SENIOR COUNSEL
C. D. MICHEL*

SPECIAL COUNSEL
JOSHUA R. DALE
W. LEE SMITH

ASSOCIATES
ANNA M. BARVIR
SEAN A. BRADY
SCOTT M. FRANKLIN
BEN A. MACHIDA
THOMAS E. MACIEJEWSKI
CLINT B. MONFORT
JOSEPH A. SILVOSO, III
LOS ANGELES, CA

* ALSO ADMITTED IN TEXAS AND THE DISTRICT OF COLUMBIA

WRITER'S DIRECT CONTACT:
562-216-4444
CMICHEL@MICHELLAWYERS.COM

MICHEL & ASSOCIATES, P.C.
Attorneys at Law

OF COUNSEL
DON B. KATES
BATTLEGROUND, WA

RUTH P. HARING
MATTHEW M. HORECZKO
LOS ANGELES, CA

GLENN S. MCROBERTS
SAN DIEGO, CA

AFFILIATE COUNSEL
JOHN F. MACHTINGER
JEFFREY M. COHON
LOS ANGELES, CA

DAVID T. HARDY
TUCSON, AZ

October 6, 2014

Honorable Tani G. Cantil-Sakauye, Chief Justice
and the Honorable Associate Justices
SUPREME COURT OF CALIFORNIA
350 McAllister Street
San Francisco, CA 91402-4797
VIA HAND DELIVERY

Re: *John Rando v. Kamala Harris*, Cal. App. Second Dist. No. B254060
Request for Depublication (Cal. Rules of Court, rule 8.1125)

Honorable Chief Justice and Associate Justices of the California Supreme Court:

We write on behalf of our clients, petitioners and appellants John Rando and Mariano A. Rodas, requesting depublication of *Rando v. Harris* because, at best, it is an advisory opinion that adds nothing to the limited body of law on quo warranto actions. At worst, it could be interpreted in a manner that renders the right of private citizens to bring such actions illusory.[1]

INTRODUCTION

Petitioner sought to bring a quo warranto action to remove real party in interest and respondent Frank Quintero from the office of city councilmember for the City of Glendale, an office to which he was appointed eight days after having retired from that same position. The appointment was unlawful because it conflicted with both the letter and spirit of a City of Glendale charter provision intended to reduce political cronyism by disqualifying former councilmembers like Mr. Quintero from using their political connections to obtain *any* city employment for a period of two years after leaving office. The intent of the provision is not and cannot be disputed. Nor can the fact that the charter provision prohibits the appointment at issue in this case in plain, unambiguous terms:

[1] The relatively rare quo warranto action is the exclusive remedy available to private parties seeking removal of someone unlawfully holding any public office. This common law writ is codified at Code of Civil Procedure section 803. Under Section 803, private parties must first file an application seeking leave to sue from the State's Attorney General. The AG denied the application, here, which ultimately led to the appellate opinion Petitioners seek to have depublished.

> No former councilmember shall hold any compensated city office or city employment until two (2) years after leaving the office of councilmember.

(Glendale City Charter, art. IV, § 12.)

Because Mr. Quintero was appointed to the "compensated city office" of councilmember after "leaving the office" and because eight days is less than two years, Petitioners' quo warranto action, at the very least, gave "reason to believe" that Mr. Quintero was unlawfully appointed to office. That Mr. Quintero was *appointed* to that office – not elected – by his former councilmembers, i.e., his "cronies," should have erased any doubt that application of the plain meaning of Section 12 would have effected precisely the result intended by the voters of Glendale. In sum, Petitioners had the facts, the law, and the voters' intent on their side. But they were blocked by respondent Attorney General Harris from having their case heard by the courts.

Attorney General Harris, who acts as a gatekeeper for quo warranto actions, denied Petitioners' application to proceed with the action as a private party and, in doing so, contravened both the plain meaning of Section 12 and the voters' intent to prevent political cronyism. On appeal, the AG argued that application of Section 12 in this case would have had the unintended consequence of imposing a term limit on councilmembers. She further argued that, because the voters never intended a term limit, Mr. Quintero's appointment was subject to an implied exception to the 2-year disqualification for ex-councilmembers. (Appellee Br. at pp. 18-22.)

In short, the AG chose to change the subject, claiming the issue presented was whether Section 12 unintentionally imposed a term limit on Mr. Quintero that denied him the right to run for elective office. She then found an implied exception to the non-existent term-limit problem to avoid that supposed unintentional result.

That is nonsense, of course, as Mr. Quintero was not "term-limited" out of office. Rather, he voluntarily retired, and was later *appointed* back to his old office by his political allies – in direct contravention of Section 12. The AG's decision to raise a non-existent term limits issue, one that could be resolved in Mr. Quintero's favor, is puzzling. But regardless of her motivations, the effect of "successfully" convincing the panel that this case was about term limits rather than about political favors and cronyism was to transform the panel's decision into an advisory opinion not worthy of publication.

FACTUAL AND PROCEDURAL BACKGROUND

On April 2, 2013, the City of Glendale held its municipal election to elect, among others, a City Treasurer and three City Councilmembers. (Appellants Appendix I ["A.A. I"] 0008.) Three councilmembers, including Mr. Quintero, had terms that expired in April 2013, leaving three councilmember positions for which the voters could cast their ballot. Mr. Quintero did not run for re-election. (A.A. I 0008.)

On or about April 11, 2013, the City of Glendale finalized the election results. (A.A. I 0008.) On April 15, 2013, the new councilmembers took office, and Mr. Quintero's term as city councilmember officially terminated. (A.A. I 0008.)

Rafi Manoukian, a sitting Glendale City Councilmember at the time of the April 2, 2013 election, ran in the election for the position of City Treasurer and won. Because Mr. Manoukian's council term was not set to expire in 2013, his seat was not filled by the election and his assuming the position of City Treasurer on or about April 15, 2013, left a vacancy on the Council. (A.A. I 0008.)

Pursuant to Article VI, Section 13(b) of the Glendale City Charter, a vacancy on the city council may be filled via appointment by the majority vote of the remaining members of the council. On April 23, 2013, approximately eight (8) days after Mr. Quintero left office, the City Council appointed him to fill the vacancy. His appointed term lasted approximately 14 months, ending at the time of next election in June 2014. (A.A. I 0009.)

Article VI, Section 12 of the Glendale City Charter, however, provides that:

> 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.* (1982.)

(A.A. I 0021-62, emphasis added.)

Petitioners chose to challenge Mr. Quintero's appointment, believing it violated Section 12. Under California Code of Civil Procedure section 803,[2] Petitioners had to apply to the Attorney General for leave to sue in quo warranto before they challenged the legality of the appointment. (A.A. I 0009-10.)[3] On May 23, 2013, Petitioners filed an application with the AG for leave to sue, seeking to remove Mr. Quintero from office. (A.A. I 0066-77.) The AG denied Petitioners' application for leave to sue in quo warranto on October 25, 2013, more than five months after it was filed. (A.A. I 0114-122.)

On November 13, 2013, Petitioners filed an ex parte application for an alternative writ and an order to show cause why a peremptory writ of mandate should not issue in the Superior Court. (A.A. I 0001.) The Superior Court granted Petitioners' application and set an expedited briefing and hearing schedule. (A.A. II 0183-84.)

---

[2] California has codified quo warranto actions in Code of Civil Procedure section 803. It provides that an action to remove a public official from office may be brought by the Attorney General, on his or her own information or on the complaint of a private party. A private party wishing to bring such an action must first obtain the consent of the Attorney General. In any event, "the attorney-general *must* bring the action, whenever he has *reason to believe* that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person . . . ." (*Id.*, emphasis added).

[3] Quo warranto is the exclusive remedy against an individual who unlawfully holds any public office. (*Nicolopulos v. City of Lawndale* (2001) 91 Cal.App.4th 1221, 1225.) The primary remedy available in a quo warranto proceeding is removal from the office unlawfully held. (*Elliot v. Van Delinder* (1926) 77 Cal.App. 716, 719.)

On January 7, 2014, all parties participated in a hearing in Los Angeles Superior Court before the Honorable James Chalfant. (A.A. III 0281-323.) On January 15, 2014, Judge Chalfant entered judgment denying the petition for a writ of mandate. (A.A. II 0278-80; *Rando v. Harris* (Aug. 6, 2014, B254060) at p. 5.)

Petitioners filed a timely appeal on January 22, 2014, claiming the lower court erred in finding that the AG did not abuse her discretion by denying Petitioners' request for leave to sue in quo warranto. The panel affirmed the lower court's judgment in its opinion filed and certified for publication on August 6, 2014. (Attached.)

In sum, the facts show that: (1) Mr. Quintero chose to retire from the city council; (2) he officially left office on April 15, 2013; (3), on April 23rd he was appointed by his former colleagues to fill a vacancy on that same council; and (4) the office of councilmember is a "compensated city office." Thus, the question presented below, first to the AG and ultimately to the appellate panel, was whether, under Section 803, there was "reason to believe" that Section 12 prohibited that appointment.

DEPUBLICATION IS WARRANTED

As one court noted: "Unfortunately, the law of our state in this area [the Attorney General's discretion] remains murky . . .." (*Intl. Assn. of Fire Fighters, Local 55 v. Oakland* (1985) 174 Cal.App.3d 687, 697.) The most that can be gleaned from the only case to directly discuss the AG's discretion in denying quo warranto applications is that the alleged abuse of discretion must be extreme and indefensible to be corrected by a writ of mandamus. (*Lamb v. Webb* (1907) 151 Cal. 451, 454.) Petitioners believe this case meets that standard based on the plain language and undisputed intent of Section 12, the "reason to believe" test of Section 803, and the undisputed facts set forth, above. That is, the paucity of case law is not an obstacle to granting Petitioners' request for depublication. Rather, it makes depublication all the more important.

In addition, the panel's decision warrants depublication for the separate and independent reasons discussed, below: (1) the decision renders the right of private parties to bring quo warranto actions illusory; and (2) the decision constitutes an advisory opinion unworthy of publication.

A. Interpreting the Statute as Providing the AG Unfettered Discretion Would Bring An End to the Right of Private Parties to Obtain Judicial Review of Valid Quo Warranto Actions

The panel's decision, in practice, means that private parties are at the mercy of the AG. This is especially troubling where the AG and the person unlawfully holding office are of the same political party or otherwise inclined to support each other, i.e., where there is the potential for political chicanery. Regardless of whether that is the case here, the court should guard against that possibility to protect the right of private parties to challenge those improperly holding office. Notably, Section 803 nowhere provides for the "unfettered discretion" suggested in AG's and panel's opinions. If, based on this published opinion, future appellate courts "find" and then defer to the "unfettered" discretion of the AG, then the petitioner's *right* to bring a quo warranto action – even one with obvious merit – is illusory. There is no recourse, no judicial oversight, no day in court.

Conversely, where the AG and the *petitioner* are of the same party or otherwise inclined to support each other, the most the AG can do is grant the petition and let the court decide the matter. The court then has the power to grant the writ and oust the individual from office or reject the writ and leave the individual in office. And that is as it should be in *any* case where there is "reason to believe" that someone is holding office unlawfully. Such cases warrant judicial resolution. (See Code Civ. Proc., § 803.) And that is how it should have been, here. It is hard to imagine a more direct violation of Section 12's prohibition on councilmembers benefiting from political cronyism than having a retired councilmember *appointed* by his former colleagues to a powerful and prestigeous – and paid – office within eight days of leaving that same office. If that is not reason enough to warrant judicial resolution, then nothing is.

B. The Panel's Decision Does Not Address the Facts of the Case, Resulting in an Advisory Opinion that Should not Serve as Precedent for Future Quo Warranto Litigation

Attorney General Harris incorrectly conflated the right to run for and win elected office with the non-existent right to be appointed to an elected office by one's former colleagues. Treating those two scenarios the same makes no sense, either as a matter of law or policy. In the case of someone *elected* to office, the voters decide, thus negating for the most part the evils of political cronyism the voters sought to prohibit by passing Section 12. That is, the AG might be correct in arguing that courts should read into the law a narrow exception for those actually run for and get elected to a compensated office. But that's not the case, here.

Assuming that the AG's term limit analysis is worthy of discussion, the question presented should have been whether the AG's proposed implied exemption to the two-year ban applied only to those *elected* to a city office, or to *anyone holding* an elective office, including those *appointed* to that office by their political allies. But the AG ignored that distinction and the panel followed suit, adopting the broad and false choices presented by the AG, stating:

> On one hand, [Section 12] could be construed as encompassing any City position, including elective office, thereby operating as the functional equivalent of a term limit. Alternatively, it could be construed to apply to non-elective, compensated positions, thus limiting a former City council member from using his or her influence as a means to gain City employment.

(*Rando v. Harris* (Aug. 6, 2014, B254060) at p. 11.)

Neither the AG nor the panel, however, explains why it adopted a broad-based implied exception to Section 12 that flies in the face of the voters' intent. As the panel seems to acknowledge, the intent was to limit "former City council member[s] from using [their] influence as a means to gain City employment." But the panel's decision inexplicably allows precisely that. By adopting the AG's solution to its strawman issue, the panel allows Mr. Quintero and his former colleagues to circumvent both the plain meaning of Sections 12 and the voters' intent.

One consequence of treating this case as a term limits matter rather than matter concerning political cronyism is that it makes the panel's decision an advisory opinion, one that improperly raises and resolves a term limits issue not raised by the facts in this case. As such, it should not have been

certified for publication.

CONCLUSION

Given the paucity of cases interpreting the vitality of quo warranto actions as codified in Section 803, allowing this advisory opinion to stand as the only modern-day precedent on quo warranto actions would do more harm than good and create more confusion than clarity. While such actions are seldom brought, they remain the sole remedy available to private parties to remove disqualified persons from office. The panel's opinion effectively negates private party challenges to those holding office unlawfully by placing the matter solely in the hands of the AG without meaningful judicial review.

Accordingly, Petitioners respectfully request that the Court depublish the Second District Court of Appeal's decision in *Rando v. Harris.*

Sincerely,

Michel & Associates, P.C.

C.D. Michel

CDM/llq

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I, Laura L. Quesada, am employed in the City of Long Beach, Los Angeles County, California. I am over the age of 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 October 6, 2014, I served the foregoing document(s) described as:

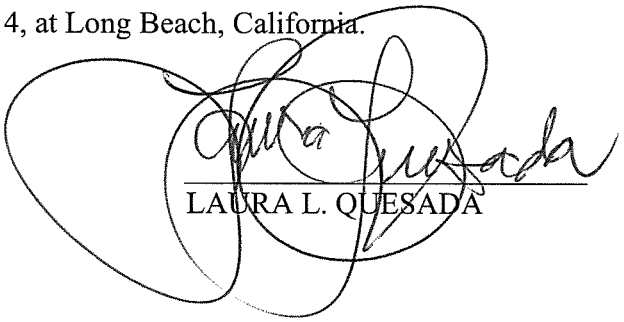
REQUEST FOR DEPUBLICATION (CAL. RULES OF COURT, RULE 8.1125)
***JOHN RANDO V. KAMALA HARRIS*, CAL. APP. SECOND DIST. NO. B254060**

on the interested parties in this action by placiing
[ ] the original
[x] a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

SEE ATTACHED 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 October 6, 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 October 6, 2014, at Long Beach, California.



LAURA L. QUESADA

SERVICE LIST

California Court of Appeal
Second District, Division 2
Ronald Reagan State Building
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

California Court of Appeal

Mark R. Beclomgton,
Supervising Deputy Attorney General
Susan K.Smith,
Deputy Attorney General
Office of the Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
Email: Susan.Smith@doj.ca.gov

Attorney for Defendant Kamala Harris

Andrew C. Rawcliffe,
Deputy City Attorney, Litigation
613 E. Broadway, Suite 220
Glendale, CA 91206
Email: Arawcliffe@ci.glendale.ca.us

Attorney for Defendant/Real Party in Interest Frank Quintero and the City of Glendale

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

Judge

Clerk of the Court
Los Angeles Superior Court
Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

Clerk

OPINION

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JOHN RANDO et al.,

Petitioners and Appellants,

v.

KAMALA HARRIS,

Respondent,

FRANK QUINTERO,

Real Party in Interest and Respondent.

B254060

(Los Angeles County Super. Ct. No. BS145904)

APPEAL from a judgment of the Superior Court of Los Angeles County. James Chalfant, Judge. Affirmed.

Michel & Associates, C.D. Michel and Sean A. Brady for Petitioners and Appellants.

Kamala Harris, Attorney General, Douglas J. Woods, Senior Assistant Attorney General, Mark R. Beckington and Susan K. Smith, Deputy Attorneys General for Respondent.

Michael J. Garcia and Andrew C. Rawcliffe for Real Party in Interest/Respondent.

* * * * * *

Real party in interest Frank Quintero (Quintero) was appointed to fill a vacant position on the city council for real party in interest the City of Glendale (City). Petitioners and appellants John Rando and Mariano Rodas thereafter submitted an application for leave to sue in quo warranto to respondent Kamala Harris, the Attorney General for the State of California (Attorney General). They argued Quintero's appointment violated the City Charter. The Attorney General denied the application and the trial court denied appellants' petition for writ of mandate challenging that decision.

We affirm. The Attorney General did not abuse her discretion in determining that it was not in the public interest to authorize the initiation of a quo warranto action.

FACTUAL AND PROCEDURAL BACKGROUND

City of Glendale Governance.

The City is governed by a City Charter. Article IV, section 3 of the Charter provides that City council members are compensated. Article VI of the Charter contains provisions regarding "[t]he Council Generally" and in section 13 specifies how a vacancy on the City council must be filled, providing, "[a]ny vacancy occurring in the council shall be filled by a majority vote of the remaining members of the council." The person appointed serves until the next local or statewide election, whichever is earlier. In the event an appointment is not made within 30 days of the vacancy, a special election must be held. In the same article, section 12 (Section 12) captioned, "Councilmembers holding other city offices" provides: "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 of a councilmember. No former councilmember shall hold any compensated city office or city employment until two (2) years after leaving the office of councilmember. (1982.)"

Prior to its 1982 enactment via Proposed Charter Amendment JJ, Section 12 read: "No members of the council shall be eligible to any office or employment, except an elective office, during the term for which he was elected." The neutral analysis in the ballot pamphlet for Amendment JJ explained the amendment was designed to clarify that the ban on employment in Section 12 applied only to City employment—not to other

outside employment. The argument in favor of the amendment similarly stated: "This amendment clarifies the language in the present Charter which leaves in question the right of councilpersons 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." The argument against the amendment emphasized the valuable experience a council member could provide to the City in other capacities, asserting as one example: "Couldn't an attorney who has had four or more years on the council become a most valuable part of the legal department? Perhaps even the manager?"

April 2013 Events.

On April 2, 2013, the City held its municipal elections, which included the election of a City Treasurer and three City council members. The terms of Quintero and two other council members had expired, and Quintero did not run for re-election. After the election results were finalized on April 11, 2013, three new council members took office and Quintero's term of office ended. In the same election, sitting City council member Rafi Manoukian had run for City Treasurer and won, thereby creating a vacancy on the City council. Pursuant to Article VI, section 13 of the Charter, the City council appointed Quintero to serve the remainder of Manoukian's term, set to expire in June 2014.

Quo Warranto and Writ Proceedings.

Code of Civil Procedure[1] section 803 provides: "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. And the attorney-general must bring the action, whenever he has reason to believe that any such office . . . has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the governor." In May 2013, appellants,

---

1 Unless otherwise indicated, all further statutory references are to the Code of Civil Procedure.

the proposed "relators" as members of the public and City residents, sought leave to sue in quo warranto and submitted their application to the Attorney General in accordance with section 803. (See also Cal. Code Regs., tit. 11, §§ 1-11.) They argued that Quintero's appointment to the City council violated Section 12. As proposed defendants, the City and Quintero opposed the application.

The Attorney General issued an opinion (Opinion) in October 2013, denying leave to sue on the ground that it was "not in the public interest to authorize the initiation of a quo warranto lawsuit under the present circumstances." The Attorney General found the language of Section 12 ambiguous, reading it as either imposing a ban on any type of office and serving a term-limiting function, or applying to City employment and precluding a former council member from using his or her influence as a means to future City employment. In view of that ambiguity, the Attorney General turned to the electorate's intent in enacting Section 12 and concluded that "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." Though the Attorney General acknowledged there was "room for some debate" concerning Section 12's interpretation, she concluded the case was not close and therefore burdening the courts with the proposed quo warranto action would not further the public interest.

In November 2013, appellants filed an ex parte application seeking an alternative writ of mandate and an order to show cause why a peremptory writ should not issue, arguing the Attorney General abused her discretion by deciding the merits of the quo warranto action and, alternatively, abused her discretion by ruling incorrectly. The Attorney General opposed the application. The trial court issued an alternative writ of mandate to expedite a hearing on an order to show cause why a peremptory writ of mandate should not issue. It also set a briefing schedule, and the Attorney General, the City and Quintero thereafter answered the petition and filed opposition papers.

The trial court heard the matter on January 7, 2014. At the beginning of the hearing, the trial court summarized the bases for its tentative ruling denying the writ of mandate. Rejecting the first of appellants' two arguments, it explained that the Attorney General was necessarily required to evaluate the merits of appellants' proposed action in order to determine whether their quo warranto application raised a substantial question. With respect to appellants' second argument, the trial court explained that while the plain language of Section 12 could be read to support appellants' position, nothing in the ballot materials supported the view that Section 12 precluded Quintero from holding the position of a City council member less than two years after leaving office. The trial court also considered that there was no public purpose served by appellants' interpretation and that the fundamental right to hold office may only be curtailed when clearly specified. Accordingly, the trial court reasoned that while appellants offered a plausible interpretation of Section 12, the Attorney General did not commit an extreme and indefensible abuse of discretion in concluding that the public interest would not be served by appellants' proposed action. At the conclusion of the hearing, the trial court adopted the tentative ruling denying the writ of mandate as its final order.

Thereafter, the trial court entered judgment denying the petition for writ of mandate. This appeal followed.

DISCUSSION

Appellants maintain that the trial court erred in denying their petition for writ of mandate, arguing that the trial court essentially provided the Attorney General with unfettered discretion both to determine the merits of their claim and, in turn, to make an incorrect determination. We find no merit to their contentions.

I. General Principles Regarding Quo Warranto Actions and the Standard of Review.

Quo warranto was a common law writ literally meaning "by what authority" was a public office held or claimed. The crown instituted a formal inquiry into whether a subject was exercising a privilege illegally or had the right to occupy a public office. (*International Assn. of Firefighters, Local 55 v. City of Oakland* (1985) 174 Cal.App.3d

687, 695 (*Firefighters*); accord, 8 Witkin, California Procedure (5th ed. 2008), § 27, pp. 907-908; Black's Law Dict. (8th ed. 2004), p. 1285, col. 2.) The quo warranto remedy is currently codified in section 803, and it is "the specific action by which one challenges 'any person who usurps, intrudes into, or unlawfully holds or exercises any public office.' [Citation.] It is the exclusive remedy in cases where it is available. [Citation.] Title to an office cannot be tried by mandamus, injunction, writ of certiorari, or petition for declaratory relief. [Citations.]" (*Nicolopulos v. City of Lawndale* (2001) 91 Cal.App.4th 1221, 1225-1226 (*Nicolopulos*).)

The key to the remedy of quo warranto is that it can only be brought by the Attorney General, on his or her own information or by the request of a private party. (*Nicolopulos, supra,* 91 Cal.App.4th at p. 1228; *Firefighters, supra*, 174 Cal.App.3d at p. 697.) A quo warranto action "must" be brought when the Attorney General "has reason to believe" the conditions warranting the remedy exist or when directed to do so by the governor. (§ 803.) Courts have construed that language to mean the Attorney General enjoys considerable discretion whether to bring any particular quo warranto action and may exercise that discretion to "'refuse to sue where the issue is debatable.'" (*Firefighters, supra*, at p. 697; see also *City of Campbell v. Mosk* (1961) 197 Cal.App.2d 640, 650-651.)

The Attorney General's discretion under section 803 is not wholly beyond the trial court's control. As explained in *Lamb v. Webb* (1907) 151 Cal. 451, 454, the trial court's power "to compel [the Attorney General] to violate his own judgment by ordering him to grant leave to commence a suit against his own conviction and conscientious belief that such leave should not be given should be exercised only where the abuse of discretion by the Attorney General in refusing the leave is extreme and clearly indefensible." (Accord, *City of Campbell v. Mosk, supra,* 197 Cal.App.2d at p. 645 ["Appellant must demonstrate that the Attorney General's refusal to sue was an extreme and clearly indefensible abuse of his discretion"].)

An appellant may challenge the Attorney General's exercise of discretion via a writ of mandamus. (*Firefighters, supra*, 174 Cal.App.3d at p. 697; see also *Lamb v.*

Webb, supra, 151 Cal. at p. 453.) Because "[t]he trial court and appellate court perform the same function in a traditional mandamus action, . . . we therefore do not undertake a review of the trial court's findings or conclusions. [Citation.]" (*Khan v. Los Angeles City Employees' Retirement System* (2010) 187 Cal.App.4th 98, 105-106.) We consider the record to determine whether appellants have met their burden to show the Attorney General abused her discretion—in other words, whether the "decision was arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair. [Citation.]" (*Khan v. Los Angeles City Employees' Retirement System, supra*, 187 Cal.App.4th at p. 106.) To the extent the Attorney General's decision depended upon an interpretation of section 803, the decision raises a question of law that we review de novo. (*California Correctional Peace Officers' Assn. v. State* (2010) 181 Cal.App.4th 1454, 1460.)

II. The Attorney General and the Trial Court Properly Construed Code of Civil Procedure Section 803 to Afford Discretion to the Attorney General to Decline to Bring a Quo Warranto Action.

In the Opinion, the Attorney General set forth the principles governing her decision whether to grant leave to sue: "[W]e 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. 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. Instead, the overall public interest is the guiding principle and paramount consideration in our exercise of discretion." (Fns. omitted.)

Following an assessment of the facts and circumstances giving rise to appellants' application, the Attorney General concluded that while the application presented a debatable issue it did not present a substantial one. The Opinion concluded: "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. . . . [A] private party who has merely raised a debatable issue is not entitled to pursue the debate in quo warranto proceedings where we determine it would not serve the public interest." (Fns. omitted.)

In its order, the trial court outlined the Attorney General's obligations, explaining: "The test for quo warranto is whether there is a substantial issue of fact or law for a court to decide concerning the interpretation of section 12 after application of rules of construction, including the legal presumption in favor of Quintero's right to hold public office." The trial court expressly rejected appellants' assertion that the Attorney General's role was confined to weeding out frivolous or vexatious claims against public officials. Though it acknowledged case law confirming that one purpose of the application process was to prevent frivolous and vexatious prosecutions, the trial court explained that the quo warranto remedy "is vested in the People because disputes over title to public office are a public question of governmental legitimacy and not just a private quarrel among rival claimants." (See *Nicolopulos, supra*, 91 Cal.App.4th at p. 1228.) Accordingly, the trial court reasoned: "The requirement for leave to sue, therefore, is not just a procedural vehicle to weed out spurious claims. It also serves to authorize a private party to prosecute a lawsuit in the name of the People based on the public interest. The Attorney General must have reason to believe the private party is raising a substantial issue furthering the public interest before authorizing a lawsuit in the People's name."

We find no merit to appellants' assertion that the Attorney General's discretion is far more circumscribed than the trial court described and that, therefore, the Attorney General did not have discretion to deny their quo warranto application. Appellants emphasize that section 803 makes a distinction between situations where the Attorney General "may" bring an action (upon his or her own information or private party complaint) and where it "must" bring an action (when he or she has reason to believe an office is unlawfully held or when directed by the governor). (§ 803.) They further argue

the "reason to believe" standard is low, requiring that the Attorney General must be deemed to have abused her discretion in failing to comply with section 803's mandatory directive because their application—at a minimum—provided a reason to believe that Quintero was holding office in violation of the Charter.

Appellants' position finds no support in the law. Notwithstanding the statute's requirement that the Attorney General "must" bring an action when she has "reason to believe" certain conditions exist, the court in *Firefighters, supra,* 174 Cal.App.3d 687, determined that this language should not be construed to minimize the scope of the Attorney General's discretion. *Firefighters* highlighted the "must" language in section 803, but then explained, "'this suggestion of a mandatory duty is negated by the qualifying language ("has reason to believe"). Hence he has discretion to refuse to sue where the issue is debatable.' [Citation.] And while the subject has received but limited judicial attention, despite occasional suggestions that the court may intervene in the event of an extreme abuse of the Attorney General's discretion [citations], no such instance of mandamus issuing can be found." (*Id.* at p. 697.)

Even earlier, the court in *City of Campbell v. Mosk, supra,* 197 Cal.App.2d at page 648, construed the statute in the same manner, explaining "that the last line of section 803, stating that 'the attorney-general must bring the action, whenever he has reason to believe' the usurpation has occurred, does not exclude the exercise of his discretion." The court further described the scope of the Attorney General's discretion, particularly where the proposed action raises merely a debatable issue: "'We do not believe . . . that the debatable issue inevitably produces the quo warranto. Indeed, the Attorney General's exercise of discretion is posited upon the existence of a debatable issue. To hold that the mere presentation of an issue forecloses any exercise of discretion would mean, in effect, that contrary to the holding in the *Lamb* [*v. Webb* (1907) 151 Cal. 451] case, the Attorney General could exercise no discretion. The crystallization of an issue thus does not preclude an exercise of discretion, it causes it. [¶¶] 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." (*City of Campbell v. Mosk, supra,* 197 Cal.App.2d at p. 650.)

In addition to this authority, multiple Attorney General opinions have emphasized the broad nature of the Attorney General's discretion in granting leave to bring a quo warranto action.[2] (See, e.g., 86 Ops.Cal.Atty.Gen. 76, 80 (2003) ["'the Attorney General need not automatically grant leave to file any kind of suit presented to him if he does not in the exercise of his discretion deem it a proper subject for litigation'"]; 74 Ops.Cal.Atty.Gen. 31, 32 (1991) ["It is well settled that the mere existence of a justiciable issue does not establish that the public interest requires a judicial resolution of the dispute or that leave automatically should be granted for the relator to sue in quo warranto"]; 67 Ops.Cal.Atty.Gen. 151, 153 (1984) ["the mere existence of a legal dispute does not establish that the public interest requires a judicial resolution of the dispute or that leave automatically should be granted for the proposed relator to sue in quo warranto"].)

Thus, contrary to appellants' argument, the existence of a legal dispute or justiciable issue does not invariably give the Attorney General "reason to believe" that the conditions mandating a quo warranto action exist. Rather, the Attorney General retains discretion to evaluate the proposed action and address three relevant inquiries: "1. Is quo warranto the proper remedy to resolve the issues which are presented? [¶] 2. Has the proposed relator raised a substantial question of law or fact? [¶] 3. Would the public interest be served by judicial resolution of the question?" (72 Ops.Cal.Atty.Gen. 15, 20 (1989).) It was well within the scope of the Attorney General's discretion to conclude that the presence of a debatable issue neither raised a substantial question of law or fact, nor established that the public interest would be served by judicial resolution.

---

2 "Attorney General opinions are entitled to considerable weight." (*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1087, fn. 17; see also *California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 17 ["'Opinions of the Attorney General, while not binding, are entitled to great weight'"].)

III. The Attorney General Did Not Abuse Her Discretion in Declining to Bring a Quo Warranto Action.

Beyond challenging the scope of the Attorney General's discretion, appellants maintain the Attorney General abused her discretion by actually resolving the question of whether Quintero's appointment violated Section 12, and resolving it incorrectly. In the Opinion, the Attorney General outlined appellants' position that Quintero's appointment violated the provision that, "No former councilmember shall hold any compensated city office or city employment until two (2) years after leaving the office of councilmember." The Opinion reasoned that this provision could be read more than one way. On one hand, it could be construed as encompassing any City position, including elective office, thereby operating as the functional equivalent of a term limit. Alternatively, it could be construed to apply to non-elective, compensated positions, thus limiting a former City council member from using his or her influence as a means to gain City employment.

Applying established methods of statutory construction, the Opinion concluded that consideration of the Charter as a whole, ballot arguments for and against Amendment JJ, and the principle that limitations on the right to hold public office must be unambiguous together indicated "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." Conceding that the proper interpretation of Section 12 was debatable, the Opinion concluded the issue was not substantial, nor would it serve the public interest to adjudicate the issue, particularly given that Quintero's term was set to expire in June 2014.

It is well established that in determining whether to grant leave to sue in quo warranto, the Attorney General does "not attempt to resolve the merits of the controversy. Instead, [he or she] decide[s] whether the application presents substantial issues of fact or law that warrant judicial resolution, and whether granting the application will serve the public interest." (95 Ops.Cal.Atty.Gen, *supra,* at p. 51.) Though appellants maintain that the Opinion's examination of Section 12 was an improper resolution of the merits of the

controversy, the trial court properly rejected that argument, stating: "[T]he Attorney General did not exceed or abuse her discretion by considering the merits of their claim. The Attorney General was required to decide whether the question of law was substantial, and was not required to grant leave to sue for a debatable proposition. Thus, she appropriately considered the merits in deciding whether the legal issue was sufficiently substantial for the court to decide." Indeed, Attorney General opinions involving whether leave to sue should be granted typically discuss the merits of the issue proposed for judicial action. (See, e.g., 95 Ops.Cal.Atty.Gen 77 (2012) [applying rules of construction and considering extrinsic evidence to determine the scope and meaning of the statutory term "policymaking management employee," and on that basis finding the relator had raised a substantial question]; 88 Ops.Cal.Atty.Gen. 25 (2005) [evaluating facts and construing Lab. Code, § 1150 to conclude the question whether individual forfeited his board position because he performed paid political consulting work during his term of office did not pose a substantial issue of fact or law].) Thus, the trial court properly concluded that the Attorney General had the discretion to utilize accepted principles of statutory construction to determine whether appellants had raised a substantial question mandating judicial resolution.

The trial court likewise properly concluded that the Attorney General did not abuse her discretion by determining appellants had not raised a substantial issue. In their application for leave to sue in quo warranto, appellants urged that Section 12 barred Quintero's appointment, while the City and Quintero asserted the provision was never intended to bar anything beyond City employment. On its face, the two-year ban in Section 12 applies to "any compensated city office or city employment . . . ." While the Opinion concluded this provision was capable of more than one meaning, it also acknowledged the propriety of examining extrinsic evidence where a literal construction suggests a meaning different from what was intended. As recently summarized in *Honchariw v. City of Stanislaus* (2013) 218 Cal.App.4th 1019, 1027: "The 'plain meaning' rule . . . does not require courts to automatically adopt the literal meaning of a statutory provision. (*Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1332.) For example,

when a literal construction would frustrate the purpose of the statute, that construction is not adopted. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 979 [nonliteral construction of Proposition 64 adopted based on evidence of underlying purpose and voter intent]; *Bob Jones University v. United States* (1983) 461 U.S. 574, 586 [a well-established canon of statutory construction provides that literal language should not defeat the plain purpose of the statute].) Also, courts will not adopt a literal construction when it produces absurd consequences. [Citations.]" (Accord, *Woo v. Superior Court* (2000) 83 Cal.App.4th 967, 975.) Correspondingly, voter intent is the paramount consideration in interpreting a charter provision. (*Arntz v. Superior Court* (2010) 187 Cal.App.4th 1082, 1092; *Woo v. Superior Court, supra*, 83 Cal.App.4th at p. 975.)

In line with these principles, the Opinion considered the Charter as a whole and reasoned that the absence of any express term-limits provision militated against construing Section 12 as a term limit on City council members.[3] The Opinion further found nothing in the ballot pamphlet suggesting the voters intended to enact term limits. (See *Braziel v. Superior Court* (2014) 225 Cal.App.4th 933, 945 [official ballot pamphlet's analyses and arguments may be considered to ascertain voter intent when the statutory language is unclear or to show an interpretation consistent with otherwise unambiguous statutory language].) To the contrary, the ballot pamphlet showed that Amendment JJ was intended to clarify that City council members could maintain outside employment—not City employment—during their term and to prevent City council members from using their influence to obtain City employment. Nothing in the ballot pamphlet suggested that Amendment JJ was intended to effect term limits; none of the arguments in favor of or in opposition to Amendment JJ addressed the question of term limits. (See *Woo v. Superior Court, supra,* 83 Cal.App.4th at pp. 977-978 [declining to adopt literal construction of a measure where there was no indication voters intended that

---

3 Though the City and Quintero also offered evidence demonstrating that in 1996 the City council rejected a term limits measure, the Attorney General accorded little weight to this evidence. (See *American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1261-1262 [the failure to enact a measure generally sheds little light on legislative intent].)

construction].) Finally, the Opinion was guided by the principle "that the right to hold public office is a fundamental right of citizenship [citation] that can be curtailed only if the law clearly so provides [citations]." (*Woo v. Superior Court, supra*, at p. 977.)

In finding the Attorney General did not commit an extreme and indefensible abuse of discretion, the trial court emphasized the extrinsic evidence uniformly showing the voters intended to address the issue of former council members obtaining City employment, as well as an individual's fundamental right to hold office. It concluded: "[Amendment] JJ was intended to prevent former council members from using their influence to obtain employment from the City. The extrinsic evidence shows that voters did not intend to impose a term limit on council members, and [appellants] have presented no rationale for why the voters would have wanted section 12 to ban former council members from running for elected office." (Fn. omitted.)

In asserting that the Attorney General abused her discretion by construing Section 12 so as not to bar Quintero's appointment, appellants point to reasons why an alternative construction should prevail, emphasizing that the phrase "city office" generally refers to elective and non-elective office throughout the Charter. The Attorney General acknowledged that appellants raised a debatable issue and that Amendment JJ "could have been worded more precisely"; the trial court likewise characterized appellants' argument as a "fair one." But as explained earlier, the Attorney General retains discretion whether to grant leave to sue in quo warranto where an issue is fair or debatable. (*Firefighters, supra,* 174 Cal.App.3d at p. 697; *City of Campbell v. Mosk, supra,* 197 Cal.App.2d at pp. 649-650.) Stated more generally, a decision will not be reversed for an abuse of discretion "'merely because reasonable people might disagree.'" (*Gouskos v. Aptos Village Garage, Inc.* (2001) 94 Cal.App.4th 754, 762; see also *O'Donoghue v. Superior Court* (2013) 219 Cal.App.4th 245, 269 ["That another court might reasonably have reached a different result on this issue, however, does not demonstrate an abuse of discretion"].) We find no basis to conclude the Attorney General committed an extreme and indefensible abuse of discretion in determining the

public interest would not be served by initiating a quo warranto action in this matter. (See *Lamb v. Webb, supra,* 151 Cal. at p. 454.)

DISPOSITION

The judgment is affirmed. The City and Quintero are entitled to their costs on appeal.

CERTIFIED FOR PUBLICATION.

_____, J. *

FERNS

We concur:

_____, P. J.

BOREN

_____, J.

ASHMANN-GERST

---

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

C. D. Michel
Michel & Associates, P. C.
180 E. Ocean Blvd.
Suite 200
Long Beach, CA 90802

Case Number B254060
Division 2

JOHN RANDO et al.,
Petitioners and Appellants,
v.
KAMALA HARRIS,
Respondent;
FRANK QUINTERO,
Real Party in Interest and Respondent.

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JOHN RANDO et al.,

Petitioners and Appellants,

v.

KAMALA HARRIS,

Respondent,

FRANK QUINTERO,

Real Party in Interest and Respondent.

B254060

(Los Angeles County Super. Ct. No. BS145904)

ORDER MODIFYING OPINION [NO CHANGE IN JUDGMENT]

THE COURT:*

It is ordered that the opinion filed herein on August 6, 2014, be modified as follows:

On page 13, paragraph two, line 5, remove only the citation *Braziel v. Superior Court* (2014) 225 Cal.App.4th 933, 945, keeping the beginning parenthesis and the bracket and wording immediately following the citation, and replace it with the following:

Silicon Valley Taxpayers' Assn. v. Garner (2013) 216 Cal.App.4th 402, 407-408.

There is no change in the judgment.

---

* BOREN, P.J., ASHMANN-GERST, J., FERNS, J.†

† Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

C. D. Michel
Michel & Associates, P. C.
180 E. Ocean Blvd.
Suite 200
Long Beach, CA 90802

Case Number B254060
Division 2

JOHN RANDO et al.,
Petitioners and Appellants,
v.
KAMALA HARRIS,
Respondent;
FRANK QUINTERO,
Real Party in Interest and Respondent.