IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

JOHN RANDO and MARIANO A. RODAS, 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.	Case No. B254060

Los Angeles County Superior Court, Case No. BS14509
The Honorable James Chalfant, Judge

APPELLANTS' REPLY BRIEF

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

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INTRODUCTION

The Attorney General's two main arguments on appeal have both been rejected by the trial court. The AG's primary argument is that it denied Appellants' petition because the claim did not raise a "substantial question" and was "not a close call." At the hearing on the matter, the trial court stated that it would "part from the Attorney General" on Petitioners' case not being a "close call" and, further noted that "If you had a private [rather than public] legal grievance, you would win this case." (Transcript at 41, AA 322.)

The AG's secondary argument is that Mr. Quintero will likely be out of office before the matter can be resolved, so the action would not serve the public interest. The trial court rejected that notion, too, stating: "It took the Attorney General five months to deny the application. . . . The Attorney General cannot rely on the shortness of time as a basis to conclude that public interest would not be served by filing the lawsuit." (Transcript at 41, AA 284.)

The trial court, while getting the substance of Appellants' arguments right, erred in conferring too much discretion–almost "unfettered discretion"–on the AG. The statute does not provide that much discretion. Even assuming the test applied by the court, i.e., the "indefensible abuse"

standard, is correct, the AG's abuse in this case was indefensible. Her self-described role in these matters is not that of a final arbiter of such disputes. Where the facts are undisputed and the legal claim has merit, the AG must grant petitions in quo warranto per the terms of Section 803. In sum, the AG's discretion does have limits, and those limits were exceeded here.

Moreover, as explained below, neither the AG nor the City provide any substantive rebuttal to the arguments in Petitioners' opening brief. Most importantly, neither could explain why the *appointment* of Mr. Quintero does not fall within the plain meaning–and the *intended* meaning–of the Charter provision at issue. The voters of Glendale made it abundantly clear that they did not want Glendale's politicians doling out favors to ex-councilmembers, whether in the form of city contracts or paid city positions, for a period of two years. Mr. Quintero's appointment to the council eight days after he retired violates that voter-approved amendment to the Charter.[1]

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[1] The attempt to read an exception into that provision for officials who seek election to office within the two-year period may have some merit, but it does not apply here because Mr. Quintero was *appointed*. The AG and City both ignore that fact.

I. THIS CASE INVOLVES A PURE QUESTION OF LAW THAT IS SUBJECT TO DE NOVO REVIEW

All parties agree that no question of fact exists in this matter. (Court's Order, AA 267 ["The underlying facts pertinent to the Attorney General's decision are undisputed."].) There is only a question of law, specifically: whether the AG abused her discretion in denying Petitioners the right to have a court adjudicate their quo warranto claim that Section 12 of Glendale's City Charter disqualified Mr. Quintero from lawfully being appointed by his former colleagues to his current position on the City Council. The AG's sole authority to review quo warranto applications is conferred by statute. (Code Civ. Proc., § 803).

The result in this case thus depends entirely upon this Court's interpretation of a seldom-used statute, Section 803, as well as the underlying Charter provision, Section 12, to determine (1) the scope of the AG's discretion and (2) whether she abused it. The AG's suggestion that this Court is not entitled to exercise independent judgment and instead must defer to the AG under these circumstances as to pure matters of law is misguided. (*See* Resp. Br. 11 & fn 2 [The AG cited the proper authority on this point, but then immediately contradicted it.]) This case does not present "questions of fact" in the usual sense; de novo review is appropriate. (See *Cal. Correctional Peace Officers' Assn. v. State* (2010) 181 Cal.App.4th

1454, 1460 [when an agency's action depends solely upon the correct interpretation of a statute, it is a question of law, upon which the court exercises independent judgment].)

II. THE AG's DISCRETION IS NOT AS BROAD AS SHE ASSERTS

The AG repeatedly makes the conclusory assertion that the trial court was correct in holding that she did not commit an "extreme and clearly indefensible abuse of discretion" by denying Petitioners leave to sue. But, she never explains what exactly that standard means or why she passes it. She does, however, attempt to rebut Petitioners' interpretation of that standard—i.e., Petitioners' contention that an "indefensible abuse of discretion" occurs when a quo warranto application is denied even though it provides facts and law sufficient to give an objective Attorney General "reason to believe" (not certitude) that a public office is being unlawfully held.

Notably, the court below agreed with Petitioners that the "reason to believe" language in Section 803 contemplates an objective standard. (Tr. AA 321 ["I agree it's objective. . . . It's an objective standard."].) Even the AG's own policy is in accord. As pointed out in Petitioners' opening brief, AOB at 18-19, the policy of the AG is *not* to decide the question of eligibility for office on the merits, but to allow legitimate challenges of that

kind to be resolved by courts. (*See* 95 Ops.Cal.Atty.Gen. 77 (2012) ["Again, our role is not to decide the question of [Quintero's] eligibility to hold the office of [City Councilmember]. Rather, the action of the Attorney General is a preliminary investigation . . .."].) The AG does not rebut this point.

Citing *International Association of Fire Fighters Local 55 v. Oakland* (1985) 174 Cal.App.3d 687, the AG nonetheless argues that Section 803's "reason to believe" language actually expands rather than limits her discretion and negates any mandatory duty of the AG in deciding quo warranto applications. But as explained in Petitioners' opening brief, *Fire Fighters* not a case concerning the scope of the Attorney General's discretion in deciding quo warranto petitions, it was a due process case. (AOB at 15-17). As such, its discussion of what "reason to believe" means under Section 803 is dicta that can be and should be disregarded by this Court.[2]

Regardless, the AG's reading of Section 803 is untenable because it renders the word "must"—which creates a mandatory duty for the AG– meaningless. Courts have a "duty 'to give effect, if possible, to every clause

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[2] *Nicolopulos v. City of Lawndale* (2001) 91 Cal.App.4th 1221 is likewise a due process case and thus mostly irrelevant here.

and word of a statute.' . . . [Courts] are thus 'reluctan[t] to treat statutory terms as surplusage' in any setting." (*Duncan v. Walker* (2001) 533 U.S. 167, 174 [internal citations omitted].)

Moreover, what the AG and the Real Parties in Interest ("RPI") essentially argue here is that the AG should be free from any, or at least serious, judicial review, even on pure questions of law. That is a power that, to Petitioners knowledge, is not enjoyed by any executive officer. But as the AG and RPI would have it, the AG would be entitled to *more* discretion than superior and district court judges whose decisions on questions of law are reviewed de novo. Such a view of the AG's power, under Section 803—or any law for that matter—simply does not make sense.

The AG makes much of the fact that there has been no known instance of a court granting a writ compelling an Attorney General to grant a quo warranto petition. But, on the other hand, there have only been two cases in Section 803's more than-100 year history where a court has denied such a writ. (*See Lamb v. Webb* (1907) 151 Cal. 451; *City of Campbell v. Mosk* (1961) 197 Cal.App.2d 640.) This is not surprising due to the rarity of quo warranto actions. According to the AG herself, only about three or four of them are considered annually. Respondent's Brief ("RB") at 5.

What is more telling is that the AG, the arbiter of all quo warranto petitioners, has not cited a single case where, an Attorney General has acknowledged a meritorious question-of-law-claim concerning whether a public official was unlawfully appointed to office, and nevertheless denied leave to sue, as she did here. In the absence of any such authority, the AG is left trying to distinguish an essentially identical case to the one raised by Petitioners—one where the AG followed her own policy and *granted* leave to sue. In a footnote, the AG claimed that the difference between the two cases was that the other raised a "substantial question" and this one did not. As noted in the opening brief, the shear length of the AG's opinion belies the notion that there was no substantial question here. Further, the lower court clearly thought the legal questions raised in the Appellants' petition were substantial and, in disagreeing with the AG, noted that he found the case a "close call." Indeed, the judge stated he would have granted the petition if he were in the AG's shoes. (Tr. AA at 00322) In short, the AG's claim that the case did not raise a serious question or that it was not a "close call" is just not tenable.

Additionally, the AG provides no retort to Petitioners' analysis of why the lower court erred in holding the AG has an even higher level of discretion when a public right is being asserted other than to cite to the

same passage from *Fire Fighters* that Petitioners showed does not support that view. (RB at 15). The AG does, however, rely heavily on a case that said the exact opposite, i.e., that denying leave to sue may be more appropriate when *private* rights are being asserted because the *public* interest is not the paramount concern in such cases. (*City of Campbell v. Mosk* (1961) 197 Cal.App.2d 640.)

In sum, the AG's discretion is not unlimited, and the AG cites no compelling authority establishing otherwise.

III. THE PUBLIC INTEREST WOULD BE SERVED, NOT HARMED, BY GRANTING PETITIONERS LEAVE TO SUE; PUBLIC POLICY MILITATES IN FAVOR OF ALLOWING ACCESS TO COURTS

The AG asserts that her role is more than a mere gatekeeper in these matters, and that she enjoys broad discretion to determine whether allowing a lawsuit to proceed is in the public's interest. But that notion is found nowhere in the language of Section 803, nor did the *Lamb* court make mention of a "public interest" inquiry. It was invented whole cloth by Attorneys General. The only court other than *Lamb* to consider the scope of the Attorney General's discretion in deciding quo warranto petitions, however, arguably did adopt the Attorney General's "test" that "the public interest prevails." (*City of Campbell v. Mosk, supra*, 197 Cal.App.2d 640,

648.) Whether it actually did, its basis for doing so and whether it was correct in doing so is unclear.

Regardless, even if it is a proper inquiry, the AG never specifies how the public interest would be harmed by granting Petitioners' quo warranto application. She makes a vague reference to her belief that Petitioners' "debatable issue" would be "burdening the courts." (RB at 21). But she never explains specifically how allowing this particular "debatable issue" to reach a court is a burden on the public; likely because she cannot.

The public interest is indeed furthered by allowing Petitioners' claim concerning a matter of the utmost public importance, i.e., the legitimacy of official city representation, to be heard in a court of law. Setting aside the right to petition the government for the redress of grievances found in both the United States and California constitutions, discussed below in Section VI, California courts have generally espoused a public policy favoring access to courts for legal disputes. (*See Payne v. Super. Ct.* (1976) 17 Cal.3d 908 ["In a variety of contexts, the right of access to courts has been reaffirmed and strengthened throughout our 200-year history."]; *Rubin v. Green* (1993) 4 Cal.4th 1187, 1194 [emphasizing "the importance of virtually unhindered access to the courts"], *see, e.g.*, *Albertson v. Raboff* (1956) 46 Cal.2d 375, 380 [recognizing a "broadly applicable policy of

assuring litigants the utmost freedom of access to the courts to secure and defend their rights. . ."]; *Silberg v. Anderson* (1990) 50 Cal.3d 205 [access to courts is the underlying policy behind "litigation privilege" found in Civil Code section 47]; *In re Marriage of Flaherty* (1982) 31 Cal.3d 637 [access to courts tempers the imposition of sanctions against attorneys filings frivolous claims]; *Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc.* (1986) 42 Cal.3d 1157, 1164 [setting high bar for malicious prosecution actions to "avoid an improper 'chilling' of the right to seek redress in court"]; *Jorgensen v. Jorgensen* (1948) 32 Cal.2d 13, 18 [balancing the policy of res judicata with "the policy that a party shall not be deprived of a fair adversary proceeding in which fully to present his case"].)

While the *Mosk* court agrees with the AG that the Attorney General's consideration of the "public interest" is the determining factor in whether to grant a a quo warranto petition, the Attorney General in that case provided a litany of specific interest justifying its denial, most prominently that the petitioners had alternative remedies that they did not avail themselves of. Here, on the other hand, not only do Petitioners have no other recourse, but the AG cannot explain why an admittedly legitimate argument of this nature should *not* reach a Court.

IV. THE AG'S INABILITY TO ADDRESS PETITIONERS' CRITICISMS OF HER DEVIATION FROM STANDARD RULES OF STATUTORY CONSTRUCTION FOR A THIRD TIME DEMONSTRATE THE WEAKNESS OF HER VIEW OF SECTION 12

The AG does not even attempt to rebut a single one of Petitioners' criticisms of her (mis)application of the rules of statutory construction. Instead, she simply cites to her own Opinion—the very opinion that is the basis of the controversy here, as if that has some precedential value. On that note, the Court should take care in sifting what is purported authority and evidence from the AG's recitation of her Opinion because she often intertwines the two.

Likewise, the RPI's brief fails to address Petitioners' specific arguments about how the rules of statutory construction demand a different interpretation of Section 12. They simply reiterate the arguments that the AG has already accepted. Thus, their brief is of little help here. It does, however, highlight the utter weakness of their and the AG's view of Section 12 that was accepted by the trial court, and the strength of Petitioners'. Citing to various provisions of the Glendale Charter, RPI note that "[w]hen other Charter sections apply to elective office, the phrase 'elective office(r)' is used," whereas "when a Charter provision applies to both elective office and non-elective office, the Charter utilizes either 'officer or employee' or

'city office(rs).' " (RPI Br. 13). Section 12 uses the term that, according to RPI themselves, contemplates *both* elective and non-elective offices. RPI's claim that the term "compensated" confuses the matter is unpersuasive. There certainly is no ambiguity about that term. In any event, RPI's own view of the City Charter's treatment of the term "city office" supports Petitioners' view of Section 12.

Moreover, like the AG, RPI focus exclusively on Section's 12's effect on positions of "employment" without explaining what "office" means. They simply read "office" out of Section 12, claiming that was the voters' intent. But, an assumed view of the voters' intent cannot be based on wholly ignoring words in a provision, especially ones that appear repeatedly.

Regardless of the disputes over interpretation of text, the AG, RPI, the trial court, and Petitioners all agree that Section 12 must be construed to reflect the voters' intent, and that their general intent was to prevent cronyism and corruption in the selection of (at least some) officers and employees to the Glendale payroll. But no one can explain how the circumstances attendant Quintero's *appointment* to a paid office by his former colleagues are not precisely those that the residents of Glendale sought to avoid via adoption of Section 12.

Assume hypothetically that Quintero's appointment occurred as follows: Mr. Manoukian ran for Treasurer unopposed, and the sitting members of the Glendale City Council, knowing well before the election that Manoukian would leave a vacancy on the council,[3] planned to assure their support for an important pending matter slated for after the election by guaranteeing Quintero's appointment to the vacated seat, thereby allowing Quintero to avoid an expensive and potentially weakening election campaign and a possible loss to someone politically at odds with Quintero and his fellow councilmembers' goals.

We do not know if this is what really occurred, but speculation about motives is irrelevant. For we do know that the people of Glendale intended to prevent the opportunity for cronyism by eliminating—at least for two years—the possibility that former councilmembers would benefit from cronyism at the expense of those not as well connected, politically. Section 12 is a prophylactic measure to that end. Its prohibition is not triggered by actual malfeasance, but rather generally applies to all situations that it contemplates *in case* corruption is at hand. The appointment of a former

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[3] Because Section 12 prohibits holding "other city offices" simultaneously, which apparently RPI agrees includes elective offices in that context.

Mayor to the council by his colleagues a mere eight days after he left that same position indisputably fits the bill.

A. There Is No Constitutional Impediment to Interpreting Section 12 as Petitioners Do

The AG and RPI insist constitutional principles preclude Petitioners' view of Section 12 because it would infringe on Qunitero's right to hold public office. While there is a fundamental right to hold public office either by election or appointment, this right may be restricted by a clear declaration of law. (*See Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) The AG concludes without explanation that Section 12 is not sufficiently clear to constitutionally restrict an elective office. But, Petitioners have refuted that, showing that Section 12 clearly contemplates councilmembers as being subject to its two-year restriction. (AOB 24-31).

To the extent there is any ambiguity in Section 12, the *Lungren* court resolved an ambiguity in favor of restricting the plaintiff from taking office, because, as here, the interpretation in favor of the would-be office holder did not make sense in light of the language of the provision at issue and its related materials. (*Lungren, supra.*, 45 Cal.3d at p. 743.) Thus, this Court does not have to defer to permitting Quintero's appointment simply because

RPI raise some unspecified ambiguity where, as here, the overwhelming evidence suggests Section 12 intended to bar him.[4]

Regardless, whether Section 12 is sufficiently clear to pass constitutional muster as a restriction on the right to office is by definition a question of law appropriate for a *court* to decide, not the Attorney General. "[A] challenge to the constitutionality of an act is inherently a judicial rather than political question and neither the Legislature, the executive, nor both acting in concert can validate an unconstitutional act or deprive the courts of jurisdiction to decide questions of constitutionality." (*Schabarum v. Cal. Legislature* (1998) 60 Cal. App. 4th 1205, 1215.)

B. Petitioners Do Not Assert Section 12 Effectuates a Term Limit

Both the AG and RPI claim Petitioners read Section 12 as a term limit. This is a red herring. While Petitioners are not entirely clear on the relevance of their argument, Petitioners maintain that Section 12 is not a term limit. To the contrary, denying *appointments* like Quintero's is a

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[4] To the extent any constitutional issues with Section 12 are raised under *De Bottari v. Melendez* (1975) 44 Cal.App.3d 910, as RPI contend—which is doubtful since that case involved a far different provision—a court could simply construe the term "leaving" in Section 12 as being limited to voluntary departures, like that of Quintero. Such would not preclude recalled councilmembers from running for reelection within two years, avoiding the asserted constitutional problem. (*McClung v. Employment Dev. Dep't* (2004) 34 Cal. 4th 467, 477 [provisions are to be interpreted to avoid constitutional infirmity].)

perfectly logical way for Glendale to achieve its goal in enacting the two-year ban of avoiding cronyism or self-dealing by or on behalf of former councilmembers, while *not* limiting the time councilmembers can remain in service. As Petitioners have previously noted, it is unlikely an accident that Glendale general elections are held every two years and that is the same period selected for Section 12's restriction. (AOB 29). Accordingly, all suggestions (and implications therefrom) that Petitioners' view of Section 12 implicates a term limit, including RPI's historical account of Glendale rejecting a term limit measure, RPI Br. 7-8, 20, are irrelevant.

The fact is that Quintero had every right and opportunity to run for the elected office of City Council member and extend his term. He chose not to; he let his term expire. Now, as a former councilmember, he is of a class temporarily ineligible to serve in a paid city office for two years. Such a temporary ban on moving to another city position to prevent corruption is perfectly reasonable and, contrary to RPI's assertion, is not the sort of "bizarre result" courts seek to avoid.[5]

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[5] *See, e.g., Woo v. Super. Ct.* (2000) 83 Cal.App.4th 967 [RPI heavily rely on this case, where the court found a provision led to an "absurd" result and thus required consideration of extrinsic evidence. There, the court held that were it to accept the literal meaning of the charter amendment at issue—which deleted from the city's term-limit rule that only terms commenced on or after July 1, 1993, would be counted—seven of fifteen council districts would have immediately become unrepresented and required a special election or appointment, despite

V. THE AG's REASONING FOR DENYING PETITIONERS' QUO WARRANTO APPLICATION IS UNPERSUASIVE

The AG insists that in denying Petitioners' quo warranto application she was diligent and fair, that she thoroughly reviewed Section 12 and relevant evidence to arrive at her view and applied the standards, but in her proper discretion simply found the question raised wanting. The AG's self-assessment sounds impressive but just because the test the AG applies may be fair and she conducted an extensive analysis, does not mean she applied it in a fair or accurate manner.

As Petitioners demonstrated by citing a case almost identical to theirs that the AG allowed to proceed to court, the AG departed from her general practice of leaving legal issues to courts without explanation. (AOB 18-19). And the AG continues to avoid addressing Petitioners' arguments about the interpretation of Section 12, instead opting to stick with a contrived, nonsensical view. Her decision to do so has left Petitioners without any remedy here.

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having been reelected by the people at the same time the amendment was adopted. 83 Cal.App.4th at pp. 974-977. Upon considering the ballot pamphlet, it was readily apparent that the literal reading of the provision did not correspond to the voters' intent, because it stated that the existing term limits would be "*retain[ed]*," indicating to the voters that there *was no change*. *Id.* at p. 977.

Petitioners do not know why the AG diverted from standard practice in their case. Nor do they know why she ignored their very plausible interpretation of Section 12, which should lead any objective observer to "have reason to believe" that Quintero's former colleagues *may* have engaged in cronyism, improperly offering up a vacant seat to a former mayor and city council member only eight days after he left office. But the AG's motivation is irrelevant. All that matters is that the appointment of Quintero squarely conflicts with the letter *and* spirit of Section 12. The people instituted a two-year ban on former council members accepting paid positions, contracts, or other such benefits from the city, all to keep people in power from engaging in cronyism and corruption. The city council disregarded it. And the AG, for whatever reason, blocked petitioners from challenging the improper appointment – after an inexcusable five-month delay.

At this point, the public interest in having Quintero removed from office lies solely in enforcing the provision precluding his appointment adopted by the people of Glendale; it will be difficult if not impossible to remove him from office much before the expiration of his term. But the AG cannot benefit from her delay in processing the petition. It is the public

interest that needs vindication, regardless of how much time is left in Quintero's term.

VI. NOTHING SUPPORTS PRECLUDING COURT REVIEW OF THE AG's QUO WARRANTO DENIALS; ON THE CONTRARY, THE CONSTITUTION REQUIRES SUCH REVIEW

The AG argues that the degree of discretion and control she can exercise over a quo warranto action affords her the power to quash any proceeding before it reaches a court. Her powers, however, cannot extend that far without trenching upon basic constitutional rights to petition the government.

The right to petition the government for the redress of grievances occupies a "paramount and preferred place in our democratic system." *American Civil Liberties Union v. Bd. of Education* (1961) 55 Cal.2d 167, 178; *see* U.S. Const., 1st Amend.; Cal. Const. art. I, § 3. This right encompasses the right to petition the "judicial branch for resolution of legal disputes." (*Vargas v. City of Salinas* (2011) 200 Cal.App.4th 1331, 1342; *see also Tichinin v. City of Morgan Hill* (2009) 177 Cal.App.4th 1049, 1064. [examining the *Noerr-Pennington* doctrine "which is a broad rule of statutory construction under which laws are construed as to avoid burdening the constitutional right to petition."]. And "the act of filing suit against a government entity represents an exercise of the right of petition and thus

invokes constitutional protection." *City of Long Beach v. Bozek* (1982) 31 Cal.3d 527, 532, judg. vacated and cause remanded (1983) 459 U.S. 1095, sub. opn. 33 Cal.3d 727 ["Because we deem it unnecessary to modify our prior opinion, we reiterate that opinion in its entirety."].)

If, as the AG contends, Section 803 actually allowed her to deny people that right without recourse to judicial review, it would be unconstitutional on its face. That is not to say the AG is without discretion, but only that her decisions must be reviewable for abuse of that discretion. Even the cases cited in support of the AG's position acknowledge the role of the court in reviewing the denial of quo warranto petitions.

For example, the AG relies upon *Mosk* to argue that a writ is unavailable. But the attorney general in *Mosk* made that same argument, and the court expressly *rejected* it:

> While the Attorney General argues that a court should never compel him to grant leave to sue in quo warranto, and language in certain of the above cases sustains that position, we need not make so sweeping a ruling. In accordance with the test suggested in *Lamb*, we hold that, to justify court intervention, the abuse of discretion by the Attorney General in refusing the requested leave must be extreme and clearly indefensible.

Mosk, 197 Cal.App.2d at 648.

The need for review is obvious. Without it, an Attorney General could use such authority to protect political allies and punish adversaries.

Hypothetically, for example, if Quintero was a donor to the AG's campaign or Quintero's son worked with a highly influential political fundraiser who had donated significant amounts of money to the AG in past election campaigns, and that formed the basis of the AG's decision to deny Petitioners' quo warranto application, there would be no remedy to correct such an injustice. The AG would be untouchable. And, that is antithetical to our system of government.

CONCLUSION

This case presents a serious legal question about the *appointment* of an unelected official to a city office, one that warrants judicial resolution. That appointment likely violated, in both letter and spirit, a Charter provision enacted by the people of Glendale to reduce political cronyism and corruption at city hall–at least for a period of two years after a councilmember leaves office. The City Council turned a blind eye to that provision by allowing the appointment of Mr. Quintero to the Council a mere eight days after he left office. That appointment, at the very least, had the appearance of cronyism. Petitioners' legitimate challenge to that appointment should have been expeditiously processed by the AG and then reviewed by a court of law.

Instead, the timely petition languished in the AG's office for five months, only to be denied–in part, due to the short time left in the challenged office holder's term. In denying the petition, the AG ignored the standard practices of her own office by ruling in full on the merits, rather than allowing the substantial legal question presented to proceed to judicial resolution. The AG also ignored standard judicial doctrines of statutory construction when ruling on the merits.

The trial court agreed that the AG wrongly denied Appellants' petition, but declined to issue a writ based on its erroneous finding that the AG has almost "unfettered discretion" in quo warranto proceedings dealing with public interests, i.e., claims where no private right attaches. The trial court erred on that point; in fact, public claims are preferred. That is the nature of quo warranto proceedings. The AG arguably has greater discretion in cases where private interests are at stake, e.g., where the loser in an election challenges the result, because not all such private matters serve the "public interest." In any event, the AG's discretion does have limits, and those limits were exceeded here. The AG's suggestion that a writ of mandate is not available in this case, i.e., that the AG's discretion to deny a quo warranto petition has no limits, only serves to highlight the need for one.

Accordingly, Appellants ask that this Court reverse the district court's decision and remand with instructions for the court to issue the writ or otherwise expeditiously resolve this matter.

Dated: April 9, 2014

MICHEL & ASSOCIATES, P.C.

By: _____
C. D. MICHEL
Attorney for Respondents

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I, Catalina Kelly, 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 April 9, 2014, I served the foregoing document(s) described as

APPELLANTS' REPLY BRIEF

on the interested parties in this action by placing

[ ] the original

[X] a true and correct copy

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

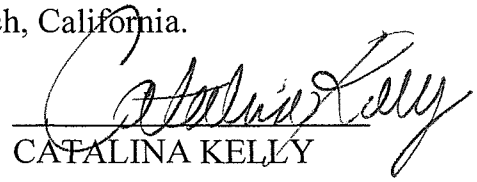
"SEE SERVICE LIST"

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 April 9, 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 April 9, 2014, at Long Beach, California.



CATALINA KELLY

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

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Honorable James C. Chalfant Los Angeles Superior Court Stanley Mosk Courthouse 111 North Hill Street Los Angeles, CA 90012 Department 85	Judge

Clerk of the Court Los Angeles Superior Court Stanley Mosk Courthouse 111 North Hill Street Los Angeles, CA 90012	Clerk
California Supreme Court	Via Electronic Service (CRC 8.212 (c)(2)

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PLAINTIFF: Rando, John
VS.
DEFENDANT: Harris, Kamala

COURT: Court of Appeals
JUDICIAL DIST: 2nd
CITY: Los Angeles
CASE #: B5145904

APPROVED DIRECT BILLING:
CARRIER NAME:
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CITY, STATE, & ZIP:

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INSURED:
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TOTAL	65-

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2nd SUBMIT
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NO CONFORM	SHERIFF	COURTESY	DROP C/W	DROP DP	RCV C/W	RCV DP	FILE C/W	FILE DP	ATTY CK	OUR CK	CASH