

1 time frame chose to use explicit language concerning  
2 membership in the state bar.

3 Plaintiff seems to want this Court to take an act  
4 of oath by inserting words or finding words in the  
5 Constitution that aren't there.

6 The Court should respect the intention of word  
7 choice of the framers. And to that extent the Court of  
8 Appeals has repeatedly said that internal consistency in the  
9 use of language in the Constitution is important.

10 They will look at clauses in one section of the  
11 Constitution and compare them to a specific clause and try to  
12 determine what the meaning of the clause is by doing that.

13 In this case there is specific language and it  
14 doesn't mention membership in the Bar. In the Cadan versus  
15 Board of Elections case the Court of Appeals relied on  
16 exactly that argument in finding that Orphan's Court judges  
17 did not need to be attorneys because the language -- there is  
18 no language in the provision of the Constitution specifically  
19 stating that the Orphan's Court judge had to be an attorney,  
20 the Court rejected that requirement even though it may have  
21 seemed logical that an Orphan's Court judge, like any other  
22 judge was required to be a member of the Bar or required to  
23 be an attorney as part of the general qualifications set  
24 forth in the Constitution.

25 This interpretation of the plain language is

1 consistent with the purpose of the statute. And the Court of  
2 Appeals has repeatedly said that in looking at the plain  
3 language the two important things are the common meaning of  
4 the words in the statute and whether those words are  
5 consistent with the purpose of the statute.

6 Well what was the purpose of the statute? The  
7 purpose of the statute was to make sure that whoever becomes  
8 Attorney General is an experienced lawyer. Someone who has  
9 10 years worth of experience and is learned in the law.

10 The purpose of the statute was not to insure the  
11 formality of Maryland Bar membership. Had that been the  
12 purpose of the statute the framers would have said so as they  
13 did in it in many of other states and other portions in the  
14 Constitution.

15 In reviewing the history of the statute the  
16 Attorney General in a couple of the Attorney General opinions  
17 that have been cited in briefs specifically said that the  
18 purpose of the statute was to find a person steeped in the  
19 law of sufficient legal assuery to undertake the duties of  
20 the office. Someone who had occupied a leading position in  
21 the profession. And Mr. Perez obviously meets those  
22 qualifications.

23 To the extent that the Court does feel a need to  
24 look at the legislative history, the legislative history  
25 shows that the legislature in the 1864 convention considered

1 how the age or racial requirement along with a specific  
2 requirement were barred admission in the State of Maryland,  
3 but that requirement was dropped.

4 And all of the language in the debate concerning  
5 this provision all had to do with simply finding a person who  
6 was experienced in the law and learned in the law to hold the  
7 position of Attorney General.

8 So ultimately they are really poor arguments that  
9 from expressed viewpoint Bar admission is not a requirement  
10 for Attorney General. The plain language does not state  
11 anything about Bar admission.

12 In comparing the language to the language of other  
13 provisions of the Constitution where there is a requirement  
14 of Bar admission that demonstrates that the framers knew  
15 where to put Bar admission requirements. If they wanted to  
16 do so they didn't do so here.

17 A comparison to other states, which we set forth,  
18 shows that it was very common at that time for framers to put  
19 in specific language about being a member of the Bar of that  
20 state. And the legislative history and what happens in the  
21 committee further supports this argument.

22 To the extent that the Plaintiff argues that there  
23 is an implicit requirement of membership in the Maryland Bar  
24 we believe that that argument is just incorrect because if  
25 fails to properly take into account federal law which allows



1 the Department of Justice to have its attorneys practice in  
2 any state in the United States in state courts and in federal  
3 courts, not just limited to federal court. It specifically  
4 provides for appearing in the state courts and pursuing  
5 actions in state courts.

6 And 28 USC Section 517 is what specifically allows  
7 that. And that is why in the State of Maryland now you will  
8 find that there are assistant U.S. attorneys and federal  
9 public defenders who are not members of the Maryland Bar.

10 Do they practice law in the State of Maryland? Of  
11 course they do. They go to Federal Court on a consistent  
12 basis and present their cases. They investigate cases. They  
13 interview witnesses. They analyze the law and at times they  
14 appear in State Court in state tribunals in both a civil and  
15 a criminal context. And the local rules provide for that.

16 In Sperry v Florida, the United States Supreme  
17 Court specifically addressed this issue. The Plaintiff was  
18 trying to distinguish that in Plaintiff's memorandum, but  
19 fundamentally that case is almost directly on point with this  
20 situation.

21 In Sperry, the Florida Bar tried to block somebody  
22 from practicing law in the State of Florida. The Florida Bar  
23 said in order to practice law in the State of Florida you  
24 have to be a member of the Florida Bar. And the Supreme  
25 Court said where there is a federal law that trumps the state

1 law that requirement has to fall by the wayside.

2 And in that case the Supreme Court said we don't  
3 contest that this person is practicing law in the State of  
4 Florida, that is fine. But when they are doing it pursuant  
5 to a federal law, then the State does not have the right to  
6 override the federal law and say you can't practice law in  
7 the State of Florida unless you pass our Bar.

8 And that is really what is happening here.  
9 Plaintiff is basically saying Mr. Perez had to have been a  
10 member of the Maryland Bar in order to have practiced law in  
11 the State of Maryland for 10 years.

12 And that is just not so because the federal law  
13 says you can practice law in the State of Maryland without  
14 being a member of the Maryland Bar to the extent you are a  
15 federal attorney and you are pursuing federal matters.

16 And the Court of Appeals acknowledged this also in  
17 the Kennedy vs Bar Association of Montgomery County case when  
18 they specifically acknowledged the right of attorneys to  
19 practice law in the State of Maryland under federal statute  
20 or as admitted to the Federal Bar as long as the practice was  
21 limited to that time.

22 To the extent that the Court needs to get into the  
23 facts of the case, which Plaintiff had represented to me will  
24 not be contested, we believe that the facts plainly show that  
25 Mr. Perez has practiced law in the State for 10 years.

1           Now there are repeated statements of the Court of  
2 Appeals and the Attorney General's Office and legal  
3 commentators that when interpreting eligibility provisions  
4 like Article 5, Section 4, it is imperative that courts take  
5 a very broad interpretation of the language.

6           And that courts take into account the changes that  
7 occurred since the time that the framers wrote the language  
8 of the Constitution to the extent that that applies for  
9 interpreting the term "practice law in this State for 10  
10 years."

11           And we would argue that that also applies to the  
12 issue of the bar admission because at the time of the framers  
13 drafting the Constitution there was no federal provision that  
14 allowed federal attorneys to practice in the State of  
15 Maryland. That is something that has changed since that  
16 time. And that is a change that has to be recognized by the  
17 Court under the Supreme Court precedence and the supremacy  
18 clause.

19           And Plaintiff seemed to argue that we should stay  
20 back in the 1860's and because such a federal provision did  
21 not apply at the time, the Court should read that there is no  
22 application of such provision today. I mean not only did  
23 that not make sense, it would be contrary to federal law.

24           The Court of Appeals has repeatedly interpreted the  
25 term "Practice of law" in a very broad manner. I don't think



1 I need to go into that because having read Plaintiff's  
2 memorandum, which I just got a copy of earlier today.  
3 Accidentally, apparently it hadn't been -- or there was some  
4 kind of mixup in the service.

5 But it appeared to me from the Plaintiff's  
6 memorandum that the Plaintiff is not challenging whether  
7 Mr. Perez practiced law for 10 years or not, so I don't think  
8 that is an issue.

9 We believe that his practice was in the State of  
10 Maryland during the 10-year period, again using a broad  
11 interpretation that the courts have required this Court to  
12 use.

13 In the modern world, legal work is often performed  
14 by telephone, by fax, by internet. Mr. Perez has repeatedly  
15 been in Maryland handling cases for the Department of Justice  
16 in Maryland, handling cases for OCR. That is all laid out in  
17 the affidavit.

18 And Mr. Perez has also supervised dozens of cases  
19 in Maryland, arising in Maryland, from the Department of  
20 Justice. And that supervision includes analyzing the cases,  
21 talking to witnesses, talking to attorneys, preparing legal  
22 strategies, pursuing cases in the State of Maryland.

23 Certainly, based on the case law that we have cited  
24 in our brief, the Court of Appeals of Maryland says that  
25 those types of activities are practicing law in the State of

1 Maryland.

2           So from a factual viewpoint, based on the affidavit  
3 we have submitted, we believe that it is very clear that  
4 Mr. Perez meets the requirements for practicing law in the  
5 State of Maryland for 10 years.

6           Your Honor, I thought it would be important to  
7 mention that we don't concede the issue about the 10-day  
8 notification period. We would like to get a ruling on the  
9 merits if possible. That is something that we want. We  
10 agree with Mr. Abrams that it is in Maryland's interest to  
11 have this issue decided as soon as possible.

12           That being said, we are concerned about other  
13 people coming forward and saying well, I was on vacation or I  
14 was in Timbuctu for two months and didn't know about what was  
15 going on.

16           So we believe the 10-day law has to be applied in a  
17 practical manner. And in this situation for several of the  
18 days after Mr. Perez filed the certificate, the Plaintiff was  
19 in the State of Maryland.

20           And even if the Plaintiff wasn't in the State of  
21 Maryland and was on vacation, we have the internet. Anyone  
22 can check the internet and go on the Board of Elections  
23 website and see who has filed their certifications.

24 Obviously Plaintiff was well aware of this issue. It got  
25 tons of press coverage before Mr. Perez filed his



1 certificate.

2           So we do believe that there is an implicit  
3 requirement in the 10-day rule that -- it is not just a  
4 matter of burying your head in the sand if there is some type  
5 of obligation on behalf of a Plaintiff to keep informed about  
6 what is going on.

7           And when the information that is necessary is put  
8 on the internet and was available, we believe that either by  
9 applying the 10-day rule or by applying the laches theory  
10 that Plaintiff did not file his complaint in a timely manner.

11           THE COURT: Well what would you consider to be the  
12 act or omission that would trigger that 10-day rule?

13           MR. DANSICKER: Once the Attorney General issued  
14 his opinion and Mr. Perez made clear in the media that he was  
15 running for office. He had already established his campaign  
16 organization. He had already begun campaigning.

17           At that point I think an act or omission occurred,  
18 especially in light of the fact that the Plaintiff has argued  
19 that the mere filing of the request of the Attorney General  
20 was an improper act. And certainly within 10 days of that  
21 filing or within 10 days of the opinion being issued and all  
22 the press that happened.

23           THE COURT: I think the whole business of the AG  
24 issuing an opinion is somewhat of a side issue. I mean  
25 whether that should have happened or could have happened

1 differently or whatever, that is not necessarily imputed to  
2 the Board.

3 I mean the Board accepted the papers and went  
4 forward, so the question I guess is the 10-day period has to  
5 start from an act or omission of the Board or of the  
6 Defendant, Mr. Perez.

7 So it is either when he filed the paper and was  
8 allegedly not qualified or when the Board failed to see to  
9 that he wasn't qualified and they have to climb over it.  
10 It is kind of a moving target and I just want to make sure I  
11 know which one you are thinking --

12 MR. DANSICKER: I would argue that it was when  
13 Mr. Perez filed the certification on -- I believe it was June  
14 19th of this year. But my understanding from the affidavit  
15 is that Plaintiff was in the country on June 19th until June  
16 26th, for about a week.

17 THE COURT: Let's say just for sake of argument  
18 that if Mr. Abrams is -- in view of what the functions of the  
19 Board were, correct, that upon receiving Mr. Perez' papers  
20 that the Board would inquire further and say, you know what,  
21 we think maybe he is not eligible and, you know, we are going  
22 to do something about it.

23 Or he might have had a change of heart -- you know,  
24 I am not holding my breath, but let's say theoretically, and  
25 submitted a -- whatever the proper expression is, a withdraw

1 in his candidacy because the deadline to do that was all  
2 essentially up to the July 3rd deadline, was it not?

3 MR. DANSICKER: Yes.

4 THE COURT: So it was still not -- it hadn't ---  
5 until July 30 into a -- sort of a final act or omission until  
6 that moment at least. I mean I know you don't accept that.  
7 I am just wondering if you --- in my thought.

8 MR. DANSICKER: Well the Plaintiff's papers  
9 specifically say that the filing on June 19th was done  
10 wrongfully because Mr. Perez certified that he was qualified  
11 or that he was eligible for office when in fact he wasn't.

12 So that would be certainly the first act from which  
13 the deadline would begin running. And to the extent that  
14 Plaintiff is seeking to have the ability -- eligibility of  
15 Mr. Perez overturned that would be the day it would have to  
16 run from.

17 (Court and Attorney talking at same time.)

18 THE COURT: Okay. Thanks.

19 MR. DANSICKER: That is all for now, Your Honor.  
20 Do you have any specific questions?

21 THE COURT: Not at the moment. Thank you very  
22 much.

23 MR. DANSICKER: Thank you.

24 THE COURT: Mr. Abrams?

25 MR. ABRAMS: Thank you, Your Honor. I would like  
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1 the record to reflect how quickly I got up here to respond  
2 just in case there is any suggestion of the ---

3 THE COURT: --- no laches in your getting up here.

4 (Court and attorney talking at same time.)

5 MR. ABRAMS: Let me address the last point that was  
6 raised because I think that goes to the --- I can't answer  
7 for you what is the proper date. I had two dates that I was  
8 looking at in terms of triggering that section, but I could  
9 argue there are others as well.

10 I believe that the filing deadline is the  
11 appropriate date because that is when I would assume  
12 certification by the State Board doesn't take place until the  
13 close of filing. And so then the act of certifying  
14 candidates for the ballot I presume that is somewhere around  
15 the 3rd or perspective, but that creates an act or a time  
16 that would logically comply with it.

17 I accepted an alternative argument that one could  
18 reasonably argue that the day a candidate submits their --  
19 formally submits their papers is the trigger date to read the  
20 first half of that section because that is the act -- that  
21 could be reasonably construed to be the act or omission.

22 The second half of that is actual knowledge on the  
23 part of the person raising it. And what are the requirements  
24 for actual knowledge. I believe it is actual knowledge.

25 A lot has been included in the briefs of the

1 parties of newspaper reports. Of newspaper articles as being  
2 a reasonable basis of ascertaining what a reasonable person  
3 would know or not know.

4 THE COURT: There are a lot of reporters in the  
5 courtroom and I just --

6 MR. ABRAMS: I don't want them to get swelled heads  
7 on this --

8 THE COURT: I think they view it differently  
9 perhaps.

10 MR. ABRAMS: The fact remains that Mr. Perez'  
11 papers were dated at the State Board on the 19th of June. I  
12 did a search of the Archives of the Baltimore Sun and  
13 Washington Post and spoke with the Gazette Newspapers to  
14 ascertain whether there were any articles that noted the  
15 formal filing of Mr. Perez between the 19th of June, when he  
16 formally filed, and July 13th, and there were none.

17 There is one article that was included during that  
18 time frame that appeared in the Montgomery Weekly Section of  
19 the Washington Post talking about Senator Ivan Ruben's race.  
20 And in that article there was a reference made to Mr. Perez  
21 running for Attorney General, but nothing in that article to  
22 suggest that he had formally filed.

23 So I submit to you that the innuendo being raised  
24 of when I knew that is contrary to what I have sworn to and  
25 the fact of when I knew are really misplaced.

1           That in fact I did find out -- let me be the more  
2 practical about it, Your Honor. I don't believe the duty  
3 that was just suggested is the appropriate one.

4           I believe the duty in terms of actual knowledge are  
5 to be construed from a reasonable perspective. I had an  
6 interest in checking with the State Board as to who filed for  
7 state office and I did so on July 5th.

8           I had that interest because I am a candidate for  
9 statewide office. And I had every interest in the world to  
10 find out who I would be running against. I didn't feel  
11 compelled to check that every day because until the filing  
12 deadline I could care less as to what the minute-to-minute  
13 running commentary was.

14           On July 5th when the filing deadline closed I went  
15 and looked. I don't believe that is unreasonable and I don't  
16 think that changes because I am Plaintiff in this case.

17           THE COURT: I don't know that it is necessarily  
18 unreasonable, but I find it amazing because candidly when I  
19 was a candidate for office I would check, not minute-by-  
20 minute, but every day to make sure somebody hadn't put his  
21 name in. And I find it pretty surprising that you wouldn't  
22 be curious until the deadline.

23           MR. ABRAMS: Well you are not spending as much --  
24 you probably spent more money on your campaign than I have.

25           THE COURT: Well, I am happy to say I didn't. I



1 hear you.

2 MR. ABRAMS: I am notorious for running campaigns  
3 without accepting or spending any money. And I believe in --  
4 quite frankly when they file is when I need to know about it.

5 THE COURT: Well, you are just calmer than I am  
6 apparently. Go ahead, I --

7 MR. ABRAMS: It comes with age. You will get there  
8 also, Your Honor.

9 THE COURT: Thank you.

10 MR. ABRAMS: But the second point of carrying an  
11 argument to its logical extreme about when I knew Mr. Perez  
12 was going to run for Attorney General. Mr. Perez never  
13 filed, when he decided to run for Attorney General, a  
14 separate committee to finance his campaign. He didn't have  
15 to because on January 25th of 2002, Mr. Perez filed a  
16 continuing committee called "Friends of Tom Perez" at the  
17 State Board.

18 Now in 2002 I think Mr. Perez was a candidate for  
19 the County Counsel in Montgomery County. But on that form  
20 they ask you are you filing a committee for local office,  
21 state office or both? And he checked both.

22 And in fact that is the vehicle that he has been  
23 using and I assume will continue to use if he remains a  
24 candidate to fund his campaign activities.

25 Under the argument just put forward I well could

1 have been held responsible to know he was running for  
2 Attorney General on January 25th, 2002. I don't think the  
3 law -- I don't think that section conflicts it.

4 Now much has been made about the legislative intent  
5 in the plain language. By the way, I do want to thank  
6 counsel for Mr. Perez for acknowledging that his read of the  
7 language of the State Constitution is that you would not have  
8 to be a member of the Maryland Bar to serve as Attorney  
9 General. And he submits in looking at the legislative  
10 history when the provision was created to support that  
11 conclusion.

12 Our good friend, Mike Barnes, would be delighted to  
13 hear that. It might change his opinion as to whether he  
14 would ever seek the office of Attorney General because he  
15 couldn't be accepted to the Maryland Bar absent taking the  
16 lawyer's bar exam. And to my knowledge to this day he still  
17 never has sat for the lawyer's bar and has never taken it.

18 So under the one interpretation Mike Barnes, not a  
19 member of the Maryland Bar, could still qualify to run for  
20 Attorney General. I submit that clearly that couldn't have  
21 been what the framers were contemplating in the 1860's when  
22 they drafted this language.

23 What do I base it on? They did use some specific  
24 language about the requirements for State's Attorney in the  
25 Constitution. And I don't think there is any dispute that

1 the State's Attorney must be a member of the Bar of Maryland  
2 and it must have been for a certain period.

3 In the 1860's, in fact all the way up through 1913,  
4 the Attorney General was not empowered to hire anyone else to  
5 assist him in the performance of his office. So to buy the  
6 argument that is being put forward that you didn't even have  
7 to be a member of the Maryland Bar to be Attorney General  
8 belies the fact that you would have had a circumstance of an  
9 Attorney General who couldn't go into the courts of Maryland  
10 to prosecute the duties of the Attorney General.

11 And at the same time didn't have the authority to  
12 go out and hire somebody who did have that ability to help  
13 him prosecute that office. And I submit that is an absurd  
14 interpretation.

15 I believe it is fairly clear that by having the  
16 requirements for the State's Attorneys and in different  
17 language as it relates to the Attorney General. You  
18 necessarily have to read them in a consistent and a  
19 complimentary fashion.

20 It certainly was envisioned that the sole, legal  
21 officer of the State of Maryland back in the 1860's, when  
22 this language was being developed -- when this constitutional  
23 language was being developed, was expected to appear in court  
24 in the State of Maryland -- on behalf of the State of  
25 Maryland. At the time thinking only of state court



1 proceedings or at least primarily.

2 --- about with State's Attorneys have a shorter  
3 time frame, so I would submit the better interpretation of  
4 those differences is in addition to not a three-year  
5 requirement, but a ten-year requirement.

6 Now let's take a look at the strong end that has  
7 been thrown up about what was contemplated by federal  
8 practice and let's talk about Sparry. Sparry stands for the  
9 proposition that for purposes of representation in federal  
10 proceedings, be it federal agencies or federal courts, as it  
11 relates to patent matters. Very specialized and, by the way,  
12 exclusively within the jurisdiction of the federal  
13 government.

14 That the State of Florida could bar an experienced,  
15 accepted, patent expert to hold himself out for  
16 representational purposes in the federal process for clients  
17 in the State of Florida.

18 I am not aware of any patent specialist or patent  
19 lawyers that are contemplating running for Attorney General  
20 in Maryland, so I am not sure we necessarily need to go  
21 there.

22 I do know that given our proximity to Washington,  
23 D. C. that there have been issues over the years as they  
24 relate to the comedy between federal and state practice.

25 The McDade Amendment that Defendant seems to be

1 relying on again I think is somewhat being misconstrued. The  
2 purpose behind McDade is to make it clear that when there is  
3 a federal interest that needs to be represented, specifically  
4 when you are talking about removal of that federal interest  
5 from state court into federal court that the federal  
6 government ought to have the ability -- federal attorneys  
7 ought to have that ability to go in and do that. All right.

8 Now that is not necessarily consenting to all of  
9 the regulatory aspects of being a member of a state bar. And  
10 by the way, the regulatory aspects of being a member of the  
11 state bar is precisely what I believe was envisioned in the  
12 statutory language.

13 The Maryland Bar determines -- well disciplinary  
14 issues as it relates to lawyers practicing in the State.  
15 They don't have that authority over federal attorneys  
16 practicing in the federal courts in the State of Maryland who  
17 aren't members of the Bar.

18 THE COURT: Don't they though -- by statute or by  
19 rule, don't they have -- at least I know the federal public  
20 defender and federal prosecutors, they are subject to the  
21 same ethical constraints I think as Maryland lawyers.

22 MR. ABRAMS: They are subject to similar ethical,  
23 but in terms of full range grievance, I believe there is a  
24 distinction. And I believe there is an interest on the part  
25 of the State to preserve that as it relates to their court

1 system. And I think that really lends credence to an  
2 unauthorized practice of the law statutes that have also been  
3 adopted in the State of Maryland.

4 I think the point is that that comedy, that  
5 relationship, federal state, is something that needs to be  
6 respected. But in making determinations as to qualifications  
7 specifically under state law versus federal there is a  
8 distinction that has to be looked at there.

9 But let me go a little bit further. And I think --  
10 by the way, one of the reasons for the McDade Amendment was  
11 not to permit an appearance of attorneys, but rather to allow  
12 the federal government to create the disappearance of a  
13 federal issue from state court proceedings. That is  
14 precisely what that statute was intended to help facilitate  
15 with the removal back to appropriate jurisdiction.

16 Even if I am construing that wrong, I am not  
17 construing the fact that it was adopted, it was passed in  
18 1998. And if it was passed in 1998, one would have to  
19 conclude that it wasn't in effect in 1997. And if I am not  
20 mistaken, the counting time that I need to do in order to  
21 determine whether Mr. Perez meets the 10-year rule for the  
22 2006 election, would 1996. And in 1996, under McDade, that  
23 authority wasn't there. It didn't happen yet.

24 I don't want to disappoint my opponents who I think  
25 perceive that I have this very branchous lifestyle that



1 affords me the opportunity to be on vacation for extended  
2 periods of time. I will acknowledge that I had a trip of a  
3 lifetime during the first two weeks of June, but I will not  
4 acknowledge that I was vacationing in London. I was there on  
5 business.

6 Your Honor, I have done everything in my power to  
7 try to move this case along quickly, including initiating  
8 discussions with counsel on the other side, so we could  
9 communicate and expedite this case as quickly as possible.

10 And we all agree that we were going to use email as  
11 a means of communication, particularly as it related to the  
12 papers that were being filed. I am a little bit disappointed  
13 with the characterization that Mr. Dansicker made on my  
14 attempts to do that.

15 I brought with me copies of five emails that were  
16 sent by me to both Mr. Dansicker and Mr. Brockman to  
17 facilitate process of these papers. You will find on all of  
18 them that they were sent to both counsel.

19 My email system will tell me when an email is not  
20 delivered. It will say "undeliverable." I got no such  
21 notice on that. And Mr. Brockman and I have had  
22 conversations and I understand that he received all of them.

23 It is quite possible Mr. Dansicker did not receive  
24 that. I certainly was not aware that he didn't. I took  
25 every step I possibly could to make sure that was done. And

1 I just want the record to be very, very clear on that.

2 I am here in an unusual capacity. I am both the  
3 attorney and the Plaintiff. This Court's rules requires me  
4 to do some things differently because of that, specifically  
5 as it relates to service of process.

6 Normally an attorney has the ability to serve  
7 papers and that counsel would -- except if you are the  
8 Plaintiff. When I came down here and filed my initial  
9 complaint and request for TRO and went through the ex parte  
10 process -- and my affidavit lays this out fairly clearly, but  
11 I want to have it on record as well, I personally  
12 communicated with all the others.

13 I personally delivered either by hand or by  
14 electronic device, copies of everything I was going to file.  
15 When I was required after that preliminary issue before Judge  
16 Loney to have a summons served and I was required to do it by  
17 either Sheriff or private process server, I acted in what I  
18 believe was a very reasonable fashion to go out and do it as  
19 quickly as possible.

20 More importantly, Mr. Perez and the State were on  
21 notice about what had occurred with the -- before Judge Loney  
22 and what he had decided because it was reported broadly in  
23 the newspapers. And in fact Mr. Perez was quoted in that,  
24 indicating he had not formally received the service yet, but  
25 was looking forward to it and wanted to move as expeditiously

1 as possible.

2 He did receive service. All of them received  
3 service on the 18th of July. They were all given five days  
4 to respond. They all took the full five days to respond.  
5 They had every right to respond at that length of time and no  
6 sooner, but they don't have the right to cast aspersions on  
7 my being a diligent prosecutor of this claim. I take that  
8 personally and I guess that is the client in me, not the  
9 attorney in me, who wants to get that on the record.

10 Let me just say in summary, Your Honor, before I  
11 stand ready to address any questions you have. This case  
12 needs to be decided on the merits. It needs to be decided --  
13 when we are looking at constitutional interpretation it ought  
14 to be done by the courts or changed by the legislature; it  
15 shouldn't be done administratively.

16 Interestingly enough, Mr. Perez and I probably  
17 agree that given what we now know the Election Article really  
18 could use some substantial updating and rewriting and ought  
19 to go through a full legislative process in doing that. But  
20 unfortunately -- or fortunately it is the laws we are  
21 operating under today for the purposes of this election.

22 I happen to -- another one of my quirks, aside from  
23 not spending any money on campaigns, is I have a passion for  
24 an understandable process. And that government institutions  
25 have respect among each other and that laws are followed.



1 And the greater good is basically served when we adhere to  
2 that and preserve it.

3 I have been described as being a sophisticated  
4 politico, which I take as a compliment because I don't think  
5 there is anything wrong -- in fact, I enjoy having been able  
6 to participate in the political process during my entire  
7 career here.

8 Part of it is the fun of the combat -- of a  
9 campaign. But the part that I really love is governing and  
10 making policy. And governing and making policy works best  
11 when we work under a framework of rules and laws that the  
12 public understands as well as we do, so that there is  
13 competence in the outcome of that process.

14 I think you will agree with me, although from  
15 possibly a different perspective, that the whole electoral  
16 process has become too politicized in terms of the processes  
17 and they get used for a lot of reasons. That has got to  
18 stop.

19 That will ultimately stop when we, as a country, as  
20 a state, get back to the ideas of being able to have  
21 individuals with different perspective disagree agreeably and  
22 recognizing that we are all in it for the same reason, trying  
23 to make things better.

24 That is not going to happen in this case. I hope  
25 that post this election --- pass. Your Honor, I have nothing

1 further.

2 THE COURT: Thank you very much, sir. Counsel, do  
3 you want to address any further comments?

4 MR. DANSICKER: Thank you, Your Honor. Just a few  
5 followup points. First off, we don't dispute whether  
6 Plaintiff tried to serve his memorandum by email or not. I  
7 take him at his word that he did and I am assuming something  
8 with our server blocked it from coming in.

9 We also don't dispute the Plaintiff's -- whether he  
10 had actual knowledge of the filing of the certificate of  
11 candidacy on June 19th or in a few days thereafter. We are  
12 not trying to imply anything about the Plaintiff.

13 What our problem is with the Plaintiff's argument  
14 in that regard is that he sets up a situation where if  
15 somebody has gone out of the country for four months or if  
16 somebody simply doesn't read the newspaper, they could file a  
17 lawsuit the week before the election saying Mr. Perez, or  
18 somebody else, is not qualified.

19 Because they can say well, I didn't know until  
20 somebody came by my house and told me. And then I knew that  
21 that person wasn't eligible and therefore I decided to file a  
22 lawsuit. That is not a reasonable interpretation of the  
23 election law requiring a complaint to be filed within 10  
24 days.

25 I think that one of the cores of the Plaintiff's