay on Mr. Abrams's part or prejudice to the State flowing from any conduct of Mr. Abrams. The State Board and Ms. Lamone have not cross-appealed the denial of their Motion to Dismiss, and the five days within which they would have been required to do so have elapsed. <u>See</u> EL §

12-203(a)(3). Likewise, Mr. Perez, who incorporated the State's arguments by reference, has not cross-appealed this adverse ruling.

Addressing Mr. Perez's motions, the court considered the affidavit submitted by Mr. Perez and, treating Mr. Perez's Motion as one for summary judgment, granted the Motion. In so ruling, the court did not adopt Mr. Perez's arguments that the Maryland Constitution did not require that an Attorney General candidate be admitted to practice in Maryland and that, indeed, the framers had "intentionally deleted" that requirement. Rather, the court conducted its own independent research regarding whether admission to the bar of Maryland, i.e., admission to practice before all of the State courts of Maryland, was contemplated by the drafters of Article V, § 4 of the Maryland Constitution. Concluding (erroneously) that, at the time, one could not be admitted to practice state-wide, but had to be separately admitted to each court at which the attorney appeared, the court found that the constitutional provision did not necessarily imply that an Attorney General must be admitted to practice in all the state courts of Maryland.

On August 2, 2006, two days after the court's ruling, Petitioner noted this appeal directly to the Court of Appeals under the provisions of EL § 12-203(a). On August 4, 2006, another two days later, upon the direction of the Clerk of the Court of Appeals, Petitioner also noted an appeal to the Court of Special Appeals and filed a Petition for Writ of Certiorari, which was granted on the same date, setting forth the briefing schedule and setting August 25, 2006, as the date for oral argument.

QUESTIONS PRESENTED

I. Does the Constitution of Maryland require that a candidate for Attorney General be admitted to practice law before all of the courts of the State courts of Maryland for at least ten years prior to his or her commencing their term as Attorney General?

II Does the State Board of Elections have any duty to inquire into the representations made by a candidate for any office in Maryland when the candidate certifies under oath to the State Board of Elections that he or she meets the Maryland Constitutional requirements?

STATEMENT OF MATERIAL FACTS

Through much of 2006, there were many potential candidates for Attorney General of Maryland who were anxiously awaiting the decision of J. Joseph Curran, Jr. regarding whether he was going to seek another term. Respondent, Thomas E. Perez, was one of those potential candidates. Mr. Perez focused on raising funds for a potential race, using a continuing committee he filed with the State Board of Elections on January 25, 2002, but he did not formally file his candidacy and certify that he met the constitutional eligibility qualifications until June 19, 2006.

Mr. Perez graduated from Harvard Law School in 1987, was admitted to the New York Bar in 1988, and went to work for the federal government in 1989. In 2001, after taking the attorneys' exam, Mr. Perez was admitted to the Maryland Bar.

In the spring of 2006, before Mr. Curran announced his decision to retire, the question of whether Mr. Perez met all of the Constitutional requirements to be eligible to serve as Attorney General was raised and reported in the Washington Post. Instead of following the procedures in COMAR for obtaining a declaratory ruling from the State Board of Elections,[2] Mr. Perez wrote directly to the Attorney General's office as an individual to request an advisory opinion regarding his eligibility. Relying on that opinion, Mr. Perez certified to the State Board of Elections that he met all of the qualifications to be a candidate for Attorney General.

Petitioner Stephen N. Abrams is a member of the Montgomery County Board of Education and a Republican candidate for Comptroller of Maryland. Mr. Abrams had no personal knowledge that Mr. Perez had filed his certification for Attorney General on June 19, 2006. No major newspaper in Washington, D.C. or Maryland reported that Mr. Perez had formally filed. The filing deadline for the September primary was July 3, 2006. Mr. Abrams checked the website for the State Board of Elections on July 5, 2006 and learned, for the first time, that Mr. Perez had, in fact,

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[2] Code of Maryland Regulations 33.01.02.01

filed. The State Board of Elections did no independent review of Mr. Perez' constitutional qualifications. Mr. Abrams filed this action of July 13, 2006, against both Mr. Perez and the State Board of Elections and its administrator.

ARGUMENT

INTRODUCTION

The Maryland Constitution requires that a candidate for Attorney General must have "practiced Law in this State for at least ten years." Md. Const. Art. V, § 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." Perez Memorandum at 10. Mr. Perez's argument finds no support in common sense, in the ordinary meaning of the phrase "practiced Law in this State," 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: admission to the practice law 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."[3] By his own admission, Mr. Perez did not seek and was not admitted to practice law in Maryland until 2001, leaving him five years short of the constitutional requirement. Petitioner 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 and, in fact, did embellish with regard to

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[3] For purposes of this appeal, Petitioner does not dispute that Mr. 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, Petitioner does not dispute that Mr. Perez has "practiced Law" for at least ten years. But he has not "practiced Law in this State for at least ten years."

Eisenberg, et. al. v. Montgomery County Public Schools, et. al., 197 F.3d 123 (4th Cir. 1999) -- a case in which Petitioner was a named defendant -- those accomplishments are not relevant to the meaning and intent of the Constitutional requirement to run for Attorney General.[4]

The circuit court erroneously found that the constitutional requirement that a person practice Law in this for at least ten years did not have the plain, ordinary meaning: admission to practice law in Maryland for ten years. The Court then considered the intent of the framers of this provision. Judge Hackner did all of the parties a favor by structuring his decision properly. He implicitly recognized and supported Petitioner's argument: if it was clear, in choosing the language describing the qualifications for office for both the Attorney General and States' Attorneys, that the drafters of the Maryland Constitutions intended that a person must be admitted to practice law before the State Courts of Maryland (in order to be eligible to run for States' Attorney) and must have met the same requirement for the ten years preceding an election for Attorney General, the Mr. Perez would not be qualified.

The Circuit Court recognized the proper principles and standards to be used in order to ascertain the legislative intent of the drafters of the Maryland Constitution

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[4] Petitioner included the first page of the answer by Montgomery County Public Schools, et. al. to the Amended Complaint in the Eisenberg case to document that he was, in fact, a named defendant it that action. Nowhere is there any reference to Mr. Perez being involved in the case. A review of both the public records in that case as well as MCPS' files reveals the following. The Department of Justice did not intervene as an amicus until the case reached the 4th Circuit Court of Appeals in Richmond, Virginia, where the case was heard. The Brief for the United States as Amicus Curiae Supporting Appellees' Urging Affirmance, dated January 19, 1999, was signed by Bill Lann Lee, Acting Assistant Attorney General and Mark. L. Gross and Rebecca K. Troth, Attorneys, Department of Justice. Appendix Attachment 2. The opinion of the 4th Circuit reversing the District Court, decided October 6, 1999, lists Rebecca K. Troth as Counsel who argued the case on behalf of the United States Department of Justice and listed Bill Lann Lee, Acting Assistant Attorney General and Mark L. Gross as Counsel on Brief for the United States Department of Justice. Appendix Attachment 3.

provisions contained in Article V, §§ 4 and 10. However, the Circuit Court erred in its understanding of the process and requirements for Maryland lawyers to be admitted to practice law before all of the state courts of Maryland State system, a process and procedure that was referred to – both at the time of the adoption of the relevant constitutional provisions and today -- as being admitted to practice law in the State of Maryland.

Although the circuit court reached the incorrect conclusion based on a misunderstanding of what "practiced Law in this State" meant in 1864 and 1867, when the eligibility requirements were included, the court was correct to inquire into the intent and purpose of the framers of the Maryland Constitution in choosing the language they did. The circuit court admitted that Petitioner's argument based on the clear intent and purpose of the provision was "tempting" and demonstrated a "very appealing logic." Nonetheless, the court ultimately found that, in the 1860s, there was no process for admission to practice law in the State as a whole, because the individual circuit "courts of the state [in the 1860s] were in charge of [lawyer] admission[s]." Accordingly, the circuit court incorrectly assumed that there was no procedure for statewide admission to practice until 1898, when the Court of Appeals was first empowered to regulate bar admission in Maryland:

> And the reason for that, and that quote was certainly accurate, but I understand now the reason for it was in that day well before the Constitutional provision that we are talking about and at the time of the Constitutional provision anyone who wished to appear in a court would have to gain admission to that court. So if you wanted to go to Garrett County's Circuit Court, or whatever they called it at the time, you had to make sure the Judge in Garrett County admitted you to practice. And he or she, well at the time it would have been a he, no she, no shes allowed at that time. But he would have then been involved in the process determining whether you had the basic qualifications and the basic integrity and ethics to participate in the proceeding in that court.
>
> And, it wasn't until 1898 that there was a state-wide admitting process which is the result of an evolution because in the earlier days it was becoming

> burdensome that the Circuit Judges simply didn't want to be involved in the process of having an attorney come in and be admitted. And it wasn't until 1898 which is well after the Constitutional provisions were initially launched in this case that it became a sort of state wide precursor to our modern bar exam. There was a 3 lawyer board that was in charge of examination.

Appx. at Attachment 2, transcript pages 65-66.

It is clear that Judge Hackner misunderstood the prevailing law at the time Article V, § 4 was adopted. The linchpin of Judge Hackner's analysis – "it wasn't until 1898 that there was a state-wide admitting process" – is, quite simply, wrong as a matter of law. In fact, Chapter 268, Statutes of Maryland 1831 (enacted on March 10, 1833), which is entitled "An act regulating the admission of Attorneys to practice law in the several Courts of this state" did indeed set forth a state-wide admitting process. The statute prescribed that, once a state court granted admission, the court would certify the admission, make a record of the admission, and present a copy thereof "authenticated with the county seal of the county seal of the county in which the party shall be admitted [to the applicant]." [§3] The statute then provided that this certificate "shall be available and **sufficient to entitle said applicant so admitted, to practice in any of the courts of this state**." Id. (emphasis added). The specific reference to admission to practice in any state court leads to only one plausible interpretation of what the Constitutional framers meant when they used the term "practice law in this state" in both Sections 4 and 10 of Article V.[5]

Judge Hackner's error lay in his assumption that admission by a single court did not admit one to "practice law in this State," but rather admitted one only to practice only in the court that granted admission; based on this misconception, Judge

[5] The statute also even envisioned allowing attorneys from other states to apply for admission to the courts of Maryland based upon the same criteria applied to Maryland lawyers, if their home states accorded Maryland lawyers the same opportunity, "Provided**,** that in the said state, district or territory, the mode and terms of admission to the bar, be regulated by law." [§ 5].

Hackner mistakenly concluded that, because there was not yet a Maryland Bar regulated by this Court, the framers did not intend "practiced Law in this State" to include, by necessary implication, admission to practice law in Maryland. :

> So that answered at least in my mind the issue of how would these framers envisioned an Attorney General not being a member of the Bar. Well, it would have been simply that the Attorney General when he had a case in one particular county or another would have gone to the court and would have said I'm here I have a case and I would like to be admitted. And as the article the law review article says upon application the courts were required to examine the applicant upon the same day during a regular session thereof. It wasn't a diploma you on your wall that you could count on for the rest of your career that you have to be admitted presumably not more than once but at least once on the day you went to court.

Appx. at Attachment 2, transcript page 66.

That's not what the statute of 1831 said. While the statute did not contemplate a diploma to put on your wall, it did empower the court in which admission was granted to admit attorneys to practice law throughout Maryland.

As a result, the additional requirement for candidates for Attorney General, that they practiced law in this State for at least ten years, must have been understood by the framers to mean that admission to practice law in the state courts of Maryland by virtue of having been admitted to practice by a valid state court in Maryland. The fact that, for administrative purposes, this Court later assumed plenary authority over attorney admissions is irrelevant to the core meaning of the constitutional provision "practiced law in this State."[6]

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[6] By his own admission, Judge Hackner spent most of the weekend before our oral argument trying to satisfy himself on the merits of the argument based that I raised – that the framers could not possibly have intended to require that State's Attorneys be admitted to practice law in Maryland, but that Attorneys General need not. Because this argument gave him "pause," Judge Hackner researched the question and found Adkins, "What Doth the Board Require of Thee?", 28 Maryland Law Review 103 (1968). In fact, he did most, if not all of his research utilizing the resources of the Anne Arundel Bar Library located in the Anne Arundel Courthouse. I found that out

Mr. Perez was admitted to practice in the State courts of Maryland by the Court of Appeals in 2001, 5 years short of the 10 year minimum Constitutional requirement. The ordinary meaning of the language of the Maryland Constitution, the plain intent of the framers of the Maryland Constitution, and other relevant law and authority demonstrate that, by necessary implication, admission to practice law in Maryland for at least ten years is a sine qua non requirement for a candidate for Attorney General of Maryland.

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 Practice Law in Maryland

The cardinal rule of statutory and constitutional interpretation is that courts should give the plain language of text its ordinary meaning. The text's ordinary meaning is construed by reference to both the express language used and by the necessary implications of the language: "'That which necessarily is implied in the statute is as much a part of it as that which is expressed.'" Stanford v. Maryland Police Training and Correctional Comm'n, 346 Md. 374, 379 (1997)(quoting Soper

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when I went to read the law review article immediately after our hearing on the afternoon of Monday, July 31st. When I went to the library and asked for the volume, I was told it was checked out to Judge Hackner's chambers. The next day, after I had obtained a copy of the law review elsewhere, I returned and sought the volume, Statutes of Maryland 1831. I was then informed that the library doesn't own that volume. I believe had Judge Hackner had reviewed the actual text of the statute mentioned in the footnotes of the Law Review article, he would not have mischaracterized the process of Bar admission in 1864 and 1867.

v. Montgomery County, 294 Md. 331, 335 (1982)(emphasis added)(superseded in part by statute)(citing, in turn, Guardian Life Ins. v. Ins. Comm'r, 293 Md. 629, 643 (1982); Chillum-Adelphi v. Board, 247 Md. 373, 377 (1967); and Restivo v. Princeton Constr. Co., 223 Md. 516, 525 (1960)). If there is some uncertainty or ambiguity regarding the ordinary meaning of the express language and its necessary implications, then a court may 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, express and implied, of the phrase "practiced Law in this State," as well as the intent and purpose of the language contemplated by the drafters are perfectly clear: an Attorney General candidate must, at a minimum, have been admitted to practice law in Maryland for at least ten years.

In Brown v. Brown, 287 Md. 273, 277-78 (1980), this Court 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 affect 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).[7]

As the Brown court explained, the first obligation is to give a Constitutional provision "its ordinary and popularly understood meaning." Although there is some authority from other states to the effect that eligibility requirements should be liberally construed, this Court has never so held, and has in fact strictly construed eligibility requirements where the ordinary meaning of the language and its usage in other legal contexts is evident.[8] Here, there is an ordinary, popular understanding of

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[7]This Court 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))

[8] For example, in Oglesby v. Williams, 372 Md. 360 (2002), this Court held that a candidate for State's Attorney of Worcester County did not meet the constitutional eligibility requirement in Article V, § 10, of the Maryland Constitution of Maryland that one must have "resided for at least two years, in the county, or city, in which he may be elected." In so ruling, the Court did not accord a liberal construction to the term "resided," which it equated with "domiciled," even though a more liberal construction could have been adopted. For purposes of the opinion, the Court accepted that the candidate arguably resided in Worcester County for a year and eleven months before the election. The candidate fell one month short, despite the fact that that dating back well before that one month the candidate had purchased real

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, admission to the Maryland bar would be to engage in the type of "forced or subtle interpretation[]" that this Court has expressly disapproved. Price v. State, 378 Md. 378, 387 (2003)(emphasis added).

While the above-described Maryland unauthorized practice of law statutes and rules certainly do not apply of their own force, much less compel a particular interpretation of Article V, § 4's use of the term "practiced Law," those laws are relevant to the analysis of the ordinary meaning of "practiced Law in this State." Cf. Oglesbly, 372 Md. at __ ("This is in accord with our decisions generally that the words "resided" or "resident" in various constitutional and statutory provisions mean "domiciled" or "domiciliary" unless a contrary intent is shown.")(quoting Roberts v. Lakin, 340 Md. 147, 153 (1995)). The language and interpretation of unauthorized practice provisions accords with an interpretation of "practiced Law" as necessarily implying admission to practice 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) meet any requirement that the Court of Appeals may set by rule."[9]

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property in Worcester County, paid property taxes, entered into a construction contract for a new home, paid home-owners' association dues, paid sewer and water fees, received mail in Worcester County, visited Worcester County on an almost daily basis, entered into a contract for the delivery of new appliances to his new home, and became reacquainted (several years earlier, the candidate had lived in Worcester County) with his new area of residence by meeting neighbors and shopping and dining at local establishments. The Court's rejection of these considerations for purposes of the constitutional requirement does not support the proposition that the Court generally gives such requirements a liberal construction.

[9] 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

(Emphasis added.) A similar prohibition of unauthorized practice of law is found in the Maryland Rules of Professional Conduct. *See* MPRC Rule 5.5.[10]

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 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.

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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

[10] 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.

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

In short, because the phrase “practiced Law in this State” has a well-understood, common, and ordinary meaning that necessarily implies admission to practice law in Maryland, that meaning should be adopted, and there should be no need for further analysis. In reaching the conclusion that one could “practice law” in Maryland without being admitted to practice, the circuit court took the broader meaning of the phrase “practice law” and assumed that, because that phrase could have meanings of different meanings depending on context, the phrase “in this State,” ***as it is used in Article V, § 4***, also has an expansive, malleable meaning Appx. at Attachment 2 page 62 (citing In re: Application of R.G. S., 312 Md. 626 (1988)). In particular, the court cited to the language in R.G.S., where this Court noted with approval the an Attorney General Opinion discussing the “practiced Law” phrase. See 68 Md. Op. Atty. Gen. 68 (1983)(the “Kelly Opinion”). While it is true that in the Kelly Opinion, Attorney General Sachs found that Maryland law concerning unauthorized practice of law was not relevant to the analysis of what sorts of legal work constitute "practice[ing] Law," *id.* n.3 (unauthorized practice provisions "inapposite to the quite different issue of a "practice of law" eligibility), an entirely different set of considerations comes into play when analyzing the "in this State" language – considerations that were not at issue in the Kelly Opinion.[11]

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[11] Indeed, the opinion seems to assume that bar membership for 10 years was a threshold requirement -- it is no accident that the opinion's discussion section opens with Dean Kelly's statement, in the first sentence of his summary of qualifications, that "I have been a member of the bar of Maryland since 1968." *Cf.* 64 Op. Att'y Gen. Md. 103 (1979)(attorney could not have been "actively engaged in the general practice of his profession in the State of Maryland for at least five years," as required by Howard County charter for position of County Solicitor because "if one is to lawfully 'practice the profession' of law in Maryland, one first must be admitted to the Maryland bar.")

The Kelly Opinion quite reasonably concluded that legal work outside of the confines of conventional law offices could constitute "practicing law" (without regard to whether the practice was "in this State"): "Article V, § 4 of the Constitution is not limited to the specific forms of legal practice known in 1864. Rather, it 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." In contrast to a broad interpretation of "in this State," a broad understanding of what sorts of lawyering qualify one to run for Attorney General neither expands nor contracts the set of attorneys that the framers of the Constitution intended to include. In other words, this interpretation is faithful to the framers' intent by ensuring that the words have the same scope, in the modern world, that they had in 1864.
No similar consideration would justify a broad reading of what it means to practice law "in this State." An expansive reading of what it means to practice law "in this State" would open the office to attorneys who, both today and in the 19th century, would have little exposure to or experience with Maryland law, regardless of the other practice experience any particular candidate would have. Here, further analysis only confirms that the ordinary meaning of "practiced Law in this State" is exactly the meaning that the framers intended.

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 Admission to Practice Law in Maryland for at Least Ten Years.

Even if the meaning 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,

As discussed in the Introduction above, when the requirements of Article V, § 4 were adopted, individual courts could admit attorneys to practice law in all the state courts of Maryland. Thus, as of 1867, the phrase "practice[] law in the State" had a very definite meaning necessarily implied that the attorney had been admitted, through the admissions process then in effect,[12] to practice law in any of the courts of the State. Both as a matter of fact and of law, the clear understanding of the drafters of the constitution attorneys who had "practice[d] Law in the State for at least ten years" had been admitted to practice in any court of the State for that period of time.

Any different interpretation cannot be reconciled with the historical role of the Attorney General. Article V, § 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 Section 3 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, § 3 of the Constitution of 1864. Most significantly, Article V, § 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, § 3 of the Constitution of 1867.

Kelly Opinion. Not until 1913 was Article V amended to enable the Attorney

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[12] See Turkey Point Property Owners' Association, Inc. v. Anderson, et.al., 106 Md.App. 710 (1994) where Judge Rosalyn B. Bell cited the history of the admission process in Maryland, referencing chapter 268, 1831 Laws of Maryland.

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 practice law in Maryland. Those duties are specified in the 1867 version of Article V, § 3. In other words, the very same section that prohibited the Attorney General from hiring assistants also 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 . . . .

The 1867 version of Article V, § 3 also required that the Attorney General appear in the state courts:

> [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.

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 practice law in Maryland. 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 practice law in Maryland 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 advanced below in support of his radical proposition that an Attorney General candidate need not be member of the Maryland Bar was 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 concluded 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." Perez Memorandum at 10.

Mr. Perez pointed out that the language of the Attorney General requirement contrasted 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, § 10, and for judicial candidates, who are required to "have been admitted to practice law in this State." Article IV, § 2. To his credit, Mr. Perez forthrightly acknowledged that the difference between the Attorney General's requirement and those for State's Attorney and judge raised 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; see also id. ("The framers' failure to include such [admission] language" in the Attorney General requirement "was apparently an intentional decision"). But Mr. Perez plainly misread 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 they used already necessarily implied that admission to practice in the Maryland courts for at least ten years. It is clear from the history of the adoption of Article V, § 4 that the framers understood that it was unnecessary to provide expressly that the Attorney General be admitted to practice law in Maryland for ten years, because 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 practice law in Maryland 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 contended below, 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 practice law in Maryland for all of those ten or more years.

The framers could hardly have imagined any other construction that Mr. Perez has proffers. To interpret "practiced Law in this State for at least ten years" as being intended to delete any admission requirement, instead of necessarily implying admission, is not only a disfavored "forced or subtle interpretation[]," see Price, 378 Md. at 387 (2003); such an interpretation would lead to absurd results. See Comptroller v. John C. Louis Co., 285 Md. 527, 539 (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 practice law in Maryland, but not to require the same for the top lawyer for the entire State of Maryland. Moreover, if, as Mr. Perez argues, admission to practice law in the courts of Maryland 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 had to present his qualifications to a judge of any of the courts of Maryland in the 1860s or to sit for the Maryland bar exam today at some point to appear on such pleadings.

C. Mr. Perez's Reliance on Federal Law That Allegedly Authorized 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 claimed below that it is immaterial that he has not

been admitted to practice law in Maryland for at least ten years because he was authorized to practice law in Maryland by federal law, which, so Mr. Perez argued, supersedes even Maryland's constitutional requirement for Maryland's Attorney General. Setting aside the obvious point that the language of Section 4 does not envision meeting the requirement by being authorized 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. This Court 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., 316 Md. 646 (1989); Att'y Grievance Comm'n of Maryland v. Harris-Smith, 356 Md. 72 (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." Perez Memorandum. 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 admitted to practice law in Maryland 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.

Sperry is distinguishable on other grounds as well. First, the question in Sperry was merely whether a court could enforce an unauthorized practice law that directly conflicted with federal law. But this case does not involve a question of whether Mr. Perez was in fact engaged in unauthorized practice of law in Maryland during the time when he was practicing under the authority of a separate sovereign, the United States. The question is whether, now, that federal practice – which Perry itself recognizes as being distinct from state law practice – is the same thing as practicing law in this State. All of the cases cited that relate to federal practice would support what constitutes the practice of law after admission to the Maryland Bar. But, just as Dean Kelly stated in his request to the Attorney General in 1983, they only address whether the activities performed would meet the test for a properly admitted attorney. They alone would not be a substitute for the Bar requirement.

As discussed in the next section, this is not an appropriate case for the Court to substitute a policy judgment for meaning and intent of a Constitutional provision. Petitioner believes that there are times when necessary societal change cannot be accomplished unless courts take a bold role in accommodating constitutional language to the times, this is emphatically not such a case. If the current language in Article V § 4 is not unconstitutional, it must be left to the Maryland legislature to change it.

D. Were This Court To Find That Mr. Perez, As A Matter Of Law, Satisfied Article V, § 4, It Would Be Acting As A Super-Legislature Without A Compelling Interest To Justify It.

This case presents a fundamental question for this Court to decide – whether it, rather than the Maryland Legislature, should rewrite Article 5 § 4 of the Constitution of Maryland. In layman's terms, the question can be reduced to this -- should the current language of Article V § 4, Qualifications of Attorney-General:

> 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.

which has been in the Constitution since 1864 and survived a Constitutional review intact in 1968, be changed to read:

> No person shall be eligible to the office of Attorney General, who is not a citizen of this State, and a qualified voter therein, who has not resided in this State for at least 10 years, is not presently a member of the Maryland bar, and has not been a member of any State bar in the United States and practiced Law involving issues directly related to this State for at least ten years.

When all of the side issues are stripped from this matter, that is the question this Court must resolve. It takes feats of legal gymnastics, and defies the common sense of the ordinary Maryland lawyer and citizen, to say, honestly, that this provision does not mean that an Attorney General of Maryland need not be admitted to practice law in Maryland for the length of time the Constitution specifies. With all respect to both the current Attorney General and to Judge Hackner, both had institutional reasons to "pass the buck" to this Court. The act of declaring a candidate disqualified is a solemn one, and the consequences for an ongoing campaign would have been grave if either the Attorney General or Judge Hackner had so declared. For either of those state officials to have taken it upon himself to declare Mr. Perez ineligible – with the prospect that this Court might reverse late in the primary season – is the best and, candidly, the only way to understand the legal gymnastics both Mr. Curran and Judge Hackner displayed.

But the "buck stops here." The question in this case is one that only this Court can decide honestly and forthrightly. Petitioner submits that if one looks at the totality of the current Article 5 Section 4 and reads it in conjunction with the legislative context that existed first in 1864 and 1867 and later in 1968, it is clear that the drafters of the Article in the1860s and the reviewers of the Maryland Constitution in 1968 both accepted a traditional view of the meaning of "practice

Law in this State" to mean "conducting the legal business of an attorney admitted to practice law before all of the state courts of Maryland in Maryland." Mr. Perez, while perhaps a fine lawyer, is simply not eligible in 2006 to be elected Attorney General.

This Court certainly has the power to decide this case on policy rather than legal grounds. However, Petitioner submits that power should only be exercised in exceptional cases where a compelling state interest is present. Respectfully, this case is not Brown v. Board of Education, 349 U.S. 294 (1955) nor is it Roe v. Wade, 410 U.S. 113 (1973). It may be compelling to Mr. Perez, but the citizens of Maryland will not be denied an opportunity to select the only professionally qualified candidate for Attorney General if he is removed from the ballot. They will still be able to choose between two able candidates in the Democratic primary and further have at least two able candidates in the General Election to choose from among the major party candidates whose names will appear on the ballot. And Mr. Perez will still have the opportunity to run for Attorney General some day. Respectfully, this Court should not indulge in a forced or subtle interpretation of Article V, § 4 to accommodate Mr. Perez's political aspirations in 2006.

CONCLUSION

For the foregoing reasons, Petitioner Abrams respectfully requests that this Court reverse the judgment of the circuit court; declare that Mr. Perez is not eligible for the office of Attorney General of Maryland in the 2006 election; and enjoin Ms. Lamone and the State Board from placing Mr. Perez's name on the ballot in the 2006 election as a candidate for Attorney General of Maryland.

August 14, 2006

Respectfully submitted,

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Stephen N. Abrams

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of August, 2006, a copy of the foregoing Brief was sent by electronic mail in accordance with agreement of counsel and instructions of the Court to:

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