IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION 2

JOHN RANDO, 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

BRIEF OF REAL PARTIES IN INTEREST FRANK QUINTERO AND CITY OF GLENDALE

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Cal. Rules of Court, Rule 8.208)

There are no interested entities or persons to list in this certificate (Cal. Rules of Court, Rule 8.208(e)(3)).

DATED: March 20, 2014

MICHAEL J. GARCIA, CITY ATTORNEY

By: _____

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JOINDER

Real parties in interest City of Glendale and Councilman Frank Quintero join in respondent Attorney General Kamala D. Harris' brief on all grounds and reasons set forth therein. The following brief is submitted to provide the Court with the City of Glendale's long-standing, well-established interpretation of its Charter.

INTRODUCTION

The Attorney General has the discretion to deny an application to sue in quo warranto even if the application raises a debatable issue concerning an official's title to elective office. Unless there is an extreme abuse of discretion, the Attorney General cannot be compelled to grant leave to bring a quo warranto action in the name of the People of the State of California.

Here, the Attorney General found appellants' challenge to Councilman Frank Quintero's appointment fell well below this standard. The Superior Court agreed with the Attorney General's analysis and with the conclusion that the City of Glendale's Charter does not prohibit Councilman Quintero's appointment to elective office. As is demonstrated below, appellants' challenge to Councilman Quintero's appointment is predicated on a misguided, unconstitutional interpretation of the City's Charter that is contrary to the voters' intent. A writ of mandate does not lie.

STATEMENT OF FACTS

Appointment Of Councilman Frank Quintero

On April 2, 2013, the City of Glendale held a municipal election. (Appellants' Appendix ("AA"), Vol. II, Tab 14, at p. 000215) Councilman Rafi Manoukian, who had

14 months left on his term, was elected City Treasurer. (Ibid.) This resulted in a vacancy on the City Council. (Ibid.)

Pursuant to Article VI, Section 13(b) of the 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 for the remainder of the unexpired term. (Ibid.; AA, Vol. I, Tab 2, at p. 000032) Article VI, Section 13 did not and does not impose any limitations on who the Council can appoint to fill a vacancy on the Council. (AA, Vol. I, Tab 2, at pp. 000031-000032) The only limitation to elective office is found in Article VI, Section 1, which provides that "[e]ach candidate for member of council shall be a qualified elector pursuant to State law." (AA, Vol. I, Tab 2, at p. 000029)

On April 23, 2013, the Council unanimously appointed Councilman Quintero, who had retired as Mayor of the City on April 15, 2013, to the vacant Council position. (AA, Vol. II, Tab 14, at p. 0000215) His term ends in June 2014 (3 months). (Ibid)

The Intent Behind Article VI, Section 12 Of The Charter

Article VI, Section 12 of the Charter (hereinafter "Section 12") is entitled "City Councilmembers holding other offices." (AA, Vol. 1, Tab 2, at p. 000032; AA, Vol. II, Tab 14, at p. 000216) The electorate amended Section 12 by Charter Amendment JJ on November 2, 1982 to provide:

> 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 may hold any compensated city office or city employment until two (2) years after leaving the office of councilmember.

(Id. at pp. 000032, 000064, 000081; AA, Vol. II, Tab 14, at p. 000218)

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.

(Ibid.)

The ballot pamphlet that was distributed to the electorate did not contemplate or inform the electorate that Charter Amendment JJ's two year hiatus on City employment applied to elective office. (AA, Vol. 1, Tab 2, at p. 000064; AA, Vol. 2, Tab 14, at p. 000218) Instead, the ballot pamphlet explained that the primary emphasis of Charter Amendment JJ was to clarify that Section 12's ban on employment only applied to employment with the City and had no effect on outside employment. (Ibid.) It also explained that the second sentence of Charter Amendment JJ extended Section 12's ban on city employment for an additional two years after the council member left elective office. (Ibid.)

As explained in the City Attorney's Impartial Legal Analysis, this amendment was necessary because prior to Charter Amendment JJ a strict reading of Section 12 would have prohibited council members from holding any outside employment. (Ibid.) A ban on council members holding employment would result in absurd consequence for a part-time Council. The legal opinion at the time, therefore, was that Section 12 applied only to City employment. (AA, Vol. 1, Tab 2, at pp. 000064; 000082) Accordingly, the stated purpose of Charter Amendment JJ was to clarify that Section 12 was intended to prohibit a council member from holding City employment at the same time (s)he served a Council term.

The ballot argument in favor of Charter Amendment JJ, which was signed by the five council members, explained that the purpose of the second sentence of Section 12 was to prohibit council members from using undue influence to obtain *employment* with the City after leaving office. (Ibid.) In other words, the second sentence extended the prohibition on council members' employment with the city for an additional two years after leaving elective office.

Specifically, the ballot argument in favor of Charter Amendment JJ stated as follows:

> The amendment clarifies the language in the present Charter which leaves in question the right of a council person 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. (emphasis added)

(Ibid.)

Nothing in the Impartial Legal Analysis or Arguments pertaining to Charter Amendment JJ contemplated that extending the ban on city employment for two years after a council member left office would also impact (or ban) a council member's constitutional right to hold elective office for two years after leaving office. (Ibid.) For instance, the Argument against Charter Amendment JJ focused solely on the prohibition that Charter Amendment JJ imposed on ex-council members obtaining employment with the City. (Ibid.)

Specifically, the ballot argument against Charter Amendment JJ stated as follows:

> This two-year restriction against a dedicated, experienced ex-council-person continuing to serve the City of Glendale is without merit. [¶] What truly valid reason could there be for the people of the city to handicap

> themselves by having to wait two years to receive the services of someone who may be needed 'right now'? [¶] Couldn't an attorney who has had four or more years on the council become a most valuable part of the legal department? Perhaps even the manager? [¶] Couldn't a doctor work for the public health as an employee? [¶] Why not even a city manager, if the office was available? [¶] With no logical reason for the City to limit its own freedom by this proposed change, vote 'no' and give it every possible advantage to secure the best talent available.

(Id. at pp. 000064; 000082)

Rejection of Charter Amendment That Would Prohibit Ex-Council Members From Holding Elective Office For Two Years

In 1995 through 1996, the Council debated placing a term-limit Charter Amendment on the ballot that included a two year hiatus period before serving on Council again. (Id. at p. 000083) The City Attorney was directed to prepare a ballot measure to amend the Charter that provided in pertinent part:

> No person shall be eligible to serve another full or partial term until at least two (2) years has elapsed without the person having served as an elected or appointed Councilmember (or School Board or College Board member should either or both consent by October 1, 1996), since the time the person has completed serving two consecutive full terms.

(Ibid.)

During the Council's debate on term-limits, consistent opposition was voiced to amending the Charter to impose term-limits on elective office. (Ibid.) A competing proposal called the Voter's Rights Amendment was even submitted to the Council on February 20, 1996. (Ibid.) The Voter's Rights Amendment was an anti-term-limit proposal that would amend the Charter to explicitly state that there are no term-limits on elective office and would abrogate the Council's power to impose such limitations. (Ibid.)

In analyzing the legality of the Voter's Rights Act, the City Attorney noted "that this is somewhat an idle or redundant act in that the Charter currently does not limit the number of terms that an elected official may serve." (Ibid) The City Attorney reiterated these comments to Council when he explained during a meeting that he found it a "redundant or idle act. [Because] . . . right now [the Charter has] no term limits for elected officials and restating that in more specific terms is essentially a redundant act." (Ibid.)

After six meetings, the Council unanimously withdrew the Charter Amendment that would have imposed a term-limit and a two year hiatus period on elective offices. (Id. at p. 000084)

PROCEDURAL HISTORY

Appellants filed their application for leave to sue Quintero and the City in quo warranto with the Attorney General on May 23, 2013. (Id. at pp. 000066-000077) Real parties in interest filed their opposition to the quo warranto application on June 7, 2013. (Id. at pp. 000079-000093) On June 17, 2013, appellants filed their reply in support of their quo warranto application. (Id. at pp. 000095-000112)

On October 25, 2013, the Attorney General denied appellants' application in an eight page opinion, concluding that appellants' proposed quo warranto action did not raise a substantial legal issue and was not in the public interest. (AA, Vol. II, Tab 14, at pp. 000210-000221)

Following the Attorney General's denial, appellants filed a petition for alternative writ of mandate in the Superior Court. (AA, Vol. I, Tabs 2-7) The petition sought to

compel the Attorney General to grant them leave to sue Quintero and the City in quo warranto. (Ibid.)

Appellants argued, *inter alia*, that the Attorney General had a ministerial duty to grant their application, and/or abused her discretion by ignoring rules of statutory construction, erroneously interpreting Section 12, and analyzing the merits of their proposed quo warranto suit, essentially the same arguments presented by this appeal. (AA, Vol. I, Tab 2, at pp. 000007-000020)

After issuing an order to show cause, the Superior Court denied the writ of mandate. (AA, Vol. II, Tabs. 11, 19-20) In doing so, it rejected the notion that the Attorney General had a ministerial duty to approve a quo warranto application and found that an Attorney General's decision may only be overturned in the event of a clear abuse of discretion. (AA, Vol. II, Tab. 19, at p. 000269) In analyzing whether the Attorney General abused her discretion, the Superior Court held it was appropriate for the Attorney General to consider the merits of the proposed quo warranto suit when determining if an application raises a substantial question of law. (Id. at p. 000270)

The Superior Court also considered the merits of the appellants' proposed quo warranto suit. The Superior Court agreed with the Attorney General's analysis of the proposed claim and her opinion on the merits (or lack thereof) of the quo warranto suit. (Id. at pp. 000271-000272) "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." (Id. at p. 000272)

Accordingly, the Superior Court found "[it] was not an extreme and clearly indefensible abuse of discretion in denying the application as not in the public interest." (Ibid.) "The Attorney General properly evaluated the extrinsic evidence, policy, and law. . . ." (Id. at p. 000274) The Attorney General need not grant an application that presents a plausible legal question. (Ibid.) "There must be a real and substantial issue of fact or law for a court to decide, and must be in the public interest to do so." (Ibid.)

Upon the Superior Court's entry of judgment, appellants filed the instant appeal. (AA, Vol. II, Tab. 20)

STANDARD OF REVIEW

There are no reported instances of mandamus issuing in response to an Attorney General's denial of leave to commence a suit in quo warranto. See Intl. Assn. of Firefighters v. City of Oakland (1985) 174 Cal.App.3d 687, 689. To the extent there is judicial review, a court may compel the Attorney General to grant leave to commence a quo warranto 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.App.2d 451, 455; City of Campbell v. Mosk (1961) 197 Cal.App.2d 640,651

ARGUMENT

As the Attorney General and now the Superior Court have confirmed, well-established rules of statutory construction, which the City has long adhered to when interpreting its Charter, affirm Councilman Quintero's right to hold elective office. (AA,

Vol. II, Tab 14, at pp. 000210-000221; AA, Vol. II, Tab 19, at pp. 000264-AA000274; AA, Vol. II, Tab 21, at p. 000278).

I. Glendale Voters Did Not Intend To Place A Term-Limit/Waiting Period On Ex-Council Members' Fundamental Right To Hold Elective Office

First and foremost, "[t]he voters' intent in approving a measure is our paramount concern." 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. "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'l 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.

Here, the phrase "compensated city office or city employment" in the second sentence of 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.

The meaning of "compensated city office" in Section 12 is particularly ambiguous because the phrase is not defined and is not the customary nomenclature. In fact, Section 12 is the only place where the phrase "compensated city office" is found in the Charter. (AA, Vol. I, Tab 2, at pp. 000022-000062) When other Charter sections apply to elective office, the phrase "elective office(r)" is used. See, e.g., Charter, Art. IV, § 2 (uses the term "elective officer"); Charter, Art. V, § 6 (entitled "terms of elective officers");

Charter, Art. VI, § 13 (uses the term "elective office"); Article XXIII, § 28 (utilizes the term "elective office"). (AA, Vol. I, Tab 2, at pp. 000028-000029, 000032-000033) Alternatively, when a Charter provision applies to both elective office and non-elective office, the Charter utilizes either "officer or employee" or "city office(rs)." See, e.g., Charter, Art. XXIII, § 5 (utilizes term "city office"); Charter, Art. XXIII, § 8 (utilizes phrases "city officers" and "officer or employee"); Charter, Art. XXIII, §§ 10-12 (utilizes phrase "no officer or employee"). (AA, Vol. I, Tab 2, at pp. 000047-000048)

The phrase "compensated city office" attempts to make a distinction between, or among, city offices. Yet, the distinction is unclear because all city offices (elective and non-elective) are compensated. See Charter, Art. IV, §§ 1, 3-4; see also Charter, Art. § 5 subd. (5); see also Charter, Art. VIII, § 3, see also Charter, Art. IX, § 1 subd. (d); see also Charter, Art. XXIV, §7. (AA, Vol. 1, Tab 2, at pp. 0000027-000028, 000030-000031) Therefore, unless the word "compensated" is read out of the phrase or has no legal significance (creating a distinction without a difference), the meaning of "compensated city office" in Section 12 is ambiguous. See People v. Natl. Auto and Cas. Ins. Co. (2002) 98 Cal.App.4th 277, 282 (when interpreting statutory language you may not ignore language that has been inserted).

However, even if Section 12 is unambiguous and can be read to prohibit ex-council members from elective office, it is a well-established principle that the literal construction of Section 12 cannot prevail over the voters' intent. Woo v. Superior Court, supra, 83 Cal.App.4th at p. 975; California School Employees Assn. v. Governing Board,

supra, 8 Cal.4th at p. 340; Int'l Fed'n of Prof'l & Technical Engineers, AFL-CIO v. City of San Francisco, supra,76 Cal.App.4th at pp. 224-225.

In that vein, courts have consistently found "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." Raven v. Deukmejian (1990) 52 Cal.3d 336, 349; Woo v. Superior Court, supra, 83 Cal.App.4th at p. 975.

Here, the ballot pamphlet is particularly instructive in deducing the voters' intent, because the voters could not have contemplated an interpretation of Section 12 that they were never provided. 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.") As is set forth in the Statement of Facts, supra, the Impartial Legal Analysis and Arguments stated that the intent of Charter Amendment JJ was to extend the existing ban on council members' employment with the City beyond their term in elective office by two years. The ballot pamphlet never contemplated or informed the voters that the second sentence of Charter Amendment JJ (the current Section 12) would operate as a two year hiatus period on ex-council members holding elective office. (AA, Vol. I, Tab 2, at p. 000064)

Nor could the voters have deduced that Charter Amendment JJ was intended to impose a two year hiatus period on elective office. The ballot pamphlet did not make reference to Article IV, Sections 1 or 3. (Ibid.) Nor did the ballot pamphlet define the phrase "compensated city office or city employment" as including "elective offices." (Ibid.)

Instead, the Impartial Legal Analysis and Arguments informed voters 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 elective office and nothing more.

The examples provided to the electorate solidify this construction of Section 12's second sentence. The examples included positions with the legal department, public health, and the City Manager. (Ibid.) Notably absent are any examples of elective offices (such as the City Treasurer, City Clerk, and/or Council) that a former council member 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 elective office. 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 elective 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 Charter Amendment JJ was that it did not implicate the right to hold elective 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 . . .

."); Civ. Code, § 3535; Carter v. Comm'n on Qualifications of Judicial Appointments, (1939) 14 Cal.2d 179, 185.

More importantly, everyone agrees that a fair reading of the ballot pamphlet makes it clear that voters believed the second sentence of Charter Amendment JJ was simply an extension of the existing ban on a sitting council member's *employment* with the City for an additional two years after they left elective office. (AA, Vol. II, Tab 14, at p. 000163, ¶ 1 (Attorney General's opinion); AA, Vol. II, Tab 19, at p. 000272, ¶ 5 (Superior Court's opinion); Opening Brief, at p. 28 (now conceding "Section 12's goal is to curb the improper use of influence by former council members to gain *employment* with the city.")) The electorate never contemplated (nor were they informed) that the second sentence in Charter Amendment JJ would also operate as a two year hiatus on holding elective office.

II. Appellants' Interpretation Of Article VI, Section 12 Is Unconstitutional And Would Lead To Bizarre Results

An interpretation of Article VI, Section 12 that prohibits former council members from holding elective 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 criteria 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. (AA, Vol. I, Tab. 2, at pp. 000028, 000045) If, therefore, Article, VI, Section 12 restricted (as the appellants advocate) former council members from holding elective 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). (AA, Vol. I, Tab. 2, at pp. 000032-000033) A restriction like this on elective office is unconstitutional. See De Botarri v. Melendez, supra, 44 Cal.App.3d.

Beyond being unconstitutional, appellants' interpretation leads to 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 Superior Court noted:

> [Appellant's] 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 of 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 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.

(AA, Vol. II, Tab. 19, at pp. 000271- 000272)

Appellants' interpretation would transmogrify a restriction on employment into an arbitrary disqualification of potential candidates holding elective office. Appellants attempt to minimize this bizarre transformation by arguing a two year ban on appointments to elective office could serve the public interest. However, this argument is completely contrived. It creates a distinction that is not legally recognized and cannot be deduced from the ballot pamphlet or Section 12. See Carter v. Comm'n on Qualifications, etc., supra, 14 Cal.2d at p. 182 (no distinction between election and appointment to elective office). (AA, Vol. I, Tab 2, at pp. 000032, 000064)

Additionally, appellants fail to recognize that City employment is fundamentally different from elective office. Elective offices have terms and are accountable to the electorate. Charter, Art. V, § 6. (AA, Vol. I, Tab 2, at p. 000029) City employees are not directly accountable to the electorate, have civil service protections, and can only be discharged for cause. Charter, Art. XXIV, §§ 7-8. (Id. at pp. 000052-000053). The Charter provides these civil services protections to all but one non-elective City office, which is afforded alternative employment protections under the Charter. See Charter, Art., IX, § 1, subd. (h); see also Charter, Art. XXIV, §§ 7-8. (Id. at pp. 000035, 000052-000053)

Under established rules of statutory construction, Section 12 is to be construed in a way that avoids a constitutional infirmity (See McClung v. Employment Dev. Dept't. 34 Cal.4th 467,477) and/or bizarre results. See Woo v. Superior Court, supra, 83 Cal.App.4th at p. 975. As the Superior Court and Attorney General properly concluded,

appellants' interpretation of Section 12 flies in the face of these canons of statutory construction.

III. All Ambiguity Must Be Resolved In Favor Of Councilman Frank Quintero's Constitutional Right To Hold Elective Office

Assuming arguendo that appellants' interpretation is constitutional and the two examples are not considered bizarre, "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 elective office by either appointment or election after the completion or termination of his or her Council term. As such, Section 12 must still be construed in favor of Quintero's right to hold elective office.

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IV. The City Council Does Not Engage In Idle Acts That Would Create Superfluous Legislation

Because "[t]he Legislature is presumed not to engage in 'idle act[s]," the proposed 1996 Charter Amendment on term-limits is particularly instructive in interpreting Section 12. People v. Fowley (2000) 82 Cal.App.4th 784, 788-789.

As indicated in the Statement of Facts, supra, the City Council held six meetings on a measure "that would limit the terms of Councilmembers to two consecutive terms with the ability to later seek office after two years have elapsed without the individual having been in office as a Councilmember." (AA, Vol. I, Tab. 2, p. 000083) If Section 12 truly imposed a two year hiatus period on holding elective office (as the appellants argue), the Council would have never directed the City Attorney to draft such a measure. (Ibid.) This is true, not only because it is an idle act, which wasted time (6 City Council Meetings over a year long period) and money, but also because its passage would have made the second sentence of Section 12 superfluous and redundant. People v. Fowley, supra, 82 Cal.App.4th at pp. 788-789 ("[c]ourts should avoid constructions which render statutory language superfluous or unnecessary.").

Based on the public record, the current City Attorney, the '95-'96 City Attorney, and the '82 City Attorney are all in accord. The Charter does not impose any limitations (not term-limits or hiatus periods) on holding elective office. This long standing and consistent opinion on the subject should be afforded great weight. See Carter v. Comm'n on Qualifications, etc., supra,14 Cal.2d at p.185 ("the contemporaneous interpretation thus placed on concededly vague and uncertain provisions . . . under familiar rules of

construction such practical interpretation, extending over a long period of time, is entitled to great weight.").

CONCLUSION

The City has consistently interpreted Section 12 as a two year ban on employment with the City. Appellants' superficial reading of Section 12 would transform the provision into a two year term-limit/hiatus period on elective office. The Attorney General and Superior Court properly found the voters never intended Section 12 to operate in such a fashion. Appellants' arguments to the contrary are frivolous. As such, the Attorney General's denial of appellants' application to sue Councilman Frank Quintero and the City of Glendale in quo warranto was warranted and cannot be characterized as an extreme abuse of discretion.

DATED: March 20, 2014

MICHAEL J. GARCIA, CITY ATTORNEY

By: _____

ANDREW C. RAWCLIFFE
Deputy City Attorney
Attorneys for Frank Quintero and City of Glendale

CERTIFICATE OF COMPLIANCE

I, Andrew C. Rawcliffe, hereby certify that pursuant to Rule 8.204(c)(1) or 8.504(d)(1) of the California Rules of Court, the Brief of Real Parties in Interest, City of Glendale and Frank Quintero is produced using 13-point or greater Roman type and 1.5 or greater line spaced and contains 5,014 words, which is less than the total words permitted by the Rules of Court. I relied on the word count of the computer program used to prepare this brief.

DATED: March 20, 2014

MICHAEL J. GARCIA, CITY ATTORNEY

By: _____

Andrew C. Rawcliffe
Deputy City Attorney
Attorneys for 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 March 20, 2014, I served the foregoing document described as **BRIEF OF REAL PARTIES IN INTEREST FRANK QUINTERO AND CITY OF GLENDALE**on THE INTERESTED PARTIES named below by enclosing a copy in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

[ ] (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 March 20, 2014, at Glendale, California.

Sheila Redding

RANDO V. HARRIS, ET AL.
CASE NO.: B254060
Los Angeles Superior Court Case No.: BS145904

SERVICE LIST

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Honorable James C. Chalfant Los Angeles Superior Court Stanley Mosk Courthouse 111 N. Hill Street Los Angeles, CA 90012 Department 85	Judge
Clerk of the Court Los Angeles Superior Court Stanley Mosk Courthouse 111 N. Hill Street Los Angeles, CA 90012 Department 85	Clerk
California Supreme Court	Via Electronic Submission (CRC 8.212(c)(2)