IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND DISTRICT COURT OF APPEAL, DIVISION TWO

JOHN RANDO and MARIANO A. RODAS, Petitioners and Appellants, **v.** **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 RESPONDENT ATTORNEY GENERAL KAMALA D. HARRIS

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INTRODUCTION

This is not a case about statutory interpretation. Rather, the primary question on appeal is whether the Attorney General's decision to deny the quo warranto application at issue here was the result of an "extreme and clearly indefensible" abuse of discretion. It was not.

Case law and statutory authority specify 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 there was no substantial question of law or fact and that it was not in the public interest to grant leave to sue. Appellants disagree with this conclusion, but they have pointed to no "extreme and clearly indefensible" abuse of discretion on the part of the Attorney General. Instead, appellants argue that the discretion of the Attorney General is "limited," serves a "gatekeeper" function and merely weeds out "frivolous" lawsuits. The case law does not support this narrow interpretation of the Attorney General's broad discretion. Appellants additionally argue that there is a "debatable" issue with respect to the interpretation of a provision in a city charter, but this is not enough to establish that a quo warranto application should be granted. Appellants did not meet, or even come close to meeting, the very high burden of showing that there was an "extreme and clearly indefensible" abuse of discretion by the Attorney General.

Indeed, arguably, mandamus is not an available remedy in these circumstances at all. No court has held that the courts may control the Attorney General's broad discretion to decide whether a quo warranto action should be filed, instead uniformly choosing to uphold the Attorney General's decision under the "extreme and clearly indefensible" standard. That approach works likewise here; whatever the answer to the separation

of powers doctrine question may be, the court below was correct in finding that the Attorney General's decision was not in any scenario "extreme and clearly indefensible."

The petition for writ of mandate was properly dismissed by the trial court and this decision should be affirmed.

ISSUE FOR REVIEW

Did the Attorney General properly exercise her discretion in the Attorney General Opinion, No. 13-504, pursuant to Code of Civil Procedure sections 803, et seq. and applicable case law, where it was concluded that it was not in the public interest to authorize the initiation of a quo warranto lawsuit and leave to sue was denied to appellants?

Even if the Attorney General's very broad discretion were in theory found to have been abused here—and it was not— is mandamus a proper avenue by which a challenge such as this can even be brought?

THE PARTIES

The Attorney General, respondent below and on appeal, is the chief law officer of the state, subject to the powers and duties of the Governor. "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.) "'The attorney-general, as the chief law officer of the state, has broad powers derived from the common law, and in the absence of any legislative restriction, has the power to file any civil action or proceeding directly involving the rights and interests of the state, or which he deems necessary for the enforcement of the laws of the state, the preservation of order, and the protection of public rights and interests.'" (*People ex rel. Harris v. Rizzo* (2013) 214 Cal.App.4th 921, 936-37 [citations omitted].)

Appellants John Rando and Mariano Rodas are residents of the City of Glendale, California, who seek permission from the Attorney General to sue in quo warranto pursuant to Code of Civil Procedure section 803, in order to challenge the right of Real Party in Interest, Frank Quintero, to hold the office of Councilmember of the City of Glendale. (Appellants' Appendix ("AA") at 135:25-28.)

In addition to Quintero, the City of Glendale is also named as a Real Party in Interest. (AA at 136:4-7.)

FACTUAL AND PROCEDURAL BACKGROUND

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 under the direction of the Attorney General. (Code Civ. Proc., § 803, et seq.)

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. (*International Assn. 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. And the Attorney General must bring the action, whenever he has reason to believe that any such office or franchise has been usurped. . . or when he is directed to do so by the governor.

(*See* 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. (AA at 211:6-9; Susan K. Smith Declaration ("Smith Dec." at ¶ 3).] Some of the decisions are issued in a formal Attorney General opinion and some decisions are answered by letter. (*Ibid*.)

III. ATTORNEY GENERAL'S OPINION 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. (AA at pp. 213-220; ["Opinion"].) The Opinion issued after an application and full briefing by petitioners and Real Parties in Interest was completed June 17, 2013. (AA at pp. 66-112; exhibits C, D and E, attached to petitioners' Memorandum of Points and Authorities in Support of Ex Parte Application, dated November 8, 2013.)

The City of Glendale ("City" or "Glendale") is a charter city and has been since 1921. (AA 214; Opinion at p. 2.) Real Party in Interest and proposed defendant Frank Quintero is currently serving as a member of the Glendale City Council, having been appointed to that office on April 23, 2013. (*Ibid.*) The proposed defendants were also named as real parties in interest. The relators and petitioners in this litigation, John Rando and Mariano Rodas, are residents of Glendale. The petitioners sought to remove Mr. Quintero from public office because they contended that he was ineligible to serve. (*Ibid*.) They sought to remove Mr. Quintero via the proposed action in quo warranto. (*Ibid.*)

B. The Underlying Facts for the Quo Warranto Application

On April 12, 2013, the City held a municipal election, and Rafi Manoukian, a city council member with 14 months left to serve, was elected to the office of City Treasurer, creating a vacancy on the council. (AA 215; 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.'" (*Ibid.*; Opinion at p. 3 [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.") 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 their 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] (AA 216; Opinion at p. 4 [citing Charter article VI, section 12 (hereinafter "Section 12")].) Petitioners argued that this provision rendered Mr. Quintero's appointment invalid. The City of Glendale responded that the cited charter provision does not cover the circumstances of councilmember Quintero's appointment. (*Ibid.*)

The Attorney General 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. (AA 214-220; Opinion.) 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 office by virtue of eligibility requirements, valid election procedures, the absence of disqualifying factors, etc." (AA 214; 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. (AA 215; Opinion at p. 3.) The standard for determining whether consent to proceeding in quo warranto shall be granted is whether the application

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[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."

presents a substantial issue of fact or law that warrants judicial resolution, and whether granting the application would serve the public interest. (*Ibid.*)

First, the Opinion analyzed whether the application presented a substantial issue of fact or law and determined that "there is room for some debate here as to the proper interpretation of section 12." (AA 220; Opinion at p. 8.) Specifically, the Opinion determined that there was more than one way to read Section 12. (AA 216; Opinion at p. 4.) Appellants' interpretation would "impose a two-year ban on holding *any* compensated position with the City whatsoever, *including an elective office*, a kind of term-limiting function." (*Ibid.*) 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. (AA 216-217; Opinion at pp. 4-5.) This interpretation 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." (AA 217; Opinion at p. 5.)

In interpreting the language of a city charter ballot amendment, the Opinion noted that the same rules of construction are employed that apply to any voter-approved measure. (*Ibid.*) First, to determine intent, one looks at the language adopted—if clear and ambiguous, there is no need for further construction. (*Ibid.*) But where the text is not enough to determine intent, one may examine the official ballot pamphlet. (*Ibid.*)

Next, the Opinion noted that the City Charter does not contain any term limits for council members. In the absence of such limits, Section 12 could not be seen as a term-limit provision. (*Ibid*.) Examining the ballot pamphlet information, both arguments in favor and opposed to the proposition, the Opinion determined 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." (AA 219; Opinion at p. 7.) Reading the measure in context with the Charter as a whole, the Opinion determined that all indications point to the interpretation that Section was aimed at prohibiting (or continuing to prohibit) a council member from "improperly using his or her influence to gain *non-elective* City employment." (*Ibid.*) Additionally, the Opinion implicitly noted a distinction between non-elective city employment and "an individual's eligibility to hold public office [as] a fundamental right of citizenship in California." (*Ibid.*) Thus, the Opinion determined that any ambiguities should be resolved in favor of eligibility to hold elective office. (*Ibid.*)

The Opinion concluded that the question was not a "close one" and the "mere existence of a 'debatable' issue is not enough to establish that the issue requires judicial resolution through the quo warranto procedure." (AA 220; Opinion at p. 8 [citations omitted].)

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." (AA 220; Opinion at p. 8.) The Opinion concluded that "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." (*Ibid.*)

IV. THE PROCEEDINGS IN THE LOWER COURT

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. (AA 1-145.)

On November 13, 2013 at a hearing before the trial Court, respondent Attorney General and real parties in interest appeared and opposed granting a petition for writ of mandate. (AA 149-182.)

The 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 the Court set the matter for hearing on January 7, 2013 and set a briefing schedule. (AA 183-185.)

On January 7, 2013, the trial court issued a tentative order ("Order") in this matter. (AA 264-274.) In the Order, the trial court found that 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." (AA 270; Order at p. 7.) Additionally, the court noted "[t]he 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." (AA 271; Order at p. 8.) The court found that the Attorney General did not commit an extreme and clearly indefensible abuse of discretion in interpreting section 12, including looking at the ballot arguments of the amendment. (AA 272; Order at p. 9.) The trial court also stated that the Attorney General was not obligated to approve a non-frivolous application, notwithstanding appellants' arguments. (*Ibid.*) Finally, the trial court concluded that there was no abuse of discretion in the Attorney General's denial of appellants' application to pursue a lawsuit in quo warranto. (AA 274; Order at p. 11.)

On January 7, 2014, the matter was heard before the trial court with all parties appearing. (AA 281-323 [transcript of proceedings].)

On January 15, 2014, the trial court issued a judgment denying the petition for writ of mandate in its entirety. (AA 278-279.)

STANDARD OF REVIEW

An abuse of discretion standard of review is appropriate in this matter where a question of fact exists. If it is appropriate to review the Attorney General's discretion in this case, "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* (1907) 151 Cal. 451, 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.*)

To the extent the Court is interpreting Code of Civil Procedure section 803 et seq, the provisions regarding the quo warranto application process, the Court exercises independent judgment.[2] (See *California Correctional Peace Officers' Assn. v. State* (2010) 181 Cal.App.4th 1454, 1460 [when an agency's action depends solely upon the correct interpretation of a statute, it is a question of law, upon which the Court exercises independent judgment].) In conducting this independent review, however, courts use independent judgment, courts give "deference to the determination of the agency appropriate to the circumstances of the agency action." (*Yamaha Corp. v. Board of Equalization* (1998) 19 Cal.4th 1, 8 [internal citations omitted].)

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[2] Appellants argue that de novo review is appropriate for the statutory interpretation of the City of Glendale's charter amendments (App. Br. at p. 10); however, the interpretation of the charter amendments is not at issue. If the Attorney General granted appellants' quo warranto application, then the statutory interpretation of the Section 12 would be the crux of the litigation. Here, the question is whether the Attorney General abused her discretion in denying the quo warranto application—a question of fact, not law.

Under the foregoing standards, this Court should affirm the decision of the trial court to deny the petition for writ of mandate in its entirety.

ARGUMENT

I. THE TRIAL COURT CORRECTLY HELD THAT THE ATTORNEY GENERAL ACTED PROPERLY AND DID NOT USE "EXTREME AND CLEARLY INDEFENSIBLE" DISCRETION IN THIS CASE

A. The Attorney General is Afforded Broad Discretion in Responding to Quo Warranto Applications

The trial court correctly held that the Attorney General did not use "extreme and clearly indefensible" discretion in reaching the conclusion in the Opinion at issue here. It is clear that very broad discretion is given the Attorney General in determining whether to grant or deny a quo warranto application. (See, e.g., *Lamb v. Webb, supra*, 151 Cal.at p. 455; *International. Assn. of Fire Fighters v. City of Oakland*, *supra*, 174 Cal.App.3d at pp. 693-698; *City of Campbell v. Mosk* (1961) 197 Cal.App.2d at 640, 646-47 [applying the standard used in *Lamb*, "to justify court intervention, the abuse of discretion by the Attorney General in refusing the requested leave must be extreme and clearly indefensible"].) The Supreme Court, emphasizing that *if* it is appropriate to review the executive's discretion, specified that "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. Appellants pointed to none in the trial court and none in this Court. (See

generally Appellants' Opening Brief ("App. Br.") The case before this Court does not even come close to meeting this very high burden.

Contrary to appellants' argument, the law with respect to the Attorney General's discretion is not "murky." (App. Br. at p. 12 [citing *International Assn. of Fire Fighters*].) Courts that have addressed the Attorney General's discretion have noted that there is a question whether the judiciary has the power to order the Attorney General to grant leave to sue. (See, *supra,* Point II.) 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*, *supra*, 151 Cal. at p. 455.)

In *International Assn. of Fire Fighters v. City of Oakland,* the Court noted that despite 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." (174 Cal.App.3d at p. 697.) In the passage quoted by appellants (App. Br. at p. 12), the court finds that the language of Code of Civil Procedure 803 can be interpreted as follows:

> Unfortunately, the law of our state in this area remains murky, commencing even with the language of the statute itself: 'The action *may* be brought by the Attorney General, on his own information or on complaint of a private party.' And it *must* be brought whenever the Attorney General 'has reason to believe' that the condition exist, or when he is directed to do so by the Governor. However, this suggestion of a mandatory duty is negated by the qualifying language ('has reason to believe'). Hence he has discretion to refuse to sue where the issue is debatable. And while the subject has received but limited judicial attention, despite occasional suggestions that the court may intervene in the event of an extreme abuse of the Attorney General's discretion, [citations omitted] no such instance of mandamus issuing can be found.

(*International Assn. of Fire Fighters v. City of Oakland*, *supra*, 174 Cal.App.3d at p. 697.)

There is no support for appellants' argument that the standard for the Attorney General in deciding quo warranto applications is a "reasonableness test." (App. Br. at p. 17.) Appellants state that if "a reasonable Attorney General [has] *reason to believe*—not certitude—that an office has been illegally usurped and that Attorney General . . . denies the application, such would generally be sufficient to establish an 'extreme and clearly indefensible abuse of discretion." (App. Br. at p. 14.) However, as the court noted in *International Assn. of Fire Fighters v. City of Oakland*, "reason to believe" is qualifying language that negates any mandatory duty on the part of the Attorney General, contrary to appellants' reading of this statute (App. Br. at pp. 14-15). (*Ibid.*)

Moreover, *Lamb* is solid support for the broad discretion given the Attorney General, contrary to appellants' reading of the case. (App. Br. at pp. 13-14.) There was no verifiable information presented in *Lamb* to demonstrate that the person holding the office, Glass, had usurped such office. (*Lamb v. Webb*, *supra*, 151 Cal. at p. 454-455.) In light of this, the Supreme Court held that the Attorney General was not only not guilty of a violation of his discretion "in any extreme sense, but was not guilty of *any* want of discretion." (*Ibid.*)

To the extent that appellants' argue the trial court allowed the Attorney General "unfettered" or "arbitrary" discretion, the record and case law does not support their argument. (App. Br. at pp. 15-18.) While the trial court posed questions regarding the possible "unfettered"[3] discretion of the Attorney General (AA 274), the court concluded:

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[3] As in the trial court, the Attorney General's position on appeal is that the Attorney General's decision to approve or reject a quo warranto

(continued…)

> There was no abuse of discretion in the Attorney General's denial of Petitioners' application to pursue a lawsuit in quo warranto. . . . 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 [use]extreme and clearly indefensible abuse of discretion in denying the application as not in the public interest.

(AA 274.) Thus, the trial court applied the "extreme and clearly indefensible abuse of discretion" standard in denying the petition for writ of mandate. (See, e.g. *Lamb v. Webb*, *supra*, 151 Cal. at pp. 454-455.)

Additionally, the trial court did not err when it noted the distinction between a private and a public interest in applying for a quo warranto application, as noted in *International Assn. of Fire Fighters v. City of Oakland*. (174 Cal.App.3d at p. 697.) Thus, contrary to appellants' assertions, the trial court did not establish a "new test" giving the "AG essentially unbridled discretion in quo warranto proceedings." (App. Br. at p. 18.) Rather, the trial court applied the standard specified in *Lamb*, where an individual was asserting a private right because the petitioner in that case was the losing candidate in the election at issue.

Thus, even before reaching the question of whether the Attorney General's decision on a quo warranto application is subject to judicial review, her discretion with respect to quo warranto applications is, at a minimum, very broad, and the trial court did not abuse its discretion in

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(…continued)
application under Code of Civil Procedure section 803 et seq. is not subject to review by writ of mandate. See, *supra*, Point III. However, the trial court did not agree with the Attorney General on this point and applied the "extreme and clearly indefensible" standard of discretion to the case at issue.

reviewing the Attorney General's Opinion and denying the petition for writ of mandate.

B. The Attorney General Carefully Considered All Arguments and Determined That There Was No Substantial Question of Law and It was Not in the Public Interest to Authorize the Quo Warranto Application

1. The Attorney General is Not Merely a "Gatekeeper" Preventing Frivolous Quo Warranto Lawsuits

The Opinion at issue set out the standard used by the Attorney General when deciding a quo warranto application: "[W]e must decide whether the application presents a substantial issue of fact or law that warrants judicial resolution, and whether granting the application would serve the public interest." (AA 215; Opinion at 3 [citations omitted].) The Opinion then carefully considered the facts at issue in this matter, applied the standard test and concluded there was not a substantial issue of fact or law and it was not in the public interest to grant the application. (AA 220; Opinion at 8.) Contrary to Appellants' statements, the test specified and used by the Attorney General in this application and others[4] demonstrates that the Attorney General applies her discretion in an even and fair manner—using the same two-part test for all quo warranto applications where applicable. It does not show, as appellants argue, that the Attorney General sees her role merely as that of a "gatekeeper" to weed out frivolous lawsuits. (App. Br. at p. 19; see also p. 14 [citing *Lamb v. Webb*, *supra*,

[4] (See 95 Ops.Cal.Atty.Gen. 50, 54 (2012); 76 Ops.Cal.Atty.Gen. 169, 171 (1993); 25 Ops.Cal.Atty.Gen. 332, 341 (1953) [cited in App. Br. at pp. 18-19.)

151 Cal. at p. 456 and *Nicolopulos v. City of Lawndale* (2001) 91 Cal.App.4th 1221, 1229].)[5]

Lamb and *Nicolopulos* do not support appellants' argument. As discussed, *supra*, in *Lamb*, the court held that the Attorney General properly denied a quo warranto application where there was no verifiable information that the current officeholder had usurped office from Mr. Lamb. (*Lamb v. Webb*, *supra*, 151 Cal. at pp. 454-456.) There was no discussion of limiting the Attorney General's role to one of mere "gatekeeper." Similarly in *Nicolopulos*, the Court discussed the quo warranto proceeding in the context of whether the proceeding could potentially provide due process to petitioners—not simply one in which the Attorney General performs a mere "gatekeeper" function to forestall frivolous lawsuits, although the Court noted that was another benefit of the quo warranto process. (91 Cal.App.4th [h] at 1229 ["[r]equiring leave of the Attorney General also 'protects public officers from frivolous lawsuits.']).

The trial court also properly noted that appellants' argument, also made in the trial court, "was not quite a fair statement" of the holdings of *Lamb* and *Nicolopulos*. The trial court noted that both cases recognized that weeding out frivolous lawsuits is *a* purpose of the quo warranto application, but it is not the *only* purpose. (AA 273; Order at p. 10.) The trial court stated that there is more to the quo warranto application; in

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[5] In an Opinion cited by Appellants for support (App. Br. at p. 19), the Opinion concluded 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 [officeholder] is such an employee at ECRMC. We deem these issues to be appropriate for judicial resolution." (95 Ops.Cal.Atty.Gen. 77 at p. *21.) In the Opinion at issue in this litigation, however, the Attorney General found that there was *no* substantial question of fact and law. (AA 215-220.)

Nicolopulos, the court noted that the remedy is "vested in the People because disputes over title to public office are a public question of governmental legitimacy and not just a private quarrel among rival claimants." Therefore, the requirement for leave to sue 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." (AA 273; Order at p. 10.)

There is no support in the statute or case law for Appellants' argument that the Attorney General's role is limited to that of a "gatekeeper" fending off frivolous lawsuits. The trial court properly recognized this and denied the petition for writ of mandate.

2. The Attorney General Opinion Correctly Concluded that Although the Glendale Ordinance Presents a Debatable Issue, This Was Not Enough to Establish that Judicial Review is Warranted

Appellants argued to the Attorney General that Mr. Quintero's city council appointment violated the Glendale charter Section 12 which, as noted above, reads:

> 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.

(AA 216; Opinion at p. 4.) The Attorney General's Opinion properly 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. (AA 216-217; 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 this decision. (AA 214, 216-217; Opinion at pp. 1, 4-5.) 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 p. 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 Attorney General's 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." (AA 217; Opinion at p. 5 n. 17.)

The Opinion explained that Section 12 was amended in November 1982.[6] 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." (AA 218; 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. (AA 218-219;

[6] 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." (AA 218; Opinion at p. 6.)

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. (AA 217; 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." (AA 219; 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.*)

Appellants argue that the two-year restriction to "any compensated city office" includes elected city council members based on the plain meaning of the provision. (App. Br. at 20-21, 24-30.) Moreover, appellants argue that the trial court abused its discretion in reviewing the Attorney General's Opinion because the Opinion went beyond the plain meaning of Section 12. (App. Br. at pp. 23-25.) 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. (AA 217-218; Opinion at pp. 5-6.) The Opinion notes that "there is more than one way to read Section 12." (AA 216; Opinion at p. 4.):

> 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. On the other hand, because it does not refer at all to elections at terms of elective office, one could read it as applying to *non-elective* compensated office 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.

AA 216-217; Opinion at 4-5.)

The Opinion readily states that Section 12 "could have been worded more precisely," but it was not. (AA 219; Opinion at p. 7.) Thus, the Attorney General appropriately reviewed the ballot materials regarding Section 12 to ascertain the intent of the electorate.

Moreover, the Opinion noted that any ambiguities in the language of Section 12 should be resolved in favor of eligibility to hold public office. (AA 219; 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.'" (AA 219; 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.)

Further, the Attorney General concluded in the Opinion 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." (AA 220; Opinion at p. 8.)[7] 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." (*Ibid*.; see also *International Assn. of Fire Fighters v. City of Oakland*, *supra*, 174 Cal.App.3d at p. 697.) "The exercise of the discretion of the Attorney

[7] 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.*)

General in the grant of such approval to sue calls for care and delicacy. Certainly the private party's right to it cannot be absolute; the public interest prevails." (*City of Campbell v. Mosk*, *supra*, 197 Cal.App.2d at p. 650.)

Appellants disagree with the Attorney General's interpretation of Section 12, and because of this, they argue that the Attorney General abused her discretion because the "incorrect interpretation of a law is an abuse of discretion." (App. Br. at p. 24-30.) First, as discussed above, the Opinion's interpretation of Section 12 is correct and comports with the Attorney General's discretion. Second, the Opinion acknowledged that although this interpretation remained a 'debatable" issue, this was not enough to establish that the quo warranto application should be granted. (AA 220; Opinion at 8.) The statutory interpretation of Section 12 is not at issue here, but the discretion used by the Attorney General in denying appellants' application for quo warranto is at issue. Here, the process used by the Attorney General in denying the quo warranto application was thorough, considered all the arguments, followed the two-part test used in prior similar requests and came to a conclusion. There was no abuse of discretion—certainly not an extreme one.

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 in the careful consideration of this matter. The trial court acted properly in denying the petition for writ of mandate.

II. EVEN IF THERE WERE ANY ARGUMENT THE ATTORNEY GENERAL HAD ABUSED HER BROAD DISCRETION IN THIS MATTER—WHICH THERE IS NOT—THERE WOULD STILL BE A FURTHER QUESTION WHETHER MANDAMUS IS EVEN AVAILABLE TO OVERRIDE THE ATTORNEY GENERAL'S JUDGMENT ON A QUO WARRANTO APPLICATION

As demonstrated above, no abuse of discretion has been shown here, much less that the Attorney General has abused her discretion in an extreme and clearly indefensible manner. And contrary to appellants' argument, the Attorney General has more than a "gatekeeper" function in approving quo warranto applications. (See generally App. Br.) 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 "gatekeeper" function. Rather, as the legislature recognized, the gravity entailed in such a decision is one that rests appropriately with the executive branch, specifically the Attorney General and the Governor. (Cal Code Regs., tit. 11, §§ 1-11; Code Civ. Proc., § 803 [acknowledging the Attorney General's discretion and ability to control the litigation].) Notably, no court has ever expressly held that a writ could issue compelling the Attorney General to approve such an action. For example, in *Lamb* 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*, *supra*, 151 Cal. 451, 455; see also *International Assn. of Fire Fighters v. City of Oakland*, *supra*, 174 Cal.App.3d at p. 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"].)

Thus, for purposes of this appeal, no assumption need be made that the Attorney General's Opinion denying the quo warranto application is reviewable by way of mandate. Even if the Attorney General's very broad discretion were in theory found to have been abused here—and it was not—mandamus would need to be confirmed as a proper avenue by which a challenge such as this can even be brought, before appellants could obtain relief in this case.

CONCLUSION

For all the foregoing reason, this Court should affirm the trial court's denial of a petition for a writ of mandate.

Dated: March 17, 2014

Respectfully submitted,

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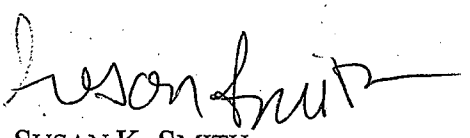

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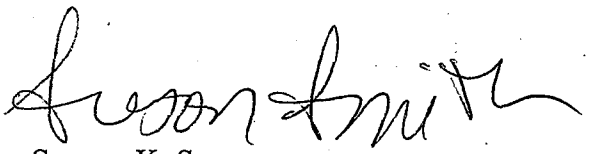
CERTIFICATE OF COMPLIANCE

I certify that the attached BRIEF OF RESPONDENT ATTORNEY GENERAL KAMALA D. HARRIS uses a 13 point Times New Roman font and contains 7,573 words.

Dated: March 17, 2014

KAMALA D. HARRIS
Attorney General of California



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DECLARATION OF SERVICE

Case Name: **Rando, John et al. v. Kamala Harris (Appeal)**
Case No.: **B254060**

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 March 17, 2014, I served the attached **BRIEF OF RESPONDENT ATTORNEY GENERAL KAMALA D. HARRIS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail system of the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

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On March 17, 2014, I caused one electronic copy of the **BRIEF OF RESPONDENT ATTORNEY GENERAL KAMALA D. HARRIS** in this case to be served on the California Supreme Court by submission of an electronica copy to the Court of Appeals pursuant to Rule 8.212(c).

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 March 17, 2014, at Los Angeles, California.

Angela Artiga
Declarant

Signature