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. BS145904
The Honorable James C. Chalfant, Judge

APPELLANT'S APPENDIX
VOLUME II OF II - AA000154 - AA000280

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APPELLANT'S APPENDIX
VOLUME II OF III - AA000154 - AA000347

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

Dated: February 12, 2014

MICHEL & ASSOCIATES, P.C.

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

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

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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. **DECLARATION OF SUSAN K. SMITH IN SUPPORT OF DEFENDANT ATTORNEY GENERAL HARRIS' OPPOSITION TO EX PARTE APPLICATION FOR ALTERNATIVE WRIT** Date: November 13, 2013 Time: 8:30 a.m. Dept.: TBD

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 defendant Harris's opposition to petitioners' ex parte request for an alternative 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.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct. Executed on November 12, 2013 in Los Angeles, California.

Susan K. Smith

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 PERSONAL SERVICE

Case Name: **John Rando, et al. v. Kamala Harris**

Case No.:

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; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On November 13, 2013, I served the attached **DECLARATION OF SUSAN K. SMITH IN SUPPORT OF DEFENDANT ATTORNEY GENERAL HARRIS' OPPOSITION TO EX PARTE APPLICATION FOR ALTERNATIVE WRIT** by personally delivering a true copy thereof to the following person(s) as follows:

C.D. Michel, Esq.
Sean A. Brady, Esq.
Michel & Associates, P.C.
180 East Ocean Blvd., Suite 200
Long Beach, CA 90802
Telephone: (562) 216-4444
Attorneys for Plaintiffs/Petitioners

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 November 13, 2013, at Los Angeles, California.

Susan K. Smith
Declarant

Signature

MICHAEL J. GARCIA, CITY ATTORNEY
ANN M. MAURER, GENERAL COUNSEL - LITIGATION (SBN 179649)
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Attorneys for Real Parties in Interest
FRANK QUINTERO and CITY OF GLENDALE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOHN RANDO and MARIANO A. RODAS, Plaintiffs and Petitioners, vs. KAMALA HARRIS, individually and in her official capacity as Attorney General; Defendant and Respondent, FRANK QUINTERO, individually and in his official capactiy as Glendale City Councilmember; CITY OF GLENDALE, Real Parties in Interest	Case No.: **MEMORANDUM OF POINTS AND AUTHORITIES IN PRELIMINARY OPPOSITION TO PETITIONER'S EX PARTE APPLICATION FOR ALTERNATIVE WRIT AND ORDER TO SHOW CAUSE WHY PEREMPTORY WRIT SHOULD NOT ISSUE** DATE: November 13, 2013 TIME: 8:30 a.m. Dept.: 82, 85, or 86 [No Fee - Gov't. Code, § 6103]

INTRODUCTION

Petitioners John Rando and Mariano Rodas have filed a petition for writ of administrative mandamus to set aside Respondent Attorney General's denial of their application to sue Real Parties in Interest Frank Quintero and City of Glendale in *quo warranto* for Quinteros' appointment to elected office. Petitioners claim that the Attorney General abused her discretion in denying their *quo warranto* application and that she had a ministerial duty to grant their *quo warranto* application against Real Parties in Interest

Quintero and the City. The Court should summarily deny the Petition as it is patently frivolous. In the alternative, the Court should set a regular briefing schedule as there is no urgency or obvious right to relief.

STATEMENT OF THE CASE

Petitioners filed their application for leave to sue Quintero and the City in *quo warranto* with the Attorney General on May 23, 2013. Real Parties in Interest filed their opposition to Petitioners' *quo warranto* application on June 7, 2013. On June 17, 2013, the Petitioners filed their Reply in support of their *quo warranto* application on June 17, 2103.

On October 25, 2013, the Attorney General denied Petitioners' application concluding in an eight page opinion that Petitioners' proposed *quo warranto* action against Quintero and the City was not in the public interest. (Exh. 1).

On Friday evening, November 8, 2013, the City was served with the instant Petition. The Petition contains the City's Charter and seven of the eight pages of the Attorney General's Opinion but does not contain any of the briefing and/or exhibits submitted to the Attorney General.

STATEMENT OF FACTS

On April 2, 2013, the City held a municipal election that resulted in a vacancy on the City Council. There were fourteen (14) months left on the term of the vacant Council seat. Pursuant to Article VI, Section 13(b) of the City's Charter, the Council was required to either appoint a council member within thirty days or hold a special election within 120 days to fill the vacancy of the remainder of the unexpired term.

Because of the costs associated with holding a special election to fill the vacancy, the Council decided to make an appointment to the vacant Council seat.

On April 15, 2013, Quintero completed his term as City Mayor. On April 23, 2013, the remaining members of the Council unanimously voted to appoint Quintero to the vacant Council seat. The unexpired term to which he was appointed ends June 2014.

Petitioners claim Quintero's appointment violates Article VI, Section 12 of the City's Charter (hereinafter Section 12), which they claim can only be interpreted as a two year term-limit or hiatus period that prohibits council members from holding elective office upon expiration the term in office.

Section 12 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.

The City has always interpreted Section 12 as prohibiting a council member's employment with the City while holding elected office and for two years after leaving elected office. It has never been interpreted as a prohibition on holding elected office.

The Attorney General found that there were at least two interpretations of Section 12 and ultimately disagreed with Petitioners' interpretation that Section 12 constituted a 2 year ban or hiatus period on holding elective office. (See, Exh. 1 p. 8 ("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.").)

As is demonstrated by her Opinion, the Attorney General carefully analyzed the language of Section 12, the ballot pamphlet distributed to the electorate, other provisions of the Charter, rules of statutory construction, the public's interest in Petitioners' proposed *quo warranto* action, and Quintero's fundamental right to hold elected office in reaching her conclusion. (Exh. 1)

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ARGUMENT

"The court may deny an application for an alternative writ of mandate and dismiss the petition if the petition fails to allege a prima facie case for relief or is procedurally defective." Gomex v. Superior Court (2012) 54 Cal.4th 293, 301. "Where it is clear from the petition that the writ ought not issue, the alternative writ should be denied, thus avoiding delay and expense to the parties." Tingley v. Superior Court (1908) 8 Cal.App. 47, 48-49. As explained below, Petitioners cannot demonstrate a prima facie case for relief from the Attorney General's denial of their *quo warranto* application.

Quo warranto is a specific action by which one challenges "any person who usurps or intrudes into, or unlawfully holds or exercises public office." Nicolopulus v. City of Lawandale (2001) 91 Cal.App.4th 1221, 1225, citing, Code Civ. Proc., § 803."It is the exclusive remedy in cases where it is available" and requires leave from the Attorney General prior to initiation of the action. Id. (citation omitted); Intl Assn. of Firefighters v. City of Oakland (1985) 174 Cal.App.3d 687, 693-698.

"The modern rational [for requiring leave from the Attorney General to bring a *quo warranto* action] is, [t]he remedy of *quo warranto* is vested in the People, and not in any private individual or group, because disputes over title to public office are viewed as a public question of governmental legitimacy and not merely a private quarrel among rival claimants. . . ." Nicolopulus v. City of Lawandale, supra, 91 Cal.App.4th at p.1228. "Requiring leave of the Attorney General also protects public officers from frivolous lawsuits. Id.

"There reposes in the Attorney General the right to exercise discretion in permitting the institution of suit in *quo warranto*." City of Campbell v. Mosk (1961) 197 Cal.App.2d 640, 642. "The exercise of discretion of the Attorney General in the grant of such approval to sue calls for care and delicacy." Id. at p. 650 "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 of litigation." Id. at p. 647. Nor do debatable issues inevitably lead to leave to sue in *quo warranto*. Id. at p. 650.

Based on these considerations, those courts that have addressed the subject have unanimously held that for a court to issue a writ of mandamus compelling the Attorney General to violate her "own judgment by ordering [her] to grant leave to commence a suit against [her] own conviction and conscientious belief that such leave should not be given should be exercised only when the abuse of the Attorney General in refusing leave is extreme and clearly indefensible. When such an extreme case does not appear, a decree of a court compelling [her] to act against [her] judgment is erroneous, and is itself an abuse of discretion."City of Campbell v. Mosk (1961) 197 Cal.App.2d 640, 646-647, citing, Lamb v. Webb (1907) 151 Cal.451, 454; Intl Assn. of Firefighters v. City of Oakland , supra, 174 Cal.App.3d; Oakland Municipal Improvement League v. City of Oakland (1972) 23 Cal.App.3d 165; Nicolopulus v. City of Lawandale, supra, 91 Cal.App.4th 1221.

It is important to note that in applying this standard of review there are no reported instances of mandamus issuing in response to an Attorney General's denial of *quo warranto* action. See, Intl. Assn. of Firefighters v. City of Oakland, supra, 174 Cal.App. 687, 689.

Here, the Petition is devoid of any evidence showing that the Attorney General abused her discretion in denying the *quo warranto* application. At best, Petitioners raise only a "debatable" question as to the proper interpretation of Section 12. The mere presentation of a debatable legal issue, however, does not entitle Petitioners to leave to sue in *quo warranto*. See, City of Campbell v. Mosk, supra, 197 Cal.App.2d at p. 650. As such, Petitioners' Alternative Writ of Mandamus should be summarily denied.

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CONCLUSION

For the foregoing reasons, the Real Parties in Interest respectfully request the Court summarily deny the Petition for Administrative Writ of Mandamus and Order to Show Cause. In the Alternative, the Real Parties in Interest respectfully request that the Court set a regular briefing schedule as there is no urgency or obvious right to relief.

DATED: November 13, 2013

MICHAEL J. GARCIA, CITY ATTORNEY

By: _____
ANDREW C. RAWCLIFFE
Attorneys for Real Parties in Interest

EXHIBIT 1

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.

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE

455 GOLDEN GATE AVENUE, SUITE 11000
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October 25, 2013

Via Facsimile and U.S. Mail
(562) 216-4445

C.D. Michel
Sean A. Brady
Michel & Associates LLP
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802

RE: *The People of the State of California on the relation of John Rando and Mariano A. Rodas v. Frank Quintero* - Opinion No. 13-504

Counsel:

Enclosed is a copy of our opinion denying your clients, John Rando and Mariano A. Rodas, leave to sue in quo warranto in the above matter.

Sincerely,

Susan Duncan Lee / sg

SUSAN DUNCAN LEE
Supervising Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

SDL:sg
Enclosures
cc: Michael J. Garcia, Ann M. Maurer, Andrew C. Rawcliffe (via facsimile & U.S. Mail)
Marc J. Nolan

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 613 East Broadway, Suite 220, Glendale, California 91206.

On November 13, 2013, I served the foregoing document described as **MEMORANDUM OF POINTS AND AUTHORITIES IN PRELIMINARY OPPOSITION TO PETITIONER'S EX PARTE APPLICATION FOR ALTERNATIVE WRIT AND ORDER TO SHOW CAUSE WHY PEREMPTORY WRIT SHOULD NOT ISSUE** on THE INTERESTED PARTIES named below by enclosing a copy in a sealed envelope addressed as follows:

C.D. Michel — Attorneys for Petitioners
Sean A. Brady
MICHEL & ASSOCIATES PC
180 East Ocean Blvd. Suite 200
Long Beach CA 90802

Susan Smith, Deputy Attorney General — Attorneys for Respondent
Office of the Attorney General
300 S. Spring St.
Los Angeles CA90013

X BY PERSONAL SERVICE - I caused such envelope to be delivered by hand to the addressee.

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

Executed September 13, 2010, at Los Angeles, California.

ANDREW C. RAWCLIFFE

85 47

C. D. Michel - SBN 144258
Sean A. Brady- SBN 262007
MICHEL & ASSOCIATES, P.C.
180 East Ocean Blvd., Suite 200
Long Beach, CA 90802
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cmichel@michellawyers.com

Attorneys for Plaintiffs/Petitioners

FILED
Superior Court of California
County of Los Angeles

DEC 10 2013

Sherri R. Carter, Executive Officer/Clerk
By Annette Fajardo Deputy
Annette Fajardo

RECEIVED
NOV 15 2013
DEPT. 85

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CENTRAL DISTRICT

JOHN RANDO and MARIANO A. RODAS,

Plaintiffs and Petitioners,

vs.

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

[PROPOSED] ORDER GRANTING PETITIONERS' APPLICATION FOR ALTERNATIVE WRIT OF MANDATE

Date: November 13, 2013
Time: 8:30 a.m.
Dept. 85

On November 13, 2013 at 8:30 a.m. in Department 85, before Superior Court Judge, James Chalfant, the following appearances were made in the above titled matter: Sean Brady on behalf of Petitioners, Susan Smith on behalf of Respondent, and Andrew Rawcliffe on behalf of Real Parties in Interest, Frank Quintero and the City of Glendale.

GOOD CAUSE BEING SHOWN, the application of Plaintiffs and Petitioners John Rando and Mariano Rodas for an alternative writ of mandate is GRANTED.

IT IS HEREBY ORDERED THAT: Defendant and Respondent, California Attorney General Kamala Harris and Real Parties in Interest, Frank Quintero and City of Glendale, show cause before this court in Department 85 on January 7, 2014 at 1:30 p.m. why a peremptory writ of mandate should not be issued in this matter.

The following briefing schedule shall apply:

Any opposition papers to the petition shall be filed and served on Petitioners no later than December 20, 2013.

Any reply papers to the opposition shall be filed and served on Respondent and Real Parties in Interest no later than December 31, 2013.

IT IS SO ORDERED.

Dated: 12/10/13

Superior Court Judge, James Chalfant

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

On November 15, 2013, I served the following:

[PROPOSED] ORDER GRANTING PETITIONERS' APPLICATION FOR ALTERNATIVE WRIT OF MANDATE

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

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

Attorney for Defendants

Michael J. Garcia, City Attorney
Ann M. Maurer, General Counsel-Litigation
Andrew C. Rawcliffe, Deputy City Attorney
613 E. Broadway, Suite 220
Glendale, CA 91206

Attorneys for Defendants

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 November 15, 2013, at Long Beach, California.

_ (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
Executed on November 15, 2013, at Long Beach, California.

X (VIA ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission. Said transmission was reported and completed without error.
Executed on November 15, 2013, California.

__ (VIA FACSIMILE TRANSMISSION) As follows: The facsimile machine I used complies with California Rules of Court, Rule 2003, and no error was reported by the machine. Pursuant to Rules of Court, Rule 2006(d), I caused the machine to print a transmission record of the transmission, copies of which is attached to this declaration.
Executed on November 15, 2013, California.

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

CLAUDIA AYALA

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Attorneys for Respondent Attorney General Kamala D. Harris

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 **RESPONDENT'S ANSWER TO VERIFIED PETITION FOR AN ALTERNATIVE WRIT OF MANDATE** Dept: 85 Judge: Hon. James C. Chalfant

Defendant and Respondent Attorney General Kamala D. Harris ("Respondent") answers the Verified Petition for Alternative Writ of Mandate as follows ("Petition "):

1. Respondent lacks sufficient information and knowledge to admit or deny the allegations regarding petitioners in paragraph 1. Respondent admits that the documents submitted

in the quo warranto proceeding before the Attorney General by petitioners speak for themselves. Except as specifically admitted, respondent denies the remaining allegations in paragraph 1.

2. Respondent admits that petitioners' quo warranto application was denied. Except as specifically admitted, respondent denies the remaining allegations in paragraph 2.

3. Respondent lacks sufficient information and knowledge to admit or deny the allegations in paragraph 3, and on that basis denies the allegations in paragraph 3.

4. Respondent admits that California law with respect to public elections and the results of those elections speak for themselves. Except as specifically admitted, respondent denies the remaining allegations in paragraph 4.

5. Respondent admits that California law with respect to public elections and the results of those elections speak for themselves. Except as specifically admitted, respondent denies the remaining allegations in paragraph 5.

6. Respondent admits that California law with respect to public elections and the results of those elections speak for themselves. Except as specifically admitted, respondent denies the remaining allegations in paragraph 6.

7. Respondent admits that California law with respect to public elections and the results of those elections speak for themselves. Except as specifically admitted, respondent denies the remaining allegations in paragraph 7.

8. Respondent admits that California law with respect to public elections and the results of those elections speak for themselves. Except as specifically admitted, respondent denies the remaining allegations in paragraph 8.

9. Respondent admits that California law with respect to public elections and the results of those elections speak for themselves. Except as specifically admitted, respondent denies the remaining allegations in paragraph 9.

10. Respondent admits that California and municipal law speak for themselves. Except as specifically admitted, respondent denies the remaining allegations in paragraph 10.

11. Respondent lacks sufficient information and knowledge to admit or deny the allegations in paragraph 11, and on that basis denies the allegations in paragraph 11.

12. Respondent admits that California and municipal law speak for themselves. Except as specifically admitted, respondent denies the remaining allegations in paragraph 12.

13. Respondent admits that California and municipal law speak for themselves. Except as specifically admitted, respondent denies the remaining allegations in paragraph 13.

14. Respondent admits that California and municipal law speak for themselves. Except as specifically admitted, respondent denies the remaining allegations in paragraph 14.

15. Respondent lacks sufficient information and knowledge to admit or deny the allegations in paragraph 15, and on that basis denies the allegations in paragraph 15.

16. Respondent admits that California law speaks for itself. Except as specifically admitted, respondent denies the remaining allegations in paragraph 16.

17. Respondent admits that the documents submitted in the quo warranto proceeding before the Attorney General by petitioners speak for themselves. Except as specifically admitted, respondent denies the remaining allegations in paragraph 17.

18. Respondent admits that the documents submitted in the quo warranto proceeding before the Attorney General by petitioners speaks for themselves. Respondent denies legal argument contained in paragraph 18. Except as specifically admitted, respondent denies the remaining allegations in paragraph 18.

19. Responding to paragraph 19, respondent incorporates herein by this reference her responses to paragraphs 1 through 18, inclusive.

20. Respondent denies the allegations in paragraph 20.

21. Respondent denies the allegations in paragraph 21.

22. Respondent denies the allegations in paragraph 22.

23. Respondent lacks sufficient information and knowledge to admit or deny the allegations in paragraph 23 regarding petitioners' residence. Except as specifically stated, respondent denies the remaining allegations in paragraph 23.

24. Respondent denies the allegations in paragraph 24.

25. Respondent denies the allegations in paragraph 25.

ADDITIONAL DEFENSES

ONE

The Petition for Writ of Mandate and each cause of action therein, fails to state facts sufficient to constitute a cause of action.

TWO

Respondent Attorney General Harris denies that she has subjected petitioners to the deprivation of any rights, privileges, or immunities secured by the Constitution or laws of the United States or the State of California.

THREE

Respondent Attorney General Harris affirmatively states that any actions she has taken with respect to petitioners have been in good faith, have been reasonable and prudent, and have been consistent with all applicable legal and constitutional standards.

FOUR

The requested relief is barred by the Constitutional doctrine of separation of powers.

FIVE

Petitioners' claims in this action are barred by equitable doctrines of waiver, laches, unclean hands, and/or estoppel.

SIX

Petitioners' claims in this action are uncertain, vague, ambiguous, improper, and unintelligible.

SEVEN

The requested relief is barred as a matter of law because granting such relief would result in an unlawful order compelling respondent Attorney General Harris to act contrary to her Constitutional and statutory duties.

EIGHT

The relief sought by Plaintiffs is barred because respondent Attorney General Harris has complied with all applicable laws, statutes and ordinances.

ACCORDINGLY, Respondent Attorney General Harris prays as follows:

1. That judgment be entered in favor of respondent Attorney General Harris and against petitioners on the Petition as a whole, and on each cause of action therein, and that petitioners take nothing by way of the Petition;

2. That the Petition, and each cause of action therein, be dismissed with prejudice;

3. That respondent Attorney General Harris be awarded the costs, expenses, and attorneys' fees incurred in this action; and

4. That the Court grant Respondent Attorney General Harris such additional relief as it deems proper.

Dated: December 20, 2013

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
MARK R. BECKINGTON
Supervising Deputy Attorney General

SUSAN K. SMITH
Deputy Attorney General
Attorneys for Respondent Attorney General Kamala D. Harris

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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 **RESPONDENT'S ANSWER TO VERIFIED PETITION FOR AN ALTERNATIVE 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:

C.D. Michel, Esq.
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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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61161190.doc

KAMALA D. HARRIS
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Attorneys for Defendant and Respondent Attorney General Kamala D. Harris

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.	Case No. BS145904 **RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF MANDATE AND ORDER TO SHOW CAUSE WHY PEREMPTORY WRIT SHOULD NOT ISSUE** Date: January 7, 2013 Time: 1:30 p.m. Dept: 85 Judge: Hon. James C. Chalfant

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INTRODUCTION

Mandamus may not issue to order the Attorney General to exercise her discretion to file suit in this matter. Petitioners misunderstand the quo warranto process and the discretion given the Attorney General to decide whether to prosecute a case or not. Petitioners fail to show that a petition for writ of mandate is appropriate in these circumstances.

Moreover, even assuming a petition for writ of mandate is available, petitioners have failed to show that the Attorney General's decision to deny the quo warranto application was the result of an "extreme and clearly indefensible" abuse of discretion. Even if this Court does review the Attorney General's decision to deny "leave to sue" in this case, it is clear that very broad discretion is given the Attorney General in determining whether to grant or deny a quo warranto application.

Here, the Attorney General carefully considered the quo warranto application, including the briefs submitted by both parties, and then issued a reasoned and logical opinion concluding that it was not in the public interest to grant leave to sue. Petitioners disagree with this conclusion, but they have pointed to no abuse of discretion on the part of the Attorney General. At most, Petitioners have alleged a "debatable" issue with respect to the interpretation of a provision in a city charter, but this is not enough to meet the very high burden of an "extreme and clearly indefensible" abuse of discretion. Indeed, this case does not even come close to meeting this standard. The petition for writ of mandate should be dismissed in its entirety.

STATEMENT OF FACTS

I. HISTORY OF QUO WARRANTO

Quo warranto ("by what authority") is a legal action brought to resolve disputes concerning the right to hold public office or exercise a franchise. Quo warranto originated as a writ filed by early English monarchs to challenge claims of royal subjects to an office or franchise supposedly granted by the crown. Current California law provides that the action may be brought by the Attorney General or by a private party acting with the consent and direction of the Attorney General.

The nomenclature "action in the nature of 'quo warranto'" is still used even though that phrase no longer appears in the statutory or constitutional framework. (*Int'l Assoc. of Fire Fighters v. City of Oakland* (1985) 174 Cal.App.3d 687 n.10.) The 1872 code abolished the writ and substituted a statutory action, identical in purpose and effect. (*Ibid.*) Then the Constitution of 1879 included quo warranto in the recital of writs which the *superior court* had jurisdiction over. (*Ibid.*) Subsequently, the constitutional revision of 1966 eliminated the reference to quo warranto and made the statute the foundation of the proceeding. (*Ibid.*)

II. MODERN USE OF QUO WARRANTO AND APPLICATION FOR QUO WARRANTO

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.

(Code Civ. Proc., §§ 803-811 ["Actions for the Usurpation of an Office or a Franchise"].)

Application to the Attorney General for leave to sue in quo warranto may be made by private person or local agency pursuant to the rules and regulations issued by the Attorney General. (Cal .Code Regs. tit. 11, §§ 1-11.) Any person desiring "leave to sue'" in the name of the people of the State of California under any law requiring the prior permission of the Attorney General shall serve the application and required papers on the proposed defendant and within five days file the same with the Attorney General. (*Id.* at § 1.) The application must include an (1) original verified complaint, prepared for the signature of the Attorney General, a deputy attorney general and the attorney for the relator (i.e., the person desiring leave to sue) and a verified statement of facts; (2) points and authorities in support of the application; (3) a notice to the proposed defendant of the filing of the application giving the proposed defendant 15 days to appear and show cause to the Attorney General; and (4) proof of service of all the documents on the proposed defendant. (*Id.* at §§ 2, 3.)

The proposed defendant is given 15 to 20 days to respond, depending upon where service is made. (Cal. Code Regs. tit. 11, § 3.) The Attorney General may prescribe a shorter period of time in special cases or upon a showing of good cause. (*Ibid.*) The relator may then file a reply

within 10 days. (*Id.* at § 4.) These response times may be extended by stipulations filed with the Attorney General, or upon a showing of good cause. (*Ibid.*)

If "leave to sue" is granted, the relator must, within 10 days, present the Attorney General an undertaking of $500, to the effect that the relator will pay any judgment for costs or damages that may be recovered against the plaintiff, and "all costs and expenses incurred in the prosecution of the proceeding in which such 'leave to sue' is granted." (Cal. Code Regs. tit. 11, § 6.)

The proposed complaint shall be changed or amended as the Attorney General shall suggest or direct, and the "relator shall not thereafter in any way change, amend or alter the said complaint without the approval of the Attorney General." (Cal. Code Regs. tit. 11, § 7.)

The Attorney General may at all times, at any stage of the proceeding, withdraw, discontinue or dismiss the case. Additionally, the Attorney General may assume management of the litigation at any stage she chooses. (Cal. Code Regs. tit. 11, § 8.) If appropriate, no appeal may be taken of the matter without first securing the approval of the Attorney General. (*Id.* at § 11.)

In the last ten years, the Attorney General has received and decided approximately three to four quo warranto applications a year. (See Susan K. Smith Declaration filed herewith ("Smith Dec." at ¶ 3.) Some of the decisions are issued in a formal Attorney General opinion and some decisions are answered by letter. (Smith Dec. at ¶ 3.)

III. ATTORNEY GENERAL'S DECISION IN THIS MATTER

A. Quo Warranto Application and the Attorney General Opinion

On October 25, 2013, the Attorney General issued an opinion, No. 13-504, denying petitioners leave to file an action in quo warranto to seek removal of a city council member of the City of Glendale. (See Opinion attached to Declaration of Susan K. Smith, Exhibit A ("Opinion"). The Opinion issued after an application and full briefing by petitioners and Real Parties in Interest was completed June 17, 2013. (See exhibits C, D and E, attached to petitioners' Memorandum of Points and Authorities in Support of Ex Parte Application, dated November 8, 2013 ("Pet. Br.")

Proposed Defendant the City of Glendale ("City" or "Glendale") is a charter city and has been since 1921. Proposed Defendant Frank Quintero is currently serving as a member of the Glendale City Council, having been appointed to that office on April 23, 2014. The proposed defendants were also named as real parties in interest. The relators and petitioners in this litigation, John Rando and Marian Rodas, are residents of Glendale. The petitioners sought to remove Mr. Quintero from public office because they contended that he was ineligible to serve. (Opinion at p. 2.) They seek to remove Mr. Quintero via the proposed action in quo warranto. (*Ibid.*)

B. The Underlying Facts

On April 12, 2013, the City held a municipal election, and Rafi Manuakian, a city council member, was elected to the office of City Treasurer, creating a vacancy on the council. (Opinion at p. 3.) The Glendale Charter specifies that "'any vacancy occurring in the council shall be filled by a majority vote of the remaining members of the council.'" (Opinion at p. 3.) On April 15, 2013, Mr. Quintero completed his term as City Mayor and councilman. On April 23, 2013, the remaining members of the Council unanimously voted to appoint Mr. Quintero to the vacant council position. The term for this position expires in June 2014. (*Ibid.*)

Petitioners asserted in this quo warranto application that Mr. Quintero's appointment violated a provision of the Glendale charter that provides, "[n]o former councilmember shall hold any compensated city office or city employment until two (2) years after leaving the office of councilmember."[1] (Opinion at p. 4.)

The Attorney General fully considered whether leave to sue in quo warranto should be granted to petitioners in order to seek removal of Frank Quintero from the Glendale city council member. (Opinion at pp. 1-2.) As noted in the Opinion, quo warranto is "the proper remedy to 'try title' to public office; that is to evaluate whether a person has the right to hold a particular

[1] This section was amended to its current wording by Glendale voters' passage of an initiative measure in an election held on November 2, 1982. The provision in full 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 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."

office by virtue of eligibility requirements, valid election procedures, the absence of disqualifying factors, etc." (Opinion at p. 2.) When a private party seeks to file an action in quo warranto in superior court, that party must obtain consent from the Attorney General. (Opinion at p. 3.) The standard for determining whether consent to proceeding in quo warranto shall be granted is 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. (*Ibid.*)

After analyzing the issues, the Opinion denied leave to sue to petitioners because "it is not in the public interest to authorize the initiation of a quo warranto lawsuit under the present circumstances." (Opinion at p. 8.)

IV. THE STATUS OF THIS LITIGATION

Petitioners gave ex parte notice to Respondent Attorney General Harris on the afternoon of November 8, 2013, stating that they were filing an alternative writ and challenging the Attorney General's denial of petitioners' quo warranto application.

On November 13, 2013 at a hearing before this Court, respondent Attorney General and real parties in interest appeared and opposed granting a petition for writ of mandate.

This Court granted the alternative writ of mandate only to expedite a hearing on an order to show cause why a peremptory writ of mandate should not be issued in this matter. The order issued by this Court set the matter for hearing on January 7, 2013 and issued a briefing schedule.

ARGUMENT

I. MANDAMUS MAY NOT ISSUE TO ORDER THE ATTORNEY GENERAL TO FILE SUIT IN THIS ACTION

The separation of powers prohibit mandamus issuing in the circumstances before this Court. "The powers of state government are legislative, executive and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." (Cal. Const., art. III, § 3.) "Subject to the powers and duties of the Governor, the Attorney General shall be the chief law officer of the State. It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced." (Cal. Const., art. V, § 13.) With respect to criminal law, "the legislative branch bears the sole responsibility and

power to define criminal charges and to prescribe punishment, it is the executive branch which decides which crime to charge and the judicial branch which imposes sentence within the legislatively determined limits for the chosen crime." (*People v. Mikhail* (1993) 13 Cal.App.4th 846, 854 [internal citations omitted]; see also *People v. Honig* (1996) 48 Cal.App.4th 289, 354-55 [Attorney General has broad discretion to determine when to step in and prosecute a criminal case and there is no suggestion that the discretion "is reviewable by the superior court at the behest of a defendant."].)

Similarly, there is a divided function for civil matters: "As the chief law officer of the state the Attorney General has broad common law powers. In the absence of legislative restriction [s]he has the power to file any civil action which [s]he deems necessary for the enforcement of the laws of the state and the protection of public rights and interests. (*People v. New Penn Mines, Inc.* (1963) 212 Cal.App.2d 667, 671 [internal citations omitted]; see also *People v. Rizzo* (2013) 214 Cal.App.4th 921, 937 [same].) Here, not only is there an absence of legislative restriction with respect to the Attorney General's discretion, there is specific statutory language, in addition to the Constitutional authority, acknowledging the Attorney General's discretion to decide whether a quo warranto application should be granted or denied, and authorizing the Attorney General to dismiss the litigation once commenced. (Cal. Code Regs. tit. 11, §§ 1-11 at § 8 ["The Attorney General may at all times, at any and every stage of the proceeding, withdraw, discontinue, or dismiss the same, as to [her] may seem fit and proper, or may, at [her] option, assume the management of said proceeding at any state thereof"]; see also Code Civ. Proc., §§ 803 [specifying authority for Attorney General to bring an action "whenever [she] has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held. . ."].) Additionally, specific regulatory language acknowledges the Attorney General's discretion in determining whether a litigation begun pursuant to a quo warranto application may be appealed. (Cal. Code Regs. tit. 11, § 11.)

Contrary to petitioners' argument, the Attorney General does *not* have a "ministerial duty to approve quo warranto applications that bring a cause of action that is in the public interest." (Pet. Br. at p. 5:1-2.) The discretion involved in allowing a suit to be brought "in the name of the

people of the State of California" is far from a "ministerial" task. Rather, the gravity that goes into such a decision is one that rests appropriately with the executive branch, specifically the Attorney General. The legislature recognizes the process through specific statutory language acknowledging the Attorney General's discretion and ability to control the litigation. (*Ibid.* Code Civ. Proc., § 803.) And although courts that have rejected quo warranto claims against the Attorney General focused on a failure to show any abuse of discretion, no court has ever expressly held that a writ could issue compelling the Attorney General to approve such an action. For example, in an early case, the California Supreme Court "assum[ed] for the purposes of this appeal that the attorney general's discretion under [Code of Civil Procedure section 803] is not entirely beyond the control of a court," but did not decide the broader question of the judiciary's power to order the Attorney General to grant leave to commence a quo warranto proceeding. (*Lamb v. Webb* (1907) 151 Cal. 451, 455; see also *Int'l Assoc. of Fire Fighters v. City of Oakland* (1985) 174 Cal.App.3d 687, 697 [noting that while the "suggestion[] that a court may intervene in the event of an extreme abuse of the Attorney General's discretion. . . no such instance of mandamus issuing can be found."].)

Other decisions have likewise recognized the power of the Attorney General and prosecutors to exercise discretion on whether to bring an action, whether civil or criminal. For example, in *City of Campbell v. Mosk,* the Court recognized that in comparable situations, 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." (*City of Campbell v. Mosk* (1961) 197 Cal.App.2d 640, 647.) In an analogous situation, the California Supreme Court held that a decision by county counsel on whether to institute a suit under certain code provisions "necessarily requires the exercise of discretion." (*Wilson v. Sharp* (1954) 42 Cal.2d 675, 678.) And in a mandamus proceeding to compel a district attorney to prosecute an alleged crime, an appellate court ruled that "'the investigation and prosecution were matters in which the district attorney is vested with discretionary power as to which mandamus will not lie.'" (*Taliaferro v. Locke* (1960) 182 Cal.App.2d 752, 757.) Similarly, here, discretion of the Attorney General is required for every step of the quo warranto application and proceeding. At

any point, pursuant to the Attorney General's discretion, a quo warranto suit can be altered, amended or withdrawn. Issuance of a writ to compel the Attorney General to authorize such an action is inconsistent with the inherently discretionary nature of the proceeding.

Thus, for purposes of this litigation, no assumption need be made that the Attorney General's Opinion denying the quo warranto application is reviewable by way of mandate. Although Petitioners argue that a writ of mandate is appropriate in this case because the Attorney General has purportedly abused her discretion in not acquiescing to petitioners' application for quo warranto (Pet. Br. at pp. 4-5), they have failed to show why mandamus is appropriate. The discretion to file any civil action which is deemed necessary for the enforcement of the laws of the state and the protection of public rights and interests lies wholly with the Attorney General. Thus, a petition for writ of mandate is not a proper procedure, and petitioners' request for mandamus should be denied.

II. EVEN IF THE COURT COULD REVIEW THE DISCRETION EXERCISED IN THIS MATTER, THE ATTORNEY GENERAL ACTED PROPERLY AND DID NOT USE "EXTREME AND CLEARLY INDEFENSIBLE" DISCRETION

Even if the Court does review the Attorney General's decision to deny "leave to sue" in this case, it is clear that very broad discretion is given the Attorney General in determining whether to grant or deny a quo warranto application. (See *Intl. Assn. of Fire Fighters v. City of Oakland*, *supra*, 174 Cal.App.3d at pp. 693-698; *City of Campbell v. Mosk*, *supra*, 197 Cal.App.2d at pp. 646-47 [same].) In fact, the Supreme Court specified that *if* it is appropriate to review the executive's discretion, "the power of a court to compel [her] to violate [her] own judgment by ordering [her] to grant leave to commence a suit . . . should be exercised only where the abuse of discretion by the attorney-general in refusing the leave is *extreme and clearly indefensible*." (*Lamb v. Webb*, *supra*, 151 Cal. at p. 455, emphasis added.) "When such an extreme case does not appear, a decree of a court compelling [her] to act against [her] judgment is erroneous, and is itself an abuse of discretion." (*Ibid.*) Research has not disclosed any court that has issued such mandamus in the last one hundred six years since *Lamb* was decided. The case before this Court does not even come close to meeting this very high burden.

In the present application that was before the Attorney General, the City held a municipal election on April 2, 2013 and city council member Rafi Maoukian, 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 Glendale's 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." (Opinion at p. 3.) On April 15, 2013, real party in interest Quintero completed his term as City Mayor, and on April 23, 2013, the remaining members of the Glendale council unanimously voted to appoint Mr. Quintero to the vacant council position. (*Ibid.*) The unexpired term of Mr. Quintero's position ends in June 2014. (*Ibid.*)

Petitioners argued to the Attorney General that Mr. Quintero's appointment violated the Glendale charter provision prohibiting a former councilmember from holding "any compensated city office or city employment until two years after leaving the office of councilmember." (Glendale Charter Art. VI, § 12 ("Section 12"); Opinion at p. 4.) The Attorney General's Opinion concluded, however, that, although there is more than one way to read Section 12, the provision is more likely a limit on "a Council member's opportunity to use his or her influence on the Council as a stepping-stone to future City employment," rather than a term-limit. (Opinion at pp. 4-5.) The Attorney General reviewed briefs from petitioners, the City and evidence regarding the city charter ballot amendment leading to Section 12's enactment in making her decision. (Opinion at pp. 1, 4-5; see also attachments to Pet. Br. Exs. B, C and D.) The Opinion noted that the same rules that apply to any other voter-approved measure, such as a constitutional amendment, apply to ballot measures. (See *Woo v. Superior Court* (2000) 83 Cal.App.4th 967, 974; *Currieri v. City of Roseville* (1970) 4 Cal.App.3d 997, 1001.) One goal in construing ballot measures is to effectuate the intent of the electorate. (*Woo*, 83 Cal.App.4th at 975; see also *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.)

To determine the intent of the electorate, the language of the provision adopted is examined. (*Woo v. Superior Court*, *supra*, 83 Cal.App.4th at p. 975.) The Opinion correctly noted that 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." (Opinion at p. 5 n. 17.)

Section 12 was amended in November 1982.[2] 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. 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." (Opinion at p. 6.) In contrast, nothing in the ballot pamphlet suggests that a former council member would be prohibited from seeking *elective* office for two years after leaving the council. (Opinion at pp. 6-7.) In fact, Glendale's charter does not impose any limits on the number of terms that a councilmember may serve. (Opinion at p. 5.) The ballot argument in favor of passing the amendment to Section 12 explained that 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." (Opinion at p. 7.) "But reading the provision in the context of the Charter as a whole, and in light of the reasons given in the ballot pamphlet," the Opinion determined that Section 12 "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." (*Ibid.*)

Petitioners argue that the two-year restriction to "any city office" includes elected city council members based on the plain meaning of the provision. (Pet. Br. at pp. 8-9.) However, the Attorney General's Opinion adequately explains that "the text itself does not provide a clear answer" to the question of what Section 12 means. (Opinion at pp. 5-6.) The Opinion readily states that Section 12 "could have been worded more precisely," but it was not. (*Id.* at p. 7.)

[2] The former language read: "No members of the council shall be eligible to any office of employment except an elected office, during a term for which he was elected." (Opinion at p. 6.)

Thus, the Attorney General appropriately reviewed the ballot materials regarding Section 12 to ascertain the intent of the electorate.

Moreover, the Opinion noted any ambiguities in the language of Section 12 should be resolved in favor of eligibility to hold office. (Opinion at p. 7.) An individual's eligibility to hold public office is a fundamental right of citizenship in California, which may not be prohibited or curtailed "'except by plain provisions of law.'" (Opinion at p. 7 n. 25-26, citing *Zeilenga v. Nelson* (1971) 4 Cal.3d 716, 720; *Carter v. Commission On Qualifications on Judicial Appointments* (1939) 14 Cal.2d 179, 182.) Petitioners argue that any ambiguity in the plain language of Section 12 should be resolved in favor of *restricting the plaintiff from taking office.* (Pet. Br. at p. 12:14-18, citing *Lungren v. Deukmejian, supra*, 45 Cal.3d at p. 743.) *Lungren*, however, does not stand for this proposition.

In *Lungren*, the Supreme Court construed the provisions of article V, section 5, subdivision (b) of the California Constitution ("Section 5(b)") when the elected state Treasurer died while serving his term of office. (*Lungren v. Deukmejian, supra*, 45 Cal.3d at pp. 729-730.) The question was whether pursuant to that provision, a nominee may be viewed as having been confirmed by the Legislature even though he has been confirmed by only one house and rejected by the other house. The question arose when Governor Deukmejian nominated Congressman Lungren to the office of Treasurer, and, although the Assembly voted to confirm the nomination, the Senate voted to deny confirmation. (*Id.* at p. 730.) The Court concluded that the language of the second sentence of Section 5(b), standing alone, "is susceptible to the construction offered by both respondents and Lungren, but that, when the section is read as a whole, it supports respondents' view that a negative vote on the confirmation by either house of the Legislature results in disapproval of the nomination." (*Id.* at p. 733.) Additionally, the legislative history of Section 5(b) supported this conclusion, and the Court rejected an alternative legislative history argument made by Lungren. (*Ibid.*) At no point did the Supreme Court state that ambiguities in language should be resolved in restricting the plaintiff from taking office, as petitioners argue. (Pet. Br. at p. 12.) Thus, *Lungren* does not contradict the reasoning and rationale specified in the

Opinion. There is no basis for arguing that the Attorney General abused her discretion in issuing the Opinion.[3]

Further, the Attorney General concluded that, although there may be a debatable issue as to the interpretation of Section 12, "the overall public interest would not be furthered by burdening the courts, the parties, and the public with the proposed quo warranto action." (Opinion at p. 8.)[4] Merely raising a "debatable issue" is not enough for a private party to proceed where the Attorney General has determined that the quo warranto proceeding "would not serve the public interest." (*Id.*; see also *Intl. Assn. of Fire Fighters*, 174 Cal.App.3d at 697.) "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* (1961) 197 Cal.App.2d 640, 650.)

Thus, even if reasonable persons can disagree over the meaning of Section 12, the Attorney General correctly decided that the public interest would not be furthered by granting the quo warranto application. There has been no abuse of discretion by the Attorney General, much less an "extreme and clearly indefensible" abuse of discretion. The petition for writ of mandate should be denied in its entirety.

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[3] Petitioner also cites *Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1215, for the proposition that a challenge to the constitutionality of an act is a judicial rather than a political question. (Pet. Br. at p. 12:19-24.) Petitioners' argument is unclear as there is no constitutional challenge to a law at issue here. (*Schabarum*, 60 Cal.App.4th at p. 1211 [examining the interpretation of Article IV, section 7.5 of the California Constitution].) The Attorney General does not argue that this is a political question that is nonjusticiable; rather, the application for quo warranto did not meet the legal requirements in order to be granted. (Opinion at pp. 7-8.)

[4] The Opinion notes that Mr. Quintero's term will end in June 2014, "for all practical purposes before judicial proceedings could conclude." (Opinion at p. 8.) This reinforces the conclusion that the public interest is best served by denying leave to sue. (*Ibid.*)

CONCLUSION

For all the reasons discussed, this Court should deny the petition for writ of mandate in its entirety.

Dated: December 20, 2013

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
MARK R. BECKINGTON
Supervising Deputy Attorney General

SUSAN K. SMITH
Deputy Attorney General
Attorneys for Defendant and Respondent Attorney General Kamala D. Harris

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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 **RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF MANDATE AND ORDER TO SHOW CAUSE WHY PEREMPTORY WRIT SHOULD NOT ISSUE** 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:

C.D. Michel, Esq.
Sean A. Brady, Esq.
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Attorneys for Plaintiffs/Petitioners

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Glendale, CA 91206
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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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KAMALA D. HARRIS
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MARK R. BECKINGTON
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Attorneys for Respondent Attorney General Kamala D. Harris

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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MICHAEL J. GARCIA, CITY ATTORNEY
ANN M. MAURER, GENERAL COUNSEL - LITIGATION (SBN 179649)
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Attorneys for Real Parties in Interest
FRANK QUINTERO and CITY OF GLENDALE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOHN RANDO and MARIANO A. RODAS, Plaintiffs and Petitioners, vs. KAMALA HARRIS, individually and in her official capacity as Attorney General; Defendant and Respondent, FRANK QUINTERO, individually and in his official capactiy as Glendale City Councilmember; CITY OF GLENDALE, Real Parties in Interest	Case No.: BS145904 **REAL PARTIES IN INTEREST FRANK QUINTERO'S AND CITY OF GLENDALE'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO THE PETITION** DATE: January 7, 2014 TIME: 1:30 p.m. Dept.: 85 [No Fee - Gov't. Code, § 6103]

Real Parties in Interest, Frank Quintero and City of Glendale submit the following opposition to John Rando's and Mariano A. Rodas' Petition for Writ of Mandamus.

DATED: December 20, 2013

MICHAEL J. GARCIA, CITY ATTORNEY

By: _____
ANDREW C. RAWCLIFFE
Attorneys for Real Parties in Interest
Frank Quintero and City of Glendale

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INTRODUCTION

Petitioners John Rando and Mariano Rodas seek to set aside Respondent Attorney General's denial of their application to sue Real Parties in Interest Frank Quintero and City of Glendale in *quo warranto* for Quintero's appointment to elected office. Petitioners claim that the Attorney General abused her discretion in denying their *quo warranto* application and/or that she had a ministerial duty to grant their *quo warranto* application against Real Parties in Interest Quintero and the City. (Ex Parte Application (hereinafter "App.") at pp. 4:23-5:2; 5:10-21) Mandamus, however, may only issue upon a showing that the denial of the *quo warranto* application *was an extreme and clearly indefensible abuse of the Attorney General's discretion.* As explained below, the Attorney General's denial of Petitioners' *quo warranto* application was proper and clearly not an extreme and indefensible abuse of her discretion.

STATEMENT OF THE CASE

Petitioners filed their application for leave to sue Quintero and the City in *quo warranto* with the Attorney General on May 23, 2013. (Verified Petition ¶ 18) Real Parties in Interest filed their opposition to Petitioners' *quo warranto* application on June 7, 2013. (Ex Parte Application (hereinafter "App.") Exh. D) On June 17, 2013, Petitioners filed their Reply in support of their *quo warranto* application. (App. Exh. E)

On October 25, 2013, the Attorney General denied Petitioners' application concluding in an eight page opinion that Petitioners' proposed *quo warranto* action against Quintero and the City did not raise a substantial legal issue and was not in the public interest. (App. Exh. F).

In response, Petitioners filed this peremptory writ of mandamus challenging the Attorney General's denial and requesting this Court order the Attorney General to grant Petitioners' *quo warranto* application for leave to sue Quintero and the City.

STATEMENT OF FACTS

On April 2, 2013, the City held a municipal election that resulted in a vacancy on the City Council. (Verified Petition ¶ 4) There were fourteen (14) months left on the term of the

vacant Council seat. (App. Exh. F at p. 3 ¶ 2). Pursuant to Article VI, Section 13(b) of the City's Charter, the Council was required to either appoint a council member within thirty days or hold a special election within 120 days to fill the vacancy of the remainder of the unexpired term. (App. Exh. A at pp. C-11-C12)

Because of the costs associated with holding a special election to fill the vacancy, the Council decided to make an appointment to the vacant Council seat. (App. Exh. D at p. 2:26-27)

On April 15, 2013, Quintero completed his term as City Mayor. (Verified Petition ¶ 7) On April 23, 2013, the remaining members of the Council unanimously voted to appoint Quintero to the vacant Council seat. (App. Exh. F at p. 3 ¶ 2) The unexpired term to which he was appointed ends June 2014. (Ibid.)

Petitioners claim Quintero's appointment violates Article VI, Section 12 of the City's Charter (hereinafter Section 12). Section 12 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.

(App. Exh. A at p. C-11)

Petitioners claim this section can only be interpreted as a two year term-limit or hiatus period that prohibits council members from holding elective office upon expiration of the term in office. However, the City has always interpreted Section 12 as only prohibiting a council member from being employed by the City while holding elected office and for two years after leaving elected office. It has never been interpreted as a prohibition on holding elected office. (App. Exh. D at p. 12:16-18)

The Attorney General found that there were at least two interpretations of Section 12 and ultimately disagreed with Petitioners' interpretation that Section 12 constituted a two

year ban or hiatus period on holding elective office. (App. Exh. F at p. 8 ("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."))

As is demonstrated by her Opinion, the Attorney General carefully analyzed the language of Section 12, the ballot pamphlet distributed to the electorate, other provisions of the Charter, rules of statutory construction, the public's interest in Petitioners' proposed *quo warranto* action, and Quintero's fundamental right to hold elected office in reaching her conclusion. (App. Exh. F)

ARGUMENT

I. THE STANDARD OF REVIEW OF THE ATTORNEY GENERAL'S OPINION

Quo warranto is a specific action by which one challenges "any person who usurps or intrudes into, or unlawfully holds or exercises public office." Nicolopulus v. City of Lawandale (2001) 91 Cal.App.4th 1221, 1225, citing, Code Civ. Proc., § 803."It is the exclusive remedy in cases where it is available" and requires leave from the Attorney General prior to initiation of the action. Id. (citation omitted); Intl Assn. of Firefighters v. City of Oakland (1985) 174 Cal.App.3d 687, 693-698.

"The modern rational [for requiring leave from the Attorney General to bring a *quo warranto* action] is, [t]he remedy of *quo warranto* is vested in the People, and not in any private individual or group, because disputes over title to public office are viewed as a public question of governmental legitimacy and not merely a private quarrel among rival claimants. . . ." Nicolopulus v. City of Lawandale, supra, 91 Cal.App.4th at p.1228. "Requiring leave of the Attorney General also protects public officers from frivolous lawsuits. Id.

"There reposes in the Attorney General the right to exercise discretion in permitting the institution of suit in *quo warranto*." City of Campbell v. Mosk (1961) 197 Cal.App.2d 640, 642. "The exercise of discretion of the Attorney General in the grant of such approval to sue calls for care and delicacy." Id. at p. 650 "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 of litigation." Id. at p. 647. Nor do debatable issues inevitably lead to leave to sue in *quo warranto*. Id. at p. 650.

Based on these considerations, those courts that have addressed the subject have unanimously held that for a court to issue a writ of mandamus compelling the Attorney General to violate her "own judgment by ordering [her] to grant leave to commence a suit against [her] own conviction and conscientious belief that such leave should not be given should be exercised only when the abuse of the Attorney General in refusing leave is extreme and clearly indefensible. When such an extreme case does not appear, a decree of a court compelling [her] to act against [her] judgment is erroneous, and is itself an abuse of discretion." City of Campbell v. Mosk (1961) 197 Cal.App.2d 640, 646-647, citing, Lamb v. Webb (1907) 151 Cal. 451, 454; Intl Assn. of Firefighters v. City of Oakland , supra, 174 Cal.App.3d; Oakland Municipal Improvement League v. City of Oakland (1972) 23 Cal.App.3d 165; Nicolopulus v. City of Lawandale, supra, 91 Cal.App.4th 1221.

It is important to note that in applying this standard of review there are no reported instances of mandamus issuing in response to an Attorney General's denial of *quo warranto* action. See, Intl. Assn. of Firefighters v. City of Oakland, supra, 174 Cal.App. 687, 689.

II. THE ATTORNEY GENERAL'S DENIAL OF PETITIONER'S *QUO WARRANTO* APPLICATION WAS NOT AN EXTREME AND CLEARLY INDEFENSIBLE ABUSE OF HER DISCRETION

For leave to sue in *quo warranto* to be granted, (1) there must be a substantial question of fact or law appropriate for judicial resolution, and, if so, (2) the overall public interest is served by allowing the quo warranto to be prosecuted. 85 Ops.Cal.Atty.Gen 101, 102 (2002); 83 Ops.Cal.Atty.Gen. 181, 182 (2000); 81 Ops.Cal.Atty.Gen. 98, 101 (1998). Here, the Attorney General found that Petitioner's *quo warranto* application did not raise a substantial question of law or support the overall public interest. (App. Exh. 4 at p. 8 ("[u]pon examining the language at issues in its full conext, however, we do not consider this

question to be a close one. . . .")) Contrary to Petitioners' claims, this conclusion was premised on well-established rules of statutory construction. There is no basis for arguing that the denial of their *quo warranto* application was an extreme and clearly indefensible abuse of the Attorney General's discretion.

A. The Attorney General's Finding that the Voters' did not Intend To Place A Term-Limit/Waiting Period On Former Council Members to Hold Elected Office Was Not An Extreme And Clearly Indefensible Abuse of Her Discretion.

Petitioners concede that "[t]he voters' intent in approving a measure is our paramount concern" when analyzing the City's Charter. Woo v. Superior Court (2000) 83 Cal.App.4th 967, 975, citing, People v. Jones (1998) 5 Cal.4th 1142, 1146; Davis v. City of Berkeley (1990) 51 Cal.3d 227, 234; see, Lungren v. Deukmejian (1988) 45 Cal.3d 727, 735; (App. at p. 7:17-18) "To determine that intent, we look first to the words of the provision adopted." Woo v. Superior Court, supra, 83 Cal.App.4th at p. 975. "If the language is clear and unambiguous, there ordinarily is no need for construction." Ibid. "We presume that the voters intended the meaning apparent on the face of the measure, and our inquiry ends." Ibid.

"However, this plain meaning rule does not prohibit a court from determining whether the literal meaning of a charter provision comports with its purpose, or whether construction of one charter provision is consistent with the charter's other provision." Lungren v. Deukmejian, supra, 45 Cal.3d at p. 735. "Literal construction should not prevail if it is contrary to the voter's intent apparent in the provision." See, California School Employees Assn. v. Governing Board (1994) 8 Cal.4th 333, 340. "Nor will a court presume that the lawmakers (here, the voters) intended the literal construction of a law if the construction would result in absurd consequences." Woo v. Superior Court, supra, 83 Cal.App.4th at p. 975.

"In those circumstances, we must consider extrinsic evidence of the voters' intent despite the unambiguous language of the enactment." Ibid. Some of the extrinsic evidence

considered, includes: "the ostensible objects to be achieved, the evils to be remedied, the legislative history including ballot pamphlets, public policy, contemporaneous administrative construction and the overall statutory scheme." Int's Fed'n of Prof'l & Technical Engineers, AFL-CIO v. City of San Francisco, (1999) 76 Cal.App.4th 213, 224-225 (citations omitted). In the end, "[t]he intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.'" Ibid.

Contrary to Petitioner's assertion, the language in Section 12 is ambiguous. As courts have explained, "[t]he words 'office' and 'public office' have been variously defined by the decisions throughout the nation, so that seemingly an exact definition is difficult." Lymel v. Johnson (1930) 105 Cal.App. 694, 696. "The words 'public office' are used in so many senses that the courts have affirmed that it is hardly possible to undertake a precise definition which will adequately and effectively cover every situation." Id. at p. 697.

However, even if Section 12 can be read to prohibit ex-council members from elective office, it is axiomatic that the literal construction of Section 12 cannot prevail over the voters' intent. See, Woo v. Superior Court, supra, 83 Cal.App.4th at p. 975; see also, California School Employees Assn. v. Governing Board, supra, 8 Cal.4th at p. 340; see also, Int's Fed'n of Prof'l & Technical Engineers, AFL-CIO v. City of San Francisco, supra,76 Cal.App.4th at pp. 224-225.

In deducing the voters' intent, the Attorney General relied on the ballot pamphlet that the electorate was provided to determine whether the Petitioner's *quo warranto* application raised a substantial question of law. 87 Ops.Cal.Atty.Gen. 176 (2004), 2004 WL 3185424 at p. *2, citing, Raven v. Deukmejian (1990) 52 Cal.3d 336, 349; Woo v. Superior Court, supra, 83 Cal.App.4th at p. 975 ("a recognized aid in ascertaining voter intent is the ballot pamphlet containing the information and arguments relied upon by the electorate in adopting the language in question.")

Based on the ballot pamphlet, the Attorney General properly found that Petitioner's could not fairly argue that the voters intended for Section 12 to prohibit former council

members from holding elected office for two years after leaving elected office. (App. Exh. F at pp. 6-7) This conclusion was not extreme or clearly indefensible. See, People v. Cruz (1996) 13 Cal.4th 764-775 ("The words of a statute are to be interpreted in the sense in which they would have been understood at the time of the enactment.")

Rather, it supported by the ballot pamphlet's Impartial Legal Analysis and Arguments, which state that the intent of Charter Amendment JJ was to extend the existing ban on council members' employment with the City beyond their term in elected office by two years. It was also supported by the fact that the ballot pamphlet never contemplated or informed the electorate that the second sentence of Charter Amendment JJ (the current Section 12) was or could be interpreted as creating a two year hiatus period on former council members holding elected office. (App. Exh. B)

It was also logical for the Attorney General to conclude that the electorate could not have deduced that Charter Amendment JJ was intended to impose a two year hiatus period on elected office based on the information the electorate had at the time of the election. The ballot pamphlet did not define the phrase "compensated city office or city employment" as including "elected offices." (Ibid.)

Instead, the Impartial Legal Analysis and Arguments informed the electorate that the stated purpose of the second sentence of Section 12 was to prohibit council members from obtaining "employment" with the City for two years after leaving office. (Ibid.) In effect, an extension of the existing ban on council members' employment with the City for two years after they left elected office and nothing more. (Ibid.)

Moreover, the examples provided to the electorate solidify this construction of Section 12's second sentence. (Ibid.) The examples included positions with the legal department, public health, and the City Manager. (Ibid.) Notably absent are any examples of elected offices (such as the City Treasurer, City Clerk, and/or Council) that a former councilmember would be disqualified from under Charter Amendment JJ. (Ibid.)

In fact, nothing in the ballot pamphlet made reference to Charter Amendment JJ abrogating a former council member's Constitutional right to hold elected office. (Ibid.) This omission in the City Attorney's Impartial Legal Analysis of Charter Amendment JJ is most notable, because common sense dictates that if there was even a remote possibility that Charter Amendment JJ imposed a limitation on holding elected office (a right afforded by the Constitution) the City Attorney would certainly have addressed such an interpretation in his Impartial Analysis.

He did not. The Arguments in favor and against Charter Amendment JJ did not. It, therefore, can reasonably be deduced that the contemporaneous interpretation of the Charter Amendment JJ was that it did not implicate the right to hold elected office. See, Riley v. Thompson (1924) 193 Cal.773, 778. ("A contemporaneous construction by the officers upon whom was imposed a duty of executing those statutes is entitled to great weight . . . ."); Civil Code, § 3535; Carter v. Comm'n on Qualifications of Judicial Appointments, (1939) 14 Cal.2d 179, 185.

In the end, the Attorney General's finding is supported by a fair and impartial reading of the ballot pamphlet, which makes it clear that the electorate believed the second sentence of Charter Amendment JJ was simply an extension of the existing ban on a sitting council members' employment with the City for another two years after leaving elected office. Despite Petitioners' best efforts to argue to the contrary, the Attorney General's Opinion is neither extreme nor clearly indefensible. Moreover, as explained below, the Attorney General was correct in finding that Petitioners' interpretation of Charter Amendment JJ would have bizarre consequences.

B. It was not an Extreme and Clearly Indefensible Abuse of Discretion for the Attorney General to Find the Petitioners' Interpretation of Article VI, Section 12 would lead to Bizarre Results

Petitioners ignore the Attorney General's implicit finding that their interpretation of Section 12 would have bizarre results. See, Woo v. Superior Court, supra, 83 Cal.App.4th at

p. 975 (one cannot presume voters intend absurd and unreasonable consequences). As the Attorney General a noted, if the stated purpose of Charter Amendment JJ was to impose a term limit or hiatus period on holding elected office, Section 12 does not meaningfully serve that purpose.

Under Petitioners' reading of Section 12, "[a]t most, Council member who fails to win re-election would have to wait two years before running and serving again, but there is nothing in the Charter to stop that person from serving forty years in a row the first time, and forty years more the second time. This is not how term-limiting provisions generally work." (App. Exh. F at pp. 5 ¶ 3, 6 ¶ 1)

For the Attorney General to find it bizarre that the electorate would intend the passage of Proposition JJ as a hiatus or term limit provision when Section 12 does not meaningfully serve that purported purpose is neither extreme nor an indefensible abuse of discretion.

C. The Attorney General Properly Resolved all Ambiguity in Article VI, Section 12 of the Charter in Favor of Councilman Frank Quintero's Constitutional Right to Hold Elected Office

It is beyond dispute that "the right to hold public office, either by election or appointment, is one of the valuable rights of citizenship." Carter v. Comm'n on Qualifications, etc., supra, 14 Cal.2d at p. 182. Accordingly, "[t]he exercise of this right should not be declared prohibited or curtailed except by plain provisions of law." Ibid. "Any ambiguity in a law affecting that right must be resolved in favor of eligibility to hold office." Ibid.; Woo v. Superior Court, supra, 83 Cal.App.4th at 977 (citations omitted); 87 Ops.Cal.Atty.Gen 176 (2004), 2004 WL 3185424 at p. * 3 (citations omitted).

In this instance, neither the language nor the history of Section 12 shows any intent to prohibit a council member from holding elected office by either appointment or election after the completion or termination of his or her Council term. In light of this, it was proper for the Attorney General to find there was not a substantial legal question as to whether Section 12 restricted Quintero's constitutional right to hold elected office.

D. Petitioners' Interpretation of Article VI, Section 12 is Unconstitutional

While not addressed by the Attorney General, an interpretation of Article VI, Section 12 that prohibits former council members from holding elected office for two years is unconstitutional under the Equal Protection's Clause of the Fourteenth Amendment. See, De Bottari v. Melendez (1975) 44 Cal.App.3d 910.

In De Bottari, the court struck down a local ordinance prohibiting recalled council members from running for city council within a year of recall. Ibid. The court found "there is an inextricable relationship between the right to vote and restrictions on candidacy," and although the statute did not classify according to suspect criterions there was a danger that members of suspect groups may be especially vulnerable to recall. Id. at pp. 915, 918. In applying strict scrutiny, "the court reviewed the interests that supported a temporary ban on candidacy by recalled candidates and found them insufficient to sustain the restriction." Legislature v. Eu (1991) 54 Cal.3d 492, 522.

Like De Bottari, the City of Glendale's Charter provides that "all elective officers of the city shall be subject to recall as provided by the Charter." Charter, Art. IV, § 2; see, Charter, Art. XVIII, § 1. If, therefore, Article, VI, Section 12 restricted (as the Petitioners advocate) former council members from holding elected office, Section 12 would disqualify recalled council members from running for office in a subsequent special election. See, Charter, Art. IV, § 13 (special election for a vacant elected position must be held within either 120 or 180 days). This type of restriction on holding elected office is unconstitutional. De Botarri v. Melendez, supra, 44 Cal.App.3d. at pp. 923-924.

E. The Attorney General's Denial of Petitioners' *Quo Warranto* Application Serves the Public Interest

Even assuming Petitioners' *quo warranto* application raised a substantial legal issue (which it did not), the Attorney General properly found that Petitioners' proposed suit did not serve the public interest. "[I]t is well settled that the mere existence of a justiciable issue does not establish that the public interest requires a judicial resolution of a dispute or that the

Attorney General is required to grant leave to sue in *quo warranto*." 75 Ops.Cal.Atty.Gen 287, 289 (1992). "As stated in City of Campbell v. Mosk , supra, 197 Cal.App.2d at p. 650: "The exercise of the discretion of the Attorney General in the grant of such approval to sue calls for care and delicacy. . . ." 79 Ops.Cal.AttyGen. 243 (1996), 1996 WL 676126 at p. *4. In this instance, the public interest is not furthered by this *quo warranto* action for the following two (2) reasons.

First, it is clear that this *quo warranto* action would discourage citizens from holding elected office and/or, at the very least, discourage elected officials from taking positions unpopular with the National Rifle Association. See, 74 Ops.Cal.Atty.Gen. 26, 29 (1991) (Denying a *quo warranto* action against a council member who sought reelection after serving two consecutive terms contrary to the provisions of the Charter because "it would not be in the public interest to burden the parties, the city, and the courts with this dispute, and that a contradictory disposition would discourage participation by citizens in holding public office."). It would also violate the First Amendment. See, Schroder v. Irvine City Council (2002) 97 Cal.App.4th 174, 183, fn. 3 (voting is conduct qualifying for the protections afforded by the First Amendment.)

Here, the circumstances surrounding the initiation of this *quo warranto* action suggest that it is being brought in retaliation for Councilman Quintero's vote in favor of an ordinance that restricted the sale of firearms on municipal property and ended the Glendale Gun Show (hereinafter "Ban"). The Council passed the Ban on March 19, 2013. (App. Exh. D at p. 13:19) Councilman Quintero was the City's Mayor at the time and voted in favor of the Ban. (App. Exh. D at p. 13:20-21) The Petitioners' counsel, Sean Brady, was representing the opponents of the Ban and threatened the City with litigation if it passed. (App. Exh. D at p. 13:21-22) Mr. Brady was explicit when he stated that the opponents would sue the City if the Ban passed and warned that litigation would be costly. (App. Exh. D at p. 13:22-24)

Even the Petitioners, John Rando and Mariano A. Rodas, are affiliated with, and ardent opponents of the Ban. (App. Exh. D at p. 13:25-26) During the City Council's debate

on the Ban, the Petitioners were among the most vociferous opponents of the Ban. App. Exh. D at p. 13:26-27) Mr. Rando's commentary was especially inflammatory. (App. Exh. D at p. 13:27-28) Among the most inflammatory comments made during his four appearances before the Council were: calling the Ban a racist and xenophobic law; implying that the council members were supporting a new kind of racism; and engaging in numerous ethnic stereotypes to illustrate his opposition to the Ban. (App. Exh. D at pp. 13:28-14:2)

In light of the circumstances surrounding this lawsuit, granting leave to sue *quo warranto* would not only curtail the fundamental right to hold public office but would also curtail Councilman Quintero's fundamental right to vote. See, Carter v. Com. On Qualifications, etc, supra, 14 Cal.2d at p. 182; see also, Schroder v. Irvine City Council, supra, 97 Cal.App.4th at p. 183, fn. 3. Being sensitive to these constitutional principles and the corresponding rules of statutory construction that "holding public office . . . may be curtailed only when the law clearly provides . . . [and] [a]ny ambiguity affecting the right to hold public office is resolved in favor of eligibility to serve," dictates that the public interest is better served by denying this application.

Second, the Petitioners' *quo warranto* action against Councilman Quintero will be moot prior to its resolution. 87 Ops.Cal.Atty.Gen. 176 (2004), 2004 WL 3185424 at pp. *3-*4. "A *quo warranto* may be filed 'only to right an existing wrong and not to try moot questions." Id. at p. *3. *Quo warranto* applications have repeatedly been declined where the alleged unlawful term of has expired, or the question of unlawfulness has become or will become moot by subsequent events. Id. at pp. *3-*4.

Here, Councilman Quintero's term of office will expire in June 2014 (within 6 months of the hearing). For all practical purposes, therefore, the judicial proceeding will likely not conclude before the expiration of Councilman Quintero's term.

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CONCLUSION

For the foregoing reasons, the Real Parties in Interest respectfully request the Court deny the Petition for writ of mandamus.

DATED: December 20, 2013

MICHAEL J. GARCIA, CITY ATTORNEY

By: _____
ANDREW C. RAWCLIFFE
Attorneys for Real Parties in Interest
Frank Quintero and City of Glendale

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 613 East Broadway, Suite 220, Glendale, California 91206.

On December 20, 2013, I served the foregoing document described as **REAL PARTIES IN INTEREST FRANK QUINTERO'S AND CITY OF GLENDALE'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO THE PETITION** on THE INTERESTED PARTIES named below by enclosing a copy in a sealed envelope addressed as follows:

C.D. Michel — Attorneys for Petitioners
Sean A. Brady
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Email: cmichel@michellawyers.com

Attorneys for Respondent
Susan Smith, Deputy Attorney General
Office of the Attorney General
300 S. Spring St.
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Susan.Smith@doj.ca.gov

[ ] (BY MAIL) I deposited the envelope with the United States Postal Service with the postage fully prepaid.

[XX] (BY MAIL) I placed the envelope for collection and mailing on the date shown above, at this office, in Glendale, California, following our ordinary business practices.

I am readily familiar with this office's practice of collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service in a sealed envelope with postage fully prepaid.

[XX] (BY E-MAIL) By transmitting a copy of the above listed document via e-mail to the e-mail address listed above and/or on the attached mailing list.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare under penalty of perjury that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on December 20, 2013, at Glendale, California.

Sheila Redding

11-156

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[No Fee - Gov't. Code, § 6103]

Attorneys for Real Parties in Interest
FRANK QUINTERO and CITY OF GLENDALE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOHN RANDO and MARIANO A. RODAS, Plaintiffs and Petitioners, vs. 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 [Assigned to Hon. James C. Chalfant, Dept. 85] **REAL PARTIES IN INTEREST FRANK QUINTERO'S AND CITY OF GLENDALE'S ANSWER TO VERIFIED PETITION FOR AN ALTERNATIVE WRIT OF MANDATE**

Real Parties in Interest, Frank Quintero and City of Glendale, ("Real Parties in Interest") answer the Verified Petition for Alternative Writ of Mandate as follows ("Petition"):

1. Answering Paragraph 1 of the Petition, Real Parties in Interest admit that petitioners filed an application with the California Attorney General for leave to sue in *quo warranto* pursuant to Code Civ. Proc., § 803 challenging Real Party in Interest, Frank Quintero's title to the office of Councilman of the City of Glendale. Except as specifically admitted, Real Parties in Interest deny the remaining allegations in Paragraph 1.

2. Answering Paragraph 2 of the Petition, Real Parties in Interest admit that the petitioners' *quo warranto* application was denied by Respondent California Attorney General Kamala Harris. Except as specifically admitted, Real Parties in Interest deny the remaining allegations in Paragraph 2.

3. Answering Paragraph 3 of the Petition, Real Parties in Interest admit that they are the Real Parties in Interest. Except as specifically admitted, Real Parties in Interest deny the remaining allegations in Paragraph 3.

4. Answering Paragraph 4 of the Petition, Real Parties in Interest admit that the City of Glendale held its municipal election on April 2, 2013 where the electorate voted on candidates to fill three seats on the City Council and to fill the position of City Treasurer. Except as specifically, admitted Real Parties in Interest deny the remaining allegations in Paragraph 4.

5. Answering Paragraph 5 of the Petition, Real Parties in Interest admit the California law with respect to public elections and the results of those elections speak for themselves. Real Parties in Interest further admit that Councilman Quintero did not run for re-election and that there were three open City Council seats that the electorate voted on during the April 2, 2013 election. Except as specifically, admitted Real Parties in Interest deny the remaining allegations in Paragraph 5.

6. Answering Paragraph 6 of the Petition, Real Parties in Interest admit the California law with respect to public elections and the results of those elections speak for themselves. As to all other allegations contained in Paragraph 6, Real Parties in Interest lack sufficient information to admit or deny the allegations and on that basis deny the remaining allegations in Paragraph 6.

7. Answering Paragraph 7 of the Petition, Real Parties in Interest admit the allegations contained therein.

8. Answering Paragraph 8 of the Petition, Real Parties in Interest admit the allegations contained therein.

9. Answering Paragraph 9 of the Petition, Real Parties in Interest admit the

allegations contained therein.

10. Answering Paragraph 10 of the Petition, Real Parties in Interest admit that California and municipal law speak for themselves. Except as specifically, admitted Real Parties in Interest deny the remaining allegations in Paragraph 10.

11. Answering Paragraph 11 of the Petition, Real Parties in Interest admit that there was a City Council meeting on April 16, 2013 at which the Council Members discussed options for appointment or election to fill the vacancy on City Council. Real Parties in Interest further admit that the City Attorney was asked for his opinion on whether Article VI, Section 12 of the City of Glendale Charter would preclude former Mayor Quintero's appointment to City Council. Except as specifically, admitted Real Parties in Interest deny the remaining allegations in Paragraph 11.

12. Answering Paragraph 12 of the Petition, Real Parties in Interest admit that California and municipal law speak for themselves. Except as specifically admitted, Real Parties in Interest deny the remaining allegations in Paragraph 12.

13. Answering Paragraph 13 of the Petition, Real Parties in Interest admit that California and municipal law speak for themselves. Except as specifically, admitted Real Parties in Interest deny the remaining allegations in Paragraph 13.

14. Answering Paragraph 14 of the Petition, Real Parties in Interest admit that California and municipal law speak for themselves. Except as specifically admitted, Real Parties in Interest deny the remaining allegations in Paragraph 14.

15. Answering Paragraph 15 of the Petition, Real Parties in Interest admit the allegations contained therein.

16. Answering Paragraph 16 of the Petition, Real Parties in Interest admit that California law speaks for itself. Except as specifically admitted, Real Parties in Interest deny the remaining allegations in Paragraph 16.

17. Answering Paragraph 17 of the Petition, Real Parties in Interest admit that the documents submitted in the quo warranto proceeding before the Attorney General by petitioners speak for themselves. Except as specifically admitted, Real Parties in Interest deny

the remaining allegations in Paragraph 17.

18. Answering Paragraph 18 of the Petition, Real Parties in Interest admit that the documents submitted in the quo warranto proceeding before the Attorney General by petitioners speak for themselves. Petitioners deny the legal arguments contained in Paragraph 18. Except as specifically admitted, Real Parties in Interest deny the remaining allegations in Paragraph 18.

19. Answering Paragraph 19 of the Petition, Real Parties in Interest incorporate herein by reference their responses to Paragraphs 1 through 18, inclusive.

20. Answering Paragraph 20 of the Petition, Real Parties in Interest deny the allegations contained therein.

21. Answering Paragraph 21 of the Petition, Real Parties in Interest deny the allegations contained therein.

22. Answering Paragraph 22 of the Petition, Real Parties in Interest deny the allegations contained therein.

23. Answering Paragraph 23 of the Petition, Real Parties in Interest lack sufficient information and knowledge to admit or deny the allegations regarding petitioners' residency. Real Parties in Interest deny the remaining allegations in Paragraph 23.

24. Answering Paragraph 24 of the Petition, Real Parties in Interest deny the allegations contained therein.

25. Answering Paragraph 25 of the Petition, Real Parties in Interest deny the allegations contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

26. The Petition for Writ of Mandate and each cause of action therein, fails to state facts sufficient to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE

27. Real Parties in Interest deny that they have subjected Petitioners to the deprivation of any rights, privileges or immunities secured by the Constitution or laws of the

United States or State of California.

THIRD AFFIRMATIVE DEFENSE

28. Real Parties in Interest affirmatively state that the appointment of Real Party in Interest Frank Quintero to the elective position on the City Council was done in good faith under color of title.

FOURTH AFFIRMATIVE DEFENSE

29. Petitioners' requested relief is barred by the Constitutional doctrine of separation of powers.

FIFTH AFFIRMATIVE DEFENSE

30. Petitioners' claims in this action are barred by equitable doctrines of waiver, laches, unclean hands, and/or estoppel.

SIXTH AFFIRMATIVE DEFENSE

31. Petitioners' claims in this action are uncertain, vague, ambiguous, improper and unintelligible.

SEVENTH AFFIRMATIVE DEFENSE

32. The requested relief is barred as a matter of law because granting such relief would result in an unlawful order compelling respondent Attorney General Harris to act contrary to her Constitutional and statutory duties.

EIGHTH AFFIRMATIVE DEFENSE

33. The relief sought by Petitioners is barred because Attorney General Harris has complied with all applicable laws, statutes, and ordinances.

NINTH AFFIRMATIVE DEFENSE

34. The relief sough by Petitioners is barred because Real Parties in Interest have complied with all applicable laws, statutes, and ordinances.

TENTH AFFIRMATIVE DEFENSE

35. The requested relief is barred as a matter of law because granting such relief would result in constitutional deprivation of Real Party in Interest Quintero's fundamental right to hold elected office.

ELEVENTH AFFIRMATIVE DEFENSE

36. Petitioners' claims violate Real Party in Interest Frank Quintero's First Amendment Right to vote because petitioners' claims are raised in retaliation for a vote that Real Party in Interest Frank Quintero cast as Mayor of the City of Glendale.

PRAYER FOR RELIEF

ACCORDINGLY, Real Parties in Interest pray as follows:

1. That judgment be entered in favor of Real Parties in Interest and against petitioners on the Petition as a whole, and on each cause of action therein, and the petitioners take nothing by way of the Petition;

2. That the Petition, and each cause of action therein, be dismissed with prejudice;

3. That Real Parties in Interest be awarded costs, expenses, and attorneys' fees incurred in this action; and

4. That the Court grant Real Parties in Interest such additional relief as it deems proper.

DATED: December 23, 2013

MICHAEL J. GARCIA, CITY ATTORNEY

By: _____
ANDREW C. RAWCLIFFE
Attorneys for Real Parties in Interest
Frank Quintero and City of Glendale

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 613 East Broadway, Suite 220, Glendale, California 91206.

On December 23, 2013, I served the foregoing document described as **REAL PARTIES IN INTEREST FRANK QUINTERO'S AND CITY OF GLENDALE'S ANSWER TO VERIFIED PETITION FOR AN ALTERNATIVE WRIT OF MANDATE** on THE INTERESTED PARTIES named below by enclosing a copy in a sealed envelope addressed as follows:

C.D. Michel — Attorneys for Petitioners
Sean A. Brady
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Susan.Smith@doj.ca.gov

[ ] (BY MAIL) I deposited the envelope with the United States Postal Service with the postage fully prepaid.

[XX] (BY MAIL) I placed the envelope for collection and mailing on the date shown above, at this office, in Glendale, California, following our ordinary business practices.

I am readily familiar with this office's practice of collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service in a sealed envelope with postage fully prepaid.

[XX] (BY E-MAIL) By transmitting a copy of the above listed document via e-mail to the e-mail address listed above and/or on the attached mailing list.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare under penalty of perjury that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on December 23, 2013, at Glendale, California.

Sheila Redding

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Attorneys for Plaintiffs/Petitioners

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CENTRAL DISTRICT

JOHN RANDO and MARIANO A. RODAS,

Plaintiffs and Petitioners,

vs.

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

REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF MANDATE AND ORDER TO SHOW CAUSE WHY PEREMPTORY WRIT SHOULD NOT ISSUE

Date: January 7, 2014
Time: 8:30 a.m.
Dept. 85

INTRODUCTION

This Court ordered Respondent Attorney General, Kamala Harris ("AG") to show cause why a peremptory writ should not issue requiring her to grant Petitioners' *quo warranto* application to remove Frank Quintero from office as a member of the Glendale City Council. The AG's primary response to that order is that her discretion in such matters is absolute and this Court has no power to issue a writ.[1] Her alternate position is that, even *if* the Court had such power, Petitioners have not shown that her denial of their application constituted a sufficient abuse of discretion to warrant this Court's compelling her to grant their application.

The AG's primary proposition is simply untenable. Courts have made clear that denials of quo warranto applications are reviewable for abuse of discretion and the specific remedy is a mandamus action against the Attorney General. *Nicolopulos v. City of Lawndale*, 91 Cal.App.4th 1221, 1228-29 (2001). The AG's backup position is also unpersuasive. She overstates her discretion in quo warranto proceedings, ignoring the plain language of Cal.C.C.P. § 803 and, in doing so, fails to rebut any of Petitioners' substantive arguments.

I. MANDAMUS MAY ISSUE TO CORRECT THE ATTORNEY GENERAL'S ABUSE OF DISCRETION IN DENYING QUO WARRANTO APPLICATIONS

The AG begins her brief in opposition by properly acknowledging that the standard for reviewing quo warranto denials is whether there was an "extreme and clearly indefensible" abuse of discretion. See, Res. Opp. at 1. However, she proceeds to assert that this Court does not have authority to review her decision. Indeed, she claims this Court would be abusing its discretion and violating the separation of powers doctrine if it found she abused her discretion. (Res. Opp, at 5-8). But, to support this proposition, the AG cites cases where courts are in fact reviewing the discretion of Attorneys General through a writ of mandate. (Res. Opp, at 7, citing *Int'l Assn. of Fire Fighters, Local 55 v. Oakland* (1985) 174 C.A.3d 687; *City of Campbell v. Mosk*, 197 Cal. App. 2d 640, 648 (1961); and *Lamb v. Webb*, 151 Cal. 451, 455 (1907).).

Contrary to the AG's assertion, the separation of powers doctrine does not prohibit or limit

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[1] *See, e.g.*, Res. Opp. at 8 (" a petition for writ of mandate is not a proper procedure, and petitioners' request for mandamus should be denied.").

this Court in this context. In fact, case law makes clear that the sole reason the writ of quo warranto survives a facial due process challenge is *because* the AG's decision is reviewable by the courts. *Nicolopulos*, 91 Cal. App. 4th at 1228-29.

The writ of quo warranto is unique because of its requirement that a private citizen first receive permission from the government (the Attorney General) to sue the government (an official who unlawfully holds office). Because this is a rare procedure, it has been argued on several occasions that the quo warranto application process violates Due Process and is unconstitutional. Courts have repeatedly rejected this argument, each time reassuring the petitioner that the writ of quo warranto does not violate due process because the Attorney General's decision to deny it is reviewable for abuse of discretion:

> Appellant suggests the quo warranto procedure does not satisfy due process because it requires the consent of the Attorney General to proceed. . . if the circumstances were such that the Attorney General abused his discretion by denying leave, appellant would have a remedy by mandamus against the Attorney General.

Nicolopulos, 91 Cal. App. 4th at 1228-29.

This view is reiterated in *Int'l Assn. of Fire Fighters, Local 55 v. Oakland* . In that case, the appellants argued that quo warranto proceedings were improper because it would commit their case to the AG's "unbridled discretion, leaving them without an adequate remedy at law." (*Int'l Assn. of Fire Fighters,* 174 C.A.3d at 695.) The Court rejected this argument, holding:

> And, with regard to the conundrum posed by appellant as to whether the ancient proceeding affords an individual sufficient protection against abuse by a government officer in the prosecution of grievances in large part distinctively private in nature such as those in the case at bench, the resolution hinges upon whether the Attorney General's control of the action is judicially reviewable by and responsive to a writ of mandamus—to the extent that it is, a proceeding in the nature of quo warranto affords an adequate remedy, since the authority to determine whether an individual might proceed to redress his grievance would reside ultimately in the courts. (*Id.* at 696.).

The court continued that it "would not hesitate to hold that mandamus would issue to correct any arbitrary, capricious, or unreasonable action by the Attorney General." (*Id.* at 697.).

Therefore, contrary to the AG's assertions, not only does the case law permit this Court to review the AG's decision to deny Petitioners' quo warranto application, Due Process *requires* that

the Court be able to.

II. THE AG'S ROLE IN QUO WARRANTO PROCEEDINGS IS TO SERVE AS GATEKEEPER AND HER DISCRETION IS LIMITED ACCORDINGLY

The AG begins her analysis of the modern use and application of the writ of quo warranto by quoting the controlling statute, California Code of Civil Procedure section 803. But, she omits the second sentence of this single-paragraph statute. That sentence speaks directly to the limits on her discretion – that is, to the heart of the matter before this Court. The full statute reads as follows, with the portion omitted by the AG in italics, and key terms underlined:

> 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, or any franchise, or against any corporation, either de jure or de facto, which usurps, intrudes into, or unlawfully holds or exercises any franchise, within this state. *And 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, or when he is directed to do so by the governor.*

Cal.C.C.P. § 803 (emphasis added). In short, the AG quoted the "may" portion of the statute and curiously left out the "must" portion.[2]

There is little debate that the primary purpose of requiring a private party to obtain permission ("leave to sue") from the AG prior to litigation is to avoid frivolous or vexatious claims against public officials. (See, *Lamb,* 151 Cal. at. 456; *Nicolopulos,* 91 Cal.App.4th at 1225.). Identifying the AG's role as gatekeeper to prevent frivolous suits is essential to understanding the limited scope of her discretion to deny a quo warranto application. This principle is further illuminated by a review of the relevant case law.

The first documented case in California discussing a court's role in reviewing the Attorney

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[2] Unfortunately, the AG's omission of important but damaging language in the quo warranto statute at issue in this case is but one example of the AG's failure to address authorities directly adverse to her position, let alone Petitioners' arguments. Another is the AG's failure to address *Nicolopulos*, the most recent and comprehensive case out of the Court of Appeal, Second District concerning the quo warranto procedure – one that specifically confirms (1) that an action in quo warranto is the *exclusive* means for removing someone from an unlawfully held office and (2) that a mandamus action is the proper way to challenge an Attorney General who refuses to grant leave to sue, i.e., a case that directly contracts the AG's position on those key points.

General's discretion in deciding quo warranto applications is *Lamb v. Webb*. In *Lamb*, the Court held that a writ of mandamus correcting the AG's denial of a quo warranto application should only issue "where the abuse of discretion by the Attorney General in refusing the leave is extreme and clearly indefensible." *Id* at 454. At first blush, this might seem an unusually high standard. But, the Court's application of this standard makes clear that it merely solidifies the AG's role in the quo warranto procedure, which is essentially to weed out frivolous litigation.("[the] chief object in requiring leave is to prevent vexatious prosecutions." *Id.* at 456.)

This is seen in how the California Supreme Court in *Lamb* applied its abuse of discretion standard. The Court analyzed Lamb's evidence supporting his quo warranto application (which was only a verified complaint). It determined that such evidence was insufficient to give the Attorney General *reason to believe* an office had been illegally usurped and thus the Attorney General did not abuse his discretion in denying the application. ("Clearly, to our minds this was not a sufficient showing to warrant a court in holding that the Attorney General ought to have been convinced that he had 'reason to believe' that [the opponent] had unlawfully intruded into and usurped said office of supervisor." *Id.*).

This application and subsequent explanation by the Court demonstrates that if there is sufficient information to give the Attorney General "*reason to believe*" that an office has been illegally usurped, then the application is not frivolous and the Attorney General must grant the quo warranto application. Therefore, logic dictates that if there is sufficient information to give the Attorney General *reason to believe* that an office has been illegally usurped and the Attorney General still denies the quo warranto application this would be sufficient to establish an "extreme and clearly indefensible abuse of discretion."

This conclusion is strengthened after reviewing the *Lamb* Court's source for this test, *Lamoreaux v. Ellis*. ("The true rule on the subject is, in our opinion, expressed by the court in *Lamoreaux v. Ellis*, 89 Mich. 146, [1891]." *Lamb*, 151 Cal. at 456). In *Lamoreaux,* the Court reviewed the Petitioner's evidence for the position that an office had been unlawfully usurped concluding there was insufficient, "reasonable grounds for the belief that the incumbent of the office is an intruder therein." *Id.* at 817.

This case makes clear that the focus of courts when determining whether there is an abuse of discretion by the Attorney General, turns on the facts of the case. If there are sufficient facts from which the Attorney General should have had a reasonable belief that the office was unlawfully usurped and nevertheless denies the quo warranto application, then she has abused her discretion in an extreme and clearly indefensible manner.

III. THE ATTORNEY GENERAL'S DISCRETION IN REVIEWING QUO WARRANTO APPLICATIONS MUST BE OBJECTIVE

The AG asserts in general terms that when she decided to deny Petitioners' quo warranto application she did so in a reasoned manner and therefore did not exercise "extreme and clearly indefensible discretion." In fact, she argues that "the case before this Court does not even come close to meeting this very high burden." (Res. Opp. at 1). But, she never defines the limits this standard places on her. Instead, the AG ignores the limits on her discretion and argues that since she cannot find any case where she abused her discretion, this Court should not find an abuse of discretion here. (Res. Opp. at 8).

This Court should reject the AG's generalist approach, as it lacks any legal foundation. It fails to recognize the role of this Court and the constitutional check imposed on her in quo warranto proceedings. See, *Int'l Assn. of Fire Fighters*, 174 C.A.3d at 263 ["it is, however, contrary to the policy of our law that the power to determine whether an individual shall have the privilege to be heard in the courts in the assertion of private rights should be lodged in any official or tribunal except a court or judicial office."]. If the limit cannot be defined by the AG (the one charged with making decisions under this standard) or by the courts, (the entity charged with enforcing the limit) then there is no limit, which is precisely what *Int'l Firefighter* rejected.

Fortunately, there is a standard, it just has not been fully developed, as this issue rarely makes it before the courts. As discussed above, the focus of the controlling cases is whether there is sufficient information to give the Attorney General "*reason to believe*" that an office was illegally usurped.

It appears that the AG's confusion on this issue is rooted in her belief that the "reason to believe" language provides her with a subjective standard. However, this is incorrect. As detailed

above, this standard must be an objective one, where, if a reasonable AG acting on a quo warranto application finds reasonable grounds to believe that a government official unlawfully holds office, she must grant leave to sue. The AG Harris seems to argue that her personal belief trumps all. But the standard is not whether *she* believes that Councilmember Quintero is ineligible to hold office, it is whether there are sufficient facts that give "reason to believe" that he unlawfully holds office. If there are - as is the case here - then she must grant Petitioners' application and allow for judicial resolution of the matter. If the test were as the AG suggests, then she would have "unbridled discretion" and, as case law makes clear, Due Process would be violated.

IV. THE AG HAD "REASON TO BELIEVE" QUINTERO IS UNLAWFULLY HOLDING OFFICE AND ABUSED HER DISCRETION BY DENYING PETITIONERS' QUO WARRANTO APPLICATION

Petitioners' initial brief to this court (as well as the briefs submitted to the AG attached thereto as exhibits) provides to the AG overwhelming "reason to believe" that Quintero is holding office in violation of Section 12. Both the AG and RPI admit Petitioners' view of Section 12 is plausible, and, thus, by definition, not frivolous. *See*, Res Opp. at 9, "there is more than one way to read Section 12;" RPI. Opp. at 3 "there [are] at least two interpretations of Section 12." They just propose a different - and in Petitioners' view, less plausible - interpretation, one based on a strained and complicated exercise in statutory construction. But, the question of whose interpretation of Section 12 is correct is one for the courts.

While the AG is correct that no reviewing court has upheld a writ of mandate to correct the AG's denial of a quo warranto application,[3] it is equally noteworthy that no court has upheld the AG's denial of an application based purely on interpreting a question of law. As noted above, in every case upholding the AG's denial the courts held there was insufficient evidence (facts) to give the AG reason to believe that a quo warranto application should be granted. Thus, nothing supports the notion that the AG has discretion to decide questions of law. In fact, the AG's own long established position has been that "in passing on applications for leave to sue in quo

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[3] The lower court in *Lamb* issued such a writ, but it was overturned because there was insufficient evidence to give the Attorney General "reason to believe" the office had been unlawfully usurped, not because a writ is the improper vehicle to challenge the Attorney General's discretion.

warranto, the Attorney General ordinarily does not decide the issues presented, but determines only whether or not there is a substantial question of law or fact which calls for judicial decision." (19 Ops. Cal. Atty. Gen.46.).

This case involves a pure question of law, i.e., the interpretation of Section 12. But, the AG deviated dramatically from the usual practice of allowing courts to decide such issues. After finding Petitioners had presented a substantial and serious (i.e., non-frivolous) question of law, instead of considering her gatekeeper role fulfilled, the AG chose to adjudicate their claim, denying to Petitioners the judicial review that they were entitled to under the quo warranto procedure. The AG's extensive venture into legislative history, ballot arguments, etc., to reach a particular statutory construction - regardless of whether it is correct - was an indefensible abuse of her discretion, violating the plain language of section 803, the uncontroverted role of the AG, and the separation of powers doctrine. Statutory construction based on inferences drawn from extrinsic evidence like ballot pamphlets warrant *judicial* resolution.

Even if the AG were entitled to resolve such complex legal questions on a quo warranto application, as Petitioners' pointed out in their opening brief (and unrebutted by the AG in her opposition thereto), she nonetheless abused her discretion by failing to follow basic tenets of statutory construction. For example she insists that the ballot pamphlet must be considered in construing Section 12's two-year restriction because it is an ambiguous provision but never identifies the ambiguity she sees in "any city office" that would call for such.[4] But, it is improper to look past clear language to determine the meaning of legal provisions. See, Pet. Br. A7 citing *People v. Jones*, 5 Cal.4th 1142, 1146 (1993) ["[i]f the language is clear and unambiguous. there ordinarily is no need for construction."].

Moreover, the AG failed to rebut or even address, for the second time, Petitioners' very specific arguments that, even if it were proper to consider, the ballot pamphlet supports

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[4] *Leymel v. Johnson*, 105 Cal.App. 694 (1930), cited by RPI merely explains that determining the universe of positions contemplated by "office" can be problematic, but makes clear that courts consider positions of governmental authority like that of councilmember to be an "office." *Id.* at 696; 698-99. It does not stand for the proposition that one can never determine whether a position is an "office" definitively.

Petitioners' interpretation of Section 12. See, Pet. Br. at 9-11. RPI wholly ignored those points too.

Without addressing these points, the AG cannot be certain her interpretation of Section 12 is correct. And, regardless of what the scope of the AG's discretion ultimately is determined to be, in no case can it include committing errors of law. (*Bruns v. E-Commerce Exchange, Inc.* (Cal. App. 2d Dist. 2009) 2009 WL 737663; *In re Lugo* (2008) 164 Cal.App.4th 1522, 1536, fn. 8.)

In short, Petitioners provided the AG with more than ample reason to believe that Mr. Quintero is unlawfully serving in a position for which he is ineligible, reasons solidly founded in fact. Under Section 803, the AG was bound to grant Petitioners' application and allow for judicial review of their claim.

V. THE CONSTITUTIONAL CONCERNS RAISED BY THE AG AND RPI ARE BASELESS

Petitioners do not argue, as the AG contends, that "ambiguities in language of Section 12 should be resolved in restricting the plaintiff [sic][5] from taking office" in citing *Lungren v. Deukmejian*, 45 Cal. 3d 727 (1988) Res. Opp. at 11. Rather, Petitioners are simply making the point that ambiguities could be resolved in favor of restricting an officeholder where the interpretation supporting the officeholder is contrived, as is the one set forth by the AG. The very language the AG cites from *Lungren* shows why it is a fitting example to that point. See, Res. Opp. at 11, citing *Lungren*, 45 Cal.3d at 733 . In any event, it is irrelevant since Section 12 clearly contemplates councilmembers as being subject to its two-year restriction. Glendale Charter Art. VI, sec 12.

RPI ironically argue that Quintero has a First Amendment right to be immunized from political consequences for his official decisions (an argument rejected by the U.S. Supreme Court, *Nevada Commission on Ethics v Carrigan*, 131 S. Ct. 2343, (2011)), while at the same time arguing Petitioners are precluded from pursuing a quo warranto action against Quintero simply because of their alleged political views on an unrelated matter. Setting aside that RPI's assertion about Petitioners' motives for bringing this action is completely speculative, it is irrelevant.

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[5] Presumably, the AG means Quintero in stating "plaintiff."

Taking such into account is so antithetical and offensive to our First Amendment traditions that it is not even worthy of further consideration here.[6]

VI. PETITIONERS DO NOT ASSERT SECTION 12 EFFECTUATES A TERM LIMIT

Both the AG and RPI claim Petitioners read Section 12 as a term limit. While Petitioners are not entirely clear on the relevance of their point, Petitioners maintain that Section 12 is not a term limit. To the contrary, denying *appointments* like Quintero's is a perfectly logical way for Glendale to achieve its goal in enacting the two-year ban of avoiding cronyism or self-dealing by former councilmembers, while *not* limiting the time councilmembers can remain in service.

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 council-member, 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.

CONCLUSION

The operative Glendale Charter provision (Section 12) contains two sentences that address two different time periods. The first clearly says that sitting councilmembers cannot hold "any other" city office unless expressly authorized by law or necessary to performing their "duties as a councilmember." The second just as clearly states that after a member leaves the council, he or she is barred for two years from holding "any city office or city employment." These provisions obviously are aimed at avoiding self-dealing and cronyism– like having someone's former colleagues *appoint* him to a vacant seat on a city council eight days after he left the council. And that is exactly what happened, here, precipitating Petitioners' quo warranto challenge pursuant to Section 803.

Section 803 plainly states that "the attorney-general *must* bring the action, whenever he has *reason to believe* that any such office [is] . . . unlawfully held." The plain language of Glendale's Section 12 provides more than ample evidence to support a "reason to believe" that

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[6] This argument has been rebutted throughout this process. See Exhibit E pp 5-7, attached to Petitioners' Memorandum of Points and Authorities in Support of Ex Parte Application.

Councilmember Quintero unlawfully holds his current seat on the council. It is of little import that the AG *personally* believes otherwise. The "reason to believe" standard must be an objective one; otherwise it is meaningless. The question of Section 12's meaning should be resolved by the courts.

Because, by all objective measures, there is reason to believe Mr. Quintero unlawfully sits on the city council, it was incumbent upon the AG to grant Petitioners Quo Warranto application for permission to sue. Accordingly, this Court should issue the peremptory writ.

Dated: December 31, 2013

MICHEL & ASSOCIATES, P.C.

Sean A. Brady
Attorneys for Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

On December 31, 2013, I served the following:

REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF MANDATE AND ORDER TO SHOW CAUSE WHY PEREMPTORY WRIT SHOULD NOT ISSUE

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

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 Defendants

Andrew C. Rawcliffe
Deputy City Attorney, Litigation
Glendale city Attorney's Office
613 E. Broadway, Suite 220
Glendale, CA 91206
Email: ARawcliffe@ci.glendale.ca.us
Attorneys for Defendants

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 December 31, 2013, at Long Beach, California.

__ (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
Executed on December 31, 2013, at Long Beach, California.

X (VIA ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission. Said transmission was reported and completed without error.
Executed on December 31, 2013, California.

__ (VIA FACSIMILE TRANSMISSION) As follows: The facsimile machine I used complies with California Rules of Court, Rule 2003, and no error was reported by the machine. Pursuant to Rules of Court, Rule 2006(d), I caused the machine to print a transmission record of the transmission, copies of which is attached to this declaration.
Executed on December 31, 2013, California.

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

CLAUDIA AYALA

C. D. Michel - SBN 144258
Sean A. Brady - SBN 262007
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Attorneys for Plaintiffs/Petitioners

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CENTRAL DISTRICT

JOHN RANDO and MARIANO A. RODAS,

Plaintiffs and Petitioners,

vs.

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

NOTICE OF ERRATA RE: REPLY TO RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF MANDATE AND ORDER TO SHOW CAUSE WHY PEREMPTORY WRIT SHOULD NOT ISSUE

Date: January 7, 2014
Time: 1:30 p.m.
Dept. 85

TO: ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Petitioners JOHN RANDO and MARIANO A. RODAS, request the Court take notice of the following Errata: Petitioners filed with the Court their Reply to Respondents' Opposition to Petition for Writ of Mandate and Order to Show Cause Why Peremptory Writ Should Not Issue and inadvertently noted the time of the hearing as 8:30 a.m. instead of 1:30 p.m., the correct time per the Court's December 10, 2013 order.

Please also take notice that Petitioners also inadvertently omitted attorney Sean A. Brady and his California State Bar number from the caption page of the Reply brief, which appeared on the caption page of the initial filings in this matter.

For the Court's convenience, attached please find the corrected caption page for our Petitioners' Reply to Respondents' Opposition to Petition for Writ of Mandate and Order to Show Cause Why Peremptory Writ Should Not Issue Exhibit "A."

Dated: January 3, 2014

MICHEL & ASSOCIATES, P.C.

C.D. Michel
Attorneys for Plaintiffs

EXHIBIT A

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Attorneys for Plaintiffs/Petitioners

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CENTRAL DISTRICT

JOHN RANDO and MARIANO A. RODAS,

Plaintiffs and Petitioners,

vs.

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

REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF MANDATE AND ORDER TO SHOW CAUSE WHY PEREMPTORY WRIT SHOULD NOT ISSUE

Date: January 7, 2014
Time: 1:30 p.m.
Dept. 85

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 January 3, 2014, I served the following:

NOTICE OF ERRATA RE: REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF MANDATE AND ORDER TO SHOW CAUSE WHY PEREMPTORY WRIT SHOULD NOT ISSUE

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

Mark R. Beclomgton, Supervising
Deputy Attorney General
Susan K. Smith, Deputy Attorney General
Office of the Attorney General
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Los Angeles, CA 90013
Email: Susan.Smith@doj.ca.gov
Attorney for Defendants

Andrew C. Rawcliffe
Deputy City Attorney, Litigation
Glendale city Attorney's Office
613 E. Broadway, Suite 220
Glendale, CA 91206
Email: ARawcliffe@ci.glendale.ca.us
Attorneys for Defendants

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 January 3, 2014, at Long Beach, California.

_ (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
Executed on January 3, 2014, at Long Beach, California.

X (VIA ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission. Said transmission was reported and completed without error.
Executed on January 3, 2014, California.

___ (VIA FACSIMILE TRANSMISSION) As follows: The facsimile machine I used complies with California Rules of Court, Rule 2003, and no error was reported by the machine. Pursuant to Rules of Court, Rule 2006(d), I caused the machine to print a transmission record of the transmission, copies of which is attached to this declaration.
Executed on January 3, 2014, California.

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

Catalina Kelly
CATALINA KELLY

John Rando, et al. v. Kamala Harris
BS 145904

Tentative decision on petition for peremptory writ of mandate: denied

Petitioners John Rando ("Rando") and Mariano A. Rodas ("Rodas") seek a peremptory writ of mandate compelling Respondent Kamala Harris (the "Attorney General" or the "AG") to grant Petitioners' quo warranto application permitting Petitioners to sue Real Parties-in-Interest Glendale City Councilmember Frank Quintero ("Quintero") and the City of Glendale ("City").

The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

A. Statement of the Case

Petitioners commenced this proceeding with a verified petition for alternative writ of mandate, seeking to have the Attorney General grant their application for leave to sue in quo warranto pursuant to CCP section 803 in order to challenge the title of Real Party-in-Interest, Quintero, to the City's office of Council member.

1. The Petition

The Petition alleges in pertinent part as follows.

On April 2, 2013, the City held its municipal election to elect, among others, a City Treasurer and three City Councilmembers. The terms of three council members, including Quintero, had expired in April 2013, leaving three positions for which the voters could cast their ballot. Quintero did not run for re-election. The election results were finalized on or about April 11, 2013, the new councilmembers took office, and Quintero's term as city councilmember officially terminated.

Rafi Manoukian ("Manoukian"), a sitting council member at the time of the April 2, 2013 election, ran for the position of City Treasurer and won. When Manoukian assumed the position of City Treasurer on or about April 15, 2013, a vacancy resulted on the City Council.

Per Article VI, Section 13(b) of the City Charter, any vacancy on the City Council must be filled via appointment by the majority vote of the remaining members of the City Council. Any appointment to the City Council not made within 30 working days of the vacancy must be filled by a special election called by the City Council within 120 days.

Approximately eight days after Quintero left office, the City Council appointed him under this provision to fill the vacancy left by Manoukian. Quintero's appointed term lasts until the next election in June 2014.

On May 23, 2013, Petitioners filed an application with the Attorney General for leave to sue in quo warranto, seeking to remove Quintero from office because his appointment violated City Charter section 12, which provides that "[n]o former councilmember shall hold any compensated city office or city employment until two (2) years after leaving the office of councilmember."

On October 25, 2013, the Attorney General issued an opinion denying Petitioners' application on the grounds that it was not in the public interest to burden the courts with the question of whether Quintero's appointment violates City Charter section 12. The Attorney General cited two reasons for this conclusion: (1) the extrinsic evidence strongly suggests that

City Charter section 12 does not apply to "elective offices" and Petitioners' proposed lawsuit would likely fail; and (2) Petitioners' lawsuit would likely not be resolved by a court before Quintero's appointed term ends in June 2014.

Petitioners allege that the Attorney General committed a clear abuse of her discretion, particularly since the Attorney General delayed in ruling on Petitioners' application for five months.

2. The Alternative Writ

On November 13, 2013, the same day Petitioners filed their petition, the court granted Petitioners' *ex parte* application for an alternative writ of mandate and order to show cause re why a peremptory writ of mandate should not issue.

B. Standard of Review

A party may seek to set aside an agency decision by petitioning for either a writ of administrative mandamus (CCP §1094.5) or of traditional mandamus. CCP §1085. A petition for traditional mandamus is appropriate in all actions "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station ...." CCP §1085.

A traditional writ of mandate under CCP section 1085 is the method of compelling the performance of a legal, ministerial duty. Pomona Police Officers' Assn. v. City of Pomona, (1997) 58 Cal.App.4th 578, 583-84. Generally, mandamus will lie when (1) there is no plain, speedy, and adequate alternative remedy, (2) the respondent has a duty to perform, and (3) the petitioner has a clear and beneficial right to performance." Id. at 584 (internal citations omitted). Whether a statute imposes a ministerial duty for which mandamus is available, or a mere obligation to perform a discretionary function, is a question of statutory interpretation. AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health, (2011) 197 Cal.App.4th 693, 701.

Where a duty is not ministerial and the agency has discretion, mandamus relief is unavailable unless the petitioner can demonstrate an abuse of that discretion. Mandamus will not lie to compel the exercise of a public agency's discretion in a particular manner. American Federation of State, County and Municipal Employees v. Metropolitan Water District of Southern California, (2005) 126 Cal.App.4th 247,261. It is available to compel an agency to exercise discretion where it has not done so (Los Angles County Employees Assn. v. County of Los Angeles, (1973) 33 Cal.App.3d 1, 8), and to correct an abuse of discretion actually exercised. Maniares v. Newton, (1966) 64 Cal.2d 365, 370-71. In making this determination, the court may not substitute its judgment for that of the agency, whose decision must be upheld if reasonable minds may disagree as to its wisdom. Id. at 371. An agency decision is an abuse of discretion only if it is "arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair." Kahn v. Los Angeles City Employees' Retirement System, (2010) 187 Cal.App.4th 98, 106. A writ will lie where the agency's discretion can be exercised only in one way. Hurtado v. Superior Court, (1974) 11 Cal.3d 574, 579.

No administrative record is required for traditional mandamus to compel performance of a ministerial duty or as an abuse of discretion.

C. Governing Law

1. Quo Warranto

CCP 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, or any franchise, or against any corporation, either de jure or de facto, which usurps, intrudes into, or unlawfully holds or exercises any franchise, within this state. And 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, or when he is directed to do so by the governor."

Quo warranto -- "by what authority?"-- lies to test the usurpation of office or exercise of a franchise or office. The attack is made on the procedural regularity of an office or franchise already in effect. *See* International Assn. of Fire Fighters, Local 55 v. Oakland, ("International") (1985) 174 Cal.App.3d 687, 694 (quo warranto challenge to city police and fire pension and compensation measures that had taken effect). A quo warranto action under CCP section 803 provides the sole means for a private citizen to challenge the unlawful holding of public office. Nicolopulos v. City of Lawndale, ("Nicolopulos") (2001) 91 Cal.App.4th 1221, 1225. Title to an office cannot be tried by mandamus, injunction, certiorari, or declaratory relief. Ibid.

A quo warranto action may be brought by the Attorney General, on his or her or her own information or on the complaint of a private party. CCP §803. A private citizen seeking leave to sue need only have a general public right, not an individual right to enforce. International, *supra,* 174 Cal.App.3d at 697. The action *must* be brought whenever the Attorney General "has reason to believe" that the conditions exist, or when the Attorney General is directed to do so by the Governor. CCP §803. Although the word "must" suggests a mandatory duty, the qualifying language "has reason to believe" provides the Attorney General with discretion to refuse to sue where the issue is debatable. International, *supra,* 174 Cal.App.3d at 697.

The remedy of quo warranto is vested in the People, and not in any private individual or group because disputes over title to public office are a public question of governmental legitimacy and not just a private quarrel among rival claimants. Nicolopulos, *supra,* 91 Cal.App.4th at 1228. A chief object of the requirement of leave to sue "protects public officers from frivolous lawsuits." Id. at 1229. The Attorney General's determination whether to grant leave to file a lawsuit in the name of the people of the State of California involves the exercise of discretion, and a court should compel the attorney general to violate her own judgment by ordering her to grant leave to commence a suit "only where the abuse of discretion by the attorney general in refusing the leave is extreme and clearly indefensible. Lamb v. Webb, (1907) 151 Cal. 451,455. "Only in the event of an extreme abuse of the discretion should the courts annul the Attorney General's decision." City of Campbell v. Mosk, ("City of Campbell") (1961) 197 Cal.App.2d 640,651 (Attorney General's refusal to file quo warranto over annexation of property in battle between cities was not extreme abuse of discretion).

A complaint in a quo warranto proceeding may set forth the claim of the person rightly entitled to the office, and the judgment may determine that right. CCP §§ 804, 805, 806. The rights of multiple claimants may be adjudicated in a single action. CCP §808. If the defendant is

adjudged guilty of the usurpation, the judgment must be rendered excluding the defendant from the office, with costs, and the court in its discretion may impose a fine not exceeding $5,000. CCP §809. Damages suffered by the rightful party may be recovered in a separate action. CCP §807.

2. The City Charter

Art. VI, Section 12 of the City Charter ("section 12") 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 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."

Art. VI, section 13(b) of the City Charter ("section 13(b)") provides as relevant:

> "Any vacancy occurring in the council shall be filled by a majority vote of the remaining members of the council .... If any appointment to the council, city clerk or city treasurer is not made within thirty (30) working days of the vacancy, then council shall immediately call for a special election to be held within one hundred twenty (120) days for the purpose of filling such vacancy, unless the earliest next general municipal election or next county or statewide election with which a city election may be consolidated is no more than one hundred eighty (180) days from the call for special election. A person appointed to fill a vacancy shall serve until such time as a successor may be elected at the earliest of the next general municipal election, or the next county or statewide election, with which a city election may be consolidated. The elected successor shall hold office for the remainder of the unexpired term."

D. Analysis

1. Statement of Facts

The underlying facts pertinent to the Attorney General's decision are undisputed.

The current language in section 12 stems from Proposition JJ ("Prop. JJ"), a ballot initiative passed by the voters in November 1982 which amended section 12. The pertinent language in amended section 12 provides: "No former councilmember shall hold any compensated city office or city employment until two (2) years after leaving the office of councilmember."

On April 2, 2013, the City elected a City treasurer and three council members. Quintero had held one of the three council member seats, and his term expired in April 2013. Quintero did not run for re-election, and his term as City council member officially terminated in April 2013. Manoukian, who was a sitting council member, ran for City treasurer in the same election and won. When Manoukian assumed the position of City treasurer on or about April 15, 2013, a vacancy resulted on the City Council.

Approximately eight days after Quintero left office, the City Council appointed him under section 13(b) to fill the vacancy left by Manoukian. Quintero's appointed term lasts until the next election in June 2014.

2. Petitioners' Argument

Petitioners contend that the Attorney General committed an extreme and clearly indefensible abuse of discretion in interpreting the amended section 12 to permit the appointment of Quintero to fill a vacancy on the City Council eight days after his term had expired, and by determining that the public interest would not be served by Petitioners' quo warranto lawsuit. Petitioners contend that the phrase "any compensated city office" in section 12 includes the elective office of City councilmember. According to Petitioners, once Quintero's term as councilmember expired, section 12 required that he wait at least two years before he could be elected (or appointed) to the office of councilmember.

3. The Attorney General's Opinion

Petitioners' argument was addressed by the Attorney General, who concluded that section 12 could be required as Petitioners argue to impose a two-year ban on a former council member holding any compensated position, including an elected office.

The Attorney General concluded, however, that this plain language interpretation is not supported by an obvious public purpose. Smith Decl., Ex. A ("Ex. A"), p. 5. If section 12 was intended to be a term-limiting provision, it is atypical and largely ineffective. Id., p.4, n.12. [1]

The Attorney General noted that there is an alternative interpretation of section 12:

> "On the other hand, because [Section 12] does not refer at all to elections or terms of elective office, one could read it as applying 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." Id., pp. 4-5.

The Attorney General found the language of section 12 to be ambiguous, and looked to the voters' intent in passing Prop. JJ. Ex.A, pp. 5-6.

At the time of Prop. JJ's passage, section 12 contained an express elective office exception from the ban on former councilmember public employment. [2] Id., p.6. According to the official ballot pamphlet, [3] the purpose of Prop JJ was to clarify that (1) sitting council members could obtain outside employment while serving on the City Council, which is a part-time body, and (2) council members were only banned from obtaining other City employment. In addition, the measure would extend the ban on other City employment for two years after leaving office. Id., p.6. Nothing in the pamphlet suggested that a former council member would be prohibited from seeking elective office for two years. Id, p.7.

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[1] The Attorney General's decision notes that a term limits measure for City councilmembers was considered but rejected by the City Council in 1996. Ex. A, p. 5, n.18.

[2] "No members of the council shall be eligible to any office or employment, except an elected office, during a term for which he was elected." Smith Decl., Ex. A: pp. 6-7.

[3] 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. 89 Ops.Cal.Atty.Gen. 176, 178 (2004); Raven v. Deukmejian, (1990) 52 Cal.3d 336, 349.

The ballot argument in favor of Prop. JJ focused on prohibiting a councilmember from "using his influence to obtain employment with the City until two years after leaving his council office." Id., p. 6. The ballot argument said nothing about elective office.

The Attorney General concluded that, while Prop. JJ was ambiguous, the ballot materials and the Charter as a whole indicated that the voters intended in Prop. JJ to prohibit a councilmember from using his or her influence to gain non-elective City employment when he or she leaves office. Id, p. 7.

The Attorney General relied on the fact that the eligibility to hold public office is a fundamental right in California, which may not be curtailed except by plain provisions of law. Any ambiguity must be resolved in favor of holding public office, and a two-year ban on elected office would have to be stated more explicitly. Id, p.7.

While there is room for debate, the Attorney General did not consider the question close, and the public interest would not be served by burdening the courts. The mere existence of a debatable issue is not enough to require judicial resolution through quo warranto. Id., p.8.

4. The Timing of Quo Warranto

The Attorney General does not have a ministerial duty to approve quo warranto applications. Only in the event of an extreme abuse of the discretion should the court overrule the Attorney General's decision. City of Campbell, *supra,* 197 Cal.App.2d at 651. In deciding whether to grant leave to sue in quo warranto, the Attorney General considers (1) whether the application has raised a substantial question of fact or issue of law which should be decided by a court and (2) whether it would be in the public interest to grant leave to sue. 95 Ops. Cal. Atty. Gen. 50, 54 (2012); 76 Ops. Cal. Atty. Gen. 169, 171 (1993). "[I]t is not the province of the Attorney General to pass upon the issues in controversy, but rather to determine whether there exists a state of facts or questions of law that should be determined by a court." 72 Ops. Cal. Atty. Gen. 63, 69 (1989).

Petitioners contend that the Attorney General determination that the public interest would not be served by their quo warranto lawsuit in part due to the short amount of time in which Quintero would remain in office. Acknowledging that the Attorney General has denied quo warranto application where an official is nearing the end of an elected term, Petitioners point out that Quintero was appointed, not elected. They argue that the Attorney General's five month delay in making her decision was unreasonable, and they should not be punished by her failure. Mot. at 13.

The Attorney General's opposition does not address the issue of her delay. In his opposition, Quintero only weakly argues without any evidence that in seeking a quo warranto action Petitioners are motivated to punish him for voting in favor of a City restriction on the sale of firearms. Quin. Opp. at 12.

It is not clear that the Attorney General's opinion relied on the June 2014 expiration of Quintero's term as a basis to justify denial of quo warranto. The opinion merely states that this fact "only reinforces our conclusion that the public interest is best served by denying leave to sue." Ex.A, p.8. Reinforcement is not the same thing as reliance.

To the extent that the Attorney General did rely on the shortness of Quintero's remaining term to support a conclusion that the public interest does not favor quo warranto, the court agrees with Petitioners that she could not fairly to do. When Petitioners sought leave to sue on May 23,

2013, one month after Quintero took office. The application was made when Quintero had 13 months left on his appointed term. A denial of the application five months later on the ground that Quintero's term will end in June 2014, before judicial proceedings could conclude, is a self fulfilling prophecy. Petitioners would have had more time to address the issue had the Attorney General acted with alacrity. Moreover, as Petitioners argue, it is not necessarily true that judicial proceedings could not be completed before Quintero's term ends.

The timing of a quo warranto action does not support denial of Petitioners' application.

5. Substantial Question of Fact or Law

a. The Attorney General's Discretion to Consider the Merits

Petitioners contend that the Attorney General's opinion acknowledges that Petitioners raised a question of law, but deviated from the standard practice that, "in passing on applications for leave to sue in quo warranto, the Attorney General ordinarily does not decide the issues presented, but determines only whether or not there is a substantial question of law or fact which calls for judicial decision." Mot. at 6 (citing 19 Op.Cal.Atty.Gen. 46).

Certainly the interpretation of section 12 constitutes a question of law. The Attorney General noted that section 12 is ambiguous, and devoted a fair amount of effort in considering extrinsic materials: the ballot initiative arguments and voter pamphlet. The Attorney General concluded that while Petitioners' application raises a question of law, it did not raise a *substantial* question of law:

> "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 ... " Smith Decl., Ex. A, p.8.

Despite Petitioners' argument to the contrary, the 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 a court to decide.

b. Whether the Attorney General Abused Her Discretion in Interpreting Section 12

Petitioners contend that, even if the Attorney General may consider the merits in evaluating whether there is a substantial question, her decision to adopt the interpretation of section 12 as only prohibiting a council member from stepping immediately from his or her elected office into other City employment, and not other elective office, is unsupported by the plain meaning of the provision, which applies to "compensated City office or City employment," including the office of council member. The Attorney General's interpretation, which inserts a *de facto* exception for elective office, is an unwarranted rewriting of the provision. Mot. at 8-9. It also conflicts with the City Charter because (a) section 12's term "city office" would have a different meaning than that term is used in the rest of the City Charter and (b) the City Charter expressly distinguishes between "elective" and "non-elective" offices in other provisions. Mot. at 10.

The Attorney General had the discretion to employ the tools of statutory construction in determining whether an application raises a substantial question of law. If such tools resolve the matter, then the Attorney General was entitled to find that no substantial question of law has been raised and deny the application. Put another way, the mere fact that the Attorney General recognized two possible interpretations of section 12 does not impose on her the ministerial duty to grant the application. A debatable issue does not inevitably produce quo warranto. City of Campbell, *supra*, 197 Cal.App. 2d at 650. To hold otherwise would foreclose the Attorney General's exercise of discretion on whether the debatable issue should be presented to a court. Ibid.

The Attorney General knows when the interpretation question is substantial, she should grant the application for quo warranto. In 95 Ops. Cal. Atty. Gen. 77 (2012), 2012 Cal.AG LEXIS 11, a statutory interpretation case regarding eligibility to serve as a director of a healthcare district while serving in another job, the Attorney General wrote:

> "Although we have employed many of the tools of construction at our disposal, we believe that this matter is properly within the province of a court. Again, our role is not to decide the question of Rubin's eligibility to hold the office of PMHD Director. Rather, 'the action of the Attorney General is a preliminary investigation, and the granting of the leave is not an indication that the position taken by the relator is correct, but rather that the question should be judicially determined and that quo warranto is the only proper remedy.' 'We believe that there remain substantial questions of fact and law regarding the meaning of the term 'policymaking management employee' for purposes of section *Health and Safety Code section 32110(d)*, and whether Rubin is such an employee at ECRMC. We deem these issues to be appropriate for judicial resolution." Id., p. 21.

In this case, the Attorney General relied on the official ballot pamphlet, the ballot argument, Prop. JJ's failure to clearly state that elective employment would be banned, and the inconsistency of section 12 operating as a term limit to conclude that section 12's intent was to prevent a council member form using his or her influence to obtain City employment and the provision did not ban a former council member from seeking elected City office.

The office of council member is presumably a compensated position with the City, and the plain language of the ordinance would suggest that Quintero could not hold a new City council member position for two years. However, the overriding consideration is voter intent. *See* California School Employees Assn. v. Governing Board, (1994) 8 Cal.4th 333, 340. Where the literal construction of a law would result in absurd consequences, the courts will not presume that the voters intended that construction. *See* Woo v. Superior Court, (2000) 83 Cal.App.4th 967, 975. In that circumstance, extrinsic evidence of the voters' intent must be considered despite the unambiguous language of the enactment. "'The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act'" Ibid. (citations omitted).

The plain meaning of the language in section 12 does not control if it makes little sense and/or extrinsic evidence shows another interpretation is appropriate. Petitioners' plain language interpretation of section 12 -- banning a former council member from seeking elected City office for two years -- would lead to an odd result. If so interpreted, section 12 would permit a council member to seek re-election to his or her office of council member for an indefinite number of terms. Or, as in Manoukian's case, the council member could seek election to the office of City

treasurer while in the middle of a council member term. But a council member whose term has expired would be forced to wait two years before seeking elective City office. There does not seem to be any public goal or purpose to such a result, which would in no way provide the perceived public benefits of term limits. Certainly, Petitioners do not articulate such a public purpose for this interpretation.

The argument made by Petitioners that the term "City office" in section 12's two-year ban on "any compensated City office or City employment" necessarily includes an elected office is a fair one. Mot. at 10. As Petitioners note, this is particularly true since the term "city office" is used in the immediately preceding sentence of section 12. Ibid. Petitioners further note that Prop. JJ eliminated section 12's exception for elective office for employment by a council member, and a redlined version of the two provisions is listed in the voter pamphlet. Ibid.

Neither party cites to any City ordinance defining "City office," but the term generally includes both elected and appointed offices. However, this fact is not dispositive. While the scope of the term "office" generally includes elected office, Quintero is correct that the ballot materials for Prop. JJ focus on council member employment with the City, not election to City office. Quin. Opp. at 8. The City Attorney analysis of Prop. JJ notes that existing section 12 has been interpreted to prohibit any officer or employment by the City, and the amendment will remove the ambiguity. Mot., Ex.B. The argument in favor of Prop. JJ discusses only issues of employment by the City, not election. Ibid. And the argument against Prop. JJ discusses the importance of a former council member with expertise to find employment with the City's public health or legal departments, or as city manager. There is no reference to election.

The Attorney General acknowledged that Prop. JJ was not precise, but looked to the voters' intent of curbing the improper use of influence to gain employment and law that the right to hold public office is a fundamental right which may not be curtailed except by clear provisions of law. She concluded that any ambiguity must be resolved in favor of the officeholder, and a ban on holding elective office would have to be stated more explicitly to be given effect. Ex.A, p.7.

The court agrees. Prop. 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 Petitioners have presented no rationale why the voters would have wanted section 12 to ban former council members from running for elected office.[4]

The Attorney General did not commit an extreme and clearly indefensible abuse of discretion in interpreting the amended section 12.

c. The Attorney General Was Not Obligated to Approve a Non-Frivolous Application

Petitioners contend that the issue of section 12's ambiguity must be resolved by a court. They argue that both the Attorney General and Quintero admit that Petitioners' interpretation is "plausible," and thus not frivolous. The Attorney General's gatekeeper function was fulfilled and she had an objective "reason to believe" that the office had been illegally usurped. Therefore, she was required to let a court decide. Reply at 6-7.

[4] Petitioners argue that the voters pamphlet side-by-side redline comparison of the existing section 12 and proposed Prop JJ shows that the voters intended to delete the exemption from elective office. Mot. at 11. However, the redline merely compares a completely stricken section 12 with the proposed Prop. JJ, and no inference can be drawn from it. Ex.B.

This argument concerns the extent of the Attorney General's duty. 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 Attorney General concluded that the issue was not substantial (in her words "close"), and therefore the public interest would not be served by a quo warranto action.

Petitioners rely on language in Lamb and Nicolopulos to conclude that the purpose of the requirement that a private party obtain the Attorney General's leave to sue is to weed out frivolous or vexatious claims against public officials. Reply at 3.

This is not quite a fair statement. Lamb concluded that "a chief object" in requiring leave is to prevent vexatious prosecutions. 151 Cal. at 456 (citation omitted). Nicolopulos cited the Attorney General for the statement that the leave requirement "also 'protects public officers from frivolous lawsuits.'" 91 Cal.App.4th at 1229. Thus, neither case states that weeding out frivolous claims is the *only* purpose of the leave requirement.

To the contrary, Nicolopulos expressly notes that the remedy of quo warranto 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. Nicolopulos, *supra,* 91 Cal.App.4th at 1228. 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 that the private party is raising a substantial issue furthering the public interest before authorizing a lawsuit in the People's name. *See* City of Campbell, *supra,* 197 Cal.App.2d at 648 ("In the exercise of his discretion the Attorney General must essentially determine whether the public interest would be subserved by the institution of the suit."). The considerations for this judgment exceed the simple factor of a non-frivolous claim.

The importance of the public interest was discussed in International, which drew a distinction between cases in which the proposed relator is asserting his own rights (such as a former officer holder who allegedly is wrongly ousted) as opposed to the rights of the general public. 174 Cal.App.3d at 697-98. The International court stated it would not hesitate to issue mandamus to correct an arbitrary decision by the Attorney General in a properly supported case by an aggrieved private party. Id., at 697. But the court cited to a treatise stating that, in a case of "purely public interest" the Attorney General's discretion is "arbitrary and uncontrollable, and his refusal to act does not confer on a private person a right to proceed." Id., at 698 (citing 74 C.J.S., Quo Warranto, §18, pp. 203-04). [5]

[5] As Petitioners acknowledge (Reply at 6), no reviewing court has upheld mandamus to correct denial of a quo warranto application. The court observed in International:

> "[T]his 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. 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, no such instance of mandamus issuing can be found."174 Cal.App.3d at 697.

At a minimum, the Attorney General's discretion in deciding the public interest is affected by whether the proposed relator is asserting private or public rights. Petitioners have no private legal grievance against Quintero's appointment, and assert only the general public right to question his office. The Attorney General's discretion is greater in such a circumstance, and arguably is unfettered.

Consequently, this is not a case where mandamus will lie to correct the Attorney General's abuse of discretion. While Petitioners' interpretation is plausible, the Attorney General's duty requires a more searching inquiry than ascertaining plausibility for decision by a court. There must be a real and substantial issue of fact or law for a court to decide, and it must be in the public interest to do so. The Attorney General's decision is not an extreme and clearly indefensible abuse of discretion. [6]

E. Conclusion

There was no abuse of discretion in the Attorney General's denial of Petitioners' application to pursue a lawsuit in quo warranto. The provision in question, section 12, is ambiguous in light of the ballot material. While Petitioners' position is plausible, they do not assert private rights and great deference to the Attorney General is appropriate. The Attorney General properly evaluated the extrinsic evidence, policy, and law, and she did not extreme and clearly indefensible abuse of discretion in denying the application as not in the public interest. The petition for writ of mandate is denied.

The Attorney General's counsel is ordered to prepare a proposed judgment, serve it on Petitioners' counsel for approval as to form, wait 10 days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/ non-existence of any unresolved objections. An OSC re: judgment is set for February 4, 2014.

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[6] Petitioners further argue that the Attorney General must objectively exercise her discretion that there is "reason to believe" that an office was illegally usurped, and not her subjective opinion. Reply at S-6. This contention is unsupported. The Attorney General relied on objective facts in concluding that there was not a reason to believe Quintero illegally usurped his office.

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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 RE: [PROPOSED] JUDGMENT DENYING PETITION FOR WRIT OF MANDATE** Date: January 7, 2014 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 regarding the [Proposed] Judgment denying Petition for Writ of Mandate, attached herewith. 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. As required by the tentative ruling, I prepared a proposed judgment. The Court's tentative ruling was re-typed without change and attached to the proposed judgment.

3. Petitioner's counsel, Sean A. Brady, and counsel for the real parties in interest, Andrew C. Rawcliffe, have both reviewed and approved as to form the [Proposed] Judgment Denying Petition for Writ of Mandate filed herewith. Mr. Brady has indicated his approval as to the form by signing the [Proposed] Judgment Denying Petition for Writ of Mandate.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct. Executed on January 14, 2014 in Los Angeles, California.

SUSAN K. SMITH

SA2013113708

DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **Rando, John 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; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On January 14, 2014, I served the attached **DECLARATION OF SUSAN K. SMITH RE: [PROPOSED] JUDGMENT DENYING PETITION FOR WRIT OF MANDATE** by placing a true copy thereof enclosed in a sealed envelope with the **ONTRAC Overnight Courier Service**, addressed as follows:

C.D. Michel, Esq.
Sean A. Brady, Esq.
Michel & Associates, P.C.
180 East Ocean Blvd., Suite 200
Long Beach, CA 90802
Email: SBrady@michellawyers.com
Attorneys for Plaintiffs/Petitioners

Andrew C. Rawcliffe
Deputy City Attorney, Litigation
Glendale City Attorney's Office
613 E. Broadway, RM. 220
Glendale, CA 91206
Email: ARawcliffe@ci.glendale.ca.us
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 January 14, 2014, at Los Angeles, California.

Angela Artiga
Declarant

Signature

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ORIGINAL

KAMALA D. HARRIS
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Attorneys for Respondent Attorney General Kamala D. Harris

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 ~~[PROPOSED]~~ JUDGMENT DENYING PETITION FOR WRIT OF MANDATE Dept: 85 Judge: Hon. James C. Chalfant Trial Date: January 7, 2014 Action Filed: November 13, 2013

The Petition for Writ of Mandate filed by petitioners in this matter came for hearing on January 7, 2014 in Department 85 in the above-entitled court, the Honorable James C. Chalfant presiding. Petitioners John Rando and Mariano A. Rodas were represented by Sean A. Brady. Respondent Attorney General Kamala D. Harris was represented by Deputy Attorney General

Susan K. Smith. Real Parties in Interest were represented by Deputy City Attorney Andrew C. Rawcliffe.

Having reviewed the arguments submitted by the parties, and having heard oral argument, the Court adopts the tentative decision. ~~attached hereto as Exhibit A.~~

Accordingly, IT IS ORDERED, ADJUDGED, AND DECREED that:

The Petition for Writ of Mandate filed by petitioners is DENIED in its entirety.

IT IS SO ORDERED.

Dated: 1/15/14

J. Chalfant

Hon. James C. Chalfant, Superior Court Judge

Approved as to form:

MICHEL & ASSOCIATES, P.C.

By: _____ Dated: 1/13/14

Sean A. Brady
Attorneys for Petitioners
John Rando and Mariano A. Rodas

DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **Rando, John 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; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On January 14, 2014, I served the attached **[PROPOSED] JUDGMENT DENYING PETITION FO WRIT OF MANDATE** by placing a true copy thereof enclosed in a sealed envelope with the **ONTRAC Overnight Courier Service**, addressed as follows:

C.D. Michel, Esq.
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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 January 14, 2014, at Los Angeles, California.

Angela Artiga
Declarant

Signature

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Attorneys for Petitioners/Appellants

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CENTRAL 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. BS145904

NOTICE OF APPEAL

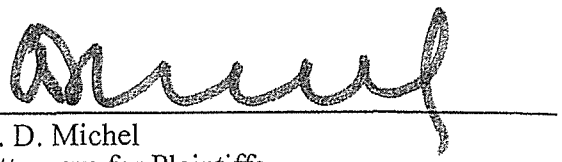
$775.

TO THIS COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that Petitioners and Appellants, John Rando and Mariano Rodas, appeal to the Court of Appeal of the State of California, Second Appellate District, from the Judgment entered denying Plaintiffs' Petition for Writ of Mandate heard on January 7, 2014, in Department 85 of the above-entitled court. Attached hereto as Exhibit "A" is the Los Angeles Superior Court Judgment.

Dated: January 22, 2014

MICHEL & ASSOCIATES, P.C.



C. D. Michel
Attorneys for Plaintiffs

EXHIBIT A

John Rando, et al. v. Kamala Harris
BS 145904

Tentative decision on petition for peremptory writ of mandate: denied

Petitioners John Rando ("Rando") and Mariano A. Rodas ("Rodas") seek a peremptory writ of mandate compelling Respondent Kamala Harris (the "Attorney General" or the "AG") to grant Petitioners' quo warranto application permitting Petitioners to sue Real Parties-in-Interest Glendale City Councilmember Frank Quintero ("Quintero") and the City of Glendale ("City").

The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

A. Statement of the Case

Petitioners commenced this proceeding with a verified petition for alternative writ of mandate, seeking to have the Attorney General grant their application for leave to sue in quo warranto pursuant to CCP section 803 in order to challenge the title of Real Party-in-Interest, Quintero, to the City's office of Council member.

1. The Petition

The Petition alleges in pertinent part as follows.

On April 2, 2013, the City held its municipal election to elect, among others, a City Treasurer and three City Councilmembers. The terms of three council members, including Quintero, had expired in April 2013, leaving three positions for which the voters could cast their ballot. Quintero did not run for re-election. The election results were finalized on or about April 11, 2013, the new councilmembers took office, and Quintero's term as city councilmember officially terminated.

Rafi Manoukian ("Manoukian"), a sitting council member at the time of the April 2, 2013 election, ran for the position of City Treasurer and won. When Manoukian assumed the position of City Treasurer on or about April 15, 2013, a vacancy resulted on the City Council.

Per Article VI, Section 13(b) of the City Charter, any vacancy on the City Council must be filled via appointment by the majority vote of the remaining members of the City Council. Any appointment to the City Council not made within 30 working days of the vacancy must be filled by a special election called by the City Council within 120 days.

Approximately eight days after Quintero left office, the City Council appointed him under this provision to fill the vacancy left by Manoukian. Quintero's appointed term lasts until the next election in June 2014.

On May 23, 2013, Petitioners filed an application with the Attorney General for leave to sue in quo warranto, seeking to remove Quintero from office because his appointment violated City Charter section 12, which provides that "[n]o former councilmember shall hold any compensated city office or city employment until two (2) years after leaving the office of councilmember."

On October 25, 2013, the Attorney General issued an opinion denying Petitioners' application on the grounds that it was not in the public interest to burden the courts with the question of whether Quintero's appointment violates City Charter section 12. The Attorney General cited two reasons for this conclusion: (1) the extrinsic evidence strongly suggests that

City Charter section 12 does not apply to "elective offices" and Petitioners' proposed lawsuit would likely fail; and (2) Petitioners' lawsuit would likely not be resolved by a court before Quintero's appointed term ends in June 2014.

Petitioners allege that the Attorney General committed a clear abuse of her discretion, particularly since the Attorney General delayed in ruling on Petitioners' application for five months.

2. The Alternative Writ

On November 13, 2013, the same day Petitioners filed their petition, the court granted Petitioners' *ex parte* application for an alternative writ of mandate and order to show cause re why a peremptory writ of mandate should not issue.

B. Standard of Review

A party may seek to set aside an agency decision by petitioning for either a writ of administrative mandamus (CCP §1094.5) or of traditional mandamus. CCP §1085. A petition for traditional mandamus is appropriate in all actions "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station ...." CCP §1085.

A traditional writ of mandate under CCP section 1085 is the method of compelling the performance of a legal, ministerial duty. Pomona Police Officers' Assn. v. City of Pomona, (1997) 58 Cal.App.4th 578, 583-84. Generally, mandamus will lie when (1) there is no plain, speedy, and adequate alternative remedy, (2) the respondent has a duty to perform, and (3) the petitioner has a clear and beneficial right to performance." Id. at 584 (internal citations omitted). Whether a statute imposes a ministerial duty for which mandamus is available, or a mere obligation to perform a discretionary function, is a question of statutory interpretation. AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health, (2011) 197 Cal.App.4th 693, 701.

Where a duty is not ministerial and the agency has discretion, mandamus relief is unavailable unless the petitioner can demonstrate an abuse of that discretion. Mandamus will not lie to compel the exercise of a public agency's discretion in a particular manner. American Federation of State, County and Municipal Employees v. Metropolitan Water District of Southern California, (2005) 126 Cal.App.4th 247,261. It is available to compel an agency to exercise discretion where it has not done so (Los Angles County Employees Assn. v. County of Los Angeles, (1973) 33 Cal.App.3d 1, 8), and to correct an abuse of discretion actually exercised. Manjares v. Newton, (1966) 64 Cal.2d 365, 370-71. In making this determination, the court may not substitute its judgment for that of the agency, whose decision must be upheld if reasonable minds may disagree as to its wisdom. Id. at 371. An agency decision is an abuse of discretion only if it is "arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair." Kahn v. Los Angeles City Employees' Retirement System, (2010) 187 Cal.App.4th 98, 106. A writ will lie where the agency's discretion can be exercised only in one way. Hurtado v. Superior Court, (1974) 11 Cal.3d 574, 579.

No administrative record is required for traditional mandamus to compel performance of a ministerial duty or as an abuse of discretion.

C. Governing Law

1. Quo Warranto

CCP 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, or any franchise, or against any corporation, either de jure or de facto, which usurps, intrudes into, or unlawfully holds or exercises any franchise, within this state. And 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, or when he is directed to do so by the governor."

Quo warranto -- "by what authority?"-- lies to test the usurpation of office or exercise of a franchise or office. The attack is made on the procedural regularity of an office or franchise already in effect. *See* International Assn. of Fire Fighters, Local 55 v. Oakland, ("International") (1985) 174 Cal.App.3d 687, 694 (quo warranto challenge to city police and fire pension and compensation measures that had taken effect). A quo warranto action under CCP section 803 provides the sole means for a private citizen to challenge the unlawful holding of public office. Nicolopulos v. City of Lawndale, ("Nicolopulos") (2001) 91 Cal.App.4th 1221, 1225. Title to an office cannot be tried by mandamus, injunction, certiorari, or declaratory relief. Ibid.

A quo warranto action may be brought by the Attorney General, on his or her or her own information or on the complaint of a private party. CCP §803. A private citizen seeking leave to sue need only have a general public right, not an individual right to enforce. International, *supra,* 174 Cal.App.3d at 697. The action *must* be brought whenever the Attorney General "has reason to believe" that the conditions exist, or when the Attorney General is directed to do so by the Governor. CCP §803. Although the word "must" suggests a mandatory duty, the qualifying language "has reason to believe" provides the Attorney General with discretion to refuse to sue where the issue is debatable. International, *supra,* 174 Cal.App.3d at 697.

The remedy of quo warranto is vested in the People, and not in any private individual or group because disputes over title to public office are a public question of governmental legitimacy and not just a private quarrel among rival claimants. Nicolopulos, *supra,* 91 Cal.App.4th at 1228. A chief object of the requirement of leave to sue "protects public officers from frivolous lawsuits." Id. at 1229. The Attorney General's determination whether to grant leave to file a lawsuit in the name of the people of the State of California involves the exercise of discretion, and a court should compel the attorney general to violate her own judgment by ordering her to grant leave to commence a suit "only where the abuse of discretion by the attorney general in refusing the leave is extreme and clearly indefensible. Lamb v. Webb, (1907) 151 Cal. 451,455. "Only in the event of an extreme abuse of the discretion should the courts annul the Attorney General's decision." City of Campbell v. Mosk, ("City of Campbell") (1961) 197 Cal.App.2d 640,651 (Attorney General's refusal to file quo warranto over annexation of property in battle between cities was not extreme abuse of discretion).

A complaint in a quo warranto proceeding may set forth the claim of the person rightly entitled to the office, and the judgment may determine that right. CCP §§ 804, 805, 806. The rights of multiple claimants may be adjudicated in a single action. CCP §808. If the defendant is

adjudged guilty of the usurpation, the judgment must be rendered excluding the defendant from the office, with costs, and the court in its discretion may impose a fine not exceeding $5,000. CCP §809. Damages suffered by the rightful party may be recovered in a separate action. CCP §807.

2. The City Charter

Art. VI, Section 12 of the City Charter ("section 12") 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 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."

Art. VI, section 13(b) of the City Charter ("section 13(b)") provides as relevant:

> "Any vacancy occurring in the council shall be filled by a majority vote of the remaining members of the council .... If any appointment to the council, city clerk or city treasurer is not made within thirty (30) working days of the vacancy, then council shall immediately call for a special election to be held within one hundred twenty (120) days for the purpose of filling such vacancy, unless the earliest next general municipal election or next county or statewide election with which a city election may be consolidated is no more than one hundred eighty (180) days from the call for special election. A person appointed to fill a vacancy shall serve until such time as a successor may be elected at the earliest of the next general municipal election, or the next county or statewide election, with which a city election may be consolidated. The elected successor shall hold office for the remainder of the unexpired term."

D. Analysis

1. Statement of Facts

The underlying facts pertinent to the Attorney General's decision are undisputed.

The current language in section 12 stems from Proposition JJ ("Prop. JJ"), a ballot initiative passed by the voters in November 1982 which amended section 12. The pertinent language in amended section 12 provides: "No former councilmember shall hold any compensated city office or city employment until two (2) years after leaving the office of councilmember."

On April 2, 2013, the City elected a City treasurer and three council members. Quintero had held one of the three council member seats, and his term expired in April 2013. Quintero did not run for re-election, and his term as City council member officially terminated in April 2013. Manoukian, who was a sitting council member, ran for City treasurer in the same election and won. When Manoukian assumed the position of City treasurer on or about April 15, 2013, a vacancy resulted on the City Council.

Approximately eight days after Quintero left office, the City Council appointed him under section 13(b) to fill the vacancy left by Manoukian. Quintero's appointed term lasts until the next election in June 2014.

2. Petitioners' Argument

Petitioners contend that the Attorney General committed an extreme and clearly indefensible abuse of discretion in interpreting the amended section 12 to permit the appointment of Quintero to fill a vacancy on the City Council eight days after his term had expired, and by determining that the public interest would not be served by Petitioners' quo warranto lawsuit. Petitioners contend that the phrase "any compensated city office" in section 12 includes the elective office of City councilmember. According to Petitioners, once Quintero's term as councilmember expired, section 12 required that he wait at least two years before he could be elected (or appointed) to the office of councilmember.

3. The Attorney General's Opinion

Petitioners' argument was addressed by the Attorney General, who concluded that section 12 could be required as Petitioners argue to impose a two-year ban on a former council member holding any compensated position, including an elected office.

The Attorney General concluded, however, that this plain language interpretation is not supported by an obvious public purpose. Smith Decl., Ex. A ("Ex. A"), p. 5. If section 12 was intended to be a term-limiting provision, it is atypical and largely ineffective. Id., p.4, n.12. [1]

The Attorney General noted that there is an alternative interpretation of section 12:

> "On the other hand, because [Section 12] does not refer at all to elections or terms of elective office, one could read it as applying 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." Id., pp. 4-5.

The Attorney General found the language of section 12 to be ambiguous, and looked to the voters' intent in passing Prop. JJ. Ex.A, pp. 5-6.

At the time of Prop. JJ's passage, section 12 contained an express elective office exception from the ban on former councilmember public employment. [2] Id., p.6. According to the official ballot pamphlet, [3] the purpose of Prop JJ was to clarify that (1) sitting council members could obtain outside employment while serving on the City Council, which is a part-time body, and (2) council members were only banned from obtaining other City employment. In addition, the measure would extend the ban on other City employment for two years after leaving office. Id., p.6. Nothing in the pamphlet suggested that a former council member would be prohibited from seeking elective office for two years. Id, p.7.

---

[1] The Attorney General's decision notes that a term limits measure for City councilmembers was considered but rejected by the City Council in 1996. Ex. A, p. 5, n.18.

[2] "No members of the council shall be eligible to any office or employment, except an elected office, during a term for which he was elected." Smith Decl., Ex. A: pp. 6-7.

[3] 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. 89 Ops.Cal.Atty.Gen. 176, 178 (2004); Raven v. Deukmejian, (1990) 52 Cal.3d 336, 349.

The ballot argument in favor of Prop. JJ focused on prohibiting a councilmember from "using his influence to obtain employment with the City until two years after leaving his council office." Id., p. 6. The ballot argument said nothing about elective office.

The Attorney General concluded that, while Prop. JJ was ambiguous, the ballot materials and the Charter as a whole indicated that the voters intended in Prop. JJ to prohibit a councilmember from using his or her influence to gain non-elective City employment when he or she leaves office. Id, p. 7.

The Attorney General relied on the fact that the eligibility to hold public office is a fundamental right in California, which may not be curtailed except by plain provisions of law. Any ambiguity must be resolved in favor of holding public office, and a two-year ban on elected office would have to be stated more explicitly. Id, p.7.

While there is room for debate, the Attorney General did not consider the question close, and the public interest would not be served by burdening the courts. The mere existence of a debatable issue is not enough to require judicial resolution through quo warranto. Id., p.8.

4. The Timing of Quo Warranto

The Attorney General does not have a ministerial duty to approve quo warranto applications. Only in the event of an extreme abuse of the discretion should the court overrule the Attorney General's decision. City of Campbell, *supra,* 197 Cal.App.2d at 651. In deciding whether to grant leave to sue in quo warranto, the Attorney General considers (1) whether the application has raised a substantial question of fact or issue of law which should be decided by a court and (2) whether it would be in the public interest to grant leave to sue. 95 Ops. Cal. Atty. Gen. 50, 54 (2012); 76 Ops. Cal. Atty. Gen. 169, 171 (1993). "[I]t is not the province of the Attorney General to pass upon the issues in controversy, but rather to determine whether there exists a state of facts or questions of law that should be determined by a court." 72 Ops. Cal. Atty. Gen. 63, 69 (1989).

Petitioners contend that the Attorney General determination that the public interest would not be served by their quo warranto lawsuit in part due to the short amount of time in which Quintero would remain in office. Acknowledging that the Attorney General has denied quo warranto application where an official is nearing the end of an elected term, Petitioners point out that Quintero was appointed, not elected. They argue that the Attorney General's five month delay in making her decision was unreasonable, and they should not be punished by her failure. Mot. at 13.

The Attorney General's opposition does not address the issue of her delay. In his opposition, Quintero only weakly argues without any evidence that in seeking a quo warranto action Petitioners are motivated to punish him for voting in favor of a City restriction on the sale of firearms. Quin. Opp. at 12.

It is not clear that the Attorney General's opinion relied on the June 2014 expiration of Quintero's term as a basis to justify denial of quo warranto. The opinion merely states that this fact "only reinforces our conclusion that the public interest is best served by denying leave to sue." Ex.A, p.8. Reinforcement is not the same thing as reliance.

To the extent that the Attorney General did rely on the shortness of Quintero's remaining term to support a conclusion that the public interest does not favor quo warranto, the court agrees with Petitioners that she could not fairly to do. When Petitioners sought leave to sue on May 23,

2013, one month after Quintero took office. The application was made when Quintero had 13 months left on his appointed term. A denial of the application five months later on the ground that Quintero's term will end in June 2014, before judicial proceedings could conclude, is a self fulfilling prophecy. Petitioners would have had more time to address the issue had the Attorney General acted with alacrity. Moreover, as Petitioners argue, it is not necessarily true that judicial proceedings could not be completed before Quintero's term ends.

The timing of a quo warranto action does not support denial of Petitioners' application.

5. Substantial Question of Fact or Law

a. The Attorney General's Discretion to Consider the Merits

Petitioners contend that the Attorney General's opinion acknowledges that Petitioners raised a question of law, but deviated from the standard practice that, "in passing on applications for leave to sue in quo warranto, the Attorney General ordinarily does not decide the issues presented, but determines only whether or not there is a substantial question of law or fact which calls for judicial decision." Mot. at 6 (citing 19 Op.Cal.Atty.Gen. 46).

Certainly the interpretation of section 12 constitutes a question of law. The Attorney General noted that section 12 is ambiguous, and devoted a fair amount of effort in considering extrinsic materials: the ballot initiative arguments and voter pamphlet. The Attorney General concluded that while Petitioners' application raises a question of law, it did not raise a *substantial* question of law:

> "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 ... " Smith Decl., Ex. A, p.8.

Despite Petitioners' argument to the contrary, the 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 a court to decide.

b. Whether the Attorney General Abused Her Discretion in Interpreting Section 12

Petitioners contend that, even if the Attorney General may consider the merits in evaluating whether there is a substantial question, her decision to adopt the interpretation of section 12 as only prohibiting a council member from stepping immediately from his or her elected office into other City employment, and not other elective office, is unsupported by the plain meaning of the provision, which applies to "compensated City office or City employment," including the office of council member. The Attorney General's interpretation, which inserts a *de facto* exception for elective office, is an unwarranted rewriting of the provision. Mot. at 8-9. It also conflicts with the City Charter because (a) section 12's term "city office" would have a different meaning than that term is used in the rest of the City Charter and (b) the City Charter expressly distinguishes between "elective" and "non-elective" offices in other provisions. Mot. at 10.

The Attorney General had the discretion to employ the tools of statutory construction in determining whether an application raises a substantial question of law. If such tools resolve the matter, then the Attorney General was entitled to find that no substantial question of law has been raised and deny the application. Put another way, the mere fact that the Attorney General recognized two possible interpretations of section 12 does not impose on her the ministerial duty to grant the application. A debatable issue does not inevitably produce quo warranto. City of Campbell, *supra*, 197 Cal.App. 2d at 650. To hold otherwise would foreclose the Attorney General's exercise of discretion on whether the debatable issue should be presented to a court. Ibid.

The Attorney General knows when the interpretation question is substantial, she should grant the application for quo warranto. In 95 Ops. Cal. Atty. Gen. 77 (2012), 2012 Cal.AG LEXIS 11, a statutory interpretation case regarding eligibility to serve as a director of a healthcare district while serving in another job, the Attorney General wrote:

> "Although we have employed many of the tools of construction at our disposal, we believe that this matter is properly within the province of a court. Again, our role is not to decide the question of Rubin's eligibility to hold the office of PMHD Director. Rather, 'the action of the Attorney General is a preliminary investigation, and the granting of the leave is not an indication that the position taken by the relator is correct, but rather that the question should be judicially determined and that quo warranto is the only proper remedy.' 'We believe that there remain substantial questions of fact and law regarding the meaning of the term 'policymaking management employee' for purposes of section *Health and Safety Code section 32110(d)*, and whether Rubin is such an employee at ECRMC. We deem these issues to be appropriate for judicial resolution." Id., p. 21.

In this case, the Attorney General relied on the official ballot pamphlet, the ballot argument, Prop. JJ's failure to clearly state that elective employment would be banned, and the inconsistency of section 12 operating as a term limit to conclude that section 12's intent was to prevent a council member form using his or her influence to obtain City employment and the provision did not ban a former council member from seeking elected City office.

The office of council member is presumably a compensated position with the City, and the plain language of the ordinance would suggest that Quintero could not hold a new City council member position for two years. However, the overriding consideration is voter intent. *See* California School Employees Assn. v. Governing Board, (1994) 8 Cal.4th 333, 340. Where the literal construction of a law would result in absurd consequences, the courts will not presume that the voters intended that construction. *See* Woo v. Superior Court, (2000) 83 Cal.App.4th 967, 975. In that circumstance, extrinsic evidence of the voters' intent must be considered despite the unambiguous language of the enactment. "'The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act'" Ibid. (citations omitted).

The plain meaning of the language in section 12 does not control if it makes little sense and/or extrinsic evidence shows another interpretation is appropriate. Petitioners' plain language interpretation of section 12 -- banning a former council member from seeking elected City office for two years -- would lead to an odd result. If so interpreted, section 12 would permit a council member to seek re-election to his or her office of council member for an indefinite number of terms. Or, as in Manoukian's case, the council member could seek election to the office of City

treasurer while in the middle of a council member term. But a council member whose term has expired would be forced to wait two years before seeking elective City office. There does not seem to be any public goal or purpose to such a result, which would in no way provide the perceived public benefits of term limits. Certainly, Petitioners do not articulate such a public purpose for this interpretation.

The argument made by Petitioners that the term "City office" in section 12's two-year ban on "any compensated City office or City employment" necessarily includes an elected office is a fair one. Mot. at 10. As Petitioners note, this is particularly true since the term "city office" is used in the immediately preceding sentence of section 12. Ibid. Petitioners further note that Prop. JJ eliminated section 12's exception for elective office for employment by a council member, and a redlined version of the two provisions is listed in the voter pamphlet. Ibid.

Neither party cites to any City ordinance defining "City office," but the term generally includes both elected and appointed offices. However, this fact is not dispositive. While the scope of the term "office" generally includes elected office, Quintero is correct that the ballot materials for Prop. JJ focus on council member employment with the City, not election to City office. Quin. Opp. at 8. The City Attorney analysis of Prop. JJ notes that existing section 12 has been interpreted to prohibit any officer or employment by the City, and the amendment will remove the ambiguity. Mot., Ex.B. The argument in favor of Prop. JJ discusses only issues of employment by the City, not election. Ibid. And the argument against Prop. JJ discusses the importance of a former council member with expertise to find employment with the City's public health or legal departments, or as city manager. There is no reference to election.

The Attorney General acknowledged that Prop. JJ was not precise, but looked to the voters' intent of curbing the improper use of influence to gain employment and law that the right to hold public office is a fundamental right which may not be curtailed except by clear provisions of law. She concluded that any ambiguity must be resolved in favor of the officeholder, and a ban on holding elective office would have to be stated more explicitly to be given effect. Ex.A, p.7.

The court agrees. Prop. 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 Petitioners have presented no rationale why the voters would have wanted section 12 to ban former council members from running for elected office.[4]

The Attorney General did not commit an extreme and clearly indefensible abuse of discretion in interpreting the amended section 12.

c. The Attorney General Was Not Obligated to Approve a Non-Frivolous Application

Petitioners contend that the issue of section 12's ambiguity must be resolved by a court. They argue that both the Attorney General and Quintero admit that Petitioners' interpretation is "plausible," and thus not frivolous. The Attorney General's gatekeeper function was fulfilled and she had an objective "reason to believe" that the office had been illegally usurped. Therefore, she was required to let a court decide. Reply at 6-7.

[4] Petitioners argue that the voters pamphlet side-by-side redline comparison of the existing section 12 and proposed Prop JJ shows that the voters intended to delete the exemption from elective office. Mot. at 11. However, the redline merely compares a completely stricken section 12 with the proposed Prop. JJ, and no inference can be drawn from it. Ex.B.

This argument concerns the extent of the Attorney General's duty. 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 Attorney General concluded that the issue was not substantial (in her words "close"), and therefore the public interest would not be served by a quo warranto action.

Petitioners rely on language in Lamb and Nicolopulos to conclude that the purpose of the requirement that a private party obtain the Attorney General's leave to sue is to weed out frivolous or vexatious claims against public officials. Reply at 3.

This is not quite a fair statement. Lamb concluded that "a chief object" in requiring leave is to prevent vexatious prosecutions. 151 Cal. at 456 (citation omitted). Nicolopulos cited the Attorney General for the statement that the leave requirement "also 'protects public officers from frivolous lawsuits.'" 91 Cal.App.4th at 1229. Thus, neither case states that weeding out frivolous claims is the *only* purpose of the leave requirement.

To the contrary, Nicolopulos expressly notes that the remedy of quo warranto 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. Nicolopulos, *supra*, 91 Cal.App.4th at 1228. 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 that the private party is raising a substantial issue furthering the public interest before authorizing a lawsuit in the People's name. *See* City of Campbell, *supra*, 197 Cal.App.2d at 648 ("In the exercise of his discretion the Attorney General must essentially determine whether the public interest would be subserved by the institution of the suit."). The considerations for this judgment exceed the simple factor of a non-frivolous claim.

The importance of the public interest was discussed in International, which drew a distinction between cases in which the proposed relator is asserting his own rights (such as a former officer holder who allegedly is wrongly ousted) as opposed to the rights of the general public. 174 Cal.App.3d at 697-98. The International court stated it would not hesitate to issue mandamus to correct an arbitrary decision by the Attorney General in a properly supported case by an aggrieved private party. Id., at 697. But the court cited to a treatise stating that, in a case of "purely public interest" the Attorney General's discretion is "arbitrary and uncontrollable, and his refusal to act does not confer on a private person a right to proceed." Id., at 698 (citing 74 C.J.S., Quo Warranto, §18, pp. 203-04). [5]

---

[5] As Petitioners acknowledge (Reply at 6), no reviewing court has upheld mandamus to correct denial of a quo warranto application. The court observed in International:

> "[T]his 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. 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, no such instance of mandamus issuing can be found."174 Cal.App.3d at 697.

At a minimum, the Attorney General's discretion in deciding the public interest is affected by whether the proposed relator is asserting private or public rights. Petitioners have no private legal grievance against Quintero's appointment, and assert only the general public right to question his office. The Attorney General's discretion is greater in such a circumstance, and arguably is unfettered.

Consequently, this is not a case where mandamus will lie to correct the Attorney General's abuse of discretion. While Petitioners' interpretation is plausible, the Attorney General's duty requires a more searching inquiry than ascertaining plausibility for decision by a court. There must be a real and substantial issue of fact or law for a court to decide, and it must be in the public interest to do so. The Attorney General's decision is not an extreme and clearly indefensible abuse of discretion. [6]

E. Conclusion

There was no abuse of discretion in the Attorney General's denial of Petitioners' application to pursue a lawsuit in quo warranto. The provision in question, section 12, is ambiguous in light of the ballot material. While Petitioners' position is plausible, they do not assert private rights and great deference to the Attorney General is appropriate. The Attorney General properly evaluated the extrinsic evidence, policy, and law, and she did not extreme and clearly indefensible abuse of discretion in denying the application as not in the public interest. The petition for writ of mandate is denied.

The Attorney General's counsel is ordered to prepare a proposed judgment, serve it on Petitioners' counsel for approval as to form, wait 10 days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/ non-existence of any unresolved objections. An OSC re: judgment is set for February 4, 2014.

[6] Petitioners further argue that the Attorney General must objectively exercise her discretion that there is "reason to believe" that an office was illegally usurped, and not her subjective opinion. Reply at S-6. This contention is unsupported. The Attorney General relied on objective facts in concluding that there was not a reason to believe Quintero illegally usurped his office.

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

On January 22, 2014, I served the foregoing document(s) described as

NOTICE OF APPEAL

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 January 22, 2014, at Long Beach, California.

__ (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
Executed on January 22, 2014, at Long Beach, California.

__ (OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt on the same day in the ordinary course of business. Such envelope was sealed and placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance.
Executed on January 22, 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.

___ (FEDERAL) I declare that I am employed in the office of the member of the bar of this court at whose direction the service was made.

CLAUDIA AYALA

"SERVICE LIST"

JOHN RANDO et al. v. KAMALA HARRIS et al.

Case No.: BS145904

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 Defendants	Attorney for Defendant Kamala Harris
Andrew C. Rawcliffe Deputy City Attorney, Litigation Glendale city Attorney's Office 613 E. Broadway, Suite 220 Glendale, CA 91206 Email: ARawcliffe@ci.glendale.ca.us Attorneys for Defendants	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 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

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*
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Sean A. Brady - S.B.N. 262007
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ATTORNEY FOR *(Name)*: Proposed Relators

ORIGINAL FILED

JAN 22 2014

CIVIL APPEALS
ROOM 111

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
STREET ADDRESS: 111 North Hill Street
MAILING ADDRESS: 111 North Hill Street
CITY AND ZIP CODE: Los Angeles, CA 90012
BRANCH NAME: Stanley Mosk Courthouse

Plaintiff/Petitioner: John Rando and Mariano A. Rodas
Defendant/Respondent: Kamala Harris, et al

APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)

Superior Court Case Number: BS145904

RE: Appeal filed on *(date)*: January 22, 2014

Court of Appeal Case Number *(if known)*:

Notice: Please read form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.

1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the superior (*check a, b, c, d, or e and fill in any required information):*

a. ☐ A clerk's transcript under rule 8.122. (*You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.)*

(1) ☐ I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.

(2) ☐ I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have attached the following document *(check (a) or (b)):*

(a) ☐ An order granting a waiver of court fees and costs under rule 3.50 et seq.; or

(b) ☐ An application for a waiver of court fees and costs under rule 3.50 et seq. (*Use* Request to Waive Court Fees *(form FW-001) to prepare and file this application.*)

b. ☒ An appendix under rule 8.124.

c. ☐ The original superior court file under rule 8.128. (NOTE: *Local rules in the Court of Appeal, First, Third, Fourth, and Fifth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.*)

d. ☐ An agreed statement under rule 8.134. *(You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)*

e. ☐ A settled statement under rule 8.137. *(You must complete item 2b(3) below and attach to your proposed statement on appeal copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.137(b)(3).)*

2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I elect to proceed:

a. ☐ WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.

Case Name: John Rando et al. v. Kamala Harris	Superior Court Case Number: BS145904

b. [X] WITH the following record of the oral proceedings in the superior court:

(1) [X] A reporter's transcript under rule 8.130. *(You must fill out the reporter's transcript section on page 3 of this form.)* I have *(check all that apply):*

(a) [X] Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).

(b) [ ] Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).

(c) [ ] Attached the reporter's written waiver of a deposit for *(check either (i) or (ii)):*

(i) [ ] all of the designated proceedings.

(ii) [ ] part of the designated proceedings.

(d) [ ] Attached a certified transcript under rule 8.130(b)(3).

(2) [ ] An agreed statement. *(Check and complete either (a) or (b) below.)*

(a) [ ] I have attached an agreed statement to this notice.

(b) [ ] All the parties have agreed in writing (stipulated) to try to agree on a statement. *(You must attach a copy of this stipulation to this notice.)* I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.

(3) [ ] A settled statement under rule 8.137. *(You must attach the motion required under rule 8.137(a) to this form.)*

3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT

[ ] I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court *(give the title and date or dates of the administrative proceeding):*

Title of Administrative Proceeding	Date or Dates

4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

(You must complete this section if you checked item 1a. above indicating that you elect to use a clerk's transcript as the record of the documents filed in the superior court.)

a. **Required documents.** The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.

Document Title and Description	Date of Filing

(1) Notice of appeal

(2) Notice designating record on appeal *(this document)*

(3) Judgment or order appealed from

(4) Notice of entry of judgment *(if any)*

(5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order *(if any)*

(6) Ruling on one or more of the items listed in (5).

(7) Register of actions or docket *(if any)*

Case Name: John Rando et al. v. Kamala Harris	Superior Court Case Number: BS145904

4. **NOTICE DESIGNATING CLERK'S TRANSCRIPT**

b. **Additional documents.** *(If you want any documents from the superior court proceeding in addition to the items listed in a. above to be included in the clerk's transcript, you must identify those documents here.)*

☐ I request that the clerk include the following documents from the superior court proceeding in the transcript. *(You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed)*

	Document Title and Description	Date of Filing
(8)		
(9)		
(10)		
(11)		
(12)		

☐ See additional pages.

c. **Exhibits to be included in clerk's transcript.**

☐ I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court *(for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):*

	Exhibit Number	Description	Admitted (Yes/No)
(1)			
(2)			
(3)			
(4)			
(5)			

☐ See additional pages.

5. **NOTICE DESIGNATING REPORTER'S TRANSCRIPT**

(You must complete this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.)

a. I request that the reporters provide *(check one):*

(1) ☒ My copy of the reporter's transcript in paper format.

(2) ☐ My copy of the reporter's transcript in computer-readable format.

(3) ☐ My copy of the reporter's transcript in paper format and a second copy in computer-readable format.

(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

Case Name: John Rando et al. v. Kamala Harris	Superior Court Case Number: BS145904

b. **Proceedings.**

I request that the following proceedings in the superior court be included in the reporter's transcript. *(You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions—the name of the court reporter who recorded the proceedings, and whether a certified transcript of the designated proceeding was previously prepared.)*

	Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)	1/7/2011	85	Partial	Petition for Writ of Mandate Hearing	Louis R. Machuca	[X] Yes [ ] No
(2)						[ ] Yes [ ] No
(3)						[ ] Yes [ ] No
(4)						[ ] Yes [ ] No
(5)						[ ] Yes [ ] No
(6)						[ ] Yes [ ] No
(7)						[ ] Yes [ ] No

c. The proceedings designated in 5b [X] include [ ] do not include all of the testimony in the superior court.

If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal *(rule 8.130(a)(2) provides that your appeal will be limited to these points unless, on motion, the reviewing court permits otherwise).*

Date: January 22, 2014

C. D. Michel
(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

On January 22, 2014, I served the foregoing document(s) described as

APPELLANTS NOTICE DESIGNATING RECORD ON APPEAL

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 January 22, 2014, at Long Beach, California.

__ (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
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Executed on January 22, 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.

__ (FEDERAL) I declare that I am employed in the office of the member of the bar of this court at whose direction the service was made.

CLAUDIA AYALA

"SERVICE LIST"

JOHN RANDO et al. v. KAMALA HARRIS et al.

Case No.: BS145904

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 Defendants	Attorney for Defendant Kamala Harris
Andrew C. Rawcliffe Deputy City Attorney, Litigation Glendale city Attorney's Office 613 E. Broadway, Suite 220 Glendale, CA 91206 Email: ARawcliffe@ci.glendale.ca.us Attorneys for Defendants	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 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

- General Information
- Online Services
- Tools for Litigators
- Complex Court
- Collections Court
- Limited Civil Court
- Personal Injury Court
- Unlawful Detainer Court
- Get Help
- Civil Forms
- Civil Fees
- Civil Locations
- Court Rules

Case Summary

Please make a note of the Case Number.

Click here to access document images for this case.
If this link fails, you may go to the Case Document Images site and search using the case number displayed on this page.

Case Number: BS145904
JOHN RANDO, ET AL VS. KAMALA HRRIS, ET AL

Filing Date: 11/13/2013
Case Type: Writ-Oth Ltd Court Review (General Jurisdiction)
Status: Judgment by Court-Petition Denied 01/15/2014

Future Hearings

None

Documents Filed | Proceeding Information

Parties

ANDREW C. RAWCLIFFE - Attorney for Real Pty in Interest

CITY OF GLENDALE - Real Party in Interest

HARRIS KAMALA - Defendant/Respondent

JOHN RANDO - Plaintiff/Petitioner

MARIANO RODAS - Plaintiff/Petitioner

MICHEL & ASSOCIATES P.C. - Attorney for Plaintiff/Petitioner

QUINTERO FRANK - Real Party in Interest

SUSAN K. SMITH - Attorney for Deft/Respnt

Case Information | Party Information | Proceeding Information

Please make a note of the Case Number.

Click here to access document images for this case.
If this link fails, you may go to the Case Document Images site and search using the case number displayed on this page.

Documents Filed (Filing dates listed in descending order)

01/23/2014 Ntc to Atty re Notice of Appeal
Filed by Clerk

01/22/2014 Designation of Record on Appeal
Filed by Attorney for Plaintiff/Petitioner

01/22/2014 Notice of Appeal
Filed by Attorney for Plaintiff/Petitioner

01/15/2014 Judgment (denying petn for writ of mandate)
Filed by Attorney for Deft/Respnt

01/14/2014 Declaration (OF SUSAN K. SMITH RE: [PROPOSED] J UDGMENT DENYING PETITION FOR WRIT OF MANDATE)

Filed by Attorney for Respondent

01/07/2014 Order (tentative decision)
Filed by Court

01/03/2014 Notice (of errata)
Filed by Attorney for Pltf/Petnr

12/31/2013 Reply/Response (TO PETITION FOR WRIT OF MANDATE AN D ORDER TO SHOW CAUSE WHY PEREMPTO RY WRIT SHOULD NOT ISSUE)
Filed by Attorney for Petitioner

12/23/2013 Answer to Petition (Frank Quintero and City of Glendal e)
Filed by Attorney for Real Pty in Interest

12/20/2013 Answer to Petition
Filed by Attorney for Deft/Respnt

12/20/2013 Opposition Document
Filed by Attorney for Deft/Respnt

12/20/2013 Declaration (of susan k. smith)
Filed by Attorney for Deft/Respnt

12/20/2013 Opposition Points & Authorities
Filed by Attorney for Real Pty in Interest

12/10/2013 Order (granting petnrs app for altern writ)
Filed by Attorney for Pltf/Petnr

11/13/2013 Complaint

11/13/2013 Ex-parte Request for Order
Filed by Attorney for Petitioner

11/13/2013 Declaration (of notice in support of ex parte)
Filed by Attorney for Petitioner

11/13/2013 Points and Authorities (in support of ex parte)
Filed by Attorney for Petitioner

11/13/2013 Points and Authorities (in opposition to ex parte)
Filed by Attorney for Deft/Respnt

11/13/2013 Declaration (of Smith in support of opposition to ex parte)
Filed by Attorney for Deft/Respnt

11/13/2013 Opposition Points & Authorities (to ex parte application)
Filed by Attorney for Real Pty in Interest

Proceedings Held (Proceeding dates listed in descending order)

01/15/2014 at 03:51 pm in Department 85, James C. Chalfant, Presiding
Notice of Entry of Judgment mailed - **Completed**

01/07/2014 at 01:30 pm in Department 85, James C. Chalfant, Presiding
Order to Show Cause (RE WHY A PEREMPTORY WRIT OFMANDATE SHOULD NOT ISSUE) - **Denied**

11/13/2013 at 08:30 am in Department 85, James C. Chalfant, Presiding
Exparte proceeding - **Granted**

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

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

APPELLANT'S APPENDIX
VOLUME II OF III - AA000154 - AA000347

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 February 12, 2014, at Long Beach, California.

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

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

CLAUDIA AYALA

SERVICE LIST

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

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 Defendants	Attorney for Defendant Kamala Harris
Andrew C. Rawcliffe Deputy City Attorney, Litigation Glendale city Attorney's Office 613 E. Broadway, Suite 220 Glendale, CA 91206 Email: ARawcliffe@ci.glendale.ca.us Attorneys for Defendants	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 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