IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION ____

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

DECLARATION OF SUSAN K. SMITH IN OPPOSITION TO APPELLANTS' MOTION FOR CALENDAR PREFERENCE

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SECOND APPELLATE DISTRICT, DIVISION _____

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

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OPPOSITION TO APPELLANTS' MOTION FOR CALENDAR PREFERENCE

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INTRODUCTION

Respondent and appellee Attorney General Kamala D. Harris ("Respondent") does not oppose the motion for calendar preference, but Respondent does oppose the unreasonable expedited briefing schedule requested by petitioners and appellants John Rando and Mariano A. Rodas ("Petitioners").

The matter at issue here is whether mandamus may issue ordering the Attorney General to authorize Petitioners to file a quo warranto suit challenging the interpretation of a Glendale city charter provision and seeking to remove a Glendale city councilmember from office. Petitioners failed to show that they were entitled to a writ of mandate in these circumstances, and the superior court properly denied their petition for writ of mandate. Very broad discretion is given the Attorney General in determining whether to grant or deny a quo warranto application. Petitioners did not show in the trial court that the Attorney General's decision to deny the quo warranto application was the result of an "extreme and clearly indefensible" abuse of discretion. Petitioners will not be able to meet this very high standard on appeal.

Without conceding that this is a proper matter for calendar preference, Respondent does not object to expedited briefing and oral argument, but does request a reasonable amount of time to respond to petitioners' opening brief. Ten days is not a reasonable amount of time to respond to an appeal of a judgment in a quo warranto proceeding. Respondent requests at least thirty days to respond to the opening brief.

ARGUMENT

This appeal concerns the discretion given the Attorney General when making a decision on a quo warranto application. On October 25, 2013, the Attorney General issued an opinion, No. 13-504, denying petitioners leave

to file an action in quo warranto to seek removal of a city council member of the City of Glendale. (See Opinion attached to Declaration of Susan K. Smith ("Smith Dec."), Exhibit A ("Opinion").) Petitioners challenged the Attorney General's decision by filing a petition for writ of mandate and asking the trial court to order the Attorney General to grant the requested application. After expedited briefing and a hearing, the trial court found that the Attorney General did not abuse her discretion in deciding that (1) there was not a substantial issue of fact or law for a court to decide concerning the interpretation of section 12 of the Glendale city charter and (2) the public interest would not be served in granting the application. (See Judgment attached to Notice of Appeal and Opinion at pp. 1, 3.)

Very broad discretion is given the Attorney General in determining whether to grant or deny a quo warranto application. (See *International Assn. of Fire Fighters v. City of Oakland* (1985)174 Cal.App.3d 687, 693-698; *City of Campbell v. Mosk* (1961) 197 Cal.App.2d 640, 646-47 [same].) In fact, the Supreme Court has specified that, even *if* it is appropriate to review the Attorney General's discretion, "the power of a court to compel [her] to violate [her] own judgment by ordering [her] to grant leave to commence a suit . . . should be exercised only where the abuse of discretion by the attorney-general in refusing the leave is *extreme and clearly indefensible*." (*Lamb v. Webb* (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.*) Research has not disclosed any court that has issued such mandamus in the more than 100 years since *Lamb* was decided. The case before the trial court did not even come close to meeting this very high burden.

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." (Opinion at p. 2.) When a private party seeks to file an action in quo warranto in superior court, that party must obtain consent from the Attorney General. (Opinion at p. 3.) The standard for determining whether consent to proceeding in quo warranto shall be granted is whether the application presents a substantial issue of fact or law that warrants judicial resolution, and whether granting the application would serve the public interest. (*Ibid.*) The Attorney General's Opinion adequately explains that "the text itself does not provide a clear answer" to the question of what Section 12 means. (Opinion at pp. 5-6.) The Opinion readily states that Section 12 "could have been worded more precisely," but it was not. (*Id.* at p. 7.) The Attorney General's Opinion concluded that, although there may be a debatable issue as to the interpretation of Section 12, "the overall public interest would not be furthered by burdening the courts, the parties, and the public with the proposed quo warranto action." (Opinion at p. 8.) 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."[1] (*Id.*; 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 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.)

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[1] Petitioners are asserting a general public interest and are not asserting a private right of action to hold office.

Thus, even if reasonable persons can disagree over the meaning of Section 12, the Attorney General was acting well within her discretion in deciding that the public interest would not be furthered by granting the quo warranto application in this case. There has been no abuse of discretion by the Attorney General, much less an "extreme and clearly indefensible" abuse of discretion.

Contrary to petitioners' statement in their motion for calendar preference, this appeal does not concern whether a "sitting councilmember is currently holding office unlawfully." (See Petitioners' Motion at p. 1.) Rather, the issue is whether a petition for writ of mandate should be granted to order the Attorney General to grant a quo warranto application. If the quo warranto application had been granted, then the next litigation would examine if a "sitting councilmember is currently holding office unlawfully." This distinction is important, and clarifies an important issue in this motion: adequate time is needed to verify the accuracy of the notice of appeal, the record, the opening brief and to respond to the legal arguments in a thorough and comprehensive fashion. Ten days is not an adequate amount of time to respond fully and accurately to the legal issues presented.[2]

Although respondent opposes the proposed briefing schedule, counsel for Respondent did agree to respond within thirty days of receiving the opening brief. (See Smith Dec. at ¶ 11.) The full 30 days is appropriate. The Deputy Attorney General assigned to this matter informed petitioners' counsel that she is the primary deputy on a Ninth Circuit Court of Appeals

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[2] Petitioners have had more than four weeks to file their opening brief. At the hearing on January 7, 2014, the superior court denied the petition for writ of mandate and ordered counsel for respondent to prepare a proposed judgment. (See Smith Dec. at ¶ 6.) The opening brief has not yet been served on Respondent.

case and the Attorney General's opening brief for that appeal is due February 14, 2014. Moreover, in this matter time must be allotted not only for drafting the appellee's brief, but for review and approval of that brief within the Attorney General's Office. Thus, a 10-day response in this appeal is not adequate time to respond to the legal and factual issues presented in this proceeding. (See Petitioners' Motion at p. 3.)

CONCLUSION

Respondent does not oppose expedited briefing and oral argument. But Respondent does object to the unreasonable briefing schedule for responding to the opening brief as proposed by petitioners. Respondent therefore requests a reasonable amount of time to respond to petitioners' opening brief, including at least thirty days to respond after service of petitioners' opening brief.

Dated: February 4, 2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DOUGLAS J. WOODS
Senior Assistant Attorney General
MARK R. BECKINGTON
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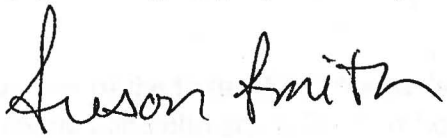

SUSAN K. SMITH
Deputy Attorney General
Attorneys for Attorney General Kamala D. Harris

DECLARATION OF SERVICE BY OVERNIGHT COURIER

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

On February 4, 2014, I served the attached **OPPOSITION TO APPELLANTS' MOTION FOR CALENDAR PREFERENCE** by placing a true copy thereof enclosed in a sealed envelope with the **ONTRAC Overnight Courier Service**, addressed as follows:

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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 February 4, 2014, at Los Angeles, California.

Angela Artiga
Declarant

Signature

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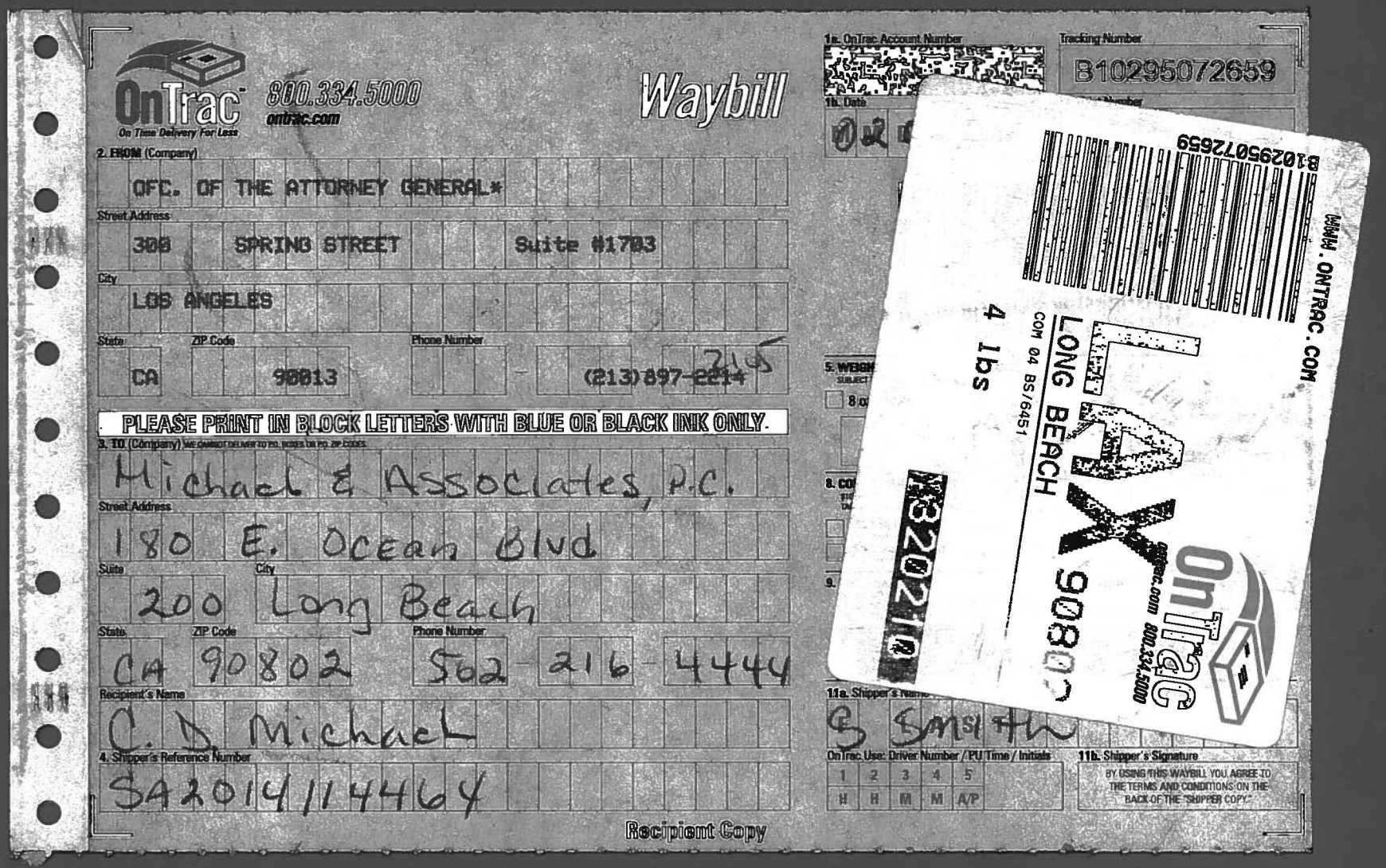

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