
**IN THE COURT OF APPEALS
OF MARYLAND**

September Term, 2006

No. 71

NIKOS STANFORD LIDDY,

Appellant,

v.

LINDA LAMONE, et al.,

Appellees.

On Appeal from the Circuit Court for Anne Arundel County
(Ronald A. Silkworth, Judge)
Pursuant to a Writ of Certiorari to the Court of Special Appeals

BRIEF OF APPELLEE DOUGLAS F. GANSLER

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STATEMENT OF THE CASE

The complaint giving rise to this appeal was filed on October 20, 2006, and sought to enjoin Douglas Gansler from “continuing his candidacy for Attorney General of Maryland” and to enjoin the State Board of Elections (“SBE”) from placing Mr. Gansler’s name on the ballot for the general election to be held on November 7, 2006. Complaint at p. 7. The procedural history of this case is set forth at pages 1-2 of the Circuit Court’s Memorandum Opinion (“Mem. Op.”) and is adopted by appellant with the following additions.

The Complaint contained only a conclusory allegation that Mr. Gansler did not meet the requirements set forth in Article V, Section 4 of the Maryland Constitution. The Complaint alleges only that Mr. Gansler has served for eight years as the State’s Attorney for Montgomery County and apart from that “practiced law solely in the District of Columbia.” Complaint at ¶ 17; Mem. Op. at 2-3. Mr. Gansler filed an opposition to plaintiff’s motions supported by an Affidavit detailing his practice of law.¹

During the hearing, plaintiff relied on his own testimony, which provided no greater specificity as to the basis for the challenge. At the Circuit Court’s request, Mr. Gansler appeared and plaintiff called him as a witness.

1. Because there has been no record extract prepared, a copy of the affidavit (“Aff.”), along with a copy of Mr. Gansler’s testimony at the Oct. 25, 2006 hearing (“T.”) is attached as a separately bound Appendix (and as a separate electronic file).

QUESTIONS PRESENTED

1. Did the Circuit Court correctly hold that Douglas Gansler has met the requirements of Article V, Section 4 of the Maryland Constitution inasmuch as he has practiced law in the State for at least ten years.
2. Whether the Circuit Court erred in concluding that a challenge to the qualifications of the duly elected nominee of the Democratic Party for Attorney General could be commenced more than three days after the certification of the primary and barely two weeks before the general election.

STATEMENT OF FACTS

The facts in this case are summarized at pages 3-11 of the Circuit Court's opinion.

The Circuit Court findings of fact establish that Mr. Gansler has been a member in good standing of the Bar of the State of Maryland continuously for seventeen years and has practiced law in Maryland for those seventeen years. Aff. ¶ 1; T. 1. While much of his legal work occurred in Washington, D.C. with two law firms and the United States Attorney's Office, Mr. Gansler has also practiced law in Maryland throughout that entire period. At the most fundamental level, Mr. Gansler has practiced law by holding himself out to the citizens of Maryland as an attorney admitted to practice law in Maryland from 1989 to the present. During those seventeen years, Mr. Gansler has continuously resided in Montgomery County, Maryland, and has been actively involved in the civic and legal life of the County. Through these activities and others, Mr. Gansler has met literally thousands of citizens of Maryland, in Montgomery County and beyond. Mr. Gansler has

been available to represent any citizen in the courts of the State of Maryland or otherwise to engage in the practice of law in the State, as he in fact did during these years.² The development of this wide network of acquaintances of potential clients, pro bono and otherwise, is exactly what successful young lawyers do to develop a law practice. Thus, Mr. Gansler's membership in the Maryland Bar since 1989, his uninterrupted engagement in the practice of law during all those years, and his holding himself out as admitted to practice law in Maryland for all that time suffice to establish that he has "practiced Law in this State for at least ten years."

Mr. Gansler was admitted to the Maryland Bar in 1989, shortly after he began clerking for the Honorable John McAuliffe of the Maryland Court of Appeals. T. 61. In that capacity, he used his legal knowledge, skill, and training to apply legal principles, in the service of Judge McAuliffe and the Court of Appeals. T. 60. After his clerkship with Judge McAuliffe, in 1990, he joined the Litigation Department of Howrey and Simon, a national law firm with its principal place of business in Washington, D.C. At the time, Howrey and Simon represented numerous national clients, including clients with business interests in Maryland. T. 61-62. As a young associate, Mr. Gansler did not have to appear in court in Maryland, but he applied his legal expertise to assist in the representation of several clients with interests in Maryland. T. 62-63. Both the law firm and Mr. Gansler represented to the public that he was licensed to practice law in

2. At certain times, Mr. Gansler's employment would have limited his representation of clients other than the government to pro bono matters.

Maryland and able to provide advice and representation to any client in Maryland. Aff. ¶ 3; T. 62-63.

Throughout the period from 1990 to 1992, Mr. Gansler performed legal work while present in Montgomery County, Maryland and for Maryland citizens and organizations. This work included drafting legal documents and providing analysis of legal rights to individuals, both in connection with work performed for his employers and in connection with his responsibilities on matters handled pro bono. Aff. ¶¶ 6-8, 11; T. 72-73. More generally, Mr. Gansler, on a number of occasions, provided legal advice to individuals, primarily personal acquaintances, friends, and family members.

To take only two specific examples of legal work that Mr. Gansler performed while present in Maryland in the early 1990s: Aff. ¶ 11; T. 75-77.

- From 1990 through 1992 Mr. Gansler served on the Montgomery County Community Partnership, an organization that dealt with drug use in the Montgomery County community. He drew on his legal education, training, and experience to assist in the work of the Partnership; in fact, he was selected because the Partnership wanted a member of a law firm to participate. Meetings of the Partnership and his preparation for the Partnership meetings took place in Maryland. T. 70, 81-83.
- From 1990 through 1993, Mr. Gansler served as a member of the Montgomery County Commission on Aging. In that capacity, he drew on his legal education, training, and experience to assist the Commission on questions involving legal principles that affected the Commission's work, such as the

jurisdiction of various federal, state, and county entities to deal with some of the problems facing our elder citizens in Maryland. As with the Montgomery County Community Partnership, meetings of the Commission and his preparation for Commission meetings took place in Maryland. T. 70-71, 81-83.

From 1992 through 1998, Mr. Gansler served as Assistant United States Attorney for the District of Columbia. In that capacity, he prosecuted over 1,000 cases involving almost every conceivable type of crime, including public corruption, hate crimes, narcotic trafficking, sex offenses, child abuse, economic crimes, gang-related violence and homicides. All these cases were prosecuted in the local and federal courts in the District of Columbia. The Department of Justice prohibited its Assistant United States Attorneys from engaging in the private practice of law, but allowed them to provide pro bono services that included the practice of law. Mr. Gansler frequently did so.

From approximately 1994 through 1998, Mr. Gansler served first as a member and then as Co-Chair of the Montgomery County NAACP Criminal Justice Committee. In that capacity, he assisted the Committee in identifying and analyzing legal issues in the criminal system affecting Montgomery County citizens. This work included reviewing complaints by and counseling individuals who alleged misconduct by the police, as well as identifying those cases that should or could be referred for litigation or other appropriate action because an individual's legal rights had been violated. T. 71, 73-75, 81-83.

From 1996 until the present, Mr. Gansler has served as an Adjunct Professor at the Washington College of Law, American University in Washington, D.C. His preparation for classes took place in Maryland. T. 72.

Mr. Gansler was a civil litigator at Coburn and Schertler from February, 1998 through January, 1999. During this time, the firm and Mr. Gansler represented to the public that he was licensed to practice law in Maryland and able to provide advice and representation to any client in Maryland. During his year at Coburn and Schertler, Mr. Gansler personally represented at least one Maryland resident in an ongoing matter and represented a client at depositions taking place in Maryland. T. 79.

In November 1998, Mr. Gansler was elected State's Attorney for Montgomery County and assumed the office in January 1999. In his capacity as State's Attorney, he has supervised all prosecutions brought in Montgomery County and appeared personally on behalf of the State on several occasions.

ARGUMENT

The Maryland Constitution lists four criteria for eligibility for the office of Attorney General of Maryland: (1) citizenship; (2) qualified voter; (3) ten-year residency in the state; and (4) ten year's legal practice in Maryland. Md. Const., Art. V, § 4. There is no argument that Mr. Gansler satisfies the first three and Mr. Liddy does not contend otherwise. Mr. Liddy also concedes that Mr. Gansler practiced law in this State for eight years, while he has been the Montgomery County State's Attorney.

I. The Circuit Court Correctly Concluded That Douglas F. Gansler Is Eligible to the Office of Attorney General.

There is no dispute that Mr. Gansler has been a member of the bar of this Court for seventeen years. At the time of his admission, this Court made a determination that Mr. Gansler is “qualified to practice law and is of good moral character.” Rules Governing Admission to the Bar of Maryland, Rule 12. For seventeen uninterrupted years, Mr. Gansler has been a member of the bar of this Court. Mr. Gansler has also been a practicing attorney and paid an annual assessment to the Client Protection Fund of the Bar of Maryland. Md. Bus. Occs. & Profs. Ann. Code, § 10-311(c). These facts, without more, conclusively establish that Mr. Gansler is eligible for the office of Attorney General.³

The Circuit Court, in deference to this Court’s continuing consideration of *Abrams v. Lamone*, No. 142, September Term 2005, declined to decide whether bar membership is sufficient to satisfy the constitutional requirement. Mem. Op. at 16-17. This Court, however, is under no such constraint. It should make clear that membership in the bar of this Court by candidate who actually engages in the practice of law satisfies the constitutional requirement that a candidate for Attorney General has practiced Law in this State.

The Circuit Court accepted (because it was uncontroverted and uncontrovertible) that Mr. Gansler has practiced law in Maryland - as the State’s Attorney for Montgomery

3. These facts distinguish Mr. Gansler’s eligibility from that of Thomas Perez, who at the time this Court declared him ineligible, had only been a member of the bar of this Court (and concomitantly, the Client Protection Fund) for five years. See *Abrams v. Lamone*, No. 142, September Term 2005 (per curiam order, Aug. 29, 2006).

County - for at least the last eight years. Mem. Op. at 21. Thus, the Circuit Court constrained itself to “determining whether two year’s ‘worth’ of the remaining . . . years . . . would suffice.” *Id.* The court below held that Mr. Gansler’s numerous legal activities in Maryland, even while maintaining a principal office in Washington, D.C., clearly satisfied the constitutional requirement. *Id.* at 21-23. This conclusion is not only not erroneous, it is indisputably correct.

A. Douglas Gansler has Practiced Law in this State Within the Plain Meaning of Article V, § 4

Article V, § 4 of the Maryland Constitution, entitled “Qualifications of Attorney General,” provides:

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.

The term “practice Law in the State” has an ordinary meaning in common usage, in today’s world as in the nineteenth century. The term “practiced law in this State” should be given the construction that effectuates the intent of the framers. *Brown v. Brown*, 287 Md. 273, 278 (1980). “Such intent is first sought from the terminology used in the provision, with each word being given its ordinary and popularly understood meaning . . .” *Id.* (citations omitted). If the words are not ambiguous, the inquiry into meaning ends. If examination of the language demonstrates ambiguity, then the inquiry turns to ascertain the reason which induced the framers to enact the provision and the purpose sought to be accomplished. *Id.* (quoting *Perkins v. Eskridge*, 278 Md. 619, 640-41 (1976)).

This Court “has always found it difficult to craft an all encompassing definition of the ‘practice of law,’” but has stated that “[t]o determine whether an individual has engaged in the practice of law, the focus of the inquiry should ‘be on whether the activity in question required legal knowledge and skill in order to apply legal principles and precedent.’” *Attorney Grievance Comm'n of Maryland v. Hallmon*, 343 Md. 390, 397, 681 A.2d 510, 514 (1996) (quoting *In re application of Mark W.*, 303 Md. 1, 8 (1985)). Without limiting its authority to define the term “practice law,”⁴ the Court of Appeals derives “some guidance” from the definition in the Maryland Code of the Business Occupations & Professions Article, § 10-101(h):

(1) “Practice law” means to engage in any of the following activities:

- (i) giving legal advice;
- (ii) representing another person before a unit of the State government or of a political subdivision; or
- (iii) performing any other service that the Court of Appeals defines as practicing law.

(2) “Practice law” includes:

- (i) advising in the administration of probate of estates of decedents in an orphans’ court of the State;
- (ii) preparing an instrument that affects title to real estate;

4. Although the term “[p]ractice law” is defined by statute, the interpretation of “[w]hat constitutes the practice of law is a determination that, ultimately, [the Court of Appeals] makes.” *Attorney Grievance Comm’n of Maryland v. Shaw* at 648 (citing *Public Serv. Comm’n v. Hahn Transp., Inc.*, 253 Md. 571, 583, 253 A.2d 845, 852 (1969); *Lukas v. Bar Ass’n of Montgomery County, Inc.*, 35 Md. App. 442, 447, 371 A.2d 669, 67, cert. denied, 280 Md. 733 (1977)).

- (iii) preparing or helping in the preparation of any form or document that is filed in a court or affects a case that is or may be filed in a court;
or
- (iv) giving advice about a case that is or may be filed in a court.

This Court has held that the more restrictive – but still very liberal – interpretation of “practice of law” includes “[u]tilizing legal education, training, and experience [to apply] the special analysis of the profession to a client’s problem.” *Kennedy v. Bar Ass’n of Montgomery County, Inc.*, 316 Md. 646, 662, 561 A.2d 200, 208 (1989); *see also Attorney Grievance Comm’n of Maryland v. Shaw*, 354 Md. 636, 732 A.2d 876 (1999) (“Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer.”) (quoting *Louisiana State Bar Ass’n v. Edwins*, 540 So. 2d 294, 299 (La.1989)). Even if one does not appear in a Maryland court or drafts legal documents, the “acts of interview, analysis and explanation of legal rights constitute practicing law in Maryland.” *Kennedy* at 666, 561 A.2d at 210.

In the exercise of its inherent authority to determine what amounts to the practice of law, this Court has stated that the phrase “practiced law” in the Article V, § 4 of the Maryland Constitution “means something quite different from (and *much less restricted* than) the meaning of ‘practice of law’” in other contexts, such as cases involving the unauthorized practice of law. *In re Application of R.G.S.*, 312 Md. 626, 637 (1988) (emphasis added). The Maryland Lawyer’s Rules of Professional Conduct treat the act of holding oneself out as a Maryland attorney as “practic[ing] law” because a person who does so without a license would be engaged in the unauthorized practice of law. MLRPC Rule 5.5 (Unauthorized Practice of Law; Multi-Jurisdictional Practice of Law) provides:

(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.

Since 1989, Mr. Gansler has held himself out as practicing law in Maryland.

Mr. Gansler's actual legal work, throughout his seventeen years as a Maryland Bar member and within the territorial boundaries of Maryland, has comprised a number of activities that have "utilized his legal education, training, and experience." These activities requiring legal expertise readily satisfy the statutory and judicially adopted descriptions of "practice [of] law."

Because Mr. Gansler satisfies this more restrictive standard, he also readily satisfies, *a fortiori*, the "quite different . . . and much less restricted" standard that the Court previously has stated (albeit in dicta) that it would use to interpret the Constitutional eligibility requirement -- "practiced Law in this State for at least ten years" -- in Article V, § 4 of the Maryland Constitution. *See R.G.S.* at 637.

In *R.G.S.* the Court cited to an Opinion of Attorney General Stephen H. Sachs, which will be referred to as the Kelly Opinion, that squarely addressed the meaning of Article V, § 4. In that Opinion, Attorney General Sachs opined that a law school dean, who described his work as primarily administrative, was practicing law within the

meaning of the Constitutional eligibility requirement. The threshold showing that the law school dean made was that he had been a member of the Maryland Bar for 15 years.

Attorney General Sachs said that, for Constitutional purposes, practicing law in Maryland means “the application of personal legal expertise to a range of issues” that might arise in all sorts of settings. Such activities would include:

- “consultation with individuals and public and private institutions, sometimes in addition to, sometimes as part of [one’s] official duties”;
- informal legal advice or opinions to third persons;
- service on boards and committees where one’s legal background contributed in some manner to the board’s or committee’s work;
- participation in conferences and other professional activities of local, state, and national bar associations;
- “administrative duties [that] entail the exercise of legal judgment--for example, ‘[a]ssessment of federal law and regulations applicable to administration of grants and contracts with agencies of U.S. government’”;
- “shaping legal policy” for a public or private entity;
- work as or *for* a judge; thus, a judicial clerkship while a bar member would count;
- holding oneself out to the public as a practicing Maryland attorney, e.g., being listed in a public record of Maryland attorneys, such as the Maryland Law Manual, Martindale Hubbard, or other such lists would also count.

68 Op. Atty. Gen. Md. 48.

Under any application of any interpretation of the phrase “practiced Law in this State for at least ten years,” Mr. Gansler’s experience meets and exceeds the constitutional requirement. In fact, even using an unworkable and strained interpretation of the Constitutional eligibility requirement, under which one would start and stop a “constitutional clock” to measure the precise length of time that Mr. Gansler performed

legal work while physically present in Maryland, he has practiced law in Maryland well in excess of the required ten years.

The fact that Mr. Gansler was licensed to practice law by the State of Maryland and did practice law, without more, establishes that Mr. Gansler is eligible for the Office of Attorney General of Maryland. But the record also establishes that Mr. Gansler was in fact active in practicing law, within the geographical boundaries of Maryland, during the years from 1989 until he became State's Attorney in 1998.

B. The Circuit Court's Interpretation of the Term "Practiced Law in the State" is Consistent With the Purpose of Article V, § 4.

The Maryland Constitution of 1776 provided that "the governor . . . , with the advice and consent of the council, may appoint . . . the attorney general". Article 48. *See* 68 Op. Atty. Gen. Md. 48 at *2. In 1817 the Constitution was amended to repeal all references to the Attorney General. *Id.* Later, the Constitution of 1851 empowered the Governor, '[w]hen the public interest requires it, . . . to employ counsel.' *Id.* citing Article II, § 21. The position of Attorney General finally was reestablished by the Constitution of 1864. *Id.*

The qualifications sought for Attorney General are reflected in the 1864 debates and were those of a general practitioner with extensive litigation experience -- in short, "one who will be called upon to apply himself to the practice of law in all its branches". *Id.* (citing *The Debates of the Constitutional Convention of the State of Maryland, Vol. I, at 1465 (1864) (remarks of Smith)*). The expectation was that someone who in private practice personally handled a wide array of litigation and counseling duties -- as most

experienced lawyers at the time did -- would personally conduct the same kind of practice no behalf of the State. 68 Op. Atty. Gen. Md. 48 at *4.

The purpose of this requirement was to ensure that the Attorney General be qualified to conduct legal business of the State, which included “to attend to the preservation of the rights of the people,” Debates and Proceedings of the Maryland Reform Convention, Vol. I, at 530 (1851), serve as “the adviser of the Governor, of the Legislative, and of every executive officer,” *id.* at 523, and be able to ascertain the “construction of laws” and the powers and duties of government, *id.*

At the time Article V, § 4 was enacted, as today, the practice of law encompassed more than litigation in the Maryland courts; it included providing legal advice in probate, industry, trade, finance, real estate, tax and other matters reflecting the full spectrum of human interaction. *See, e.g.*, L. Friedman, *A History of American Law* at 270-72 (1973); M. Mayer, *The Lawyers* at 5 (1966). Holding oneself out as a lawyer was part and parcel of the practice of law. The historical purpose and understanding of the practice of law is consistent with this Court’s previous interpretation of the practice of law in the decisions cited above. *See supra* at 8-11.

Contrary to the argument present on behalf of Mr. Liddy below, there was no intent, nor is there any basis, to equate the Constitutional provision with the requirement that an attorney enter an appearance in cases filed in the Maryland courts. Nor is there any basis for engrafting an additional requirement that the practice of law take place within the geographical confines of Maryland. Well before the enactment of the provision, Maryland lawyers practicing law in Maryland conducted legal activities

outside of Maryland. Early federal constitutional conventions, arbitration and negotiations over the boundaries of Virginia and Maryland and appearances at the Supreme Court all involved the practice of law, and took lawyers out of State to conduct those activities. So, too, would the interviewing of witnesses or the taking of depositions. Lawyers conducting such activities by license of the Maryland bar are engaged in the practice of law in the State of Maryland and legally subject to this state's jurisdiction.

The Circuit Court's determination comports with the purpose of Art. V, § 4 because it ensures that a person with Mr. Gansler's varied and interesting career, who is well suited to the varied demands of the office, is eligible.

II. Constitutional "Eligibility" is Not Synonymous with Constitutional "Qualification" and this Court is the Final Arbiter of Mr. Gansler's Eligibility

Appellant Liddy, in his petition for writ of certiorari, seems to argue that the question of eligibility as Attorney General must be decided twice—first, by this Court under Article V, § 4, and then again, by the Governor, pursuant to Article V, § 2. *Petition for Writ of Certiorari* at 2. According to Liddy, this Court must "delineate" "parameters and guidelines" for the Governor to conduct this secondary review. *Id.* This misconceives the constitutional framework.

It is the duty of the State Board of Elections in the first instance to determine if a candidate satisfies the four criteria for eligibility under Article V, § 4. A challenge to a candidate's eligibility may be heard in the courts and presents a justiciable question for this Court. *See Abrams v. Lamone*, No.142, September Term 2005 (per curiam order, Aug. 25, 2006) (judicially determining that candidate for Attorney General failed to meet

constitutional standard for eligibility). The trial court correctly understood its role in this constitutional scheme. Mem. Op. at 16-17. On appeal, this Court is the final arbiter of the meaning of the constitutional eligibility requirements, including what is meant by the phrase “practiced Law in this State for at least ten years.”

The Governor’s role, by contrast, is limited to determining the winner of the election and to supervising that person’s swearing in. Md. Const., Art. V, § 2. The Governor is not given a roving commission to determine eligibility, but only to oversee that the Attorney General-elect “qualifies.” “Qualifying,” as used in our constitution, has a narrowly circumscribed meaning that is synonymous with taking the oath of office:

Any officer elected or appointed in pursuance of the provisions of this Constitution, may *qualify*, either according to the existing provisions of law, in relation to officers under the present Constitution, or before the Governor of the State, or before any Clerk of any Court of Record in any part of the State; but in case an officer shall qualify out of the County in which he resides, an official copy of his oath shall be filed and recorded in the Clerk’s office of the Circuit Court of the County in which he may reside, or in the Clerk’s office of the [Circuit] Court [for] Baltimore [City], if he shall reside therein.

Md. Const., Art. I, § 10 (emphasis added); *see also* 58 Op. Atty. Gen. Md. 683, 686 (August 23, 1973). That is why the Maryland Declaration of Rights provides “[t]hat no religious test ought ever to be required as a *qualification* for any office of profit or trust in this State.” Md. Decl. of Rts., Art. 37 (emphasis added). Similarly, the Maryland constitution frequently provides that the terms of office of constitutional officers end when a “successor is elected and qualified.” *See, e.g.*, Art. IV, § 25 (clerks of court); § 41 (register of wills); § 44 (sheriffs); and Art. V, § 1 (Attorney General). Properly

understood, therefore, the Governor's role is to ensure that the democratic process is effectuated (by confirming that the candidate with the most votes assumes the office), not to undermine it (by conducting a second, post-election review of the Attorney General-elect's eligibility). Dan Friedman, *Eligibility of Attorney General Candidate Presents a Justiciable Controversy*, *The Daily Record* (Sept. 8, 2006).

III. The Relief Sought by Liddy is Barred by Laches and Section 12-202 of the Election Law.

Section 12-202(b) of the Election Law allows a registered voter to seek judicial relief from any act or omission relating to an election, provided the relief is sought "within the earlier of" (1) ten days after the act of omission became known to the petitioner or (2) seven days after the election results are certified. Md. Ann. Code, Election Law, § 12-202(b). The act or omission of which Mr. Liddy complains is Mr. Gansler's candidacy for Attorney General and the inclusion by the State Board of Mr. Gansler's name on the ballot. However early that act or omission has occurred, it is beyond cavil that it occurred no later than the primary election held more than a month before Mr. Liddy filed his complaint. Thus, he is banned from seeking judicial relief.

The lack of any finality threatens substantial prejudice to voters and the electoral process. Purposeful or inadvertent delay could give rise to last minute challenges in all elections. Moreover, successful challenges may lead to further challenges. Finality is essential.

Laches properly attach when a delay in bringing a claim prejudices the defendants and the electorate. *Ross v. State Board of Elections*, 387 Md. 649, 671-72 (2005). Both

delay and prejudice are present here. In fact, it is difficult to recognize any other case with greater prejudice and delay. If laches is to serve as a bar to dilatory claims that threaten the right of citizens to vote for a candidate of their choice this is the case in which it should be applied.

That there has been delay is undeniable. Mr. Gansler filed his certificate of candidacy on June 28, 2006, prior to the July 3, 2006 deadline for doing so. The primary ballot was certified on July 24, 2006. The primary election was held on September 12, 2006 and the results of the primary were certified on September 26, 2006. Plaintiff filed his complaint on October 20, 2006 but did not serve process until October 25, 2006. Plaintiff Liddy advances no incapacity or other excuse for the delay.⁵

CONCLUSION

For the reasons stated above, the judgment of the Circuit Court should be affirmed.

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Pursuant to Md. Rule 80504(a)(8), this brief has been printed with proportionally spaced type: Times New Roman - 13 pt.

5. Though he reads newspapers and watches television, Mr. Liddy made his first inquiry as to Mr. Gansler's qualifications on October 16, 2006. Complaint at p. 8.

TEXT OF PERTINENT PROVISIONS, STATUTES AND
RULES

**TEXT OF PERTINENT CONSTITUTIONAL PROVISIONS,
STATUTES, RULES, AND REGULATIONS**

I. ARTICLE V

A. ATTORNEY-GENERAL AND STATE'S ATTORNEYS.

- Attorney General
- State's Attorneys

a. *Attorney-General.*

SEC. 1. There shall be an Attorney-General elected by the qualified voters of the State, on general ticket, on the Tuesday next after the first Monday in the month of November, nineteen hundred and fifty-eight, and on the same day, in every fourth year thereafter, who shall hold his office for four years from the time of his election and qualification, and until his successor is elected and qualified, and shall be re-eligible thereto, and shall be subject to removal for incompetency, willful neglect of duty or misdemeanor in office, on conviction in a Court of Law (*amended by Chapter 99, Acts of 1956, ratified Nov. 6, 1956*).

SEC. 2. All elections for Attorney-General shall be certified to, and returns made thereof by the Clerks of the Circuit Courts for the several counties, and the Clerk of the Superior Court of Baltimore City, to the Governor of the State, whose duty it shall be to decide on the election and qualification of the person returned; and in case of a tie between two or more persons, to designate which of said persons shall qualify as Attorney-General, and to administer the oath of office to the person elected.

SEC. 3. (a) The Attorney General shall:

(1) Prosecute and defend on the part of the State all cases pending in the Appellate Courts of the State, in the Supreme Court of the United States or the inferior Federal Courts, by or against the State, or in which the State may be interested, except those criminal appeals otherwise prescribed by the General Assembly.

(2) Investigate, commence, and prosecute or defend any civil or criminal suit or action or category of such suits or actions in any of the Federal Courts or in any Court of this State, or before administrative agencies and quasi legislative bodies, on the part of

the State or in which the State may be interested, which the General Assembly by law or joint resolution, or the Governor, shall have directed or shall direct to be investigated, commenced and prosecuted or defended.

(3) When required by the General Assembly by law or joint resolution, or by the Governor, aid any State's Attorney or other authorized prosecuting officer in investigating, commencing, and prosecuting any criminal suit or action or category of such suits or actions brought by the State in any Court of this State.

(4) Give his opinion in writing whenever required by the General Assembly or either branch thereof, the Governor, the Comptroller, the Treasurer or any State's Attorney on any legal matter or subject.

(b) The Attorney General shall have and perform any other duties and possess any other powers, and appoint the number of deputies or assistants, as the General Assembly from time to time may prescribe by law.

(c) The Attorney General shall receive for his services the annual salary as the General Assembly from time to time may prescribe by law, but he may not receive any fees, perquisites or rewards whatever, in addition to his salary, for the performance of any official duty.

(d) The Governor may not employ any additional counsel, in any case whatever, unless authorized by the General Assembly (*amended by Chapter 663, Acts of 1912, ratified Nov. 4, 1913; Chapter 10, Acts of 1966, ratified Nov. 8, 1966; Chapter 545, Acts of 1976, ratified Nov. 2, 1976*).

SEC. 4. 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.

SEC. 5. In case of vacancy in the office of Attorney General, occasioned by death, resignation, removal from the State, or from office, or other disqualification, the Governor shall appoint a person to fill the vacancy for the residue of the term (*amended by Chapter 681, Acts of 1977, ratified Nov. 7, 1978*).

SEC. 6. It shall be the duty of the Clerk of the Court of Appeals and the Clerks of any intermediate courts of appeal, respectively, whenever a case shall be brought into said Courts, in which the State is a party or has

SUBTITLE 2. JUDICIAL REVIEW OF ELECTIONS

b. § 12-202. Judicial challenges.

(a) In general.- If no other timely and adequate remedy is provided by this article, a registered voter may seek judicial relief from any act or omission relating to an election, whether or not the election has been held, on the grounds that the act or omission:

(1) is inconsistent with this article or other law applicable to the elections process; and

(2) may change or has changed the outcome of the election.

(b) Place and time of filing.- A registered voter may seek judicial relief under this section in the appropriate circuit court within the earlier of:

(1) 10 days after the act or omission or the date the act or omission became known to the petitioner; or

(2) 7 days after the election results are certified, unless the election was a gubernatorial primary or special primary election, in which case 3 days after the election results are certified.

c. § 12-203. Procedure.

(a) In general.- A proceeding under this subtitle shall be conducted in accordance with the Maryland Rules, except that:

(1) the proceeding shall be heard and decided without a jury and as expeditiously as the circumstances require;

(2) on the request of a party or sua sponte, the chief administrative judge of the circuit court may assign the case to a three-judge panel of circuit court judges; and

(3) an appeal shall be taken directly to the Court of Appeals within 5 days of the date of the decision of the circuit court.

MARYLAND RULES OF PROFESSIONAL CONDUCT

Rule 5.5 Unauthorized Practice of Law; Multi-Jurisdictional Practice of Law

(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.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

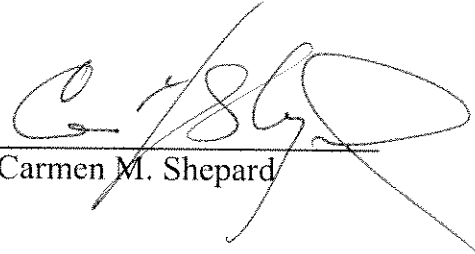
(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 31st day of October, 2006, a copy of the Brief of Appellee Douglas F. Gansler, was sent by e-mail and mailed by first-class mail, postage prepaid, to the following:

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