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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JOHN RANDO and MARIANO A. RODAS, Plaintiffs and Petitioners, **v.** **KAMALA HARRIS, individually and in her official capacity as Attorney General,** Defendant and Respondent, **FRANK QUINTERO, individually and in his official capacity as Glendale City Councilmember; CITY OF GLENDALE,** Real Parties in Interest.	Case No. BS145904 **DECLARATION OF SUSAN K. SMITH IN SUPPORT OF RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF MANDATE** Date: January 7, 2013 Time: 1:30 p.m. Dept: 85 Judge: Hon. James C. Chalfant

I, Susan K. Smith, declare as follows:

1. I am an attorney admitted to practice before the Courts of the State of California. I am a Deputy Attorney General in the Government Law Section of the Office of the Attorney General, and I am the attorney of record in this matter for respondent and defendant Attorney General Kamala D. Harris. I am submitting this declaration in support of respondent Attorney General Harris's opposition to petition for a writ of mandate and order to show cause why

peremptory writ should not issue. The matters set forth in this Declaration are true of my own knowledge, and if called as a witness I could and would testify competently thereto.

2. Attached as Exhibit A is a true and correct copy of the Opinion of the Office of the Attorney General, No. 13-504, dated October 25, 2013 ("Opinion"). This Opinion is the one at issue in this litigation.

3. In the last ten years, approximately three to four quo warranto applications are decided each year by the Attorney General's Office. These decisions are sometimes published in formal opinions. Approximately two to three quo warranto decisions are issued as formal published Attorney General Opinions each years.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct. Executed on December 20, 2013 in Lo s Angeles, California.

SUSAN K. SMITH

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EXHIBIT A

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

KAMALA D. HARRIS
Attorney General

OPINION	:	No. 13-504
of	:	October 25, 2013
KAMALA D. HARRIS Attorney General	:	
MARC J. NOLAN Deputy Attorney General	:	

Proposed Relators JOHN RANDO and MARIANO A. RODAS have requested leave to sue Proposed Defendants FRANK QUINTERO and the CITY OF GLENDALE in quo warranto in order to seek Mr. Quintero's removal from the public office of Glendale City Council member based on their contention that, under the terms of the Glendale City Charter, he is ineligible to hold that office.

CONCLUSION

Because it is not in the public interest to authorize the initiation of a quo warranto lawsuit under the present circumstances, leave to sue is DENIED.

ANALYSIS

Proposed Defendant the City of Glendale (City) operates under a charter (Charter) enacted in 1921.[1] Proposed Defendant Frank Quintero is currently serving as a member of the Glendale City Council (City Council or Council). He was appointed to that office on April 23, 2013, shortly after completing his term as City Mayor, and his Council term is set to expire in June 2014. Proposed Relators John Rando and Mariano Rodas are residents of the City. They contend that Mr. Quintero's appointment to the Council violated the terms of the City Charter, and that he is therefore ineligible to serve as a Council member. They now seek to remove Mr. Quintero from that public office via the proposed action in quo warranto, and they request that we grant them leave to do so. For the reasons that follow, we must decline this request.

Code of Civil Procedure section 803 provides in pertinent part:

> An action may be brought by the attorney-general, in the name of the people of this state, upon his own information, or upon a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, . . . , within this state.

An action filed under the terms of this statute is known as a "quo warranto" action. In its modern form, "the remedy of quo warranto belongs to the state, in its sovereign capacity, to protect the interests of the people as a whole and guard the public welfare,"[2] and it is appropriately sought in a number of contexts. As relevant here, quo warranto is the proper remedy to "try title" to public office[3]; that is, to evaluate whether a person has the right to hold a particular office by virtue of eligibility requirements, valid election procedures, the absence of disqualifying factors, etc.[4]

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[1] 1921 Stat. ch. 71 at 2204.

[2] *Citizens Utils. Co. of Cal. v. Super. Ct.*, 56 Cal. App. 3d 399, 406 (1976); *see also City of Campbell v. Mosk*, 197 Cal. App. 2d 640, 648 (1961).

[3] *Nicolopulos v. City of Lawndale*, 91 Cal. App. 4th 1221, 1225-1226, 1228 (2001) (disputes over title to public office are public questions of governmental legitimacy); *Elliott v. Van Delinder*, 77 Cal. App. 716, 719 (1926); 93 Ops.Cal.Atty.Gen. 144, 145 (2010); 81 Ops.Cal.Atty.Gen. 207, 208 (1998).

[4] 96 Ops.Cal.Atty.Gen. 36, 39 (2013).

Where, as here, a private party seeks to file an action in quo warranto in superior court, that party must obtain the Attorney General's consent to do so.[5] In determining whether to grant that consent, often called "leave to sue," we must decide whether the application presents a substantial issue of fact or law that warrants judicial resolution, and whether granting the application would serve the public interest.[6] That said, we are accorded broad discretion in determining whether to grant or deny a quo warranto application, and the existence of a "debatable" issue or a legal dispute does not necessarily establish that the issue or dispute requires judicial resolution through the quo warranto procedure.[7] Instead, the overall public interest is the guiding principle and paramount consideration in our exercise of discretion.[8]

With these precepts in mind, we now turn to the facts and circumstances that gave rise to the present application. On April 2, 2013, the City held a municipal election. In this election, Council member Rafi Manoukian, who had 14 months left to serve on his term, was elected to the office of City Treasurer, resulting in a vacancy on the Council. Under Charter article VI, section 13, "any vacancy occurring in the council shall be filled by a majority vote of the remaining members of the council."[9] On April 15, 2013, Proposed Defendant Quintero completed his term as City Mayor. On April 23, 2013, the remaining members of the Council unanimously voted to appoint Mr. Quintero to the vacant Council position. The unexpired term to which he was appointed ends in June 2014.

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[5] *See Intl. Assn. of Fire Fighters v. City of Oakland*, 174 Cal. App. 3d 687, 693-698 (1985).

[6] 95 Ops.Cal.Atty.Gen. 50, 51 (2012); 93 Ops.Cal.Atty.Gen. 144, 145 (2010); 86 Ops.Cal.Atty.Gen. 205, 208-209 (2003).

[7] *See Intl. Assn. of Fire Fighters*, 174 Cal. App. 3d at 697 (Attorney General "has discretion to refuse to sue when the issue is debatable"); *see also* 72 Ops.Cal.Atty.Gen. 15, 24 (1989).

[8] *City of Campbell*, 197 Cal. App. 2d at 650 ("The exercise of the discretion of the Attorney General in the grant of such approval to sue calls for care and delicacy. Certainly the private party's right to it cannot be absolute; the public interest prevails."); 86 Ops.Cal.Atty.Gen. 76, 79 (2003); 72 Ops.Cal.Atty.Gen. at 20; 67 Ops.Cal.Atty.Gen. 151, 153-154 (1984).

[9] This same provision states that if a vacant Council seat is not filled within 30 working days of the vacancy, then the Council "shall immediately call for a special election . . . for the purpose of filling such vacancy, ..."

Proposed Relators contend that Mr. Quintero's appointment violated a provision contained in Charter article VI, section 12 that "[n]o former councilmember shall hold any compensated city office or city employment until two (2) years after leaving the office of councilmember." They argue that, since former Mayor Quintero's term, as both mayor and Council member,[10] ended on April 15, 2013, this provision made him ineligible to hold the elective office of City Council member for a period of two years from that date, thereby rendering his recent appointment invalid. The City counters that the cited language does not cover—and was never intended to cover—the circumstances of Council member Quintero's appointment.

The language relied upon by Proposed Relators is contained in Charter article VI, section 12 (hereafter section 12). That section is entitled "Councilmembers holding other city offices," and provides as follows:

> A councilmember shall not hold any other city office or city employment except as authorized by State law or ordinarily necessary in the performance of the duties as a councilmember. No former councilmember shall hold any compensated city office or city employment until two (2) years after leaving the office of councilmember.[11]

The section was amended to its current wording by City voters' passage of an initiative measure known as "Proposition JJ" in an election held on November 2, 1982.

There is more than one way to read Section 12. One could read it, as Proposed Relators do, as imposing a two-year bar on holding *any* compensated position with the City whatsoever, *including an elective office*. Read this way, the provision's effects would appear to include a kind of term-limiting function.[12] On the other hand, because it does not refer at all to elections or terms of elective office, one could read it as applying

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[10] Under the Charter, the Council chooses "one (1) of its members as presiding officer, to be called mayor." Charter, art. VI, § 5, ¶ 4.

[11] Previously (and from the time the Charter was first enacted), the section had been entitled "Councilmen ineligible to other city positions" and had read: "No members of the council shall be eligible to any office or employment, except an elected office, during a term for which he [sic] was elected." *See* 1921 Stat. ch. 71 at 2215.

[12] Typically, a hiatus period on holding (or returning to) public office is imposed as part of a term-limits measure. For example, another quo warranto matter brought before us involved a voter-enacted charter provision in the City of Cerritos that imposed a two-year hiatus before a *termed-out* council member would be once again eligible to serve on that city council. *See* 87 Ops.Cal.Atty.Gen. 176, 177 (2004).

to *non-elective* compensated offices and employments with the City. Read this way, the provision's effects would appear to focus more on limiting a Council member's opportunity to use his or her influence on the Council as a stepping-stone to future City employment.

Where, as here, we must interpret the language of a city charter ballot amendment, we employ the same rules that apply to any other voter-approved measure, such as a proposed constitutional amendment.[13] Our central goal in construing ballot measures is to effectuate the intent of the electorate.[14] To determine that intent, we look first to the words of the provision adopted; if the language used is clear and unambiguous, there is ordinarily no need for further construction.[15] But where the text itself is not enough to resolve a legal question, we must look deeper to ascertain the voters' intent.[16] When it comes to ballot measures, a recognized indicator of voter intent is the official ballot pamphlet, which contains both the language of the measure as well as information and arguments advanced for and against its passage.[17]

To begin with, we note that the City's Charter does not impose any limits on the number of terms that a Council member may serve.[18] In the absence of any such limits, section 12's two-year proviso cannot serve any meaningful term-limiting purpose. At most, a Council member who fails to win re-election would have to wait two years before

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[13] *See Woo v. Super. Ct.*, 83 Cal. App. 4th 967, 974 (2000); *Currieri v. City of Roseville*, 4 Cal. App. 3d 997, 1001 (1970). These rules in turn echo the rules for interpreting legislatively-enacted statutes. *People v. Bustamante*, 57 Cal. App. 4th 693, 699 n. 5 (1997).

[14] *Woo*, 83 Cal. App. 4th at 975; *see also Lungren v. Deukmejian*, 45 Cal. 3d 727, 735 (1988).

[15] *Woo*, 83 Cal. App. 4th at 975.

[16] Even in those instances where a literal meaning is discernible, or even apparent, the so-called "plain meaning" rule does not prohibit us from determining whether the literal meaning of a given provision comports with its purpose. *See Cal. Sch. Employees Assn. v. Governing Bd.*, 8 Cal. 4th 333, 340 (1994); *Lungren*, 45 Cal. 3d at 735. Stated differently, where extrinsic evidence suggests a contrary intent, we may not simply adopt a literal construction and end our inquiry. *See Mosk v. Super. Ct.*, 25 Cal. 3d 474, 495 n.18 (1979); *Coburn v. Sievert*, 133 Cal. App. 4th 1483, 1495 (2005).

[17] 87 Ops.Cal.Atty.Gen. at 178; *see Raven v. Deukmejian*, 52 Cal. 3d 336, 349 (1990).

[18] Indeed, a measure imposing term limits on Council members was considered, but rejected, by the Council in 1996.

running and serving again, but there is nothing in the Charter to stop that person from serving for forty years in a row the first time, and forty years more the second time. This is not how term-limiting provisions generally work.

What, then, did the voters intend when they placed this proviso in section 12? Because the text itself does not provide a clear answer to the question, we must delve more deeply into the circumstances surrounding Section 12's enactment. We find that, before 1982 (and since the Charter was adopted in 1921), section 12 was entitled "Councilmen ineligible to other city positions" and read as follows:

> No members of the council shall be eligible to any office or employment, except an elected office, during a term for which he [sic] was elected.[19]

Section 12 was amended to its current wording when Proposition JJ was adopted by the voters in the November 1982 municipal election. The official ballot pamphlet from that election shows that the purpose of the amendment was to clarify (1) that sitting Council members could obtain or maintain *outside* employment while serving on the part-time Council, and (2) that the then-existing Charter provision only prohibited Council members from obtaining *City* employment.[20] In addition, the proposed measure would extend the ban on obtaining other City employment for a period of two years after a Council member left office.

Thus, the ballot argument in favor of Proposition JJ stated:

> This amendment clarifies the language in the present Charter which leaves in question the right of a councilperson to be employed while on the Council. It clearly states that a council member may not hold another City office *nor may a council member use his influence to obtain employment with the City until two years after leaving his council office.*[21]

By contrast, nothing in the ballot pamphlet suggested that Proposition JJ would prohibit a former Council member from seeking *elective* office for two years after leaving

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[19] *See* 1921 Stat. ch. 71 at 2215.

[20] As explained in the City Attorney's Impartial Analysis of the measure, "The legal interpretation has been that [the former] section refers to City employment only, although strict construction would be otherwise."

[21] Emphasis added.

the Council.[22] Indeed, a two-year washout or hiatus period on holding elective office would appear misplaced in the absence of term limits. Rather, as the ballot argument urging Proposition JJ's passage explains, the measure was intended to curb a former Council member's "use of his [or her] influence to obtain employment with the City," and the elective office of Council member is not the type of position that one can generally exert prestige or improper influence to obtain.[23] Certainly, section 12, as amended by Proposition JJ, could have been worded more precisely. But reading the provision in the context of the Charter as a whole, and in light of the reasons given in the ballot pamphlet, all indications are that the provision was aimed at prohibiting (or rather, continuing to prohibit) a Council member from improperly using his or her influence to gain *non-elective* City employment.

We must also be cognizant that an individual's eligibility to hold public office is a fundamental right of citizenship in California,[24] which may not be "declared prohibited or curtailed except by plain provisions of law."[25] To that end, we must resolve any ambiguities "in favor of eligibility to office."[26] Under the circumstances, we believe that the hypothesized two-year ban on holding *elective* office would have to be stated much more explicitly for it to have effect.[27]

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[22] For example, the argument against Proposition JJ focused exclusively on the negative (from the writer's point of view) impact that the measure would have by barring talented ex-Council members from obtaining non-elective employment with the City—e.g., "Couldn't an attorney who has had four or more years on the council become a most valuable part of the legal department?"; "Couldn't a doctor work for the public health as an employee?"

[23] Of course, sitting Council members already have the position, and former Council members seeking to regain it would in almost all circumstances be required to submit their candidacy to the electorate for approval. And, while we acknowledge that the particular circumstances of this case—involving the filling of a suddenly vacant Council seat by Council appointment, rather than by the holding of a special election—did not call for Proposed Defendant Quintero to actually seek reelection, this does not alter our analysis of what the voters were presented with when they were asked to consider Proposition JJ.

[24] *Zeilenga v. Nelson*, 4 Cal. 3d 716, 720 (1971).

[25] *Carter v. Commn. on Qualifications on Judicial Appointments*, 14 Cal. 2d 179, 182 (1939); *see also Helena Rubinstein Intl. v. Younger*, 71 Cal. App. 3d 406, 418 (1977).

[26] *Carter*, 14 Cal. 2d at 182; *see Younger*, 71 Cal. App. 2d at 418.

[27] *E.g.* 87 Ops.Cal.Atty.Gen. 176 (City of Cerritos term-limits charter provision). In denying the quo warranto application filed in this earlier case, we found that the charter

As is the case with most legal propositions, there is room for some debate here as to the proper interpretation of section 12. Upon examining the language at issue in its full context, however, we do not consider this question to be a close one, and we conclude that the overall public interest would not be furthered by burdening the courts, the parties, and the public with the proposed quo warranto action. As we have said, the mere existence of a "debatable" issue is not enough to establish that the issue requires judicial resolution through the quo warranto procedure.[28] Our exercise of discretion "calls for care and delicacy," and a private party who has merely raised a debatable issue is not entitled to pursue the debate in quo warranto proceedings where we determine that it would not serve the public interest.[29] Finally, the fact that Mr. Quintero's term will end in June 2014—for all practical purposes before judicial proceedings could conclude—only reinforces our conclusion that the public interest is best served here by denying leave to sue.[30]

Therefore, because it is not in the public interest to authorize the initiation of a quo warranto lawsuit under the present circumstances, leave to sue is DENIED.

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provision at issue was sufficiently clear to effectively impose a hiatus period on holding office. Invoking the rules of interpretation that favor the right to hold elective office, however, we interpreted the ban more narrowly (i.e., as having a duration of two years, rather than four) than the proposed relators had urged. *Id.*

[28] *See Intl. Assn. of Fire Fighters*, 174 Cal. App. 3d at 697 (Attorney General "has discretion to refuse to sue when the issue is debatable"); *see also* 72 Ops.Cal.Atty.Gen. at 24.

[29] *City of Campbell*, 197 Cal. App. 2d at 650 ("The exercise of the discretion of the Attorney General in the grant of such approval to sue calls for care and delicacy. Certainly the private party's right to it cannot be absolute; the public interest prevails. The presence of an issue here does not abort the application of such discretion; the issue generates the discretion."); *see* 86 Ops.Cal.Atty.Gen. at 79; 72 Ops.Cal.Atty.Gen. at 20; 67 Ops.Cal.Atty.Gen. at 153-154; *see also City of Campbell*, 197 Cal. App. 2d at 649 (challenge to Attorney General's discretion in denying leave to sue must show that such discretion was abused in an "extreme and clearly indefensible manner").

[30] *See* 87 Ops.Cal.Atty.Gen. at 179.

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **John Rando, et al. v. Kamala Harris**
Case No.: **BS145904**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On December 20, 2013, I served the attached **DECLARATION OF SUSAN K. SMITH IN SUPPORT OF RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF MANDATE** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

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Attorney for Real Parties in Interest

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 20, 2013, at Los Angeles, California.

Angela Artiga
Declarant

Signature

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