Charles H. Bell, Jr. (SBN 060553)
Jimmie E. Johnson (SBN 223344)
**BELL, McANDREWS & HILTACHK, LLP**
455 Capitol Mall, Suite 801
Sacramento, California 95814
Telephone: (916) 442-7757
Facsimile: (916) 442-7759

Attorneys for Plaintiffs
THOMAS G. DEL BECCARO,
MARK A. PRUNER, DAVID B. PRINCE,
CARL A. BURTON, and ADAM C. ABRAHMS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SACRAMENTO**

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| THOMAS G. DEL BECCARO, MARK A. PRUNER, DAVID B. PRINCE, CARL A. BURTON, and ADAM C. ABRAHMS,<br><br>Plaintiffs,<br><br>v.<br><br>EDMUND GERALD "JERRY" BROWN, JR., an individual; STEPHEN L. WEIR, County of Contra Costa Registrar of Voters; FREDDIE OAKLEY, County of Yolo Registrar of Voters; JESSE DURAZO, County of Santa Clara Registrar of Voters; JILL LaVINE, County of Sacramento Registrar of Voters; CONNY McCORMACK, County of Los Angeles Registrar-Recorder/County Clerk; and DOES 1-100, inclusive,<br><br>Defendants. | Case No. 06AS04494<br><br>**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF VERIFIED COMPLAINT FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, AND DECLARATORY RELIEF**<br><br>[Code of Civ. Proc. §§ 526, 526a, 527, and 1060]<br><br>**IMMEDIATE ACTION REQUIRED: ELECTION LAW MATTER ENTITLED TO CALENDAR PREFERENCE PURSUANT TO C.C.P § 35** |

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## INTRODUCTION

Defendant Edmund Gerald "Jerry" Brown, Jr., the Democratic nominee for California Attorney General, is not eligible to hold the office of Attorney General. Government Code section 12503 clearly provides that an individual may not be a candidate for, nor hold the Office of the Attorney General of the State of California ("Attorney General's Office") unless the individual was an uninterrupted, active member of the State Bar of California for the five consecutive years immediately preceding the primary election of that office. Defendant Brown has not been an uninterrupted, active member of the state bar for this requisite five-year period. In fact, he has only been an uninterrupted, active member of the State Bar of California for less than the past four consecutive years.

Nevertheless, undaunted by this statutory requirement, Defendant Brown campaigned for and won the Democratic nomination for the Attorney General's Office in the June 6, 2006 California statewide primary election, and is currently seeking election to the Attorney General's Office in the November 7, 2006 California statewide general election. If Defendant Brown was to prevail at the general election, he would be sworn in and would take the oath of office on January 8, 2007.

Defendants County Registrars of Voters having already counted votes for an ineligible candidate in the primary election are poised to make the same error again in the general election unless enjoined by this court. Allowing an ineligible candidate to have votes counted for him is a tremendous waste of taxpayer funds. More importantly, counting votes for an ineligible candidate poses great harm to the electoral process. Worse yet, would be declaring an ineligible candidate the victor and allowing him to be sworn into office.

Plaintiffs ask this court to uphold the law and prevent the counting of votes for Defendant

Brown based on his ineligibility to hold the office of Attorney General.

## ARGUMENT

### I. DEFENDANT BROWN IS INELIGIBLE TO HOLD THE OFFICE OF ATTORNEY GENERAL

As indicated more fully below, state law requires a candidate for California Attorney General to have been an uninterrupted, "active" member of the State Bar of California for at least the five consecutive years immediately prior to the primary election to that office. Defendant Brown has not been an uninterrupted, active member of the state bar for the requisite five-year period.

#### A. GOVERNMENT CODE SECTION 12503 REQUIRES AN INDIVIDUAL HOLDING THE OFFICE OF THE ATTORNEY GENERAL TO HAVE MAINTAINED ACTIVE STATUS WITH THE STATE BAR OF CALIFORNIA FOR THE IMMEDIATELY PRECEDING FIVE CONSECUTIVE YEARS

Government Code section 12503 provides:

> 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.

The California Supreme Court has already interpreted this exact language to require that the individual seeking office be an active member of the State Bar of California during the entire five year period immediately prior to the primary election for that office. (See *Johnson v. State Bar of California* (1937) 10 Cal.2d 212, 216; *Browning v. Dominguez* (1935) 3 Cal.2d 167, 171.)

In *Johnson*, the state high court was required to interpret the following language that at the time was found in Article VI, section 23 of the California Constitution:

> No person shall be eligible to the office of a Justice of the Supreme Court, or of a district court of appeal, or of a judge of a superior court, or of a municipal court, 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.

Other than the name of the office - "Attorney General" versus "Justice of the Supreme Court, or of a district court of appeal, or of a judge of a superior court, or of a municipal court" - this text is exactly the same as the current version of Government Code section 12503. In *Johnson*, the court interpreted this language to prohibit an individual from holding office as a superior court judge regardless of when the individual was first admitted to the state bar if that individual was on "inactive" status with the State Bar of California during the immediately preceding five years.

> It follows that no one is eligible to hold the office of superior judge who has not been an admitted practitioner before the Supreme Court of this state for a period of five consecutive years immediately preceding his election or appointment to such office. Certainly an attorney who has been suspended from the practice of law during this period cannot successfully claim to be eligible. [Citation.] *It is self-evident, we think, that said provision requires as a fundamental qualification for the office of superior judge, that the candidate for such position be qualified as an attorney* ***actually entitled to practice in the state courts***.

(Id. at p. 216. [emphasis added].)

Therefore, pursuant to *Johnson*, the requirement found both in Government Code section 12503 and Article VI, section 23 of the California Constitution circa 1937 that a person be "admitted" to the state bar for the five consecutive years immediately prior to the election of the stated public office requires more than the mere initial admission to the State Bar of California at a time at least five years prior to the election. Rather, the provisions require that the individual *both* have been initially admitted to the state bar for at least five years prior to the election *and* maintained the right to be "actually entitled to practice in the state courts" during the immediately preceding five year period.

In *Browning*, the California Supreme Court held that the language "immediately preceding his election," in Article VI, Section 15 required that a candidate have satisfied the five-year qualification period by the time of the primary election, not at the time the sought-after term commenced.

> The practical effect of granting the petition would be to declare that the petitioner was nominated at the recent primary election as a candidate for the office of municipal judge of said city, being office No. 10, instead of the respondent, Delamere Frances McCloskey. ... The primary election at which said parties were candidates for nomination to said office No. 10 was held on the second day of April, 1935. The municipal election to elect an incumbent for said office No. 10 will be held on May 7, 1935.
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> ...
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> We are, therefore, unable to agree with respondent McCloskey that under the provisions of section 23 of article VI of the Constitution a person is eligible to the office of municipal judge if admitted to practice five years before the commencement of the term of office to which he was elected, although he has not been admitted to practice for a period of five years before his election. This section of the Constitution says nothing about the beginning of the term of office, but explicitly makes the time of his election the time when he must possess the qualifications necessary to make him eligible to the office.
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> From the foregoing, we conclude that respondent McCloskey is ineligible to the office of municipal judge No. 10 of the city of Los Angeles, and was so disqualified at the date of said primary election.

(*Browning v. Dominguez, supra,* 3 Cal.2d at pp. 167-168, 171.)[1]

Therefore, pursuant to *Johnson* and *Browning* Defendant Brown must have been "actually entitled to practice in the state courts" without interruption during the five consecutive years immediately prior to the June 6, 2006 primary election in order to be a qualified candidate for California Attorney General in that election. He was not.

In *Johnson*, the court found that "an attorney who has been suspended from the practice of law during the period cannot successfully claim to be eligible." (Id. at p. 216.) In that case, the candidate was not an "active" member of the bar. He was placed on "inactive" status for

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[1] In *Browning*, the court held that the petitioner be named as the nominee having received the next highest number of votes due to specific provisions found in the then-charter of the City of Los Angeles. (*Browning v. Dominguez, supra,* 3 Cal.2d at p. 171.) In contrast, the California Supreme Court has held that for elections held pursuant to state general law - as is the case with all state officers including the California Attorney General - that when a political party nominates an ineligible candidate, the candidate receiving the next highest number of votes is not considered the nominee. Rather, the party is found to not have nominated any candidate. (See *Heney v. Jordan* (1918) 179 Cal. 24, 29-30.)

improper actions. (See id.) While the candidate in *Johnson* was "involuntarily" placed on inactive status, while Defendant Brown in the immediate case "voluntarily" placed himself on inactive status, that is not a determinative factor.

Business and Professions Code section 6006 states that the distinction between "voluntary" and "involuntary" inactive status is one without a difference for the purposes of *Johnson* as neither class of member is "actually entitled to practice in the state courts."

Business and Professions Code section 6006 provides, in pertinent part:

> *Inactive members are not entitled to* hold office or vote or *practice law.* Those who are enrolled as inactive members at their request may, on application and payment of all fees required, become active members. 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. Those who are enrolled as inactive members pursuant to Section 6007 may become active members as provided in that section. (Emphasis added.)

Therefore, inactive members - whether attaining that status voluntarily or involuntarily - are all denied the rights and privileges of one licensed to practice law including holding office with the State Bar of California, voting on state bar issues, and "*practicing law*" *in the state courts* - the ultimate question pursuant to *Johnson*. (See *Johnson v. State Bar of California*, *supra*, 10 Cal.2d at p. 216 ["It is self-evident, we think, that said provision requires as a fundamental qualification for the office of superior judge, that the candidate for such position be qualified as an attorney **actually entitled to practice in the state courts** [emphasis added]."].) Thus, a candidate must be an active member of the state bar during the entire five consecutive years prior to his or her primary nomination for the office of California Attorney General.

### B. DEFENDANT BROWN HAS NOT BEEN AN ACTIVE MEMBER OF THE CALIFORNIA STATE BAR FOR THE REQUISITE FIVE YEAR PERIOD

On June 14, 1965, Defendant Brown was admitted to the State Bar of California. (See Plaintiffs' Request for Judicial Notice, Exhibit "A".) However, from January 1, 1992 through

April 30, 2003, Defendant Brown's status with the State Bar of California was "inactive," save less than a year-long period between January 23, 1996 and January 1, 1997. (See Plaintiffs' Request for Judicial Notice, Exhibit "A".) In total, Defendant Brown has been an active member of the California State Bar for less than five of the past fourteen years combined.

On May 1, 2003, Defendant Brown regained his "active" status as a member of the state bar and has remained active as of the date the underlying complaint was filed. (See Plaintiffs' Request for Judicial Notice, Exhibit "A".) As such, at the time of the June 6, 2006 primary election on June 6, 2006, Defendant Brown had only been an active member of the state bar for just over three consecutive years. Likewise, at the time of the November 7, 2006 general election and at the time of the January 8, 2007 swearing-in of the next California Attorney General, Defendant Brown will have not met the five-year requirement of active bar membership.

## II. THE *JOHNSON* INTERPRETATION IS FIXED INTO GOVERNMENT CODE SECTION 12503 AND CANNOT BE CHANGED BY SUBSEQUENT JUDICIAL FIAT

The *Johnson* decision interpreting the text of then-Article VI, section 23 was rendered in 1937. On November 8, 1966 the State Legislature enacted Government Code section 12503, who again, decided to copy the exact language from Article VI, section 23 of the California Constitution for the text of the provision.[2] (See Stats.1966, 1st Ex.Sess., c. 161, p. 715, § 9.6.)

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[2] In 1950, the people of California passed an amendment to Article VI, Section 23 of the California Constitution. The amendment did not alter any of the text that had been interpreted in *Johnson*. Rather, the amendment added the following language to the end of the provision: "provided, however, that any elected judge or justice of an existing court who has served in that capacity by election or appointment for five consecutive years immediately preceding the effective date of this amendment shall be eligible to become the judge of a municipal court by which the existing court is superseded upon the establishment of said municipal court or at the first election of judges thereto and for any consecutive terms thereafter for which he may be reelected. The requirement of consecutive years of judicial service shall be deemed to have been met even though interrupted by service in the armed forces of the United States during the period of war."

The Legislature is presumed to be aware of prior case law when drafting legislation. (See *Barragan v. Workers' Comp. Appeals Bd.* (1987) 195 Cal.App.3d 637, 650.) Thus, when the State Legislature copied into Government Code section 12503 word-for-word the language of then-Article VI, Section 23 which had been previously interpreted by the California Supreme Court in *Johnson*, they are presumed to have been aware of that interpretation and intended such interpretation to hold for Section 12503. Even if the California Supreme Court later determined that the *Johnson* interpretation was incorrect, such a subsequent judicial determination is of no consequence as the *Johnson* interpretation was the state of the law at the time the provision was enacted, and is considered the intent of the State Legislature which drafted it. A court must ordinarily adopt that interpretation which carries out the intent and objective of the drafters of the provision. (See *Mosk v. Superior Court* (1979) 25 Cal.3d 474, 495 [superceded on other grounds].) "In construing constitutional and statutory provisions, whether enacted by the Legislature or by initiative, the intent of the enacting body is the paramount consideration. [Citations.] '[W]e are mindful that the goal of statutory construction is ascertainment of legislative intent so that the purpose of the law may be effectuated.' [Citation.]" ( *In re Lance W.* (1985) 37 Cal.3d 873, 889, 210 Cal.Rptr. 631, 694 P.2d 744.)

Therefore, unless and until a subsequent statute or initiative amends Government Code section 12503, or unless and until a subsequent statute or initiative provides a new interpretation for Government Code section 12503, the interpretation found in *Johnson* remains in effect and fully applicable to section 12503.

## III. PROPOSITION 1A (1966) AND THE 1989 AMENDMENT TO BUSINESS AND PROFESSIONS CODE SECTION 6006 REFLECT THE LEGISLATIVE INTENT TO ADOPT THE *JOHNSON* INTERPRETATION OF GOVERNMENT CODE SECTION 12503

The legislative intent confirming the *Johnson* interpretation as to Government Code

section 12503 is further evident from the fact that in the very same session in which the State Legislature drafted and enacted the provision, 1966 First Extraordinary Session, it drafted a constitutional amendment that replaced Article VI, Section 23 - from which the text of Section 12503 was copied word-for-word - for a different constitutional provision employing different language. The 1966 constitutional amendment, Proposition 1A, repealed Article VI, Section 23 and replaced it with what is now Article VI, Section 15. After the 1966 constitutional amendment was passed, Article VI, Section 15 read:

> A person is ineligible to be a judge of a court of record unless for 5 years immediately preceding selection to a municipal court or 10 years immediately preceding selection to other courts, the person has been a member of the State Bar or served as a judge of a court of record in this State. A judge eligible for municipal court service may be assigned by the chairman of the Judicial Council to serve on any court.

The State Legislature which drafted the initiative had the option to maintain the same "admitted" language found in the old Article VI, Section 23, and with it the *Johnson* interpretation of that language or to craft new "member" language subject to a different interpretation. However, the State Legislature retained the Article VI, Section 23 language for Government Code section 12503. The implication of not using the old Article VI, Section 23 language for its replacement Article VI, Section 15, but using that language for Government Code section 12503, reflects the Legislature's clear intent to maintain the *Johnson* interpretation of the "admitted" language, and not to replace it with the new "member" language.

In fact, the State Legislature addressed this fact when it enacted Stats. 1989 Ch. 1425 (SB 905 (Davis)). SB 905 enacted two distinct laws. First, SB 905 set requirements for members of the State Bar of California to participate in a certain number of hours of mandatory continuing

learning education ("MCLE's") within a prescribed period.[3] Second, SB 905 amended Business and Professions Code section 6006 to include the following provision: "Those who are or have been enrolled as inactive members at their request are member of the State Bar for purposes of Section 15 of Article VI of the California Constitution." Again, the State Legislature drafted Article VI, Section 15 in the 1966 constitutional amendment specifically altering the "admitted" language of the old Article VI, Section 23 language to that of "member." Subsequently, in SB 905 the State Legislature provided that such "member" language was intended to permit voluntarily inactive members of the state bar to be appointed for judicial positions. "Although subsequent legislation cannot change the meaning of an earlier enactment, it does supply an indication of legislative intent which may be considered with other factors in arriving at the true intent existing when the legislation was enacted." (See *Aguimatang v. California State Lottery* (1991) 234 Cal.App.3d 769, 788.)

The legislative history of SB 905 clearly demonstrates that the legislation's intent was to clarify the interpretation of the "member" language within the constitutional provision. For instance, the Senate Third Reading of SB 905 on September 12, 1989 - the first legislative record regarding the Business and Professions Code provision - provides in part the following:

> 2) As found in Section 15 of Article VI of the Constitution, [sic] states that a person is ineligible to be a judge of a court of record unless he or she has been a "member" of the State Bar for a specified period of time "immediately preceding" his or her judicial appointment.
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> ...
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> 3) Provides that a member of the Bar who is voluntarily enrolled as an inactive member, nevertheless, remains a "member" of the Bar for purposes of judicial appointment under Section 15 of Article VI.

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[3] Plaintiffs have been unable to discover whether Defendant Brown has completed the necessary MCLE credits to maintain active status as a member of the state bar. If he has not, he is subject to "involuntary" inactive membership status. (See Business and Professions Code section 6070, subdivision (a).)

(Senate Third Reading, September 12, 1989, Senate Floor Analysis, SB 905 (1989), Request for Judicial Notice, Exhibit "B.")

Aside from the State Legislature, then-Governor George Deukmejian who signed the bill was also aware that the purpose of SB 905 was to clarify the "member" language of Article VI, Section 15, as indicated in the legislation's Enrolled Bill Report.

> The California Constitution provides that a person is ineligible to be appointed as a judge of a municipal court unless he or she has been a member of the State Bar for five years immediately proceeding the appointment. For other courts, an individual must have been a member for ten years immediately proceeding the judicial appointment.
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> SB 905 would clarify that members of the State Bar who have been enrolled as inactive members, at their request, would be eligible to be appointed as a judge.

(Enrolled Bill Report, Governor's Chaptered Bill File, SB 905 (1989), Request for Judicial Notice, Exhibit "C.")

As such, SB 905 was an effort by the State Legislature to indicate its intent with respect to Article VI, Section 15's use of the new "member" language. The provision enacted by SB 905 explicitly pertains to Article VI, Section 15 only. The legislative history of the bill also shows that lawmakers were only concerned about setting qualifications for judicial positions with SB 905. (See Senate Third Reading, September 12, 1989, Senate Floor Analysis, SB 905 (1989); Enrolled Bill Report, Governor's Chaptered Bill File, SB 905 (1989).) Neither the text of SB 905, nor its legislative record make any reference to Government Code section 15203. Nor does the legislative record of SB 905 include any evidence that the State Legislature was setting forth a universal policy regarding how an individual may satisfy any and all California State Bar membership requirements, when such a requirement is a qualification of a public office. (See Senate Third Reading, September 12, 1989, Senate Floor Analysis, SB 905 (1989); Enrolled Bill Report, Governor's Chaptered Bill File, SB 905 (1989).) Finally, a legislative act is not

interpreted "to overthrow long established principles of law unless that intention is made clear by express declaration or necessary implication." (*Barragan v. Workers' Comp. Appeals Bd.* (1987) 195 Cal.App.3d 637, 650.) As no express declaration nor necessary implication is found within SB 905 towards Government Code section 12503, its provision cannot be implied upon it. SB 905 was exclusively an intent upon the State Legislature to clarify the language of "member" in Article VI, Section 15 of the California Constitution.

SB 905, and its explicit reference to the constitutional provision, is a testament to the legislative intent that the "member" language of Article VI, Section 15 is distinct from the "admitted" language of Government Code section 12503 and should not be interpreted as one and the same. Therefore, whereas the exact same session of the State Legislature employed different language for Government Code section 12503 and Article VI, Section 15 of the California Constitution, and whereas SB 905's text focuses explicitly upon Article VI, Section 15 of the California Constitution, and whereas SB 905's legislative history indicates an exclusive intent regarding setting judicial qualifications and providing a clear interpretation of the "member" language, the State Legislature has demonstrated clearly its intent that the qualifications set forth in Government Code section 12503 and Article VI, Section 15 of the California Constitution are distinct, and that the *Johnson* interpretation holds for Section 12503.

## IV. THE COURT SHOULD EXERCISE ITS INJUNCTIVE AUTHORITY IN THIS MATTER

### A. IRREPARABLE INJURY IS CLEAR

"A preliminary injunction is appropriate where a plaintiff is likely to prevail at trial and failure to provide interim relief will cause irreparable harm." (*Barajas v. Anaheim* (1993) 15 Cal.App.4th 1808, 1813.) "[T]he more likely it is that plaintiffs will ultimately prevail, the less severe must be the harm that they allege will occur if the injunction does not issue." (*King v.*

*Meese* (1987) 43 Cal.3d 1217, 1227.)

### B. LIKELIHOOD OF PREVAILING ON THE MERITS IS CLEAR

As set forth above, Plaintiffs have exhibited a strong likelihood of prevailing on the merits of this case. Moreover, 'waste' is expressly cited in California statutory law as an independent ground for a preliminary injunction. (See Code of Civil Procedure § 526(a)(2); see also 6 Witkin, Cal. Proc. 4th (1997) Prov Rem, § 302, p. 241.) Undeniably, should taxpayer funds be spent on counting the votes of an ineligible candidate, and potentially certifying the election of an ineligible candidate, especially one found to be ineligible prior to the election, the expenditure of those taxpayer funds will be irreparably wasted.

### C. INADEQUACY OF ALTERNATIVE LEGAL REMEDIES

Plaintiffs have no *adequate* remedy at law. Post-election remedies such as an election contest pursuant to Elections Code sections 16100, *et seq*. will not remedy the waste of taxpayer funds expended upon counting the votes of an ineligible candidate. First, should Defendant Brown not prevail in the November 7, 2006 election, there is no post-election remedy available to Plaintiffs and the people of California to seek redress for the ineligible candidacy and re-compensation of the waste. (See *McKinney v. Superior Court* (2004) 124 Cal.App.4th 951 [holding that the grounds for an election contest provided in Elections Code sections 16100, *et seq*., are the exclusive grounds for contesting a candidacy and do not include contesting the candidacy of a non-prevailing candidate].) Second, even if the resources wasted for counting the votes of an ineligible candidate could be momentarily re-compensated by Defendant Brown after the election by judicial order, "waste" is still a stated ground for preliminary injunction pursuant to Code of Civil Procedure section 526, subdivision (a)(2). Finally, even if the wasted resources could be momentarily re-compensated after the election by judicial order, the loss of access to

those wasted resources for other expenditures during the interim period is irreparable. Therefore, only an injunction prior to the election can spare Plaintiffs and the people of California irreparable harm in this instance.

Additionally, the post-election remedy of a quo warranto removal action of Defendant Brown from office pursuant to Code of Civil Procedure sections 803, *et seq.*, should Defendant Brown prevail at the general election and subsequently take the oath of office, is not adequate in this instance as the harm to Plaintiffs and the people of California will be irreparable and severe should an ineligible candidate prevail at the election and unlawfully hold and exercise the powers of a public office - especially that of the chief law enforcement officer of the state.

As such, recognizing the strong likelihood of success by Plaintiffs in this matter, and the unavoidable irreparable waste of taxpayer funds and potential irreparable harm of a person unlawfully holding and exercising the Attorney General Office should injunction not be issued, the factors of this case overwhelmingly weigh on issuing a preliminary injunction in this matter. Plaintiffs have no other adequate and timely legal remedy in this matter. Pursuant to *Barragan*, Defendant Brown is already an ineligible candidate. Moreover, the November 7, 2006 election is mere weeks away, and the January 8, 2007 swearing-in date will be long past before final adjudication is determined in this matter. A preliminary injunction is immediately necessary to save Plaintiffs and the People of California from irreparable harm.

## CONCLUSION

In short, (1) the *Johnson* interpretation of Government Code section 12503 is directly applicable, because the statute uses the exact textual language analyzed in *Johnson*; (2) *Johnson* was good law at the time the statutory provision was enacted and remains good law under applicable canons of construction; (3) the legislative history of SB 905 demonstrates the State

Legislature's intent regarding a different rule for judges (the new "member" language in Article VI, Section 15 of the California Constitution) than for Attorney General candidates (the "admitted" language of Government Code section 15203 as interpreted by *Johnson*), and (4) California Courts are prohibited from re-interpreting Government Code section 12503, because both the text of the statutory provision and the *Johnson* interpretation of that text were "fixed" by the fact that *Johnson* was good law at the time of the 1966 enactment and represents the intent of the State Legislature that drafted it.

Therefore, the text of Government Code section 12503, as interpreted by *Johnson* and *Browning*, requires Defendant Brown to have maintained active status in the State Bar of California for the five consecutive years immediately preceding the June 6, 2006 California statewide primary election to be an eligible candidate for the office of the California Attorney General in the November 7, 2006 election, and take the oath of office on or about January 8, 2007 if elected to that office in the November 7, 2006 election. Defendant Brown, however, had only maintained active status with the state bar for less than four years at the time of the primary election. Pursuant to Government Code section 12503, this court must enforce the laws of this state, declare Defendant Brown ineligible to be a candidate for the Attorney General's Office in the November 7, 2006 election, order Defendant Brown not to take the oath of office if elected to that office in the November 7, 2006 election, and order Defendants County Registrars of Voters

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not to waste any taxpayer funds on counting votes in support of Defendant Brown's election to that office in the November 7, 2006 election.

Dated: October __, 2006

Respectfully submitted,

BELL, McANDREWS & HILTACHK, LLP

By _____
Charles H. Bell, Jr.
Attorneys for Plaintiffs THOMAS G. DEL BECCARO, MARK A. PRUNER, DAVID B. PRINCE, CARL A. BURTON, and ADAM C. ABRAHMS