IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

JOHN RANDO and MARIANO A. RODAS, Petitioners and Appellants, vs. KAMALA HARRIS, individually and in her official capacity as Attorney General; Respondent and Appellee, FRANK QUINTERO, individually and in his official capacity as Glendale City Councilmember, CITY OF GLENDALE, Real Parties in Interest.	Case No. B254060

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

APPELLANTS' OPENING BRIEF

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APPELLANT/PETITIONER: John Rando and Mariano A. Rodas RESPONDENT/REAL PARTY IN INTEREST: Kamala Harris, Attorney General, Frank Quintero, Glendale City Councilmember	

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Date: February 10, 2014

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(TYPE OR PRINT NAME)

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INTRODUCTION

This appeal raises an issue of the utmost importance to the integrity of our form of government: What judicial remedy is available to a private citizen to challenge the Attorney General's denial of that citizen's right to pursue a non-frivolous lawsuit seeking removal of a public official from an office unlawfully held? The trial court decision below suggests that, in effect, there is none – unless the challenger has a *private* interest in holding that particular office. Of course the statute allowing members of the general public, like Appellants here, to bring an action "in quo warranto" (the sole procedure for such citizen actions) makes no such distinction. Nevertheless, the trial court's decision finding that the Attorney General has "arguably unfettered" discretion in blocking such actions, renders them useless in the first instance, as well as negating any hope of remedying an abuse of discretion via a subsequent mandamus action – it is difficult to abuse unfettered discretion.

That cannot be the law, for it would limit quo warranto proceedings to cases in which the challenger had some personal claim to the office unlawfully held. Ironically, the statutes that require the Attorney General's permission to proceed in quo warranto were designed to cut down on frivolous disputes between private parties seeking the same office, such as

election losers challenging election winners – not to deny the general public the right to bring a meritorious action to remove officials from office where there is reason to believe that they hold that office unlawfully, whether through election, appointment, or otherwise.

In short, the Attorney General's role in reviewing quo warranto petitions is that of a "gate keeper"– a role that the Attorney General's Office, itself, has long recognized in its own opinions. It is not the role of the Attorney General to adjudicate meritorious claims or otherwise exercise her discretion to deny citizens the right to have such claims resolved in a court of law. The Attorney General, here, did precisely that. Thus, it was incumbent upon the trial court to correct that abuse of discretion by granting Appellants' writ petition. Failing to do so was reversible error.

In this case, Petitioners-Appellants, John Rando and Mariano Rodas ("Appellants"), are Glendale residents who attempted to enforce a provision of the Glendale city charter, which provides that "No former council-member shall hold any compensated city office or city employment until two (2) years after leaving the office of councilmember." Specifically, Appellants sought to remove Glendale Councilmember Frank Quintero from office because his City Council colleagues appointed him back to the Council a mere eight (8) days after his term as an elected councilmember

had expired.

The basis for the challenge was both simple and obvious: (1) A city councilmember is a "compensated city office;" and (2) eight days is less than two years. Thus, it was and remains a meritorious quo warranto claim that warrants judicial resolution – on its face.

But, in compliance with state law, Appellants first filed an application with Respondent, California Attorney General Kamala Harris ("the AG"), requesting permission for leave to sue Quintero in quo warranto. Instead of allowing the matter to proceed to court, the AG used her "gate-keeping" authority to adjudicate the matter in full and, after a lengthy and strained analysis, denied Appellants' claim on the merits. She ruled that the public interest would not be served by the proposed lawsuit, citing two reasons.

First, the AG concluded that whether Glendale's two-year ban on former councilmembers holding "any compensated city office" applied to Quintero was not a substantial question worthy of court review because, based on her analysis, there is an implied exception to the ban for "elective offices." She reasoned further that, because the office of councilmember is *generally* an elective office, the two-year restriction did not apply to Quintero, even though he was appointed – not elected – to that office.

Second, the AG ruled that regardless of the question presented, a court would likely not be able resolve the dispute before Mr. Quintero's appointed term ends in June – a problem exacerbated by the AG's five-month delay in responding to Petitioners' facially meritorious request for leave to sue.

In short, the AG found ambiguity where there was none and then, based on a creative interpretation of extrinsic evidence, resolved that ambiguity by deleting the word "any" from the text of the provision at issue and finding an implied exception for "elective offices." Based on this "revised" version of Glendale's provision, she concluded that Appellants did not raise a substantial question of law. In addition, after having delayed ruling on the petition for five months, the AG cited the shortage of time as further reason for denying their petition.

Appellants immediately sought a writ of mandate in Superior Court to correct the AG's abuse of discretion in reaching that decision. Despite stating that if he were the Attorney General he would have granted Appellants' quo warranto application, the presiding Superior Court judge denied Appellants' petition for a writ of mandate, reasoning that the AG had "arguably unfettered" discretion to deny Appellants' application.

In doing so, the Superior Court committed reversible error by: 1) finding the AG's discretion to deny quo warranto applications broader than it actually is; 2) allowing the AG to go beyond her role as gatekeeper and to adjudicate Appellants' claim; and 3) not holding the AG – who was acting in a quasi-judicial capacity – to the rules of statutory construction that even courts are bound by, which is the basis of her erroneous interpretation of the Glendale charter provision at issue.

Accordingly, this Court should reverse the Superior Court and grant Appellants' writ against the AG compelling her to grant their quo warranto application for leave to sue Quintero. And, the Court should do so on as expedited a basis as feasible, due to the time sensitive nature of this matter, i.e., Quintero's appointed term ending in June 2014.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On April 2, 2013, the City of Glendale held its municipal election to elect, among others, a City Treasurer and three City Councilmembers. (Appellants Appendix I ["A.A. I"] 0008.)

Three councilmembers, including Quintero, had terms that expired in April 2013, leaving three councilmember positions for which the voters could cast their ballot. Quintero did not run for re-election. (A.A. I 0008.)

On or about April 11, 2013, the City of Glendale finalized the election results. (A.A. I 0008.)

On April 15, 2013, the new councilmembers took office, and Quintero's term as city councilmember officially terminated. (A.A. I 0008.)

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

Per Article VI, Section 13(b) of the Glendale City Charter, any vacancy on the city council must be filled via appointment by the majority vote of the remaining members of the council. If any appointment to the council is not made within 30 working days of the vacancy, then the council must call for a special election within 120 days to fill the vacant seat. (A.A. I 0008.)

At the city council meeting on April 16, 2013, the councilmembers discussed how to determine who to appoint to fill the vacant seat. In doing so, the city council decided to limit the pool of candidates for filling the position exclusively to former Mayors, due to their experience. (A.A. I

0080-81.) As a former Mayor, Quintero's name was raised as a possible candidate. Councilmember Ara Najarian raised a concern before the Council and the Glendale City Attorney, Michael J. Garcia, that Article VI, Section 12 of the Glendale City Charter might preclude appointment of Quintero because two years had not yet lapsed since the ending of Quintero's former term on April 15, 2013. (A.A. I 0008-9.)

Article VI, Section 12 of the Glendale City Charter was amended by Glendale voters in the City's 1982 election via Charter Amendment JJ and currently 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. (1982.)

(A.A. I 0021-62.)

Prior to Charter Amendment JJ's passage, Section 12 provided:

> 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.

(A.A. I 0064.)

The reasons for and against the amendment, as well as the effects thereof were presented to voters in the 1982 voting pamphlet. (A.A. I 0009.)

Article IV, Section 1 of the Glendale City Charter refers to city councilmembers as "officers" and Article IV, Section 3 provides that city councilmembers receive compensation from the City. (A.A. I 0009.)

In response to Councilmember Najarian's inquiry, City Attorney Garcia provided his opinion that Article VI, Section 12 would not preclude Quintero's appointment to the City Council. (A.A. I 0009.)

On April 23, 2013, approximately eight (8) days after he had left office, the City Council appointed Quintero to fill the vacancy. His appointed term lasts until the next election in June 2014. (A.A. I 0009.)

California Code of Civil Procedure section 803 requires private citizens like Appellants to apply with the Attorney General for leave to sue in quo warranto before they challenge the legality of someone's holding a public office. (A.A. I 0009-10.) On May 23, 2013, Appellants filed an application with the AG for leave to sue in quo warranto, seeking to remove Quintero from office because they believe his appointment violated Section 12. (A.A. I 0066-77.) On June 7, 2013, the City and Quintero filed an opposition to Appellants' application, reiterating City Attorney Garcia's previous position that Quintero's appointment was lawful. (A.A. I 0079-93.) And, on June 17, 2013, Appellants filed a reply to the City's opposition. (A.A. I 0095-112.)

The AG denied Appellants' application for leave to sue in quo warranto on October 25, 2013, more than five months after it was filed. (A.A. I 0114-122.) Denying Appellants' application, the AG claimed it is not in the public interest to "burden" the courts with the question of whether Quintero's appointment violates Section 12. (A.A. I 0121). The AG cited two reasons for reaching this conclusion: (1) That extrinsic evidence strongly suggests Section 12 does not apply to "*elective* offices" and Appellants' proposed lawsuit would likely fail; and (2) that Appellants' lawsuit would likely not be resolved by a court before Quintero's appointed term ends in June. (A.A. I 0121.)

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

On December 20, 2013 Respondents and Real Parties in Interest filed their opposition papers to the writ petition. (A.A. II 0192- 239.)

On December 31, 2013, Appellants filed their reply. (A.A. II 0247-258.)

On January 7, 2014, all parties participated in a hearing in Los Angeles Superior Court before the Honorable James Chalfant. (A.A. II 0281-323.)

On January 15, 2014, Judge Chalfant issued an order and tentative ruling denying Appellants' petition for a writ of mandate. (A.A. II 0278-80.) The court reasoned that the Attorney General has "arguably unfettered discretion" in denying quo warranto applications when an individual asserts a public right and that despite presenting a plausible and compelling plain meaning argument as to why Councilmember Quintero's appointment violated the City Charter, the AG properly exercised her discretion by determining that Appellants' quo warranto application did not present a substantial question of law. (A.A. II 0274.)

STANDARD OF REVIEW

This appeal presents a pure question of law. Facts are not in dispute here. The issues to be resolved turn on the interpretation and application of the Glendale City Charter and Code of Civil Procedure section 803. It is well settled that on appeal following a trial court's decision on a petition for a writ of mandate, where the facts are undisputed and the issue involves statutory interpretation, the reviewing court exercises its independent

judgment and reviews the matter *de novo*. *People v. Karriker* (2007) 149 Cal.App.4th 763.

ARGUMENT

THE SUPERIOR COURT ERRED IN RULING THAT THE ATTORNEY GENERAL DID NOT ABUSE HER DISCRETION BY DENYING APPELLANTS' QUO WARRANTO APPLICATION

I. The Attorney General's Discretion in Deciding Quo Warranto Applications Is Not Unlimited

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

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

been usurped, intruded into, or unlawfully held or exercised by any person . . ." (*Id.*, emphasis added).[1]

The mandatory language of section 803 ("must") suggests that any discretion the Attorney General has in denying quo warranto applications ends where an application provides "reason to believe" a public office is being unlawfully occupied. And the "reason to believe" standard must necessarily be an objective one–a la the "reasonable person" standard in tort law. If it were a subjective standard, i.e., reasonableness in the eyes of a particular Attorney General, the statute's mandatory language would be meaningless.

"Unfortunately, the law of our state in this area [the Attorney General's discretion] remains murky . . ." (*Intl. Assn. of Fire Fighters, Local 55 v. Oakland* (1985) 174 Cal.App.3d 687, 697.) To Appellants'

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[1] Section 803 provides in full:

> 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.

knowledge only one court has directly addressed the question of the Attorney General's discretion to deny quo warranto applications under section 803, *Lamb v. Webb* (1907) 151 Cal. 451.

In *Lamb*, the California Supreme Court held that assuming a writ of mandamus correcting the Attorney General's denial of a quo warranto application could issue, one 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 *Lamb* Court's application of that standard strongly indicates the California Supreme Court sees section 803 the same way Appellants do. The Court analyzed Lamb's evidence supporting his quo warranto application (which was only a verified complaint) and found it so lacking that it held the Attorney General did not abuse his discretion in denying the application, stating:

> 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.

(*Ibid.*)

Implicit in the *Lamb* Court's statement, however, is that courts can be warranted in holding that attorneys general "ought to have been convinced" that there is "reason to believe" an office is illegally held. In other words, where a quo warranto application presents a question that would give a reasonable Attorney General *reason to believe*–not certitude–that an office has been illegally usurped and that Attorney General nevertheless denies the application, such would generally be sufficient to establish an "extreme and clearly indefensible abuse of discretion."

This interpretation makes the most sense in light of section 803's mandatory language and when viewed in the context of the AG's primary role in quo warranto proceedings, which is to serve as a gatekeeper to prevent frivolous or vexatious claims against public officials. (*Lamb*, supra 151 Cal. 451 at p. 456; *Nicolopulos*, supra 91 Cal.App.4th at p. 1229. [a chief object of the requirement of leave to sue "protects public officers from frivolous lawsuits."].) It is also worth noting that the *Lamb* Court was dealing with a question of facts (or more precisely, lack thereof), which are traditionally afforded much less discretion than a question of law, which is at issue here. (*People v. Alvarez* (1996) 14 Cal. 4th 155, 926) ("Trial court's finding of fact . . . is reviewed under deferential substantial-evidence

standard, while its decision on the applicable law is a pure question of law and is scrutinized under the standard of independent review.").)

II. The Superior Court Afforded the AG Too Much Discretion

The Superior Court read the case law as affording the AG much more discretion in cases where, as here, a general public interest as opposed to a private one is being asserted. (A.A. II 0274.) The court found the distinction so important that at the hearing on the writ, the presiding judge, the Honorable James Chalfant, declared that if Appellants had a private interest, the court would have likely granted their writ. (A.A. II 0321 ["If I was the Attorney General, I probably would have granted this and allowed the court to decide it."]). Appellants do not have a private interest, and thus the Superior Court deferred to the AG's discretion in denying their writ petition.

But this "public interest" inferiority doctrine finds support nowhere in the applicable case law or any other authoritative source. Rather it is derived from dicta in *Fire Fighters*, which upon closer examination, does not even support such a standard in this case and actually supports Appellants' view.

In *Fire Fighters*, the plaintiffs appealed a dismissal of their lawsuit for failure to bring it as an action in quo warranto. (*Fire Fighters*, supra,

174 Cal. App.3d 687 at 693-94.) They argued they should be exempt from the quo warranto process because their injury was distinct from that suffered by the general public, (*Id.* at. 697), and that giving the Attorney General complete control of the proceedings would commit their cause to his unbridled discretion, leaving them without an adequate remedy at law, thereby violating due process. *Id.* at 695.

The appellate court upheld the lower court's ruling, finding that quo warranto proceedings do not violate due process as long as any "arbitrary, capricious, or unreasonable" action by the Attorney General can be corrected by the courts. (*Fire Fighters*, supra,174 Cal.App.3d at 696-697.) To bolster its holding about due process requirements for those relators asserting private rights, the court cited to and quoted a large excerpt from a treatise. (*Id.* at. 697, citing 74 C.J.S., Quo Warranto, §18, pp. 203-204.) It is this excerpt that the Superior Court relied on in affording the AG "arguably unfettered" discretion and denying issuance of the writ Appellants sought. (A.A. II 0274.) Setting aside that it is dicta, the Superior Court's interpretation of this excerpt was myopic.

While that excerpt says the Attorney General has "arbitrary and uncontrollable" discretion where public rights are asserted in a quo warranto proceeding, it qualified that rule with "in the absence of a statute

providing otherwise." (*Fire Fighters*, *supra*, 174 Cal.App.3d at. 697-698.) Moreover, the same excerpt immediately continues:

> On the other hand, it has also been held that in an exceptional case ***the court may in its own discretion authorize a private person to proceed notwithstanding the attorney general's refusal to institute proceedings or consent to their institution by another, and that under statute or rule of court the discretion of the attorney general is not arbitrary, but that on the contrary he is subject to the order of the court*** to file an information in the nature of quo warranto if the court deems such action in the public interest, ***and that on refusal of the attorney general to act a private citizen may bring such proceedings where essential to vindicate the public right.***

(*Id.* at. 698, emphasis added).

The controlling statute here, Code of Civil Procedure section 803, is clear that the AG's discretion is not arbitrary. To the contrary, it contains mandatory language that sets out an objective "reasonableness test," implicit in which is that a court can correct any unreasonable act by the AG. Therefore, to the extent this Court is inclined to rely on the dicta in *Fire Fighters*, such supports Appellants' view.

In any event, *Fire Fighters* should not be read as saying the AG somehow has "arguably unfettered discretion" when a public right is asserted. The case does not even concern public rights. It addresses the mandates of due process, not the scope of the AG's discretion under section 803. And, the question of what due process requires is separate from that of

what section 803 requires. Indeed, the case makes clear that individuals asserting private rights in a quo warranto application would be entitled to court review, regardless of that statute's existence.

As such, by granting the AG essentially unbridled discretion in quo warranto proceedings, the Superior Court established a new test that finds no support in case law and conflicts with the plain, mandatory language of section 803. While Appellants understand and respect Judge Chalfant's desire to exercise judicial restraint in this seldom explored area of the law, his decision should be overturned. It erroneously left Appellants without any meaningful judicial review of their important question about the legitimacy of Quintero's appointment to the Glendale City Council, which they are entitled to under section 803.

III. The Attorney General's Own Test for Deciding Quo Warranto Applications Contemplates Limits on the AG's Discretion

California Attorneys General have developed a test for evaluating quo warranto applications, which asks: (1) whether the application raised a substantial question of fact or issue of law which should be decided by a court; and (2) whether it is 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).) "In passing on leave to sue in the name of the people of the state in quo warranto, *it is not the province of the attorney general to pass on issues in*

controversy, but rather to determine whether there exists a state of fact or question of law that public interest requires be determined by a court in an action in quo warranto. (25 Ops.Cal.Atty.Gen. 332, 341 (1953), emphasis added.)

The AG herself recently 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.

(95 Ops.Cal.Atty.Gen. 77 (2012), emphasis added.)

These Attorney General opinions confirm that the Attorney General's primary role in quo warranto proceedings is as a gatekeeper, protecting public officials against frivolous or vexatious claims, *Nicolopulos*, 91 Cal.App.4th at p. 1229, not as an arbiter of meritorious claims. In other words, the AG does not have discretion to deny court review of a non-frivolous, i.e., "substantial" question of law, even if she believes the relator will not ultimately prevail in court. But that is exactly what the AG did here, as the question Appellants raise about the Glendale city charter cannot seriously be dismissed as frivolous or not "substantial."

IV. Appellants' Quo Warranto Application Objectively Meets the Attorney General's Test – the Superior Court Erred in Holding That the AG Did Not Abuse Her Discretion in Finding Otherwise

By any objective measure, Appellants' quo warranto application raised a substantial question of law that a court should decide, i.e., whether Glendale's two-year restriction on former councilmembers holding "any compensated city office" ("Section 12") precludes Quintero's appointment back on to the City Council a mere eight days after he had left his seat. The City of Glendale has taken the position that despite saying "any [] city office," Section 12's restriction was only intended to apply to non-"elective" city positions and assumes Quintero's *appointment* should still be treated as an "elective" office. The City further asserts that the ballot pamphlet discussing the 1982 amendment to Section 12 supports that view. Appellants contend that "any" is an absolute term that includes all "city offices," councilmember not being an exception–a reading that is supported by the Glendale charter's general treatment of councilmembers. As such, Appellants contend that there is no need to consult extrinsic evidence to interpret Section 12, but even if doing so were proper, such materials would support Appellants' position, not the City's (which the AG agreed with).

Courts have declared it a "cardinal principle that the charter represents the supreme law of the city, subject only to conflicting provisions

in the federal and state Constitutions and to preemptive state law." (*Harman v. City and County of San Francisco* (1972) 7 Cal.3d 150, 161.) It is axiomatic that the proper interpretation of the supreme law of Appellants' city of residence, especially when it concerns whether their public officials are legitimately holding office, raises a substantial question of law deserving of judicial review.

The AG attempts to trivialize the issue, claiming that while Appellants' interpretation of Section 12 is plausible, in her view, the more plausible interpretation is that Section 12 does not contemplate Quintero's situation, even describing the decision between the two as "not close." (A.A. I 0117-18). Based on this view, the AG concluded that the question is not deserving of judicial review.

To describe the question of which of Section 12's two interpretations is correct as "not close" in favor of the City's view is simply not a serious assessment. First, not only did Judge Chalfant disagree with the AG on that score at the Superior Court hearing on this matter, but continued on to opine that if His Honor were the AG, he would likely have granted Appellants' quo warranto application. (A.A. II 0321). Appellants do not suggest that this is dispositive evidence of the AG abusing her discretion, but it does show the question is much "closer" than the AG suggests, and it raises

questions about the AG's objectivity in this matter. Second, and more importantly, that the AG had to conduct a detailed (albeit erroneous) analysis of statutory construction and extrinsic evidence to arrive at her conclusion is inconsistent with a "close" question.

In any event, whether the plain meaning of a provision concerning the legitimacy of a municipal officeholder should be disregarded based on inferences from extrinsic evidence, the significance of which is disputed by the parties, is undeniably a substantial question of law that a *court* should decide, not the AG. That is the question Appellants have raised here. And that Appellants' interpretation of Section 12 is a legitimate one is indisputable. Indeed, both the AG and the Superior Court agree it is. (A.A. II 0254.)

Pursuant to her role as a gatekeeper against frivolous lawsuits, that should have been the end of the AG's analysis of Appellants' quo warranto petition, and she should have granted it. But, the AG decided to, without explanation, deviate from the longstanding practice of Attorneys General as articulated in Attorney General opinions, [95 Ops.Cal.Atty.Gen. 50, 54 (2012)], and adjudicate the question herself. In other words, the AG required that Appellants provide her more than "reason to believe" Quintero is unlawfully holding office, she required that they prove he is. That is not

within her discretion under Code of Civil Procedure section 803 and the Superior Court erred by allowing the AG to do so.

As to the second part of the Attorney General's test, aside from incorrectly concluding that Appellants' petition did not raise a substantial question, the only reason the AG provides for why Appellants' proposed lawsuit would not be in the public interest is the risk that the issue would become moot, A.A. I 0121, which notion the Superior Court flatly and correctly rejected, A.A. II 0269-70.

In short, by choosing to *decide* the substantial question of Quintero's eligibility under Section 12, rather than allow for a judicial determination via granting Appellants' quo warranto application, the AG departed from standard practice, exceeded her authority, and abused her discretion. And the AG articulated no legitimate public interest reason for denying Appellants access to a court on their quo warranto petition. Nor can she. Having access to courts to redress grievances is a sacred tradition in our nation's system.

The Superior Court, on the other hand, failed to exercise its authority; instead, it conferred what effectively amounts to "unfettered discretion" on the AG, allowing Appellants' mandamus action to be frustrated by the subjective opinion of the very person whose judgment and

discretion was being questioned. Doing so was error, and the Superior Court's decision denying issuance of Appellants' writ based thereon thus warrants reversal by this Court.

V. The Lower Court Erred by Permitting the AG to Repeatedly Ignore the Rules of Statutory Construction and Consequently Reach an Erroneous Interpretation of Section 12

Regardless of what level of discretion the AG enjoys, it does not and cannot include getting the law wrong. It is well settled that the incorrect interpretation of a law is an abuse of discretion. (*Bruns v. E-Commerce Exchange* (2011) *Inc.* 51 Cal.4th 717; *In re Lugo* (2008) 164 Cal.App.4th 1522, 1536, fn.8.) The AG's conclusion that Section 12's "any [] city office" most likely does not contemplate a city councilmember contravenes several basic rules of statutory construction and is patently erroneous. While the Superior Court may be correct that the AG has the "discretion to employ the tools of statutory construction," A.A. II 0271, she does not have the discretion to flout its well-established canons, and the Superior Court should not have allowed the AG to do so.

When construing the meaning of a voter-approved measure like Section 12, "voters' intent in approving a measure is our paramount concern." (*Woo v. Super. Ct.* (2000) 83 Cal.App.4th 967, 975.) To determine voters' intent, courts "first look to the words of the provision

adopted . . .." (*People v. Jones* (1993) 5 Cal.4th 1142, 1146.) Where the language in a law is clear and unambiguous, the court will "presume the city council and the voters intended the meaning apparent on its face and our inquiry ends there." (*Pope v. Supr. Ct.* (2006) 136 Cal.App.4th 871, 875-876.)

The term "any [] city office" is facially unambiguous. "Any" is by definition an absolute term that is utilized to encompass *all* of a particular subject matter. And, a councilmember is the quintessential "city office." On its face, therefore, Section 12 indisputably includes councilmembers among the "city offices" subject to its two-year restriction. Indeed, the Superior Court acknowledged such, A.A. II 0271 ("the plain language of [Section 12] would suggest that Quintero could not hold a new city council member position for two years"), and neither the AG nor the City of Glendale have provided any alternative facial meaning. Therefore, it is presumed that voters intended Section 12's two-year restriction to apply to the position of councilmember. (*Pope*, *supra*, 136 Cal.App.4th at pp. 875-876.)

Despite this presumption, the Superior Court accepted the AG's and the City of Glendale's assertion that the plain meaning of Section 12 should be disregarded because nothing appeared in the 1982 ballot pamphlet that expressly mentions that "elective" offices like councilmember would be

subject to its two year restriction, and thus voters could not have intended it to. But there does not need to be. "If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters)." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.)

To the contrary, as mentioned above, the rules of statutory construction provide that absent ambiguity, it is presumed that the voters intend the meaning apparent on the face of a provision, and in such a case, "the court may not add to the statute or rewrite it to conform to an assumed intent that is not apparent in its language." (*Lesher Commcns., Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 543; *Cadlerock Joint Venture, L.P. v. Lobel*, Cal.App., June 20, 2012, No. GO45936) 2012 WL 2335916 ["A court is not authorized to insert qualifying provisions not included in a statute and may not rewrite the statute to conform to an assumed intention which does not appear from its language."].) That is, however, exactly what the AG interpretation does. It inserts a de facto exception for "elective offices" (and assumes Quintero's *appointment* qualifies for one), despite admitting there is no mention of "elective" office in Section 12.

And the AG does so without ever specifying why the term "any"–which is by definition an absolute term that is utilized to encompass *all* of a particular subject matter–is not sufficient to eliminate the ambiguity of the term "city office" that the AG perceives. Just as a court may not insert language into a provision, nor may courts "ignore language that has been inserted." (*People v. Natl. Auto. and Cas. Ins. Co.* (2002) 98 Cal.App.4th 277.) But, the AG wholly ignores the word "any."

In any event, the AG's interpretation is based entirely on inferences from the 1982 ballot pamphlet. But, once again, the rules of statutory construction preclude her reasoning:

> a possible inference based on the ballot argument is an insufficient basis on which to ignore the unrestricted and unambiguous language of the measure itself. It would be a strained approach to constitutional analysis if we were to give more weight to a possible inference in an extrinsic source (a ballot argument) than to a clear statement in the Constitution itself.

(*Delaney v. Super. Ct.* (1990) 50 Cal.3d 785, 803.)

Therefore, it is presumed that the voters intended Section 12's facial meaning, which bars former councilmembers like Quintero from holding "any city office," including councilmember, for a period of two years after leaving office. All the applicable rules of statutory construction support

upholding that presumption. The Superior Court erred in allowing the AG to ignore those rules and find the presumption rebutted.

The Superior Court also erred in finding it permissible to look beyond the plain language of Section 12 because it believed that following its literal interpretation would somehow lead to "absurd consequences." (A.A. II 0271.) The court opined that there does not seem to be any public goal or purpose to barring a former councilmember from holding office for two years after leaving the council, especially when the same council-member "could seek re-election to his or her office of council member for an indefinite number of terms . . .." (A.A. II 0271.) The Superior Court continued, reasoning that such a result "would in no way provide the perceived public benefits of term limits." *Ibid.*

But Section 12's two-year restriction was not intended to provide the same benefits of term limits. Rather, as the Superior Court indicated, the goal is to curb the improper use of influence by former councilmembers to gain employment with the city. It should be noted that when discussions were taking place on who to appoint to the vacant seat the city council limited the pool of candidates exclusively to former mayors *because* of who they were. (See, A.A. I 0080-81 ["In making the appointment, the Council reached out to six former mayors, requesting that they apply for the vacant

position. The rationale being that a former mayor was unlikely to run in a future election but would have *sufficient institutional knowledge* to help with the city's business."].)

Yet, neither the City of Glendale nor the AG nor the Superior Court provides any explanation why Quintero's situation should be excluded from the voters' concerns about the use of improper influence when it seems it could conceivably be the epitome of what voters intended to prevent, i.e., council-members being allowed to bypass expensive and difficult elections to be appointed by their colleagues.[2] Indeed, it would be an odd coincidence that Glendale's charter calls for general elections every two years but that Section 12 is not intended to affect appointments like that of Quintero between elections. (A.A. I 0029.)

Therefore, interpreting Section 12 as Appellants do would not lead to "absurd consequences" at all. To the contrary, it would further the stated purpose of Section 12, i.e., to prevent former councilmembers from using influence to obtain employment from the city.

Moreover, "absurd consequences" *would* result from interpreting Section 12 as the City of Glendale and the AG do. Article IV, Sections 1

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[2] To be clear, Appellants are not accusing Mr. Quintero, or any council-member, of having engaged in such a conspiracy. But it is reasonable to assume that voters intended to preclude the appointment of former councilmembers back on the council within two years of leaving office to prevent such a situation.

and 3 of the Charter, clearly identify councilmembers as "officers" who receive "compensation." (A.A. I 0028.) The AG's interpretation would therefore require Section 12 to have a different definition of "city office" from the rest of Glendale's charter, *including the sentence immediately preceding it*. That sentence provides, in relevant part: "A councilmember shall not hold any *other* City office . . .." (Glendale, Cal., City Charter art. VI, sec. 12 (1982),emphasis added); A.A. I 032. The modifier "other" necessarily means that "City office" includes the subject of the sentence, which is "councilmember."

Not only would reading "city office" as having two different definitions in adjacent sentences, in the same section of the charter, covering the same subject matter be "absurd," it would also run afoul of the rules of statutory construction, which provide that "[e]very statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect." (*Stafford v. L.A. Cnty Emps.' Retirement Bd.* (1954) 42 Cal.2d 795, 799); *see also Lungren*, *supra*, 45 Cal.3d at p.735 [explaining that "each sentence must be read not in isolation but in the light of the statutory scheme."]

In sum, the Superior Court erred by allowing the AG to repeatedly misapply and ignore well-established rules of statutory construction when

she determined that Appellants' interpretation of Section 12 did not present a substantial question of law. Denying Appellants' application based on such an interpretation was, therefore, an abuse of discretion.

CONCLUSION

Appellants' quo warranto application provided the Attorney General, by any objective standard, "reason to believe" that Councilmember Quintero is unlawfully holding office. As such, the AG should have granted it. Instead, she formulated a contrived justification for denying it, which was not only unsupported by the rules of statutory construction, but was beyond her authority as a gatekeeper of frivolous quo warranto actions.

The Superior Court erred in refusing to exercise its authority to correct the Attorney General's abuse of discretion in this regard. Accordingly, Appellants respectfully request that this Court overturn the lower courts denial of their writ petition and order that a writ issue compelling the Attorney General to grant Appellants' quo warranto application for leave to sue Councilmember Quintero for holding office in violation of the City of Glendale's charter.

Dated: February 10, 2014

MICHEL & ASSOCIATES, P.C.

By: _____
C. D. MICHEL
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.204, subdivision (c)(1), of the California Rules of Court, I hereby certify that the attached Respondents' Brief is double-spaced, typed in Times New Roman proportionally spaced 13-point font, and the brief contains 6745 words of text, including footnotes, as counted by the WordPerfect word-processing program used to prepare the brief.

Dated: February 10, 2014 MICHEL & ASSOCIATES, P.C.

By: _____
C. D. MICHEL
Attorney for Respondents

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 10, 2014, I served the foregoing document(s) described as

APPELLANTS' OPENING BRIEF

on the interested parties in this action by placing

[ ] the original

[X] a true and correct copy

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

"SEE ATTACHED SERVICE LIST"

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

Executed on February 10, 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 10, 2014, at Long Beach, California.

CLAUDIA AYALA

SERVICE LIST

JOHN RANDO ET AL. v. KAMALA HARRIS ET AL.

CASE NO. B254060

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California Supreme Court	Via Electronic Service (CRC 8.212 (c)(2)