

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

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JOSEPH A. LANE CLERK

JOHN RANDO and MARIANO A. RODAS,

Case No. B254060

Petitioners and Appellants,

vs.

KAMALA HARRIS, individually and in her official
capacity as Attorney General;

Respondent and Appellee,

FRANK QUINTERO, individually and in his official
capacity as Glendale City Councilmember; CITY OF
GLENDALE,

Real Parties in Interest.

Los Angeles County Superior Court, Case No. BS145904
The Honorable James C. Chalfant, Judge

**APPELLANT'S APPENDIX
VOLUME III OF III - AA000281 - AA000323**

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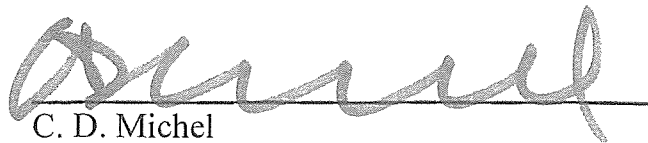
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Attorneys for Plaintiffs/Appellants

Pursuant to California Rules of Court 8.124, Appellants, JOHN RANDO and MARIANO A. RODAS, by and through their attorney of record, C. D. Michel of Michel & Associates, P.C. hereby confirm to the contents and form of Appellants' Appendix on appeal.¹

Dated: February 12, 2014

MICHEL & ASSOCIATES, P.C.

A handwritten signature in grey ink, appearing to read "C. D. Michel", is written over a horizontal line.

C. D. Michel
Attorneys for Petitioners/Appellants
John Rando and Mariano A. Rodas

¹ Pursuant to revised California Rules of Court 8.124, it is no longer required that all documents bear a clerk's date stamp to show its filing date.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 85

HON. JAMES C. CHALFANT, JUDGE

JOHN RANDO, ET AL.,

PETITIONERS,

VS.

KAMALA HARRIS, ET AL.,

RESPONDENTS.

CASE NO: BS145904

ORIGINAL

REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS

TUESDAY, JANUARY 7, 2014

APPEARANCES:

FOR PETITIONERS: MICHEL & ASSOCIATES, P.C.
BY: SEAN A. BRADY, ESQ
180 E. OCEAN BOULEVARD, SUITE 200
LONG BEACH, CALIFORNIA 90802
(562) 216-4444

FOR RESPONDENT: STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
BY: SUSAN K. SMITH, ESQ
300 SOUTH SPRING STREET, SUIT 1702
LOS ANGELES, CALIFORNIA 90013
(213) 897-2105

FOR THE CITY OF GLENDALE: CITY OF GLENDALE, CALIFORNIA
OFFICE OF THE CITY ATTORNEY
BY: ANDREW C. RAWCLIFFE, ESQ.
613 E. BROADWAY, ROOM 220
GLENDALE, CALIFORNIA 91206-4394
(818) 548-2080

REPORTED BY:
LOUIS R. MACHUCA, CSR NO. 12274
OFFICIAL COURT REPORTER

1 CASE NUMBER: BS145904
2 CASE NAME: JOHN RANDO, ET AL. VS. KAMALA
3 HARRIS, ET AL.
4 LOS ANGELES, CALIFORNIA TUESDAY, JANUARY 7, 2014
5 DEPARTMENT 85 JUDGE JAMES C. CHALFANT
6 APPEARANCES: (AS HERETOFORE NOTED.)
7 REPORTER: LOUIS MACHUCA, CSR NO. 12274
8 TIME: AFTERNOON SESSION
9
10

11 (THE FOLLOWING PROCEEDINGS WERE HELD
12 IN OPEN COURT:)

13
14 THE COURT: RANDO VERSUS HARRIS, BC145 -- SORRY,
15 BS145904, NUMBER 9 ON CALENDAR.

16 MS. SMITH: GOOD AFTERNOON, YOUR HONOR.
17 SUSAN SMITH, DEPUTY ATTORNEY GENERAL REPRESENTING
18 RESPONDENT ATTORNEY GENERAL.

19 MR. BRADY: GOOD AFTERNOON, YOUR HONOR.
20 SEAN BRADY ON BEHALF OF THE PETITIONERS.

21 MR. RAWCLIFFE: GOOD AFTERNOON. ANDREW RAWCLIFFE
22 ON BEHALF OF THE REAL PARTIES OF INTEREST.

23 THE COURT: GOOD AFTERNOON, COUNSEL.

24 THIS IS HERE ON A PETITION FOR A WRIT OF --
25 IT, ACTUALLY, IS HERE FOR A PETITION ON WRIT OF
26 MANDATE. IT'S AFTER AN ALTERNATIVE WRIT WAS ISSUED.
27 THE CASE INVOLVES QUO WARRANTO AND THE ATTORNEY
28 GENERAL'S DUTY TO GRANT LEAVE TO FILE A QUO WARRANTO

1 PETITION. I'VE ISSUED A TENTATIVE WHICH IS TO DENY.

2 THE CASE IS AN INTERESTING ONE. IT'S
3 INTERESTING BECAUSE THE PETITIONER'S INTERPRETATION OF
4 SECTION 12, ARTICLE 6 OF THE CITY CHARTER, WHICH IS
5 THE CITY OF -- WHAT CITY IS THIS?

6 MR. RAWCLIFFE: CITY OF GLENDALE.

7 MR. BRADY: GLENDALE.

8 THE COURT: GLENDALE.

9 THE PLAIN MEANING OF THAT LANGUAGE WOULD
10 SUPPORT THE PETITIONER'S VIEW. NORMALLY, PLAIN
11 MEANING IS A STRONG INDICATOR OF INTENT, IN THIS CASE,
12 VOTER INTENT. THE ATTORNEY GENERAL CONCLUDED
13 OTHERWISE, AND AFTER SOME FAIRLY CLOSE SCRUTINY, I
14 AGREE WITH THE ATTORNEY GENERAL, ALTHOUGH THAT IS NOT
15 REALLY MY ROLE HERE.

16 WHAT IS INTERESTING TO ME IS THE ISSUE OF THE
17 ATTORNEY GENERAL'S OBLIGATION WHERE THERE IS A
18 PLAUSIBLE INTERPRETATION THAT IT'S NOT FRIVOLOUS,
19 WHETHER THE ATTORNEY GENERAL HAS AN OBLIGATION TO
20 GRANT LEAVE TO PERMIT A COURT TO DECIDE THE ISSUE OF
21 INTERPRETATION, WHICH I'LL GET TO IN A MINUTE.

22 SO THE CASE LAW PROVIDES THAT THE ATTORNEY
23 GENERAL DOES NOT HAVE A MINISTERIAL DUTY TO APPROVE A
24 QUO WARRANTO APPLICATION AND THE STANDARD OF REVIEW IS
25 AN EXTREME ABUSE OF DISCRETION IN THE ATTORNEY
26 GENERAL'S DECISION ONLY WILL PERMIT A COURT TO
27 OVERRULE THAT DECISION.

28 THE ATTORNEY GENERAL CONSIDERS WHETHER

1 THERE'S A SUBSTANTIAL QUESTION OF FACT OR LAW AND THEN
2 WHETHER IT WOULD BE IN THE PUBLIC INTEREST TO GRANT
3 LEAVE TO SUE. PETITIONERS CONTEND THAT THE ATTORNEY
4 GENERAL'S DECISION RELIED, AT LEAST IN PART, ON THE
5 JUNE 2014 EXPLORATION OF COUNCILMAN QUINTERO'S TERM AS
6 A BASIS TO JUSTIFY A DENIAL OF QUO WARRANTO.

7 IF THAT IS TRUE, I AGREE WITH PETITIONERS
8 THAT IT'S NOT A BASIS TO -- ON WHICH TO DENY THE
9 APPLICATION, THAT IS THE APPLICATION WAS TIMELY MADE
10 WITHIN A MONTH AFTER COUNCILMAN QUINTERO TOOK OFFICE.
11 AN APPLICATION WAS PRESENTED TO THE ATTORNEY GENERAL
12 ON MAY 23RD, 2013. THERE WERE 13 MONTHS LEFT OF
13 MR. QUINTERO'S APPOINTED TERM AT THAT POINT. IT TOOK
14 THE ATTORNEY GENERAL FIVE MONTHS TO DENY THE
15 APPLICATION.

16 ANY SUGGESTION THAT FROM OCTOBER TO JUNE 2014
17 WOULD BE INSUFFICIENT TIME FOR A QUO WARRANTO
18 PROCEEDING TO CONCLUDE, IN MY VIEW, IS CREATING A
19 SELF-FULFILLING PROPHECY. THE ATTORNEY GENERAL CANNOT
20 RELY ON THE SHORTNESS OF TIME AS A BASIS TO CONCLUDE
21 THAT PUBLIC INTEREST WOULD NOT BE SERVED BY FILING THE
22 LAWSUIT.

23 SO THEN WE COME TO THE QUESTION OF IS THERE A
24 SUBSTANTIAL QUESTION OF FACT OR LAW, AND DOES THE
25 PUBLIC -- WOULD THE PUBLIC INTEREST BE SERVED BY
26 FILING SUIT?

27 THE PETITIONERS FIRST ARGUE THAT THE ATTORNEY
28 GENERAL DEVIATED FROM HER OWN PRACTICE IN PASSING ON

1 APPLICATIONS FOR LEAVE TO SUE, BECAUSE, ORDINARILY,
2 THE ATTORNEY GENERAL DOES NOT DECIDE THE ISSUES
3 PRESENTED BUT ONLY DETERMINES WHETHER THERE'S A
4 SUBSTANTIAL QUESTION OF FACT OR LAW CALLING FOR
5 JUDICIAL DECISION.

6 THERE'S NO QUESTION IN MY MIND THAT THE
7 ATTORNEY GENERAL IS ENTITLED TO AND, INDEED, REQUIRED
8 TO CONSIDER THE MERITS OF THE UNDERLYING PETITION --
9 APPLICATION SORRY -- UNDERLYING LAWSUIT, THE PROPOSED
10 LAWSUIT, I GUESS IS THE WAY TO PUT IT, IN DECIDING
11 WHETHER OR NOT THERE IS A SUBSTANTIAL QUESTION OF FACT
12 OR LAW.

13 IT IS NOT -- SHE IS NOT REQUIRED TO GRANT A
14 LEAVE TO SUE WHERE THERE'S A DEBATABLE PROPOSITION,
15 AND SHE HAS TO EVALUATE THE MERITS TO THE EXTENT
16 NECESSARY TO DECIDE WHETHER A SUBSTANTIAL QUESTION IS
17 RAISED. AND SHE DID.

18 THEN THE NEXT QUESTION IS WHETHER SHE ABUSED
19 HER DISCRETION, ACTUALLY COMMITTED AN EXTREME ABUSE OF
20 DISCRETION IN DECIDING NOT TO GRANT THE APPLICATION.
21 THE ATTORNEY GENERAL HAS ALL OF THE STATUTORY OR, IN
22 THIS CASE, INITIATIVE INTERPRETIVE TOOLS AVAILABLE TO
23 HER THAT A COURT HAS IN DECIDING WHETHER THERE IS A
24 SUBSTANTIAL QUESTION OF LAW IF THERE IS A DEBATABLE
25 PROPOSITION THAT DOES NOT INEVITABLY PRODUCE A QUO
26 WARRANTO LAWSUIT.

27 THAT'S CITY OF CAMPBELL 197 CAL.APP. 2ND AT
28 650. TO HOLD OTHERWISE WOULD FORECLOSE THE ATTORNEY

1 GENERAL'S EXERCISE OF DISCRETION ON WHETHER THAT
2 DEBATABLE ISSUE SHOULD BE PRESENTED TO A COURT.

3 IN THIS CASE, AS I SAID, THE PLAIN LANGUAGE
4 OF SECTION 12 SUPPORTS THE PETITIONERS' POINT OF VIEW,
5 BUT THE ATTORNEY GENERAL AND THE COURT -- AND I
6 CONSIDER THE ATTORNEY GENERAL AND THE COURT, IN
7 EVALUATING THE EXTRINSIC EVIDENCE IN SUPPORT OF
8 PROP JJ, WHICH AMENDED SECTION 12 AND IS THE LANGUAGE
9 AT ISSUE, UNDERSTAND THE PROP JJ TO BE A PROPOSITION
10 DIRECTED AT PREVENTING A FORMER COUNCIL MEMBER FROM
11 USING HIS OR HER INFLUENCE TO OBTAIN CITY EMPLOYMENT
12 AND NOT THE ELECTION TO THE CITY OFFICE OF A FORMER
13 COUNCIL MEMBER.

14 THAT IS CONSISTENT WITH THE BALLOT MATERIALS,
15 VALID ARGUMENT, AND THERE IS NOTHING IN -- ACTUALLY,
16 IN ANY OF THOSE MATERIALS THAT SUPPORTS THE VIEW
17 THAT -- THAT MR. QUINTERO CANNOT HOLD A CITY COUNCIL
18 MEMBER POSITION FOR TWO YEARS AFTER LEAVING OFFICE.

19 INDEED, IF, AS THE ATTORNEY GENERAL POINTED
20 OUT, THE TERM LIMITS FOR CITY COUNCIL MEMBERS DID NOT
21 PASS IN THE CITY OF GLENDALE, THIS WOULD BE A TOTALLY
22 INEFFECTUAL TYPE OF TERM LIMIT, BECAUSE IT WOULD NOT
23 PREVENT A SITTING MEMBER FROM SEEKING REELECTION TERM
24 AFTER TERM AFTER TERM BUT WOULD PREVENT A COUNCIL
25 MEMBER WHO LEAVES OFFICE FROM SEEKING A COUNCIL MEMBER
26 ELECTED TERM FOR TWO YEARS AFTER LEAVING OFFICES.

27 THERE DOESN'T SEEM TO BE ANY PUBLIC PURPOSE
28 TO THAT KIND OF RESULT, THAT KIND OF INTERPRETATION,

1 AND PETITIONERS HAVE NOT ARTICULATED SUCH A PURPOSE.

2 THE PETITIONERS RELY ON THE TERM "CITY
3 OFFICE" BASICALLY. I MEAN, THIS IS REALLY SORT OF A
4 PRINCIPAL PLAIN MEANING ARGUMENT BY PETITIONERS. THE
5 TERM "CITY OFFICE" IN SECTION 12, SPECIFICALLY THE BAN
6 ON ANY, QUOTE, "ANY COMPENSATED CITY OFFICE OR CITY
7 EMPLOYMENT," END QUOTE, NECESSARILY INCLUDES AN
8 ELECTED OFFICE. THAT IS A FAIR ARGUMENT. THE TERM
9 "OFFICE" GENERALLY MEANS EITHER APPOINTED OR ELECTED
10 OFFICE.

11 BUT, WHILE THE SCOPE OF OFFICE GENERALLY
12 INCLUDES AN ELECTED OFFICE, THE BALLOT MATERIALS AND
13 THE LACK OF ANY REFERENCE TO ELECTION IN ANYTHING
14 PRESENTED BY THE -- PRESENTED TO THE VOTING PUBLIC,
15 COUPLED WITH THE FACT THAT THE RIGHT TO HOLD A PUBLIC
16 OFFICE IS A FUNDAMENTAL RIGHT WHICH MAY NOT BE
17 CURTAILED UNLESS THERE IS A CLEAR PROVISION THAT DOES
18 SO, ALL SUPPORT THE NOTION THAT SECTION 12 SHOULD NOT
19 BE INTERPRETED THE WAY PETITIONERS WANT IT TO BE
20 INTERPRETED.

21 THEREFORE, THE ATTORNEY GENERAL DID NOT
22 COMMIT AN EXTREME AND CLEARLY INDEFENSIBLE ABUSE OF
23 DISCRETION IN HER INTERPRETATION, AND, IN FACT, I
24 AGREE WITH HER INTERPRETATION.

25 PETITIONERS ARGUE THAT SECTION 12'S AMBIGUITY
26 MUST BE RESOLVED BY A COURT. THEY PRESENTED A
27 PLAUSIBLE INTERPRETATION, WHICH IS TRUE, AND NOT
28 FRIVOLOUS INTERPRETATION, WHICH IS TRUE, AND THE

1 ATTORNEY GENERAL'S GATEKEEPER FUNCTION WAS FULFILLED.
2 AND SHE HAD AN OBJECTIVE, QUOTE, "REASON TO BELIEVE,"
3 END QUOTE, THAT MR. QUINTERO HAD ILLEGALLY USURPED HIS
4 OFFICE WHEN HE WAS APPOINTED AS COUNCIL MEMBER BY THE
5 EXISTING CITY COUNCIL.

6 THIS IS THE ISSUE OF WHAT IS THE SCOPE OF THE
7 ATTORNEY GENERAL'S DUTY. I LOOKED CAREFULLY AT THE
8 CASE LAW GLAM NICOLOPULOS, N-I-C-O-L-O-P-U-L-O-S, AND
9 CITY OF CAMPBELL, AS WELL AS INTERNATIONAL. AND IT
10 SEEMED TO DISCERN WHAT THE REQUIREMENTS ARE FOR THE
11 ATTORNEY GENERAL, AND IT SEEMS TO ME, FIRST OF ALL,
12 THAT THE PURPOSE OF THE LEAVE REQUIREMENT IN QUO
13 WARRANTO IS NOT SIMPLY TO WEED OUT FRIVOLOUS OR
14 VEXATIOUS CLAIMS AGAINST PUBLIC OFFICIALS, ALTHOUGH
15 THAT IS A CHIEF OBJECT.

16 IT IS ALSO TO INSURE THAT, BASICALLY, THAT
17 THE PUBLIC IMPRIMATUR IS NOT PLACED ON LAWSUITS UNLESS
18 THE ATTORNEY GENERAL BELIEVES THAT IT WILL FURTHER THE
19 PUBLIC INTEREST.

20 IN THIS REGARD, I FOUND INTERNATIONAL TO
21 BE -- THE DISCUSSION OF INTERNATIONAL TO BE
22 INTERESTING. THE PUBLIC INTEREST ISSUE WAS DISCUSSED
23 IN THAT CASE AND THAT CASE DREW A DISTINCTION BETWEEN
24 CASES IN WHICH THE PROPOSED RELATER IS ASSERTING HIS
25 OWN PRIVATE RIGHT, SUCH AS A FORMER OFFICE HOLDER WHO
26 IS KICKED OUT OF A POST AND CONTENTS THAT THAT
27 HAPPENED WRONGLY, AS OPPOSED TO THE RIGHTS OF THE
28 GENERAL PUBLIC.

1 THE INTERNATIONAL COURT CITES TO A TREATISE
2 THAT SAYS THAT WHERE THE -- ESSENTIALLY, THE PROPOSED
3 RELATERS ARE -- HAVE NO PRIVATE AX TO GRIND -- NO
4 LEGAL AX, THAT IS, TO GRIND, THE ATTORNEY GENERAL'S
5 DISCRETION IS, QUOTE, "ARBITRARY AND UNCONTROLLABLE
6 AND HIS REFUSAL TO ACT DOES NOT CONFER ON A PRIVATE
7 PERSON RIGHT TO PROCEED." IN OTHER WORDS, IN THAT
8 KIND OF CONTEXT, THE TREATISE SAYS, AND THE
9 INTERNATIONAL COURT CITES IT WITHOUT DISCREDITING IT,
10 THAT THE ATTORNEY GENERAL'S DISCRETION IS VIRTUALLY
11 UNLIMITED.

12 AND THAT'S THE KIND OF SITUATION WE HAVE
13 HERE. THE PETITIONERS HAVE NO PRIVATE LEGAL GRIEVANCE
14 AGAINST QUINTERO'S APPOINTMENT AND ONLY ASSERT THE
15 GENERAL PUBLIC RIGHT TO QUESTION HIS OFFICE. IT SEEMS
16 TO ME THAT IF THE ATTORNEY GENERAL'S DISCRETION IS NOT
17 COMPLETELY UNFETTERED IN THIS CONTEXT, IT IS CERTAINLY
18 VERY BROAD.

19 SO IT IS NOT TRUE THAT SIMPLY BECAUSE THE
20 PETITIONERS HAVE TEED UP WHAT I THINK IS AN
21 INTERESTING ISSUE AND HAVE MADE A PLAUSIBLE
22 NON-FRIVOLOUS ARGUMENT, INDEED, IT'S MORE THAN
23 PLAUSIBLE AND NON-FRIVOLOUS, IT'S A PLAIN MEANING
24 ARGUMENT, THAT DOES NOT MEAN THAT THE ATTORNEY GENERAL
25 IS COMPELLED TO PASS IT ON TO THE -- TO A COURT FOR
26 DECISION.

27 SO BOTTOM LINE HERE IS THAT THE ATTORNEY
28 GENERAL HAS CONCLUDED THAT IT WOULD NOT BE IN THE

1 PUBLIC INTEREST TO GRANT LEAVE. THE ATTORNEY GENERAL
2 HAS TREMENDOUS DISCRETION IN MAKING THAT DECISION.
3 THE ATTORNEY GENERAL HAS, IN MY VIEW, NOT ERRED AND
4 CERTAINLY NOT COMMITTED AN EXTREME AND INDEFENSIBLE
5 ABUSE OF DISCRETION IN INTERPRETING THE AMENDED
6 SECTION 12.

7 AND, THEREFORE, THE MANDAMUS PETITION TO
8 COMPEL THE ATTORNEY GENERAL TO ACT MUST BE DENIED.

9 THAT'S WHAT THE TENTATIVE SAYS. HAVE YOU
10 SEEN IT?

11 MR. BRADY: I HAVE, YOUR HONOR.

12 MS. SMITH: YES, YOUR HONOR.

13 THE COURT: DO YOU WISH TO BE HEARD?

14 MR. BRADY: I DO, YOUR HONOR.

15 THE COURT: GO AHEAD.

16 MR. BRADY: RESPECTFULLY, YOUR HONOR, I DON'T
17 THINK THAT THE DISCRETION THAT THE ATTORNEY GENERAL
18 ENJOYS IS AS BROAD AS YOUR HONOR BELIEVES IT TO BE.
19 IF YOU LOOK AT THE NICOLOPULOS CASE --

20 THE COURT: I DID.

21 MR. BRADY: I'M SURE -- THE COURT SAYS THERE THAT
22 THEY HAD NO REASON TO BELIEVE THAT THE ATTORNEY
23 GENERAL WOULD DENY THE QUO WARRANTO APPLICATION TO
24 THOSE PARTICULAR PETITIONERS. AND THEN FOLLOWED UP BY
25 SAYING, IF THEY DID, A WRIT OF MANDATE COMPELLING
26 WOULD BE AVAILABLE; OTHERWISE, DUE PROCESS WOULD BE
27 VIOLATED. SO THERE HAS TO --

28 THE COURT: BUT, SEE -- I'M INTERRUPTING YOU,

1 BUT --

2 MR. BRADY: SURE.

3 THE COURT: DING, DING, DING. DUE PROCESS WOULD
4 BE VIOLATED. THAT MEANS THEY'RE TALKING ABOUT SOMEONE
5 WHO HAS A PRIVATE LEGAL GRIEVANCE. IN THAT
6 CIRCUMSTANCE, THE ATTORNEY GENERAL CANNOT SIMPLY
7 DECIDE THAT, NAH, WE'RE NOT GOING TO PERMIT YOU TO
8 FILE SUIT, BECAUSE THERE WOULD BE A DUE PROCESS
9 VIOLATION.

10 WHEN YOU ARE A MEMBER OF THE PUBLIC, THOUGH,
11 AS YOUR CLIENTS ARE, DUE PROCESS, I DON'T THINK, HAS
12 ANY BEARING HERE.

13 MR. BRADY: WELL, YOUR HONOR, THEN MEMBERS OF THE
14 PUBLIC CAN NEVER ENFORCE THEIR CITY CHARTER AGAINST
15 SOMEBODY VIOLATING IT UNDER THAT, YOU KNOW -- I, MEAN
16 THEY HAVE NO -- THE PEOPLE WHO VOTED FOR THE PROVISION
17 THAT'S IN PLACE HAVE NO BEARING -- HAVE NO GRIEVANCE
18 WHEN IT'S VIOLATED?

19 THE COURT: I'VE BEEN TAUGHT AS A JUDGE NOT TO
20 MAKE CATEGORICAL PRONOUNCEMENTS, SO I'M NOT GOING TO
21 SAY THAT THERE IS NO CIRCUMSTANCE IN WHICH THE
22 ATTORNEY GENERAL WOULD NOT BE OVERRULED BY ME IF A
23 CITY PROVISION SAID PLAIN LANGUAGE AND SUPPORTING
24 BALLOT PAMPHLETS ALL SUPPORTED YOUR POINT OF VIEW.
25 I'M NOT GOING TO MAKE A CATEGORICAL STATEMENT AND SAY
26 THE ATTORNEY GENERAL'S DISCRETION IS UNFETTERED. I'M
27 NOT GOING TO SAY THAT.

28 THERE COULD BE CIRCUMSTANCES IN WHICH YOUR

1 CLIENT -- CLIENTS WOULD BE ENTITLED TO QUO WARRANTO.
2 WHAT I AM SAYING IS I THINK IT DOES, IN ALL OF THE
3 CASE LAW, MAKE A BIG DIFFERENCE WHETHER THE
4 PETITIONERS HAVE A PRIVATE LEGAL RIGHT THAT THEY'RE
5 PURSUING OR SIMPLY THE PUBLIC INTEREST OR THE PUBLIC
6 RIGHT TO HAVE THE RIGHT PERSON IN OFFICE.

7 MR. BRADY: OKAY. AND THAT'S A REASONABLE VIEW.
8 AND LET'S ASSUME THAT THE ATTORNEY GENERAL DOES HAVE
9 THIS LARGE AMOUNT OF DISCRETION, AS YOUR HONOR
10 BELIEVES, AND, YOU KNOW, THAT -- THAT SHE'S ABLE TO
11 BASICALLY SAY AT HER WHIM WHAT SHE WANTS.

12 IF YOU LOOK AT THE BALLOT PAMPHLET, I HAVE TO
13 YOU TAKE ISSUE WITH YOUR HONOR'S VIEW OF THE BALLOT
14 PAMPHLET. WE MADE THE CASE THAT WE'RE NOT JUST MAKING
15 A PLAIN MEANING RULE -- ARGUMENT HERE. WE SAY THAT
16 YOU DON'T NEED TO. BUT EVEN ASSUMING THAT YOU NEED TO
17 GO LOOK AT THE BALLOT PAMPHLET, THE OPENING -- AND
18 IT'S EXHIBIT, B IF YOU HAVE IT.

19 THE COURT: I'M LOOKING AT IT.

20 MR. BRADY: THE OPENING STATEMENT THERE EXPLAINS
21 SHALL ARTICLE 4 -- ARTICLE 6, SORRY, SECTION 12 OF THE
22 CHARTER FOR THE GOVERNMENT OF THE CITY OF GLENDALE BE
23 AMENDED TO PROVIDE COUNCIL MEMBERS SHALL NOT HOLD ANY
24 CITY OFFICE OR EMPLOYMENT, EXCEPT AS AUTHORIZED BY
25 STATE LAW, OR, OR HOLD ANY COMPENSATED CITY OFFICE OR
26 EMPLOYMENT UNTIL TWO YEARS AFTER LEAVING OFFICE AS
27 COUNCIL MEMBER.

28 SO THIS HAS TO APPLY TO SOME CITY OFFICES.

1 THIS HAS TO APPLY TO SOME OFFICE OFFICES. IF YOU GO
2 ON, THE PROVISION THAT --

3 THE COURT: RIGHT, AND IT DOES. IT DOES APPLY TO
4 SOME CITY OFFICES.

5 MR. BRADY: APPOINTED ONES, CORRECT?

6 THE COURT: NOT ELECTED OFFICES.

7 MR. BRADY: OKAY. LET'S ASSUME THAT'S CORRECT.
8 WE'RE TALKING ABOUT AN APPOINTMENT HERE.

9 THE COURT: I UNDERSTAND.

10 MR. BRADY: EVEN IF IT IS --

11 THE COURT: I THOUGHT ABOUT THAT AT LUNCH,
12 ACTUALLY, THAT VERY ISSUE.

13 MR. BRADY: LET ME GO ON, YOUR HONOR, BECAUSE IT
14 GOES TO THE WHOLE WHY WOULD PEOPLE WANT TO DO THIS.

15 LET'S ASSUME, AND I AM NOT, BY ANY MEANS,
16 MAKING ALLEGATIONS THAT THIS IS WHAT INDEED OCCURRED
17 IN GLENDALE. THEY COULD HAVE NON-NEFARIOUS REASONS
18 FOR HAVING DONE THIS, BUT THERE ARE NEFARIOUS,
19 POTENTIAL NEFARIOUS EXPLANATIONS FOR WHY THEY DID WHAT
20 THEY DID. THEY KNEW MR. MANOUKIAN WAS RUNNING
21 UNOPPOSED. THEY KNEW THAT A SEAT WAS GOING TO OPEN
22 UP. THAT WAS UNDERSTOOD.

23 THE COURT: DO I HAVE EVIDENCE THAT THEY KNEW --
24 DO I EVEN HAVE EVIDENCE THAT HE WAS RUNNING UNOPPOSED?

25 MR. BRADY: YES.

26 THE COURT: ALL I HAVE EVIDENCE OF IS THAT HE WAS
27 ELECTED.

28 MR. BRADY: NO, THAT'S IN THE FACTS, STATEMENT OF

1 FACTS THAT HE WAS RUNNING UNOPPOSED. IT SAID HE WAS
2 RUNNING UNOPPOSED. I MEAN, I CAN --

3 MS. SMITH: THE PETITION OR IN THE BRIEF?

4 MR. BRADY: IN BOTH.

5 THE COURT: THE PETITION IS NOT EVIDENCE.

6 MR. BRADY: WELL, IT IS AS AN EXHIBIT TO THE
7 PETITION -- TO OUR PETITION, WRIT PETITION.

8 THE COURT: WAIT, WAIT, WAIT. THE ONLY THING I
9 LOOK AT -- I NEVER LOOK AT THE WRIT PETITION. I LOOK
10 AT THE MEMORANDUM AND THE SUPPORTING EVIDENCE.

11 MR. BRADY: THAT'S WHAT I MEANT, YOUR HONOR. IT
12 IS AN EXHIBIT TO THE POINTS AND AUTHORITIES.

13 THE COURT: OKAY.

14 MR. BRADY: OUR PETITION, AND IT LAYS OUT THE
15 STATEMENT THE FACTS. I -- I CAN GRAB -- I FORGOT TO
16 BRING IT UP WITH ME. I MEAN, I BELIEVE THAT COUNSEL
17 FOR GLENDALE CAN SAY -- IT'S A JUDICIALLY NOTICEABLE
18 FACT THAT HE WAS RUNNING UNOPPOSED. FOR THEM TO SAY
19 OTHERWISE WOULD BE --

20 THE COURT: IT MAY BE JUDICIALLY NOTICEABLE, BUT
21 YOU DIDN'T ASK ME TO JUDICIALLY NOTICE.

22 MR. BRADY: WELL, I AM NOW, YOUR HONOR.

23 THE COURT: THE ATTORNEY GENERAL'S DECISION SAYS
24 MANOUKIAN WAS ELECTED TREASURER, AS TREASURER. IT
25 DOESN'T SAY HE WAS RUNNING UNOPPOSED.

26 MR. BRADY: THAT'S THEIR -- THAT'S THEIRS, NOT
27 PETITIONERS. OUR -- OUR --

28 THE COURT: I, ACTUALLY, DON'T THINK YOU -- I

1 DON'T EVEN KNOW IF YOU'VE AUTHENTICATED YOUR EVIDENCE.
2 NO, YOU DIDN'T. YOU'VE ATTACHED UNAUTHENTICATED
3 EXHIBITS. NOW, NOBODY'S OBJECTED TO THEM, SO I'M
4 CONSIDERING THE EXHIBITS. BUT I CAN'T CONSIDER YOUR
5 ALLEGATIONS IN YOUR PETITION AS TRUE, NOR CAN I
6 CONSIDER, BY THE WAY, THE QUINTERO'S OPPOSITION.
7 THAT'S EXHIBIT D.

8 MR. BRADY: LET ME SAY THIS. WE DON'T REALLY NEED
9 TO DETERMINE WHETHER IT'S TRUE OR NOT, BECAUSE I'M NOT
10 TRYING TO MAKE ALLEGATIONS THAT THIS IS WHAT INDEED
11 HAPPENED. I'M TRYING TO EXPLAIN -- PUT CONTEXT TO THE
12 COURT SO THAT YOU CAN UNDERSTAND WHY THIS WOULD BE --
13 LET'S ASSUME THAT MR. QUINTERO -- MR. MANOUKIAN WAS
14 RUNNING UNOPPOSED AND THE COUNCIL KNEW THAT A POSITION
15 WAS GOING TO OPEN UP.

16 AND LET'S ASSUME THAT THEY LIMITED THE POOL
17 OF POTENTIAL APPOINTEES. AND THIS, ACTUALLY, DID
18 HAPPEN, BUT I WON'T -- I'LL JUST, AGAIN, TALK AS --

19 MS. SMITH: WHAT'S IN THE RECORD?

20 MR. BRADY: I'M SORRY?

21 MS. SMITH: YOU WILL ADDRESS WHAT'S IN THE RECORD?

22 MR. BRADY: YEAH, IT'S IN THE RECORD THAT THEY
23 LIMITED THE POOL OF POTENTIAL CANDIDATES TO PAST
24 MAYORS, WHICH MR. -- SO, LET'S ASSUME --

25 THE COURT: SO YOU'RE MAKING A HYPOTHETICAL
26 ARGUMENT?

27 MR. BRADY: I AM MAKING A HYPOTHETICAL. SO LET'S
28 ASSUME THAT THEY LIMITED THE POOL, AND THEY SELECT --

1 AND THEY ASKED ALL THE MAYORS AND MR. QUINTERO IS THE
2 LAST MAN STANDING, AND THEY HAVE PUT HIM RIGHT BACK ON
3 KNOWING THAT THERE WAS GOING TO BE AN OPEN SEAT.

4 NOW, ASSUMING, HYPOTHETICALLY, THAT THAT'S
5 WHAT HAPPENED OR THAT THAT WAS A POTENTIAL CASE,
6 WOULDN'T THAT BE SOMETHING THAT THIS PROVISION WAS
7 INTENDED TO PREVENT, THE REVOLVING DOOR, THE
8 APPOINTING OF -- I MEAN, I BELIEVE THE COURT SAID IT
9 THEMSELVES, THE RATIONALE WAS TO BAN FORMER COUNCIL
10 MEMBERS CURBING IMPROPER USE OF INFLUENCE TO GAIN
11 EMPLOYMENT.

12 ANOTHER THING, I DON'T UNDERSTAND WHY THERE'S
13 THE DISTINCTION OF ELECTIVE VERSUS NON-ELECTIVE,
14 BECAUSE, BOTH OF THEM -- YOU HAVE A RIGHT TO BOTH.
15 THE CASE LAW SAYS YOU HAVE A RIGHT TO ELECTIVE OR
16 APPOINTED OFFICE. SO SOME CITY OFFICES IS
17 CONTEMPLATED HERE. WHETHER IT'S ELECTIVE OR WHETHER
18 IT'S APPOINTED, SOME CITY OFFICES, BOTH OF THEM ARE
19 PROTECTED. SO ARE WE JUST GOING TO READ THIS ENTIRE
20 PROVISION OUT, ESPECIALLY WHEN IT SAYS "ANY," WHICH IS
21 ALL INCLUSIVE. ANY MEANS EVERY.

22 AND SO I UNDERSTAND THE COURT'S -- THAT --
23 THE COURT: YOU WIN ON PLAIN MEANING. YOU WIN ON
24 PLAIN MEANING.

25 MR. BRADY: OKAY. OKAY. I'LL AVOID PLAIN
26 MEANING, BUT I'M GOING TO THE COURT'S -- YOU KNOW, THE
27 OTHER POINT ABOUT THIS BEING MAINLY ABOUT EMPLOYMENT,
28 THE COURT'S CORRECT THAT THIS WAS ABOUT OUTSIDE

1 EMPLOYMENT FOR THE -- FOR THE FIRST SENTENCE OF HIS
2 PROVISION. SECTION 12 IS TWO SENTENCES. AND THE
3 FIRST SENTENCE OF SECTION 12 WAS THE ORIGINAL
4 PROVISION BEING AMENDED.

5 OKAY. SO IF YOU MOVE DOWN AND YOU LOOK AT
6 THE PREVIOUS SECTION, THE STRIKE THROUGH, IT SAYS, "NO
7 MEMBERS OF THE COUNCIL SHALL BE ELIGIBLE TO ANY OFFICE
8 OR EMPLOYMENT EXCEPT AN ELECTIVE OFFICE." SO THEY
9 OBVIOUSLY KNEW HOW TO MAKE CLEAR THAT THEY WEREN'T
10 TALKING ABOUT ELECTED OFFICE. THEY DIDN'T DO THAT
11 HERE.

12 THE COURT: THEY DIDN'T DO THAT HERE.

13 MR. BRADY: THEN YOU GO TO SECTION 12, THE FIRST
14 SENTENCE, "A COUNCIL MEMBER SHALL NOT HOLD ANY OTHER
15 CITY OFFICE." OKAY.

16 THE COURT: THAT'S A SITTING COUNCIL MEMBER.

17 MR. BRADY: YES, A COUNCIL MEMBER SHALL NOT HOLD
18 ANY OTHER -- BUT IT USES THE TERM "CITY OFFICE."

19 THE COURT: YES.

20 MR. BRADY: SO COUNCIL MEMBER, ANY OTHER CITY
21 OFFICE, THAT MEANS THAT, BY DEFINITION, CITY OFFICE
22 INCLUDES COUNCIL MEMBER. THERE'S NO OTHER GRAMMATICAL
23 WAY TO READ THAT. SO THAT WOULD MEAN THAT CITY
24 OFFICE --

25 THE COURT: THAT DOESN'T MAKE SENSE. SOMEBODY
26 SAID THERE ARE TWO OTHER OFFICES, TREASURER AND
27 SOMETHING ELSE.

28 MR. RAWCLIFFE: ANY NUMBER OF OFFICES, ACTUALLY.

1 A CITY MANAGER WOULD BE AN OFFICER. A CITY CLERK. SO
2 THERE ARE A FEW OFFICERS DESIGNATED --

3 THE COURT: SOME OF THOSE ARE NOT ELECTED OFFICES.

4 MR. RAWCLIFFE: EXACTLY.

5 THE COURT: AND SOME OF THEM ARE. CITY TREASURER
6 IS AN ELECTED OFFICE. AND THERE'S ANOTHER ONE. IS
7 THE CITY MANAGER AN ELECTED OR APPOINTED?

8 MR. RAWCLIFFE: THE CITY MANAGER IS APPOINTED.

9 MR. BRADY: I THINK THE POINT HERE IS THE WORD
10 "OTHER."

11 MR. RAWCLIFFE: IF I MAY --

12 MR. BRADY: BY SAYING "OTHER," THAT'S SAYING
13 COUNCIL MEMBER. COUNCIL MEMBER SHALL NOT HOLD ANY
14 OTHER CITY OFFICE. THAT MEANS COUNCIL MEMBER IS
15 INCLUDED AMONG CITY OFFICES. SO YOU CAN'T --

16 THE COURT: WELL, YES, IN THE SENSE THAT, FOR
17 EXAMPLE, MANOUKIAN CAN'T BE BOTH CITY COUNCIL MEMBER
18 AND TREASURER.

19 MR. BRADY: PRECISELY. PRECISELY. EXACTLY. BUT
20 THAT STILL MEANS THAT CITY OFFICE, IN THAT CONTEXT,
21 MEANS COUNCIL MEMBER. AND SO THAT WOULD REQUIRE THAT
22 THE SECOND SENTENCE -- NOW, ALL OF A SUDDEN, WE'RE
23 GOING TO OMIT COUNCIL MEMBER FROM CITY OFFICE IN THE
24 EXACT SAME PROVISION IN THE SECOND SENTENCE?

25 THE COURT: RIGHT.

26 MR. BRADY: SO GOING DOWN -- THIS ANALYSIS OF
27 CHARTER, THE CITY ATTORNEY'S ANALYSIS ONLY RELATES TO
28 SENTENCE ONE. IT HAS NOTHING TO DO WITH THE

1 COMPLETELY, ENTIRELY NEW PROVISION THAT WE'RE TALKING
2 ABOUT. ALL OF THIS HAS TO DO WITH -- READ IT. IT HAS
3 ONLY TO DO WITH THE FIRST SENTENCE. SO YOU CAN'T
4 REALLY READ ANYTHING ABOUT THE SECOND SENTENCE IN
5 THERE.

6 THE COURT: WELL, WOULDN'T YOU EXPECT THE CITY
7 ATTORNEY AND THE ADVOCATE IN FAVOR OF THE PROPOSITION
8 AND THE ADVOCATE OPPOSED TO THE PROPOSITION TO DISCUSS
9 THIS ISSUE THAT YOU'RE RAISING? WOULDN'T YOU EXPECT
10 IT TO BE IN THERE?

11 MR. BRADY: WELL, YEAH, THEY DO. THEY TALK ABOUT
12 USING UNDUE INFLUENCE. AND, IN MY POSITION, IF MY
13 HYPOTHETICAL WERE CORRECT, WHY WOULD IT BE OKAY FOR
14 THE VOTER -- I GUESS THE QUESTION IS THIS.

15 THE VOTER WHO VOTED FOR THIS PROVISION, WOULD
16 THEY EXPECT A SITUATION WHERE A VACANCY APPEARS ON THE
17 CITY COUNCIL, A FORMER COUNCIL MEMBER HAD JUST STEPPED
18 DOWN AND RETIRED EIGHT DAYS PRIOR, A VACANCY POPS UP,
19 AND THEY REAPPOINT THAT SAME COUNCIL MEMBER, WHO WAS
20 ABLE TO AVOID AND BYPASS AN EXPENSIVE AND PROBLEMATIC
21 ELECTION, POTENTIALLY, HYPOTHETICALLY, AND GET
22 REAPPOINTED BACK ON BY HIS -- BY HIS COLLEAGUES.

23 THE COURT: NOBODY -- NOBODY, I THINK,
24 CONTEMPLATED THAT FACT PATTERN, BUT LET'S TAKE THE
25 OTHER FACT PATTERN --

26 MR. BRADY: THAT'S WHAT HAPPENED.

27 THE COURT: -- WHICH SEEMS TO ME TO BE CERTAINLY
28 CONTEMPLATED, WHICH IS CITY COUNCIL MEMBER RETIRES.

1 OPENING OCCURS IN THE CITY TREASURY POST. THAT PERSON
2 WANTS TO RUN FOR CITY TREASURY, AND, UNDER YOUR
3 INTERPRETATION, CANNOT DO SO FOR TWO YEARS.

4 MR. BRADY: I DON'T THINK THAT'S THE CASE. WE
5 DON'T HAVE TO READ THIS AS COVERING ELECTIVE OFFICE.
6 THIS CAN SOLELY BE APPOINTMENTS.

7 THE COURT: WELL, NOW YOUR CHANGING YOUR
8 ARGUMENTS. NOW YOU'RE TALKING ABOUT APPOINTMENTS
9 ONLY, NOT ELECTED OFFICE, BECAUSE THAT WAS NEVER IN
10 YOUR PAPERS?

11 MR. BRADY: OH, I BELIEVE IT WAS. WE EXPRESSED --

12 THE COURT: THAT YOUR DISTINGUISHING BETWEEN
13 APPOINTED AND ELECTED OFFICE?

14 MR. BRADY: SURE. THAT WAS IN OUR ENTIRE -- I
15 MEAN, WE SAID ASSUMING THAT EVEN THE ELECTIVE ARGUMENT
16 EVEN IS RELEVANT HERE, BECAUSE HE WAS APPOINTED.

17 THE COURT: SO NOW YOU'RE CONCEDED THAT THE
18 ATTORNEY GENERAL IS CORRECT THAT PROP JJ DOES NOT
19 APPLY? IN THE SECOND SENTENCE, "NO FORMER CITY
20 COUNCIL MEMBER SHALL HOLD ANY COMPENSATED CITY OFFICE
21 OR CITY EMPLOYMENT UNTIL TWO YEARS AFTER LEAVING THE
22 OFFICE OF COUNCIL MEMBER. THAT DOES APPLY TO ELECTED
23 CITY OFFICE."

24 MR. BRADY: I'M NOT CONCEDED THAT. I'M SIMPLY
25 SAYING THAT WE DON'T NEED TO GO THAT FAR BECAUSE THAT
26 WOULD BE ASKING THE COURT FOR AN ADVISORY OPINION,
27 BECAUSE THAT'S NOT THE CASE HERE. I'M NOT ASKING THE
28 COURT TO DECIDE WHETHER IT APPLIES TO ELECTIVE OFFICE,

1 BECAUSE WE'RE NOT TALKING ABOUT AN ELECTIVE OFFICE
2 HERE. WE'RE TALKING ABOUT AN APPOINTMENT.

3 THE COURT: I THINK WE ARE TALKING ABOUT ELECTIVE
4 OFFICE. SEE, THAT'S THE PROBLEM WITH YOUR ARGUMENT.
5 HE WAS APPOINTED TO AN ELECTED OFFICE. IT'S AN
6 ELECTED OFFICE, JUST LIKE JUDGES. SOME OF THEM GET
7 ELECTED, SOME OF THEM GET APPOINTED, BUT IT IS AN
8 ELECTED SEAT THAT THEY HOLD. IT IS AN --

9 ACTUALLY, THE ADJECTIVE IS "ELECTIVE," NOT
10 ELECTED. IT'S AN ELECTIVE OFFICE. THAT'S THE OFFICE
11 THAT QUINTERO HOLDS. HE WASN'T ELECTED TO THAT
12 OFFICE. HE WAS APPOINTED TO IT, BUT IT'S AN ELECTIVE
13 OFFICE. AND IF YOU DISTINGUISH BETWEEN APPOINTED AND
14 ELECTIVE OFFICES, THEN HE'S IN THE RIGHT -- THEN
15 THERE'S NOTHING WRONG WITH THE APPOINTMENT.

16 MR. BRADY: I --

17 MS. SMITH: YOUR HONOR, MAY I?

18 THE COURT: YEAH, LET'S HERE FROM THE ATTORNEY
19 GENERAL.

20 MS. SMITH: WE'RE GETTING -- I THINK WE'RE GETTING
21 AWAY FROM ONE OF THE MAIN ISSUES HERE, WHICH
22 PETITIONER HAS NOT ADDRESSED IN THIS -- IN HIS OPENING
23 ARGUMENTS, WHICH IS THE DISCRETION OF THE ATTORNEY
24 GENERAL.

25 NOW, I WOULD AGREE WITH YOUR HONOR THAT IN
26 THIS PARTICULAR CASE THAT THE DISCRETION IS
27 UNFETTERED. WE ACTUALLY MADE THE ARGUMENT THAT
28 THERE'S A SEPARATION OF POWERS ISSUE HERE THAT HASN'T

1 BEEN ADDRESSED BY HIGHER COURTS YET, HAS BEEN
2 MENTIONED BY THE HIGHER COURTS, BUT NOT -- NOT
3 SPECIFICALLY ADDRESSED.

4 THE COURT: SO LET ME INTERRUPT YOU. SO YOU'RE
5 DRAWING A PARALLEL BETWEEN THE ATTORNEY GENERAL'S
6 DECISION TO GRANT LEAVE TO SUE IN THE NAME OF THE
7 PEOPLE WHERE YOU DON'T HAVE A PRIVATE LEGAL RIGHT
8 INVOLVED, YOU'RE DRIVING A PARALLEL BETWEEN THAT AND
9 PROSECUTORIAL DISCRETION TO PROSECUTE A CRIMINAL CASE?

10 MS. SMITH: YES. AND THE REASON WE DO THAT IS
11 BECAUSE THE ENTIRE PROCEDURE -- IT'S NOT -- THE
12 ATTORNEY GENERAL DOES NOT MERELY GRANT THE APPLICATION
13 TO -- TO -- GRANT THE APPLICATION FOR LEAVE TO SUE.
14 BUT THE ATTORNEY GENERAL, PURSUANT TO THE CODE OF
15 CIVIL PROCEDURE AND THE REGULATIONS THAT APPLY TO THAT
16 CODE, THEN HAS -- HAS THE ABILITY TO OVERSEE THAT
17 LITIGATION IN TERMS OF THE ATTORNEY GENERAL'S NAME IS
18 ON THE PLEADINGS.

19 THE ATTORNEY GENERAL HAS THE ABILITY TO -- TO
20 DENY THE -- THE PLAINTIFF, AT THAT POINT, GOING
21 FORWARD, THAT RELATE TO GOING FORWARD CERTAIN MOTIONS
22 IF THEY DON'T WANT TO -- IF THE ATTORNEY GENERAL DOES
23 NOT WANT THOSE MOTIONS FILED.

24 AND AT ANY POINT, ACCORDING TO THE
25 REGULATIONS, SECTION 8, WHICH WAS CITED IN OUR BRIEF,
26 THE ATTORNEY GENERAL HAS THE DISCRETION TO END THE
27 LITIGATION, TO -- TO -- AND, ALSO, NOT TO APPEAL IF
28 THE LITIGATION IS LOST.

1 THE COURT: DO YOU HAVE THE RIGHT TO INTERVENE AND
2 TAKE OVER THE LITIGATION?

3 MS. SMITH: THE ATTORNEY GENERAL NEVER LOSES THAT
4 POWER TO TAKE OVER THE LITIGATION, BECAUSE THE
5 ATTORNEY GENERAL HAS -- IS THE ONE MAKING THE
6 DECISIONS ON THAT LITIGATION. THE ATTORNEY GENERAL'S
7 NAME IS STILL ON THE BRIEF WHEN THAT -- WHEN THAT --
8 WHEN THAT LITIGATION GOES FORWARD.

9 MR. BRADY: PURSUANT TO A REGULATION ADOPTED BY
10 THE ATTORNEY GENERAL, NOT THE STATUTES, CIVIL CODE --

11 THE COURT: YEAH, I UNDERSTAND.

12 MR. BRADY: -- 803, WHICH SAYS "MUST."

13 THE COURT: LOOK, I'M NOT OVERWHELMED BY THAT.
14 THIS ISN'T THE FIRST -- THIS STATUTORY SCHEME IS NOT
15 THE FIRST RELATER SITUATION CREATED BY THE COURTS. I
16 MEAN, I'M FAMILIAR WITH QUI TAM LAWSUITS IN FEDERAL
17 COURT --

18 MR. BRADY: SURE.

19 THE COURT: -- WHERE THE -- AT ANY TIME THE
20 DEPARTMENT OF JUSTICE CAN TAKE OVER A QUI TAM SUIT,
21 BUT THEY DON'T CONTROL THE PLAINTIFF WHO GETS TO FILE
22 THE SUIT UNDER SEAL, ALLOW THE DEPARTMENT OF JUSTICE
23 TO EVALUATE IT AND THEN WE GO FROM THERE. SO -- AND
24 THAT, OF COURSE, IS ALSO IN THE NAME OF -- THAT'S IN
25 THE NAME OF THE UNITED STATES.

26 AND THEN THERE IS A QUI TAM PROVISION IN THE
27 STATE COURT, WHICH I'M LESS FAMILIAR WITH, BUT I THINK
28 PARALLELS THE FEDERAL PROVISION.

1 MR. BRADY: NEITHER OF WHICH ALLOWS THE ATTORNEY
2 GENERAL TO JUST DENY POTENTIAL PETITIONERS THE ABILITY
3 TO PURSUE IT.

4 THE COURT: WELL, THERE ARE DUE PROCESS ISSUES.
5 ONCE YOU'RE IN -- AND NOT JUST ONCE YOU'RE IN. THERE
6 ARE DUE PROCESS ISSUES ALONG THE WAY AS TO HOW MUCH
7 CONTROL THE ATTORNEY GENERAL CAN HAVE OVER THE QUO
8 WARRANTO SUIT, BUT I INTERRUPTED YOU.

9 MS. SMITH: NO. MY POINT BEING THAT THE
10 DISCRETION, EVEN IF YOUR HONOR DOES NOT AGREE THAT --
11 WITH OUR ARGUMENT THAT IT'S UNFETTERED AT THIS POINT,
12 THE CASES DO CLEARLY STATE THAT IT HAS TO BE AN
13 EXTREME AND CLEARLY INDEFENSIBLE ABUSE OF DISCRETION.
14 AND PETITIONERS HAVE NOT MADE THAT ARGUMENT.

15 EVEN IF -- EVEN IF WE ASSUMED -- I'M NOT, BUT
16 EVEN IF ASSUMED THAT THEIR ARGUMENTS ARE PLAUSIBLE,
17 THAT THERE'S A PLAUSIBLE SECOND READING TO THE -- OR A
18 PLAUSIBLE ALTERNATIVE READING TO THE -- TO THE CHARTER
19 AMENDMENT, THAT DOESN'T -- THAT'S NOT THE END OF THE
20 STORY. THE ATTORNEY GENERAL'S OFFICE STILL HAS
21 DISCRETION IN DECIDING IS THAT A SUBSTANTIAL LEGAL
22 ISSUE AND IS IT IN THE PUBLIC INTEREST TO GO FORWARD.

23 SO I THINK THAT THE ARGUMENT ABOUT WHETHER OR
24 NOT IT'S A PLAUSIBLE READING, ALTHOUGH INTERESTING AND
25 GETS TO THE ISSUE OF WHETHER IT'S A SUBSTANTIAL LEGAL
26 ARGUMENT, I THINK WE'RE MISSING THE BIGGER ARGUMENT OF
27 WHETHER OR NOT THE DISCRETION WAS ABUSED HERE, AND IT
28 WAS NOT IN THIS CASE.

1 THE COURT: WELL, THE ONLY RESPONSE I HAVE TO THAT
2 IS THAT I DIDN'T SEE ANYTHING IN THE ATTORNEY
3 GENERAL'S OPINION THAT REALLY ADDRESSED ANYTHING WITH
4 RESPECT TO THE PUBLIC INTEREST OTHER THAN THE --
5 WHETHER THERE WAS A SUBSTANTIAL QUESTION OF LAW.
6 THERE'S NO FACT QUESTIONS HERE, SO WHETHER THERE IS A
7 SUBSTANTIAL QUESTION OF LAW, YOU KNOW, GOES OFF ON THE
8 FACT THAT THERE ISN'T A LOT OF TIME LEFT IN
9 MR. QUINTERO'S TERM.

10 BUT THAT IS ONLY TO BOLSTER THE DECISION
11 THAT'S ALREADY MADE, AND I DON'T CONSIDER THAT TO BE A
12 FAIR BOLSTERING ANYWAY. SO WE'RE BACK TO IS THERE A
13 SUBSTANTIAL QUESTION OF LAW, AND IS IT IN THE PUBLIC
14 INTEREST, BASED ON THAT SUBSTANTIAL QUESTION, TO
15 PERMIT THE LAWSUIT?

16 MR. BRADY: I THINK WE --

17 THE COURT: AND, YOU KNOW, AND THEN WE HAVE THE
18 LAYER OVER ALL THIS IS THE FACT THAT YOUR CLIENTS
19 DON'T HAVE A PRIVATE LEGAL INTEREST INVOLVED HERE.
20 THEY'RE NOT LOSING ANYTHING BY NOT HAVING THEIR QUO
21 WARRANTO PETITION.

22 MR. BRADY: THEY'RE BEING SUBJECTED TO SOMEBODY
23 WHO THEY BELIEVE IS NOT PROPERLY --

24 THE COURT: THAT'S GENERAL PUBLIC INTEREST. I'M
25 NOT SAYING YOU DON'T HAVE STANDING. OF COURSE YOU
26 HAVE STANDING.

27 MR. BRADY: I AGREE, YOUR HONOR, BUT THE POINT IS
28 SO THE PEOPLE ARE AT THE -- THEY HAVE TO -- ARE AT THE

1 WHIM OF SOMEBODY IN POWER TO BRING THIS? THEY HAVE TO
2 WAIT FOR SOMEBODY ELSE TO BRING THIS ACTION BEFORE
3 THEY'RE VINDICATED? THIS IS THE ONLY WAY THAT
4 SOMEBODY CAN EVER CALL, YOU KNOW, A POLITICIAN OR
5 SOMEBODY IN POWER OUT. THIS IS THE ONLY --

6 THE COURT: THAT'S NOT TRUE.

7 MS. SMITH: THERE ARE ELECTIONS.

8 THE COURT: WHEN THERE'S AN ELECTION, YOU CAN
9 CONTEST THE ELECTION, BY STATUTE. IT'S GOT NOTHING TO
10 DO WITH QUO WARRANTO. SO WE'RE TALKING ABOUT SOMEBODY
11 WHO'S BEEN APPOINTED TO A POSITION AND CAN THEY BE
12 THROWN OUT OF OFFICE, BASICALLY? THAT'S WHERE WE ARE
13 HERE. I MEAN, I -- IT'S AN INTERESTING CASE.

14 LET ME HEAR FROM THE CITY.

15 MR. RAWCLIFFE: WELL, I MEAN, WE'RE IN COMPLETE
16 AGREEMENT WITH THE ATTORNEY GENERAL, OBVIOUSLY. I
17 THINK THAT SHE DOES HAVE UNFETTERED DISCRETION IN THIS
18 ARENA WHERE THEY DON'T HAVE --

19 THE COURT: LET'S ASSUME -- AND THIS UNFETTERED
20 DISCRETION THING BOTHERS ME. LET'S ASSUME THAT NOT
21 ONLY DID PETITIONER HAVE THE PLAIN MEANING BUT THAT
22 THE BALLOT MATERIALS EXPRESSLY SAID -- AND THE
23 ARGUMENTS EXPRESSLY SAID, YOU KNOW, THE PURPOSE OF
24 THIS IS TO PREVENT A FORMER CITY COUNCIL MEMBER FROM
25 BEING REAPPOINTED BY HIS CRONIES ON THE CITY COUNCIL
26 TO HIS POSITION. LET'S ASSUME IT SAID THAT.

27 WOULD THE ATTORNEY GENERAL HAVE UNFETTERED
28 DISCRETION TO DENY A QUO WARRANTO LAWSUIT?

1 MR. RAWCLIFFE: I DON'T THINK I'M THE PARTICULAR
2 PERSON TO ADDRESS THAT, BUT I'M SAYING -- BUT THOSE
3 AREN'T THE FACTS OF THIS CASE. AND I THINK --

4 THE COURT: BUT I DON'T LIKE THIS UNFETTERED
5 DISCRETION.

6 MR. RAWCLIFFE: OKAY. BUT WE DON'T EVEN HAVE TO
7 GET TO THAT PLACE WITH THIS CASE, BECAUSE, AS THE
8 PETITIONER CONCEDED, I THINK, THE VOTER INTENT IS THE
9 PRIMARY CONCERN, AND I THINK THIS --

10 THE COURT: ACTUALLY, THE ONLY CONCERN.

11 MR. RAWCLIFFE: IT'S THE ONLY CONTENT -- CONCERN.
12 AND I THINK IF WE LOOK AT THE CHARTER PROVISION, THE
13 JJ, IT'S CLEAR THAT THE VOTERS' INTENT, WHILE MAYBE
14 THE LANGUAGE OF ACTUAL STATUTE IS AMBIGUOUS, THE
15 VOTERS' INTENT IN VOTING FOR THIS WAS QUITE CLEAR.
16 AND I THINK IT SUPPORTS OUR INTERPRETATION AND THAT'S
17 HOW WE'VE CONSISTENTLY INTERPRETED IT.

18 HE CANNOT -- THE PETITIONERS CAN'T POINT TO
19 ONE CASE IN WHICH IT'S NOT BEEN APPLIED CONSISTENTLY
20 AS A REVOLVING DOOR BACK INTO THE CITY, EMPLOYMENT
21 INTO THE CITY, NOT TO AN ELECTED POSITION. BECAUSE
22 THE WHOLE PURPOSES BEHIND IT WAS THAT ONCE THEY LEAVE
23 OFFICE, THEY DON'T COME -- BECAUSE IT'S A MINIMAL
24 PAYMENT FOR A CITY COUNCIL -- A PART-TIME CITY COUNCIL
25 POSITION, TO GET OUT OF OFFICE, ELECTED OFFICE, AND
26 THEN COME AND BECOME THE CITY MANAGER, CITY ATTORNEY
27 THAT GETS QUITE A BIT MORE MONEY, OBVIOUSLY, AND USE
28 THAT INFLUENCE OVER THEIR SUBORDINATES.

1 AND WHEN PEOPLE ARE IN THE CITY COUNCIL,
2 THEY'RE NOT SUBORDINATE TO ANYONE. SO I THINK THAT
3 WAS THE CLEAR INTENT BEHIND THIS.

4 AND, FURTHER MORE, AND IT'S ADDRESSED IN THE
5 EXHIBITS BUT WE EXTENSIVELY BRIEFED IT BEFORE THE
6 ATTORNEY GENERAL, THIS ISSUE ABOUT TERM LIMITS AND
7 HIATUS PERIODS CAME UP BEFORE THE CITY COUNCIL AFTER
8 THIS PROVISION WAS ADOPTED. AND IT WAS RESOUNDLY
9 REJECTED. NO ONE WOULD EVEN VOTE FOR IT.

10 SO OUR ELECTORATE HAS TALKED ABOUT THIS
11 AND --

12 THE COURT: WHEN YOU SAID -- DID YOU MISSPEAK?
13 DID IT COME BEFORE THE ELECTORATE?

14 MR. RAWCLIFFE: NO. IT CAME BEFORE THE CITY
15 COUNCIL. THE ELECTORATE CAME IN AND DEBATED THE
16 ISSUE, AND IT WAS, I THINK, FIVE COUNCIL MEETINGS, SIX
17 COUNCIL MEETINGS AND WIDESPREAD OPPOSITION. AND SO
18 WHY WOULD WE GO THROUGH ALL THE MECHANICS OF POSSIBLY
19 PUTTING THIS ON THE CHARTER AGAIN IF THIS WHAT THE
20 INTERPRETATION WAS MEANT TO BE?

21 THE COURT: WELL, THAT'S AN ARGUMENT -- THAT'S AN
22 ARGUMENT THAT COURSE OF CONDUCT, AT LEAST BY THE CITY
23 COUNCIL, HAS BEEN TO INTERPRET THIS PROVISION AS NOT
24 APPLYING TO ELECTED OFFICES.

25 MR. RAWCLIFFE: YEAH, AND, I MEAN, THAT'S WHAT THE
26 ELECTORATE -- AT THE TIME, THAT WAS THE ATTORNEY --
27 THE CITY ATTORNEY WHO PROBABLY WROTE IT -- I MEAN,
28 EVERYONE AT THE TIME AND CONSISTENTLY FROM THAT POINT

1 FORWARD HAS INTERPRETED THAT.

2 THE COURT: WHAT ABOUT THE POINT, WHICH I THINK IS
3 ABSOLUTELY CORRECT, THAT YOU CAN'T TAKE AWAY
4 SOMEBODY'S RIGHT TO HOLD AN ELECTED SEAT WITHOUT
5 CLEARLY DOING SO?

6 MR. RAWCLIFFE: OH, EXACTLY.

7 THE COURT: AND THIS DOES NOT CLEARLY DO THAT.

8 MR. BRADY: WELL, YOUR HONOR, I BELIEVE YOU HAVE
9 AN EQUAL RIGHT TO ELECTIVE AND APPOINTED OFFICE.
10 THE AUTHORITIES CITED BY BOTH THE ATTORNEY GENERAL AND
11 THE CITY SAY YOU HAVE A CONSTITUTIONAL RIGHT TO
12 ELECTED AND APPOINTED OFFICE. SO I GUESS THE
13 APPOINTED PEOPLE ARE GETTING THE SHORT END OF THE
14 STICK HERE ON THE -- ON HOW WE'RE GOING TO INTERPRET
15 THAT PARTICULAR DOCTRINE. I DON'T SEE --

16 THE COURT: AND I THINK IT'S AN ELECTIVE SEAT. DO
17 YOU HAVE A CONSTITUTIONAL RIGHT TO BE --

18 MR. RAWCLIFFE: EMPLOYMENT. THOSE OFFICES ARE
19 EMPLOYMENT. IT'S EMPLOYMENT.

20 MR. BRADY: WHY DOES IT SAY "CITY OFFICE"?

21 MR. RAWCLIFFE: BECAUSE THEY'RE --

22 MR. BRADY: THEY READING CITY OFFICE OUT OF THE
23 PROVISION. NO NOBODY WANTS TO TALK ABOUT IT'S SAYING
24 OR HOLD ANY COMPENSATED CITY OFFICE OR EMPLOYMENT.
25 THOSE ARE TWO TOTALLY DIFFERENT THINGS. COUNSEL IS
26 READING A LOT OF STUFF IN HERE AND READING A LOT OF
27 STUFF OUT, WHICH I --

28 THIS OTHER POINT WITH THE TENTATIVE I WANT TO

1 MAKE ABOUT, SURE, EVEN IF YOU WANT TO ASSUME THAT THE
2 ATTORNEY GENERAL HAS DISCRETION TO LOOK FURTHER
3 DEEP -- YOU KNOW, LOOK DEEPER INTO THE MATERIALS AND,
4 YOU KNOW, IMPLEMENT THE RULES OF STATUTORY
5 CONSTRUCTION, SHE HAS TO ABIDE BY THE RULES OF
6 STATUTORY CONSTRUCTION. SHE DOESN'T HAVE DISCRETION
7 TO FLOUT THOSE, RIGHT?

8 THE COURT: RIGHT.

9 MR. BRADY: AND SO TO READ STUFF IN HERE AND --
10 NOBODY EVER SAID -- PETITIONERS ARE NOT CLAIMING THAT
11 THIS IS A TERM LIMIT. TO THE CONTRARY, WE PUT IN OUR
12 BRIEFING, IN OUR REPLY, THAT THIS IS IN NO -- NO WAY A
13 TERM LIMIT. IT'S, ACTUALLY, QUITE THE CONTRARY. IT'S
14 SAYING YOU CAN STAY IN OFFICE AS LONG AS YOU WANT, AND
15 YOU CAN GET REELECTED BY THE PEOPLE AS LONG AS YOU
16 WANT, IF YOU'RE STAYING IN OFFICE.

17 BUT AFTER LEAVING, AFTER LEAVING OFFICE,
18 WHICH MR. QUINTERO DID, THEN THEY GOT A PROBLEM WITH
19 PEOPLE COMING RIGHT BACK WITHIN TWO YEARS AND DOING
20 SOMETHING. MR. QUINTERO --

21 THE COURT: WAIT. LET ME -- BEFORE I FORGET, LET
22 ME ASK THE ATTORNEY GENERAL. HOW DO YOU INTERPRET THE
23 "OR" IN CITY OFFICE OR CITY EMPLOYMENT? FRANKLY, I
24 DON'T REMEMBER THE ATTORNEY GENERAL OPINION ADDRESSING
25 THAT.

26 MS. SMITH: SURE. IT'S -- AND I WANT TO GO TO THE
27 OPINION, BECAUSE I THINK THAT'S WHAT WE NEED TO --
28 WHAT THIS NEEDS TO BE BASED ON. THE OPINION PROVISION

1 AFFECTS WHAT APPEARS TO INCLUDE A KIND OF TERM
2 LIMITING FUNCTION.

3

4 (COUNSEL READING EXTREMELY FAST.)

5

6 "ON THE OTHER HAND, BECAUSE IT DOES
7 NOT REFER AT ALL TO ELECTIONS OR TERMS OF
8 ELECTIVE OFFICE, ONE COULD READ IT AS
9 APPLYING TO NON-ELECTIVE COMPENSATED
10 OFFICES AND EMPLOYMENT WITHIN THE CITY.
11 READ THIS WAY, THE PROVISIONS AFFECTS WHAT
12 APPEAR TO FOCUS MORE ON LIMITING A COUNCIL
13 MEMBER'S OPPORTUNITY TO USE HIS OR HER
14 INFLUENCE ON THE COUNCIL AS A STEPPINGSTONE
15 TO FUTURE CITY EMPLOYMENT."

16 I'M READING AT THE TOP OF PAGE 5. I STARTED
17 AT THE BOTTOM OF PAGE 4.

18 THE COURT: CITY -- WELL, I DON'T THINK THAT
19 REALLY ANSWERS THE QUESTION. MAYBE THE CITY HAS AN
20 ANSWER. CITY OFFICE OR CITY EMPLOYMENT. NOW CITY
21 OFFICE WOULD INCLUDE ELECTIVE OFFICE OR APPOINTED
22 OFFICE. THERE ARE APPOINTED OFFICES, WHICH ARE NOT
23 ELECTED POSITIONS, RIGHT?

24 MR. RAWCLIFFE: YES. IT WOULD INCLUDE THE
25 OFFICERS OF THE CITY OF GLENDALE, WHICH ARE THE
26 CITY -- UNELECTED OFFICERS OF THE CITY OF GLENDALE,
27 WHICH ARE THE CITY MANAGER. I THINK THE CITY
28 ATTORNEY, FOR EXAMPLE. THEY'RE KIND OF LISTED --

1 THE COURT: THEY'RE APPOINTED BY THE CITY COUNCIL?

2 MR. RAWCLIFFE: EXACTLY. AND I CAN --

3 THE COURT: AND SO YOU WOULD INTERPRET CITY OFFICE
4 TO BE, IN THAT PHRASE, CITY OFFICE OR CITY EMPLOYMENT
5 TO BE APPOINTED CITY OFFICERS IN NON-ELECTED --
6 ELECTIVE POSITIONS.

7 MR. RAWCLIFFE: EXACTLY. AND I THINK --

8 THE COURT: IS THAT RIGHT? WELL, IT SEEMS TO BE.

9 MR. BRADY: NOT IF YOU LOOK AT THE CHARTER AS A
10 WHOLE, WHICH THE RULES OF STATUTORY CONSTRUCTION
11 REQUIRE. YOU HAVE TO LOOK AT THINGS AS A WHOLE.

12 THE COURT: YOU SAY THAT, BUT YOU DIDN'T CITE THE
13 WHOLE CHARTER TO ME.

14 MR. BRADY: I DO. WE ATTACHED IT AS AN EXHIBIT,
15 AND I DID --

16 THE COURT: YOU DO SAY THAT OFFICES USED IN THE
17 CHARTER WITHOUT ANY SPECIFIC PROVISION FOR ME TO LOOK
18 AT. OFFICE MEANS -- WELL --

19 MR. BRADY: NO, NO. WHAT IT SAYS IS THAT --
20 THAT -- THEY LIST THE OFFICERS. AND CITY COUNCIL
21 MEMBERS, ONE OF THEM, THAT'S A SEPARATE ISSUE.
22 THROUGHOUT THE CHARTER, AND I CITED IN THERE, THEY --
23 THE CHARTER DIFFERENTIATES BETWEEN ELECTIVE AND
24 NON-ELECTIVE OFFICES, JUST LIKE IT DID WHEN IT STRUCK
25 OUT ELECTIVE OFFICE.

26 THE CITY ATTORNEY, AT THIS POINT IN TIME,
27 WHOEVER IS DOING THIS AND WHOEVER IS DRAFTING THE
28 CHARTER, WAS WELL COGNIZANT OF THE DIFFERENCE BETWEEN

1 ELECTIVE AND NON-ELECTIVE OFFICE. I MEAN, TO STRIKE
2 OUT RIGHT BEFORE, IN THE PREVIOUS SECTION, "EXCEPTING
3 ELECTIVE OFFICES" AND THEN GO TO THE NEXT -- AND
4 HERE'S THE NEW PROVISION AND SAY "ANY CITY OFFICE," I
5 MEAN ANY --

6 THE COURT: I DIDN'T FIND THAT PERSUASIVE, BECAUSE
7 THEY STRIKE THE WHOLE THING. IT'S JUST HERE'S WHAT
8 THE OLD AMENDMENT SAID. WE STRIKE IT ALL. HERE'S
9 WHAT PROP JJ SAID. IF IT HAD ONLY STRICKEN THE
10 LANGUAGE OF ELECTED OFFICE IN SECTION 12, THEN YOU'D
11 BE IN BUSINESS. THEN IT WOULD MEAN SOMETHING.

12 MR. BRADY: WOULD DID THAT LANGUAGE NOT GET
13 CARRIED OVER? WOULD DID THAT LANGUAGE NOT GET CARRIED
14 OVER, RIGHT?

15 THE COURT: WELL, OKAY. I MEAN, YOUR ARGUMENT IS
16 THAT -- YEAH. BUT, I MEAN, WHATEVER THAT'S WORTH THAT
17 THEY DIDN'T CARRY THAT LANGUAGE OVER, BUT THEY REWROTE
18 THE WHOLE THING. IT'S HARD TO DRAW ANY CONCLUSION
19 FROM THE FACT THAT "EXCEPT AN ELECTIVE OFFICE" WASN'T
20 CARRIED OVER.

21 MR. RAWCLIFFE: I HAVE TWO POINTS.

22 ONE IS WE'RE DEBATING THIS ISSUE, AND THAT'S
23 EXACTLY WHAT ALL THE CASES SAY IS THAT MERE DEBATABLE
24 ISSUES DON'T RAISE -- THE ATTORNEY GENERAL DOES NOT
25 HAVE TO GRANT A PETITION ON MERE DEBATABLE ISSUES, AND
26 WE'RE DEBATING. THAT'S ALL WE'RE DOING HERE. AND SO
27 THAT I THINK SUPPORTS DENIAL OF THE PETITION.

28 SECONDLY, IF WE --

1 THE COURT: YOU ALWAYS CAN DEBATE.

2 MR. BRADY: I ASSUME ALL THIS BEFORE YOUR HONOR IS
3 DEBATABLE.

4 MR. RAWCLIFFE: OKAY. ALSO, IF WE'RE GOING TO
5 LOOK AT THESE TWO SENTENCES, I THINK, VISUALLY, IT
6 HELPS ME VISUALLY TO UNDERSTAND THIS IF WE WERE TO
7 DIAGRAM -- FIRST OF ALL, YOU CAN'T LOOK AT EACH ONE TO
8 THE EXCLUSION OF THE EITHER. SO THE FIRST ONE TALKS
9 ABOUT THE TERM IN OFFICE. YOU CAN'T HOLD ANY OTHER
10 OFFICE WHILE YOU'RE IN TERM. SO WHILE YOU'RE HOLDING
11 THAT ELECTED POSITION.

12 THE FOLLOWING SENTENCE IS SUPPOSED TO -- AND
13 THE REASON WHY IT DOESN'T INCLUDE "OTHER" IN THE
14 SECOND SENTENCE IS BECAUSE A PERSON IS NOT LONGER IN
15 COUNCIL, IS NO LONGER HOLDING THE COUNCIL ELECTED
16 POSITION, AND IT EXTENDS THAT -- THAT PROHIBITION IN
17 THE FIRST SENTENCE FOR ANOTHER TWO YEARS. IT DOESN'T
18 INCLUDE ADDITIONAL PROHIBITIONS. IT JUST EXTENDS THE
19 PROHIBITION ON CITY EMPLOYMENT AND THE OTHER APPOINTED
20 NON-ELECTIVE OFFICES.

21 MR. BRADY: I'M GLAD COUNSEL AGREES WITH ME THAT
22 CITY OFFICE IN THOSE TWO PROVISIONS SHOULD BE
23 INTERPRETED IN THE SAME WAY, BECAUSE, AGAIN, A COUNCIL
24 MEMBER SHALL NOT HOLD ANY OTHER CITY OFFICE.

25 MR. RAWCLIFFE: YOU CAN'T --

26 MR. BRADY: THAT MEANS COUNCIL MEMBERS INCLUDED
27 WITHIN CITY OFFICE. SO HE JUST SAID THEY'RE BOTH
28 INCLUDED IN CITY OFFICE.

1 MR. RAWCLIFFE: NO, YOU CAN'T INCLUDE THE OTHER,
2 BECAUSE THERE IS AN EXTENSION OF THE PRE -- THE FIRST
3 SENTENCE.

4 MS. SMITH: AND, AGAIN, YOUR HONOR --

5 THE COURT: WAIT, WAIT, WAIT. STOP.

6 SO, I MEAN, I THINK WE ALL AGREE THAT CITY
7 OFFICE INCLUDES ELECTIVE AND APPOINTED OFFICES.

8 MR. RAWCLIFFE: I DON'T AGREE THAT THE OFFICE -- I
9 DON'T THINK THE OFFICE THAT'S REFERRED IN HERE IS
10 REFERRING TO ELECTIVE OFFICE.

11 THE COURT: I'M LOOKING AT EXHIBIT -- I JUST
12 HAPPENED TO TURN TO THIS, EXHIBIT A, WHICH IS I GUESS
13 THE CHARTER, SECTION 5. NO, THIS IS -- THIS IS
14 DIFFERENT. ARTICLE 22, DEPARTMENT OF THE GLENDALE
15 WATER AND POWER, PAGE C-26, VACANCY IN CITY OFFICES.
16 I MEAN, IT'S REMOVED FROM OFFICE, ELECTION OR
17 APPOINTED, RESIGN OR BE REMOVED FROM OFFICE.

18 THIS IS ALL ABOUT -- OFFICE BASICALLY MEANS
19 AN APPOINTED OR ELECTED OFFICE. THAT'S WHAT IT MEANS.

20 MR. RAWCLIFFE: BUT THE CHARTER --

21 THE COURT: BUT I UNDERSTAND. YOUR ARGUMENT
22 REALLY IS THAT THE SECOND SENTENCE IS A RUN-ON OF THE
23 FIRST SENTENCE.

24 MR. RAWCLIFFE: EXACTLY, FOR TWO YEARS. BECAUSE
25 THE CHARTER DOES -- WHEN IT'S TRYING TO REFERENCE AN
26 ELECTIVE POSITION, IT DOES SAY "ELECTIVE POSITION."
27 AND, HERE, IT DOESN'T TALK ABOUT ELECTIVE POSITION.

28 MR. BRADY: YEAH, IT SAYS "ANY." NONE OF THE

1 OTHER PROVISIONS WHERE IT DIFFERENTIATES BETWEEN
2 ELECTIVE AND NON-ELECTIVE DOES IT SAY "ANY." IT SAYS
3 ELECTIVE OR NON-ELECTIVE. HERE IT SAYS "ANY."

4 AND ONE MORE POINT ABOUT THE PLAIN MEANING.
5 I WOULD LIKE TO NOTE, YOUR HONOR, THE STATUTORY -- THE
6 RULES OF STATUTORY CONSTRUCTION THAT SAYS, YOU KNOW,
7 WHEN THERE'S PLAIN LANGUAGE THAT YOU HAVE TO -- AND
8 YOUR HONOR JUST SAID THAT EVERYBODY AGREES THAT IT'S
9 ANY -- INCLUDES ELECTIVE -- CITY OFFICE INCLUDES
10 ELECTIVE AND NON-ELECTIVE THAT WE JUST, ALL OF A
11 SUDDEN, WRITE ELECTIVE OUT.

12 THE COURT: YEAH. YOUR ARGUMENT IS THAT YOU HAVE
13 TO REWRITE THIS IN ORDER TO CONFORM TO THE
14 OPPOSITION'S VIEW. AND THAT IS TRUE. YOU DO, I
15 THINK. BUT -- AND YOU'RE NOT SUPPOSED TO REWRITE WHEN
16 YOU INTERPRET --

17 MR. BRADY: YOU'RE NOT SUPPOSED TO ADD -- YOU'RE
18 SUPPOSED TO BE PARTICULARLY CAREFUL ABOUT ADDING
19 PROVISIONS, AND THEY'RE ADDING IN HERE ANY ELECTIVE
20 OFFICE. THEY'RE ADDING A WORD.

21 THE COURT: YOU COULD DO IT THAT WAY. BUT WE ALL
22 AGREE THAT THE VOTERS' INTENT CONTROLS.

23 MR. RAWCLIFFE: YES.

24 MR. BRADY: YES.

25 THE COURT: AND --

26 MR. BRADY: AND THAT GOES BACK, YOUR HONOR, IF I
27 MAY INDULGE YOU FOR ONE MORE -- THAT GOES BACK TO MY
28 SCENARIO, HYPOTHETICAL, WOULD A PERSON VOTING FOR THIS

1 PROVISION BELIEVE THAT IT WOULD BE OKAY FOR A CITY
2 COUNCIL TO REAPPOINT THEIR COLLEAGUE THAT JUST RETIRED
3 AND BYPASSED AN ELECTION AND BYPASSED THE EXPENSE AND
4 ALL THE TOUGH STUFF THAT GOES WITH AN ELECTION TO GET
5 REAPPOINTED A MERE EIGHT DAYS?

6 WOULD SOMEBODY VOTING FOR THIS BELIEVE THAT
7 THAT PARTICULAR SCENARIO WOULD BE COVERED? AND I
8 SUBMIT OF COURSE THEY WOULD.

9 THE COURT: OKAY. SO LET ME CHANGE YOUR
10 HYPOTHETICAL A LITTLE BIT. WOULD A VOTER BELIEVE THAT
11 SOMEONE WHO HAS BEEN IN OFFICE FOR 20 YEARS AS A CITY
12 COUNCIL MEMBER DECIDES TO RETIRE, RESIGNS FROM OFFICE,
13 AND THEN CHANGES HIS MIND EIGHT DAYS LATER AND RUNS
14 FOR CITY COUNCIL AGAIN WOULD BE FORECLOSED FROM DOING
15 SO?

16 MR. BRADY: MAYBE. MAYBE. MAYBE NOT. I DON'T
17 KNOW. I MEAN, THAT'S ASKING A LOT TO READ INTO THE --
18 YOU KNOW, THE VOTERS' MIND. BUT I THINK THERE IS A
19 PLAUSIBLE EXPLANATION FOR THAT SCENARIO. RIGHT. THEY
20 DON'T WANT PEOPLE, MAYBE, KNOWING THAT THERE'S GOING
21 TO BE AN ELECTION COMING UP THAT'S GOING TO BE EASIER
22 THAN THE ONE THAT THEY'RE GOING TO HAVE TO FACE AT
23 THAT TIME, RIGHT.

24 SO IN MR. QUINTERO SITUATION, HE KNEW THAT --

25 MS. SMITH: NOW YOU'RE ASSUMING -- WE'RE PUTTING
26 THINGS INTO THE RECORD THAT ARE NOT IN THE RECORD.

27 MR. BRADY: I'M NOT MAKING ANY ALLEGATIONS. I'M
28 SETTING UP A CONTEXT. I'M SETTING UP A HYPOTHETICAL

1 CONTEXT TO UNDERSTAND --

2 MS. SMITH: YOU SAY "HYPOTHETICAL," BUT THEN YOU
3 BRING ACTUAL PEOPLE THAT ARE IN THIS LITIGATION INTO
4 THIS.

5 MR. BRADY: COUNCILMAN Q DECIDES TO BYPASS AN
6 ELECTION KNOWING THAT THERE'S GOING TO BE ANOTHER
7 EASIER ONE A YEAR LATER, OR MAYBE GLENDALE WANTS TO
8 KEEP -- MAYBE THE CITY WANTS TO KEEP PEOPLE ON THEIR
9 CITY COUNSEL AND NOT LEAVE AND SAYS, HEY, THIS IS
10 GOING TO BE THE PUNISHMENT IF YOU DO LEAVE. YOU'RE
11 NOT COMING BACK.

12 I GUESS NOW THEY WANT TO TREAT HIM LIKE THE
13 PRODIGAL SON, BUT THAT'S A SEPARATE ISSUE THAN WHAT
14 THEY WANTED TO DISSUADE IN THE FIRST PLACE.

15 THE COURT: I'M NOT SURE WHAT YOU'RE ARGUING TO
16 ME. ARE YOU ARGUING THAT THERE ARE POTENTIAL REASONS
17 WHY THEY WOULD WANT TO DO THIS?

18 MR. BRADY: YES, THAT'S EXACTLY --

19 THE COURT: OKAY. SURE, THERE ARE POTENTIAL
20 REASONS. DO THEY MAKE SENSE IN THE CONTEXT OF WHAT IS
21 THE PUBLIC INTEREST AND WHAT IS THE -- WHAT IS THE --
22 WHAT ARE CUSTOMARILY ADVOCATED AS PUBLIC -- POLITICAL
23 ISSUES LIKE TERM LIMITS? NO, IT DOESN'T MAKE ANY
24 SENSE HERE.

25 BEFORE I FORGET, MS. SMITH, DOES THE ATTORNEY
26 GENERAL -- I MEAN, I'VE SAID THE ATTORNEY GENERAL HAS
27 DISCRETION TO TREAT PRIVATE GRIEVANCE QUO WARRANTO
28 APPLICATIONS DIFFERENTLY FROM THOSE BASED ON THE

1 PUBLIC INTEREST. DOES THE ATTORNEY GENERAL TREAT THEM
2 DIFFERENTLY?

3 MS. SMITH: I COULD SUBMIT A DECLARATION TO THAT
4 EFFECT, BUT I CANNOT TESTIFY TO EXACT -- HOW THAT
5 COMES INTO OUR OFFICE AND HOW THAT IT'S TREATED.

6 THE COURT: I WASN'T REALLY ASKING FOR THE -- I
7 WAS ASKING MORE FOR THE PUBLISHED ATTORNEY GENERAL
8 DECISIONS --

9 MS. SMITH: GOT IT.

10 THE COURT: -- IN THIS REGARD.

11 MS. SMITH: AND THAT'S NOT ALWAYS -- IT'S NOT
12 ALWAYS DISCUSSED, I DON'T THINK. IN FACT, I CAN'T
13 POINT TO ONE WHERE THAT DIFFERENTIATION IS MADE. I
14 THINK THAT WHEN THEY LOOK AT -- WHEN THE ATTORNEY
15 GENERAL LOOKS AT IT, IT'S THE TWO-PRONG TEST, IS THERE
16 A SUBSTANTIAL LEGAL ISSUE, AND, NUMBER TWO, WHAT'S IN
17 THE PUBLIC INTEREST?

18 SO I THINK GOING BEYOND THAT, IT MAY HAPPEN
19 IN A PARTICULAR CASE, BUT I DON'T THINK THAT'S THE
20 STANDARD THAT THE ATTORNEY GENERAL NORMALLY USES IN
21 THOSE CASES.

22 THE COURT: YOU WOULD AGREE THAT THE PUBLIC
23 INTEREST TIPS IN FAVOR OF QUO WARRANTO, IN THIS KIND
24 OF CASE ANYWAY, IF THERE WAS A PRIVATE GRIEVANCE
25 INVOLVED?

26 MS. SMITH: IF THERE'S A PRIVATE INDIVIDUAL
27 CHALLENGING -- CHALLENGING AN OFFICE THAT THEY WERE --

28 THE COURT: EXCLUDED FROM.

1 MS. SMITH: THAT THEY WERE EXCLUDED FROM, EXACTLY.

2 AND I DID WANT TO GO BACK TO A POINT THAT YOU
3 HAD MADE EARLIER, YOUR HONOR, WHERE YOU SAID YOU WERE
4 CONCERNED ABOUT THE UNFETTERED DISCRETION.

5 THE COURT: YES.

6 MS. SMITH: WHEN WE SAY "UNFETTERED," THERE ARE
7 STILL CHECKS ON THE ATTORNEY GENERAL. NUMBER ONE, IN
8 THE CODE OF CIVIL PROCEDURE SECTION 803, THE GOVERNOR
9 MAY ORDER THE ATTORNEY GENERAL TO FILE -- OR TO GRANT
10 LEAVE TO SUE SO INDIVIDUALS CAN SEEK -- CAN SEEK
11 ASSISTANCE FROM THE GOVERNOR.

12 NOW, I KNOW THAT THAT MAY SEEM LIKE A LAST
13 DITCH EFFORT, BUT THAT'S IN THE CODE AND THIS IS
14 ANOTHER CHECK ON THE ATTORNEY GENERAL. AND THE
15 ATTORNEY GENERAL -- IT'S A MUST COMMAND. IT'S NOT IN
16 THE CASE LAW IN TERMS OF HAS THAT EVER COME UP. BUT,
17 IN THE CODE, IT DOES SAY IN SECTION 803 THAT, AT THE
18 END OF IT, "THE ATTORNEY GENERAL IS HELD OR EXERCISED
19 BY ANY PERSON OR WHEN HE IS DIRECTED TO DO SO BY THE
20 GOVERNOR."

21

22 (COUNSEL READING EXTREMELY FAST.)

23

24 SO THAT'S ONE CHECK, AND THE OTHER CHECK IS
25 AN ELECTION. IF THE ATTORNEY GENERAL DID DO
26 SOMETHING, AS YOU MENTIONED, THAT WAS WILDLY OUT OF
27 THE BONDS OF ONE'S DISCRETION OR WAS USING DISCRETION
28 IN A WAY THAT THE ENTIRE PUBLIC THOUGHT WAS CRAZY,

1 THERE ARE ELECTIONS. AND THAT'S THE SAME THING FOR
2 DISTRICT ATTORNEYS, CITY ATTORNEYS WHO ARE ELECTED.

3 IF THEY'RE -- IF THEY USE THEIR DISCRETION
4 EITHER TO PROSECUTE SOMEBODY OR NOT TO PROSECUTE
5 SOMEBODY IN A MANNER THAT OFFENDS THE PUBLIC, THEN
6 THERE IS A CHECK ON THAT AND THAT'S AN ELECTION.

7 THE COURT: WELL, THAT'S TRUE. I DON'T VIEW THIS
8 THE SAME AS PROSECUTORIAL DISCRETION, WHICH IS
9 UNFETTERED. I DON'T THINK IT'S QUITE THE SAME. I
10 GUESS THE REASON -- I THINK ON A BLANK PAGE, I WOULD
11 HAVE -- IF I WAS THE ATTORNEY GENERAL, I PROBABLY
12 WOULD HAVE GRANTED THIS AND ALLOWED THE COURT TO
13 DECIDE IT.

14 MR. BRADY: AND I THINK THAT, YOUR HONOR, RIGHT
15 THERE, IF YOU LOOK AT THE STATUTE, IT SAYS THE
16 ATTORNEY GENERAL, MUST, WHEN SHE HAS REASON TO
17 BELIEVE, MUST BRING THE ACTION TO -- AND SO IF THE
18 STATUTE SAYS SHE MUST, WHEN SHE HAS REASON TO BELIEVE,
19 OBVIOUSLY, IF YOUR HONOR HAS REASON TO BELIEVE THAT
20 THAT'S THE CASE, THEN SHE HAS TO AS WELL. AND IT HAS
21 TO BE AN OBJECTIVE STANDARD.

22 THE COURT: I AGREE IT'S OBJECTIVE, AND NOBODY IS
23 DISPUTING THAT IT'S A SUBJECTIVE STANDARD. IT'S AN
24 OBJECTIVE STANDARD. BUT REASON TO BELIEVE DOESN'T
25 BELIEVE A SUBJECTIVE REASON TO BELIEVE. IT MEANS
26 OBJECTIVE REASON TO BELIEVE.

27 MR. BRADY: CORRECT.

28 THE COURT: I AGREE, AND NOBODY DISPUTES THAT.

1 THAT'S PRETTY SELF-EVIDENT.

2 MR. BRADY: WELL, THEY'RE SAYING THAT THEY
3 SUBJECTIVELY INTERPRET THE --

4 THE COURT: SHE'S SAYING SHE APPLIED THE RULES OF
5 STATUTORY --

6 MR. BRADY: WHAT RULE OF STATUTORY CONSTRUCTION?

7 THE COURT: STATUTORY INTERPRETATION AND FOUND
8 YOUR POSITION WANTING. YOU KNOW, I DO -- I GUESS
9 WHERE I WOULD PART FROM THE ATTORNEY GENERAL IS IF SHE
10 SAYS IT'S NOT A CLOSE QUESTION. IT'S DEBATABLE BUT
11 NOT CLOSE. WELL, I'M NOT SURE IT'S NOT CLOSE, BUT IF
12 YOU WERE -- IF YOU HAD A PRIVATE LEGAL GRIEVANCE, YOU
13 WOULD WIN THIS CASE. YOU DON'T, AND YOU HAVE HAVEN'T.

14 IS THERE ANYTHING ELSE ANYBODY WANTS TO SAY?

15 MR. BRADY: THANK YOU, YOUR HONOR.

16 THE COURT: OKAY.

17 MS. SMITH: NO. THANK YOU.

18 THE COURT: THE TENTATIVE IS ADOPTED AS THE ORDER
19 OF THE COURT. VERY INTERESTING CASE.

20 PLEASE FOLLOW THE LAST PARAGRAPH.

21 MS. SMITH: YES, YOUR HONOR.

22

23 (THE MATTER WAS CONCLUDED.)

24

25

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 85

HON. JAMES C. CHALFANT, JUDGE

JOHN RANDO, ET AL.,

PETITIONERS,

VS.

KAMALA HARRIS, ET AL.,

RESPONDENTS.

CASE NO: BS145904

I, LOUIS R. MACHUCA, OFFICIAL COURT REPORTER
OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR
THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE
FOREGOING PAGES 1 THROUGH 41, INCLUSIVE, COMPRISE A
FULL, TRUE, AND CORRECT DAILY TRANSCRIPT OF THE
PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER ON
JANUARY 7, 2014.

DATED THIS 10TH DAY OF JANUARY, 2014.

Louis R. Machuca

LOUIS R. MACHUCA
CSR NO. 12274

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I, Claudia Ayala, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Blvd., Suite 200 Long Beach, CA 90802.

On February 12, 2014, I served the foregoing document(s) described as

**APPELLANT'S APPENDIX
VOLUME III OF III - AA000281 - AA000323**

on the interested parties in this action by placing

the original

a true and correct copy

thereof enclosed in sealed envelope(s) addressed as follows:

“SEE SERVICE LIST”

X (BY MAIL) As follows: I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.

Executed on February 12, 2014, at Long Beach, California.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 12, 2014, at Long Beach, California.



CLAUDIA AYALA

SERVICE LIST

JOHN RANDO ET AL. v. KAMALA HARRIS ET AL.
CASE NO. B254060

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