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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

THOMAS G. DEL BECCARO, MARK A. PRUNER, DAVID B. PRINCE, CARL A. BURTON, and ADAM C. ABRAHMS, Plaintiffs and Contestants, vs. EDMUND GERALD "JERRY" BROWN JR., an individual and Attorney General of the State of California; et al., Defendants.	Case No. 06AS04494 **PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY TO OPPOSITION BY ATTORNEY GENERAL, TO THE ELECTION CONTEST AND FIRST AMENDED COMPLAINT** :Date: February 9, 2007 Time: 1:30 p.m. Dept.: 11 Judge: Honorable Gail D. Ohanesian

INTRODUCTION.

The Office of the Attorney General in their opposition argues two main points (1) that the phrase "admitted to the practice of law" contained in Government Code section 12503 essentially means the initial admission upon the passing of the bar examination and (2) that if the court were not to apply this meaning, it would infringe on the rights of the voters to select their elected officials and the defendants right to be a candidate.

Plaintiffs fundamentally disagree with both positions. First, case law, public policy and common sense dictate that their argument that initial admittance is all that is required is without merit. It is Plaintiffs' position that Johnson v. State Bar of California (1937) 10 Cal.2d 212 directly contradicts that the Attorney General is incorrect and (2) that the Johnson interpretation does not violate the constitution because case law has shown that limitations on candidates are viable.

No artful argument offered by the Defendant can change the foregoing. So the question remains, is Jerry Brown above or below the law. We believe the answer to be self-evident.

ARGUMENT

I. GOVERNMENT CODE SECTION 12503 REQUIRES AN INDIVIDUAL HOLDING THE OFFICE OF ATTORNEY GENERAL BE ACTUALLLY ENTITLED TO PRACTICE IN THE STATE COURTS FOR THE IMMEDIATELY PRECEEDING FIVE YEARS.

The Office of the Attorney General argues that in interpreting statutory language, a court must give its plain meaning. However, it is important to note, "when words used in a statute have acquired a settled meaning through judicial interpretation, the words should be given the same meaning when used in another statute dealing with an analogous subject matter." (*Torres v. Parkhouse Tire Service* (2001) 26 Cal. 4th 995, 1005.) Here the word admitted has been defined in *Johnson*. *Johnson* defined admitted as initial admission ***and*** ability to practice.

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A. ATTORNEY GENERAL MISSES THE POINT, THE STATE BAR CAN AND DOES REGULATE WHO IS "ENTITLED" TO PRACTICE LAW IN THE STATE COURTS.

The Attorney General focuses on the fact that initial admission to the practice of law occurs by order of the Supreme Court. (Bus & Prof. Code, section 6064.) It goes on to argue that a person is entitled to maintain their admitted status until the Supreme Court orders otherwise. (Bus & Prof. Code, section 6064.) The Attorney General's focus on the Supreme Court's power over initial admission and disbarment misses the point. Although, it is true that a Supreme Court order grant initial admission that is not what is at issue in this case. The issue in this case is whether the defendant was actually entitled to practice law.

The State Bar has been given statutory authority to suspend and restrict a bar members ability to practice law. (Business and Professions Code § 6007.) The statutory authorization of the State Bar to order involuntary inactive enrollment does not impair the inherent prerogatives of the Supreme Court. (*Conway v. State Bar of California* (1989) 47 Cal.3d 1107.) What is clear from the reading of this code section is the fact that after initial admission, the State Bar has great authority over a member's ability to practice law. The importance of the State Bar's ability to regulate the practice of law within the context of Government Code section 12503 is that "inactive attorneys" are not entitled to practice law. (Business and Professions Code § 6006.)

Here, defendant's initial admittance to the state bar is not determinative. Pursuant to *Johnson v. State Bar of California* (1937) 10 Cal.2d 212 what is important is that defendant had the ability and the lawful right to practice before the state court. Here, defendant did not. Defendant was inactive and therefore not eligible to practice law or hold the office of Attorney General.

II. QUALIFICATION REQUIREMENTS OF GOVERNMENT CODE SECTION 12503 ARE NOT UNCONSTITUTIONAL.

The Attorney General attempts to create a new standard of review to determine the constitutionality of candidate qualifications statutes; arguing that qualification statutes must be construed in a manner that respects the voter's right to vote for a candidate of their choice.

This new putative standard contradicts established case law. Case law has long held "states have compelling reasons for requiring candidates for public office to establish their eligibility for office within a reasonable and fixed period of time before the election." *Dunn v. Bloomstein* (1972) 405 U.S. 330. Here, California has a compelling reason to require any candidate for Attorney General to meet the requirements of Government code § 12503.

Much like the Attorney General does in this case, the defendant in *Daniels* alleged that the qualification requirements of Government Code § 25041 were an unconstitutional restriction upon his right to be a candidate and hold public office, and upon the public's right to vote. Government Code § 25041 requires a 30 day residential requirement. The court in *Daniels* found that these rights are fundamental and thus strict scrutiny would apply to any government restrictions on those rights. Under a strict scrutiny standard of review, a state must prove that the challenged provision intruding on a constitutional right involves a compelling governmental interest and the burden or restriction imposed by the provision is necessary to further those interests

The *Daniels* court applied the strict scrutiny standard and found the restriction constitutional. The *Daniel's* court held, "the legislature may prescribe qualification for office but cannot enact arbitrary exclusion from office. Thus, qualifications for office must relate to the needs of the office--eg. Age, integrity, training, or residence—with the voters free to judge the individual fitness of the candidates who have those basic qualifications. If a classification is employed in setting qualification, it must be nondiscriminatory." (*Zeilenga v. Nelson* (1971) 4 Cal.3d 716, 721.) The court found that a residential qualification was not an arbitrary exclusion from office, and involved a compelling state interest.

Here, as in *Daniels*, the qualification requirements of Government Code § 12503 is not an arbitrary exclusion from the office of Attorney General, but rather relates to the needs of the office. Implicit within the requirement of being an attorney actually able to practice law for the consecutive preceding five years is the fact that the legislature wants trained lawyers who were current with recent case law developments to be the Attorney General. Clearly, this is a compelling state interest and not a violation of the Constitution.

III. ALSO, AFTER *DANIELS v. TERGESON*, DEFENDANT CANNOT ARGUE HE SUBSTANIALLY COMPLIED WITH GOVERNMENT CODE 12503.

Eligibility requirements have been established to ensure that voters are well represented by candidates who meet the needs of the office. The requirements set forth in Government Code section 12503 are mandatory provisions and the subsequent violation therefore renders Defendant Brown ineligible for the office of Attorney General.

In *Daniels v. Tergeson* (1989) 211 Cal.App.3d 1204, the Court of Appeal reviewed a case where Tergeson, a candidate for supervisor in Tuolumne County, had his election was contested by a registered voter. (*Id.* at pp. 1204). The voter contested on the grounds that Tergeson was ineligible for the office when elected pursuant to 25041 because he missed the registration deadline by two days. (*Id.* at pp. 1206). Section 25401 states that "Each member [of the county board of supervisors] shall have been a registered voter of the district which he seeks to represent for a least 30 days immediately preceding the deadline for filing nomination documents for the office of supervisor,…" (Gov. Code, §25041). The trial court held that 28 days substantially complied with the 30 day requirement of the statute and upheld the election. (*Daniels v. Tergeson, supra*, 211 Cal.App.3d at 1207).

The Court of Appeal reversed, holding that the rationale for substantial compliance with statutory provisions relating to election officers and conduct of the polls has no application in the realm of candidate qualifications and thus require strict compliance. (*Id.* at pp. 1210). The court first distinguishes between a mandatory and directory provision violation. "A violation of a mandatory provision vitiates an election. Departure from a directory provision does not render the election void if there has been substantial compliance with the law." (*Id.* at pp. 1208). The court defines "mandatory provision" as one that "goes to the substance or necessarily affects the merits of results of an election." These include provisions "relating to the time and place of holding elections, the qualifications of voters and candidates and other matters of that character are mandatory." (*Id.*). 1208

In the current case, section 12503 is a mandatory provision as it relates to the qualifications for the office of Attorney General. "It necessarily affects the merits of the election because it determines who is and who is not an eligible candidate." (*Id.* at pp. 1209). Defendant Brown cannot argue that at the time of the election, his active membership for less then four consecutive years strictly complies with Government code 12503. Nor can he argue that being initially admitted in June 1965 meets strict compliance with the statute and the legislature's intent. "Thus a violation of its terms renders a candidate ineligible for office." (*Id.*)

CONCLUSION

This case is about upholding the Rule of Law, the basis for our society. The Office of the Attorney General argues that to grant Plaintiff's requested remedy would deny the People of the State of California a fundamental right. However, to fail to follow the Rule of Law puts our very system of Democracy and justice at risk.

Dated: February 2, 2007.

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