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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

THOMAS G. DEL BECCARO, et al., Plaintiffs and Contestants, **v.** **EDMUND GERALD "JERRY" BROWN JR., etc., et al.,** Defendants.	Case No. 06AS04494 **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO ELECTION CONTEST AND FIRST AMENDED COMPLAINT** Hearing Date: February 9, 2007 Time: 1:30 p.m. Assigned for All Purposes to the Honorable Gail D. Ohanesian Department 11 Action Filed: October 19, 2006

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INTRODUCTION

This case involves the meaning of one sentence: "No person shall be eligible to the office of Attorney General unless he shall have been admitted to practice before the Supreme Court of the state for a period of at least five years immediately preceding his election or appointment to such office." (Gov. Code, § 12503 [hereinafter "section 12503"].)

Defendants State Controller and the Attorney General[1] submit that the phrase "admitted to practice before the Supreme Court" clearly and unambiguously refers to an applicant's admission, by the Supreme Court, as an attorney at law, and once admitted, an attorney retains that status unless the Supreme Court orders otherwise. Moreover, even if the plain meaning rule did not apply, applicable law and other well-established policy – the rights of voters, and the fundamental right to seek and hold public office – demonstrate that plaintiffs' construction of section 12503 cannot be adopted.

Thus, plaintiffs' election contest must be denied and the remaining causes of action set out in the First Amended Complaint should be ordered dismissed with prejudice.

ARGUMENT

A. THE PLAIN LANGUAGE OF GOVERNMENT CODE SECTION 12503 DOES NOT DISQUALIFY VOLUNTARILY INACTIVE MEMBERS OF THE STATE BAR FROM ELIGIBILITY TO THE OFFICE OF ATTORNEY GENERAL.

In this case, the plain language rule controls and section 12503 means exactly what it says – admitted to practice before the Supreme Court. Such admission occurs when the Supreme Court admits an applicant as an attorney, and the attorney retains that status unless the Supreme Court orders otherwise.

In construing any statute the courts must first look to its language. (*S.B. Beach Properties v. Berti* (2006) 39 Cal.4th 374, 379.) "Words used in a statute . . . should be given the meaning they bear in ordinary use. If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature . . . ." (*Ibid.*,

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1. Defendants file this brief, in their official capacities only, in order to explain the reasons why plaintiffs' election contest must be denied and their lawsuit dismissed. Defendant Edmund G. Brown Jr., in his individual capacity, is separately represented in this lawsuit.

quoting *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) If "the words of a statute, when given their ordinary and popular meaning, are reasonably free of uncertainty, courts will look no further to ascertain the statute's meaning." (*County of Orange v. Flournoy* (1974) 42 Cal.App.3d 908, 912.) "If the statutory language contains no ambiguity, the Legislature is presumed to have meant what it said, and the plain meaning of the statute governs." (*Stephens v. County of Tulare* (2006) 38 Cal.4th 793, 802, quoting *People v. Johnson* (2002) 28 Cal.4th 240, 244.)

1. Admission to Practice Law in All of California's Courts Occurs Upon Order of the Supreme Court, and Only the Supreme Court Can Revoke That Status.

Section 12503 unambiguously states that any person "admitted to practice before the Supreme Court of the State" for at least five years immediately preceding election or appointment is eligible to the office of Attorney General. Admission "to practice law . . . in all the courts of this State," occurs upon order of our Supreme Court. (Bus. & Prof. Code, § 6064; *Saleeby v. State Bar* (1985) 39 Cal.3d 547, 557 [in the area of admission to practice, an applicant is admitted only by order of the Supreme Court].) And the Supreme Court may admit an individual to practice upon his or her certification for admission after passing California's general bar exam and meeting various other statutory prerequisites. (Bus. & Prof. Code, §§ 6060, 6064, 6067.) Such an individual is thereafter admitted to practice before the Supreme Court, and the attorney retains that status unless and until the Supreme Court orders otherwise. (Bus. & Prof. Code, § 6100.)

Only the Supreme Court performs the act of admission, and only the Supreme Court can revoke this status. (Bus. & Prof. Code, § 6100.) Thus, a voluntarily inactive member of the State Bar nevertheless retains their status of having been admitted to practice before the State Supreme Court. When a voluntarily inactive Bar member becomes active again, he or she is not "re-admitted" by the Supreme Court – the Supreme Court has no involvement in this process because the member has already been admitted. The State Bar simply performs a nondiscretionary, ministerial duty in processing a member's request to reinstate their "active" status. (Bus. & Prof. Code, § 6006 ["those who are enrolled as inactive members at their request

may, on application and payment of all fees required, become active members"].)[2/] But "voluntary inactive" status has no bearing on whether an individual has been "admitted to practice before the Supreme Court" by order of the Supreme Court.

2. The Legislature Did Not Draw a Distinction Between "Active" and "Inactive" State Bar Membership When it Enacted Government Code Section 12503.

Tellingly, the Legislature did not distinguish between "active" and "inactive" State Bar membership when it established the eligibility requirements for the office of Attorney General, as it has in many other contexts. (See, e.g., Bus. & Prof. Code, § 467(b) ["at least four of the persons appointed to the [dispute resolution] advisory council shall be *active* members of the State Bar of California" (emphasis added)]; Bus. & Prof. Code, § 6015 ["no person is eligible for attorney membership on the board [of governors of the state bar] unless he or she is an *active* member of the State Bar" (emphasis added)].) Indeed, the Legislature itself expressly established these two classes of members of the State Bar in 1927. (Stats. 1927, ch. 34, §§ 4-7 [original State Bar Act]; see also Bus. & Prof. Code, § 6003.) Yet when the Legislature enacted section 12503 in 1966, it chose not to differentiate between "active" and "inactive" members. Nor did the Legislature include a requirement that the candidate for the office of Attorney General be a "practicing attorney" prior to election or appointment, though it no doubt was aware of such a requirement in other contexts. (See, e.g., Gov. Code, § 27701 ["a person is not eligible to the office of public defender unless he has been a practicing attorney in all of the courts of the State for at least the year preceding the date of his election or appointment"].) Instead, the Legislature clearly specified that an individual need only be "admitted to practice before the Supreme Court of the State." And the process for obtaining "admission to practice law . . . in all the courts of

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2. Section 6006 also clarifies that "those who are or have been enrolled as inactive members at their request are members of the State Bar for purposes of Section 15 of Article VI of the California Constitution," because section 6002 states that the "members of the State Bar are all persons admitted and licensed to practice law in this State *except* justices and judges of courts of record during their continuance in office." (Emphasis added.) By statute, although judges are admitted and licensed to practice law, they must voluntarily become inactive members and are generally not considered members of the State Bar. Judges nevertheless remain "admitted" to practice during their tenure, though they are voluntarily inactive.

this State" has been settled for generations – the Supreme Court does so by court order and a voluntary inactive member remains admitted as an attorney unless the Supreme Court orders otherwise.[3] Further, since the State Bar is a mere "administrative assistant" to the Supreme Court, it has no independent power to affect an attorney's status as having been "admitted to practice before the Supreme Court of the state." (*Saleeby v. State Bar, supra*, 39 Cal.3d at p. 557 [in the areas of admission and discipline of attorneys, the State Bar's role has "consistently been articulated as that of an administrative assistant to or adjunct of" the Supreme Court]; see also 75 Ops.Cal.Atty.Gen. 137 (1992) [the State Bar acts in an advisory capacity to the Supreme Court on matters of admission to practice, disbarment and suspension, and establishing ethics rules; the State Bar was created, not to participate in the general government of the State, but to provide specialized professional advice to those with the ultimate responsibility of governing the legal profession].)

Such a plain reading of section 12503's unambiguous language promotes the public interest.[4] For example, this reading recognizes that an individual sitting as a superior court judge, appellate court justice, or Supreme Court Justice in California for the past five or more years is eligible to the office of Attorney General, despite the fact that he or she has been on voluntary inactive status with the State Bar during their entire tenure on the bench. (Bus. & Prof. Code, § 6002.) Adopting plaintiffs' interpretation and reading an "active" status requirement

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3. The admission to practice law has always been a function of the Supreme Court. (See Stats. 1927, ch. 34, § 24 [original State Bar Act provision regarding Supreme Court admission to practice law, grandfathering-in prior uncodified process for admission by Supreme Court].) The bar examination process for gaining admission, by the Supreme Court, to practice law was first codified in 1937. (Stats. 1937, ch. 503, §§ 4, 6.) The original 1927 version of the State Bar Act was repealed and replaced in 1939. (Stats. 1939, ch. 34, § 1.)

4. Plaintiffs' reliance on *Johnson v. State Bar of California* (1937) 10 Cal.2d 212, is misplaced. In *Johnson*, the petitioner's admission to practice before the Supreme Court had been suspended for three years *by the Supreme Court itself*. (*Id.* at p. 214.) Disbarment and suspension by the Supreme Court carry the same exact effect. (Bus. & Prof. Code, § 6117.) Moreover, unlike a suspended attorney, a voluntarily inactive attorney can immediately become active upon request to the Bar and payment of fees. (Bus. & Prof. Code, § 6006.) By contrast, the Supreme Court has ultimate authority over applications for reinstatement of a disbarred or suspended attorney. (*Resner v. State Bar of Cal.* (1967) 67 Cal.2d 799, 805.)

into section 12503 would disqualify every sitting judge in the State from seeking the office of Attorney General. Such an absurd result would be mandated were the Court to read plaintiffs' "active" status requirement into section 12503.

The ordinary and plain meaning of the phrase "admitted to practice before the Supreme Court of the State" is one who has been admitted as set forth in the Business and Professions Code. (See Bus. & Prof. Code, §§ 6060, 6064, 6067.) Only the Supreme Court can revoke a member's admission to practice before the Court. And voluntarily inactive members of the State Bar of California nevertheless remain members "admitted to practice before the Supreme Court of the State" unless and until the Supreme Court, by order, changes that status. Therefore, the plain language of section 12503 cannot be read to limit eligibility to the office of the Attorney General to only "active" members of the Bar.

B. THE RIGHT TO SEEK AND HOLD PUBLIC OFFICE IS A FUNDAMENTAL RIGHT AND ANY RESTRICTIONS ON THAT RIGHT MUST BE CONSTRUED IN A MANNER THAT RESPECTS THE VOTERS' RIGHT TO VOTE FOR CANDIDATES OF THEIR CHOICE, AND FAVORS ELIGIBILITY TO PUBLIC OFFICE.

As demonstrated above, the plain language rule controls here. But even if the court finds the plain meaning rule inapplicable, other well-established public policies require the court to interpret section 12503 in a manner that is consistent with Business and Professions Code 6064. Specifically, when construing rules regarding eligibility and qualifications to seek and hold public office the court must, where possible, adopt an interpretation that favors eligibility.

When interpreting restraints upon the eligibility for elective office, courts must be mindful that such restraints affect the public's core right to vote for candidates of their choosing. (*Zeilenga v. Nelson* (1971) 4 Cal.3d 716, 721.) Moreover, the right to hold public office is also one of our valuable, fundamental rights of citizenship. (*Helena Rubenstein Internat. v. Younger* (1977) 71 Cal.App.3d 406, 418.) Thus, section 12503 cannot be interpreted to prohibit or curtail one's eligibility unless the statute clearly and plainly provides therefor. (*Ibid.*) And if there is any ambiguity in section 12503, the statute must be construed in a manner that favors eligibility. (*Ibid.*)

Consequently, in order to give proper deference to the voters' interests, section 12503 must be construed with the aim of achieving the salutary purpose of allowing the voters to choose who, among a broad pool of eligible candidates, they deem to be the most suitable to serve as their Attorney General. Unless section 12503's "admitted to practice before the Supreme Court" language clearly and plainly requires something more than Business and Professions Code section 6060, et seq., then section 12503 cannot be interpreted in a manner that would curtail the right to seek and hold the office of Attorney General.

1. Government Code Section 12503 Must Be Construed in a Manner That Gives Deference to the Voters' Right to Vote For the Candidates of Their Choice.

As our Supreme Court acknowledged 35 years ago, a restraint upon eligibility for elective office is a restraint upon the people's right to vote as well. (*Zeilenga v. Nelson, supra*, 4 Cal.3d at p. 721 [invalidating five-year residency requirement for county supervisor candidates on equal protection grounds].) Consequently, "a qualification for office must relate to the needs of office-holding as such or the special needs of the particular office involved, with the voters free to judge the personal or individual fitness of the candidates who have those basic qualifications." (*Ibid.*, quoting *Gangemi v. Rosengard* (N.J. 1965) 44 N.J. 166, 171 [207 A.2d 665, 667] [invalidating two-year residency requirement for elective office].) Indeed, our system of government leaves it to the voters – not judges or juries – to determine what facts are germane to a candidate's suitability for public office. (*Vogel v. Felice* (2005) 127 Cal.App.4th 1006, 1019.) With these policies in mind, it is clear that one of section 12503's underlying public purposes is to make available for public service a broad pool of California's legal minds who are willing to serve as attorney general, and allow the voters to choose the candidate they find most suitable for the job.

The weight given to the voters' right to pick candidates of their choice illustrates the unreasonable construction plaintiffs place on section 12503. Plaintiffs' argue that section 12503 must be interpreted to require a candidate to have "been actually practicing law, [as] an *active* member of the State Bar . . . ." (Plaintiffs' Pts. & Auth. at 1:7-8, original italics.) But just because one may be an "active" member of the Bar does not necessarily mean the member is

"actually practicing law." And clearly, prior to the election, the nature and extent of the candidates' legal acumen, experience, and myriad other matters of interest are certainly things the voters are capable of evaluating, debating and vetting when they decide who they believe to be best suited to serve as their Attorney General. (See *Vogel v. Felice, supra*, 127 Cal.App.4th at p. 1010.)

2. Because the Ability to Seek and Hold Public Office Is a Fundamental Right, Eligibility Statutes Must Be Construed in Favor of Eligibility.

In addition to affecting the right to vote, eligibility requirements also impact the fundamental right to seek and hold public office. Thus, it is also well-established policy that restrictions on holding public office must be narrowly construed and resolved in favor of eligibility, and the right to hold public office can be curtailed only if the law clearly provides therefor.[5/] Consequently, to the extent section 12503 restricts the pool of candidates who may seek election to the office of Attorney General, the restrictive language must be narrowly construed. And should the court find any ambiguity in the statute, the ambiguity must be resolved in favor of eligibility.

As explained in *Helena Rubenstein Internat. v. Younger, supra*, 71 Cal.App.3d at p. 418, "[i]n California, the right to hold public office has long been recognized as a valuable right of citizenship." Thus, one's exercise of their right to seek and hold elected or appointed public office should not be declared prohibited or curtailed except by plain provisions of law, and any ambiguity must be resolved in favor of eligibility to office.

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5. Notably, section 12503 is worded in the negative ("no person shall be eligible . . . unless . . . ."). Under another applicable rule of statutory construction (*expressio unius est exclusio alterius*) section 12503's negative phrasing implies that its qualification is exclusive and the court cannot read additional qualifications into the statute. (See *Clark v. Burleigh* (1992) 4 Cal.4th 474, 488-489 [since Elections Code specifically lists the permissible content of candidate statements and the permissible number of words that could be used, "the negative implication of [that] specific list, of course, is that the Legislature did not intend the statutory candidate's statement to contain any other material"]); *Eldridge v. Sierra View Local Hospital Dist.* (1990) 224 Cal.App.3d 311, 324 [if a statute specifies one exception to a general rule, other exceptions are excluded; it is the Legislature's function to enact additional exceptions, the courts cannot fashion additional exceptions without invading the legislative function].)

> We consider disqualification from public office a significant civil disability. In California, the right to hold public office has long been recognized as a valuable right of citizenship. In 1869 . . . our Supreme Court declared that the elective franchise and the right to hold public offices constitute the principal political rights of citizens of the several States. In *Carter v. Com. on Qualifications etc.*, [1939] 14 Cal.2d 179, 182 . . . the court pointed out: The right to hold public office, either by election or appointment, is one of the valuable rights of citizenship. *The exercise of this right should not be declared prohibited or curtailed except by plain provisions of law. Ambiguities are to be resolved in favor of eligibility to office.* More recently, the high court, citing *Carter*, has termed the right to hold public office a "fundamental right." Thus, any ambiguity in a constitutional provision calling for forfeiture of an existing office and disqualification from holding public office should be resolved in favor of continued eligibility.

(*Helena Rubenstein Internat. v. Younger*, *supra*, 71 Cal.App.3d at p. 418, original italics, internal citations and quotations omitted.)

Helena Rubenstein Internat. v. Younger involved former Lieutenant Governor Ed Reinecke, who had been found guilty of perjury by a federal jury. (*Id.* at p. 409; see also, *United States v. Reinecke* (D.C. Cir. 1975) 524 F.2d 435, 436-437 & fn. 3, and 57 Ops.Cal.Atty.Gen. 374, 375 (1974).) In particular, the litigation involved whether Reinecke was entitled to remain in office and receive his salary after the jury's verdict, or whether the verdict operated to create a vacancy in the office of Lieutenant Governor.[6/] (*Helena Rubenstein Internat. v. Younger*, *supra*, 71 Cal.App.3d at pp. at p. 409.) The plaintiffs claimed Reinecke was disqualified from office

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6. Lieutenant Governor Reinecke's eligibility to remain in office was attacked on several fronts. The plaintiffs filed a taxpayers' action seeking to enjoin the payment of Reinecke's salary and to require the return of any compensation he received after the verdict. (*Helena Rubenstein Internat. v. Younger*, *supra*, 71 Cal.App.3d at p. 409.) In addition, Governor Reagan requested Attorney General Younger to render an opinion regarding the effect of the perjury conviction on Reinecke's status. (*Ibid.*) And at the same time, plaintiffs asked Attorney General Younger to commence quo warranto proceedings to remove Reinecke from office. Attorney General Younger issued his opinion concluding that, until a judgment was rendered, Reinecke was entitled to remain in office and receive his salary. (*Ibid.*, citing 57 Ops.Cal.Atty.Gen. 374, *supra*.) The Attorney General also declined to institute quo warranto proceedings. (*Ibid.*) The plaintiffs then sought leave to sue Reinecke in quo warranto, and Attorney General Younger denied their request. (*Ibid.*) Part of plaintiffs' appeal concerned the Attorney General's denial of their request for leave to sue in quo warranto. (*Id.* at p. 410.)

because, under plaintiffs' interpretation, the jury's verdict constituted a "conviction" under the constitutional and statutory provisions that exclude "persons convicted of perjury" from holding office. (*Id.* at pp. 409, 411, 413.)[7/]

There, an ambiguity existed because in some contexts, "conviction" means the jury's verdict of guilt, but in other contexts it means the rendition of judgment after the verdict. (*Id.* at pp. 413-415, 420-421.) And while plaintiffs' interpretation was based on one reasonable meaning of "conviction," plaintiffs' construction did not comport with legislative intent and the rule that the exercise of the right to hold elective or appointive public office "*should not be declared prohibited or curtailed except by plain provisions of law. Ambiguities are to be resolved in favor of eligibility to office.*" (*Id.* at p. 418, original italics, quoting *Carter v. Com. on Qualifications of Judicial Appointments, supra*, 14 Cal.2d at p. 182.) Thus, the court unanimously found the ambiguous term "convicted" had to be interpreted in favor of the office holder, Reinecke. (*Id.* at p. 418.)

Another example of the principle requiring eligibility statutes to be construed in favor of eligibility is *Lungren v. Davis* (1991) 234 Cal.App.3d 806. In *Lungren v. Davis*, the court applied the rule to find that David Stirling, who had been designated by Attorney General Lungren to serve as his chief deputy attorney general, was eligible to serve in that office – even though former Attorney General Van de Kamp had opined that Stirling was ineligible because he had been serving in the office of superior court judge.

There, the court was called upon to interpret the word "term" within the meaning of article VI, section 17, of the California Constitution. (*Id.* at p. 810-811.) In particular, the case turned on article VI's "disqualification" provision: "A judge of a court of record may not practice law and during the term for which the judge was selected is ineligible for public employment or public office other than judicial employment or judicial office . . . ." (Cal.

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7. The court interpreted former article XX, section 11 of the California Constitution. (*Helena Rubenstein Internat. v. Younger, supra*, 71 Cal.App.3d at p. 412.) Substantively similar language is now found in article VII, section 8, subdivision (b) of the California Constitution: "Laws shall be made to exclude persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes from office or serving on juries."

Const., art. VI, § 17.) Following a lengthy analysis, the court found Stirling could serve as chief deputy attorney general because the disqualification provision did not clearly and unambiguously render him ineligible.

In 1989, Stirling was appointed to fill a vacancy in the office of superior court judge. (*Lungren v. Davis*, *supra*, 234 Cal.App.3d at p. 809.) In 1990 Stirling filed for and was elected to a six-year term as superior court judge, with the term set to commence in January 1991. (*Ibid.*) At the same election, Dan Lungren was elected as Attorney General. Following the election, Lungren announced he would appoint Stirling as his chief deputy attorney general when Lungren took office in January 1991. (*Ibid.*) Stirling then announced that, as of December 1990, he would resign from his office of judge and would not commence the six-year judicial term for which he had been elected. (*Ibid.*) Stirling did not take the oath of office or otherwise assume the office of superior court judge. (*Id.* at p. 811.)

Shortly before Lungren began his first term, then-current Attorney General Van de Kamp opined that Stirling was not "eligible for public office or employment until at least January 1993, when another person could be elected and assume the office of superior court judge to which Stirling had been elected." (*Id.* at p. 809.) When Lungren took office, he appointed Stirling as his chief deputy. (*Id.* at p. 809, fn. 2.) But following the advice given by Attorney General Van de Kamp, the State Controller refused to issue warrants to pay Stirling's salary. (*Id.* at p. 809.) Attorney General Lungren and Stirling then sought and received original writ relief from the court of appeal. After some "archeological digging[] into [the] legal history" of the word "term," (*id.* at p. 811), and an application of the rule of construction favoring the exercise of one's right to hold public (*id.* at p. 830), the court found that article VI of the Constitution did not disqualify Stirling from serving as Lungren's chief deputy.[8/]

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8. The court began by finding Stirling's 1989 judicial appointment was that of a "temporary appointee" to fill a vacancy in office. (*Id.* at pp. 820-822.) But Stirling's appointment did not, in effect, amount to an appointment to serve a "term" within the meaning of the disqualification provision. (*Id.* at pp. 822-823.)

Significantly, the court found Stirling's 1990 election to the office of superior court judge did not result in his disqualification to serve as Attorney General Lungren's chief deputy.[9] (*Id.* at pp. 828-831.) In that regard, the court interpreted whether article VI's disqualification provision applies when a judge is elected, versus when a judge takes his or her oath and assumes their office. As the court mentioned, there was "scant" authority on the effect of one's refusal to assume office. (*Id.* at p. 829.) Thus the court also gave consideration to the established principle requiring a construction in favor of the exercise of the right to hold public office.

> Disqualification from public office is a significant civil disability. The right to hold public office is considered fundamental under the state and federal Constitutions. Accordingly, the exercise of this right should not be declared prohibited or curtailed except by plain provisions of law. Ambiguities are to be resolved in favor of eligibility to office.

(*Id.* at p. 830, internal citations and quotations omitted.)

And as the *Lungren v. Davis* court pointed out, article VI "does not clearly and unambiguously provide that ineligibility for other public office or employment accrues upon election rather than assumption of the office of superior court judge." (*Id.* at p. 830.) The court was, therefore, "compelled" to find Stirling eligible for appointment to the office of chief deputy attorney general. (*Ibid.*)

Application of these principles compels the same result with respect to section 12503. The statute does not clearly and unambiguously require that a candidate for the office of Attorney General has been "an *active* member of the State Bar" for five years immediately preceding his or her election to office. (Plaintiffs' Mem. Pts. & Auth. at 1:4-9, italics in original.) Rather, section 12503 has the same clear, unambiguous meaning as Business and Professions Code section 6064 – admission to practice law in all of California's courts is a function of the Supreme Court and becoming a "voluntary inactive" member does not require "re-admission" by the Supreme Court. But even if there were any ambiguity, the construction urged by plaintiffs is contrary to the well-

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9. The court thus disagreed with Attorney General Van de Kamp's view that there was "a possibility that the courts might consider Judge Stirling disqualified for an entire six-year period even though he did not assume his elective office." (*Lungren v. Davis*, *supra*, 234 Cal.App.3d at p. 828.)

settled rules requiring that section 12503 be construed in a manner that favors the right to seek and hold public office.

CONCLUSION

The plain meaning rule controls in this case. The phrase "admitted to practice before the Supreme Court" in section 12503 has the same meaning as Business and Professions Code section 6064: "Upon certification by the examining committee . . . the Supreme Court may admit such applicant as an attorney at law in all the courts of this state . . . ." Admission to practice before all of California's courts is a function of our Supreme Court, and once admitted to practice by the Supreme Court, an attorney retains that status unless the Supreme Court orders otherwise. Whether or not an admittee elects to be an active or inactive member of the State Bar, an admittee retains his or her status as having been admitted to practice by the Supreme Court. The court should, therefore, adopt this plain construction which favors eligibility. The court cannot, however, adopt plaintiffs' construction because section 12503's plain terms do not clearly and unambiguously curtail the right to seek the office of Attorney General to only those who have "active" status with the State Bar for the requisite period of time. Lastly, even if the plain meaning rule were inapplicable, section 12503 must be construed in a manner that favors, and gives effect to, the voters' right to vote for candidates of their choice, and preserves the right to seek and hold public office.

Thus, for the reasons discussed above, plaintiffs' election contest must be denied, and the remaining causes of action contained in the First Amended Complaint should be ordered dismissed with prejudice.

Dated: January 29, 2007

Respectfully submitted,

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DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **Del Beccaro, et al. v. Brown, et al.**
No.: **Sacramento County Superior Court Case: 06AS04494**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On January 29, 2007, I served the attached **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO ELECTION CONTEST AND FIRST AMENDED COMPLAINT** by placing a true copy thereof enclosed in a sealed envelope with Golden State Overnight as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 29, 2007, at Sacramento, California.

Brenda Sanders
Declarant

Brenda Sanders
Signature

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