

Attorneys for Proposed Relators

1 **I. INTRODUCTION**

2 Proposed Relators, John Rando and Mariano A. Rodas (“Proposed Relators”), hereby
3 apply for leave to sue in *quo warranto* because proposed Defendant, Glendale City
4 Councilmember Frank Quintero (“Defendant Quintero”), unlawfully holds the public office of
5 Councilmember, and proposed Defendant, the City of Glendale (“Defendant City” or “City”),
6 usurped and intruded into that public office by appointing Defendant Quintero in violation of its
7 City Charter.

8 **II. FACTUAL HISTORY**

9 On April 12, 2013, the City of Glendale held its municipal election to elect among others,
10 a City Treasurer and three City Councilmembers. (Verified Statement of Facts (“VSOF”), ¶ 4.),

11 Three councilmembers, including Laura Friedman, Ara Najarian, and Defendant Quintero
12 had terms that expired in April 2013, leaving three councilmember positions for which the voters
13 could cast their ballot. (VSOF, ¶ 5.) Laura Friedman and Ara Najarian both ran for re-election in
14 April 2013. (VSOF, ¶ 5.) Defendant Quintero did not run for re-election. (VSOF, ¶ 5.)

15 On or about April 11, 2013, the City of Glendale finalized the election results, and Ara
16 Najarian, Laura Friedman, and Zareh Sinanyan won the election to fill the three available
17 councilmember positions. (VSOF, ¶ 6.)

18 On April 15, 2013, the new councilmembers took office, and Defendant Quintero’s term
19 as city councilmember effectively terminated. (VSOF, ¶ 7.)

20 Rafi Manoukian, a sitting Glendale city councilmember at the time of the April 12, 2013
21 election, ran in the election for the position of City Treasurer and won. (VSOF, ¶ 8.)

22 Because Mr. Manoukian’s council term was not set to expire this year, his seat was not
23 filled by the election and his assuming the position of Treasurer on or about April 15, 2013, left a
24 vacancy on the City Council. (VSOF, ¶ 9.)

25 Per Article VI, Section 13(b) of the Glendale City Charter, any vacancy on the city council
26 must be filled via appointment by the majority vote of the remaining members of the council.
27 (VSOF, ¶ 10.) If any appointment to the council is not made within 30 working days of the
28 vacancy, then the council must call for a special election within 120 days to fill the vacant seat.

1 (VSOF, ¶ 10.)

2 At the city council meeting on April 16, 2013, the councilmembers discussed how to
3 determine who to appoint to fill the vacant seat. (VSOF, ¶ 11.) Defendant Quintero's name was
4 raised as a possible candidate. (VSOF, ¶ 11.) Councilmember Najarian raised a concern before the
5 Council and the Glendale City Attorney, Michael J. Garcia, that Article VI, Section 12 of the
6 Glendale City Charter might preclude appointment of Defendant Quintero because two years had
7 not yet lapsed since the ending of Defendant Quintero's former term on April 15, 2013. (VSOF, ¶
8 11.)

9 Article VI, Section 12 was amended by Glendale voters in the City's 1982 election to
10 reword its original language and to add the following completely new sentence:

11 No former councilmember shall hold any compensated city office or
12 city employment until two (2) years after leaving the office of
councilmember. (1982.) (VSOF, ¶ 12.)

13 Article IV, Section 1 of the Glendale City Charter refers to city councilmembers as
14 "officers" and Article IV, Section 3 provides that city councilmembers receive compensation from
15 the City. (VSOF, ¶ 13.)

16 In response to Councilmember Najarian's inquiry, City Attorney Garcia provided his
17 opinion on the application of Article VI, Section 12 to the proposed appointment of Defendant
18 Quintero. (VSOF, ¶ 14.) He concluded that such provision would not preclude Defendant
19 Quintero's appointment to the City Council. (VSOF, ¶ 14.)

20 He reasoned that *according to the legislative history*, the voters' main intent in adopting
21 the provision was to clarify an ambiguity in the previous charter provision, which when read
22 literally, prevented councilmembers from having any employment beyond the council whatsoever.
23 (VSOF, ¶ 15.)

24 City Attorney Garcia continued explaining his position by stating that while the legislative
25 history makes clear that the Charter amendment's purpose was also to prevent former
26 councilmembers from using "undue influence" to try to obtain a city position within two years of
27 leaving office – what he referred to as "a typical revolving-door policy" – he did not believe that
28 the provision contemplated the appointment of a former councilmember back on the council after

1 a recent and brief retirement. (VSOF, ¶ 16.)

2 City Attorney Garcia reasoned that because Defendant Quintero was a co-equal member of
3 the council with no legal or supervisory authority over the other councilmembers, in his view the
4 public policy purpose of this particular charter amendment would not be served by reading it in
5 such a way as to prevent the Council from appointing Defendant Quintero, or any recently
6 resigned council member, to serve on the council. (VSOF, ¶ 17.)

7 He further opined that because the constitutional right to public office was implicated, he
8 felt that the provision and its legislative history had to be more clear that situations like Defendant
9 Quintero's were intended to be covered by the Charter's prohibition on former councilmembers
10 obtaining City positions within two years of their leaving office. (VSOF, ¶ 18.) According to City
11 Attorney Garcia, the provision is ambiguous on that point – although he does not point to a
12 specific ambiguity – and the voter materials from 1982 (when the Charter amendment was voted
13 on) did not clearly enough reflect an intent to block the appointment of a former council member
14 within the two year period. (VSOF, ¶ 18.)

15 On April 23, 2013, the City Council appointed Defendant Quintero to fill the vacancy.
16 (VSOF, ¶ 19.)

17 **III. DISCUSSION**

18 **A. Standards for Granting Leave to Sue in *Quo Warranto***

19 California Code of Civil Procedure section 803 allows a private party to bring an action on
20 behalf of the public in *quo warranto* “against any person who usurps, intrudes into, or unlawfully
21 holds or exercises any public office.” In determining whether to grant leave to sue in *quo*
22 *warranto* the Attorney General considers (1) whether the application has raised a substantial
23 question of fact or issue of law which should be decided by a court, and (2) whether it would be in
24 the public interest to grant leave to sue. (76 Ops. Cal. Atty. Gen. 169, 171).

25 The present case is a *prima facie* situation for which leave to sue Defendants Quintero and
26 the City in *quo warranto* is appropriate. First, a member of a city council holds a public office for
27 purposes of a *quo warranto* action. (See 72 Ops.Cal.Atty.Gen. 63 (1989); 72 Ops.Cal.Atty.Gen. 8
28 (1989); 35 Ops.Cal.Atty.Gen. 198 (1960).) Second, there is an issue of law as to whether the

1 City's appointing Quintero violated its Charter. Finally, it is in the public interest to resolve that
2 question of law for City of Glendale residents.

3 This showing alone is sufficient for the Attorney General to grant proposed Relators'
4 application for leave to sue in *quo warranto*. While proposed Relators believe they will ultimately
5 prevail on this question before a court, the Attorney General need not bother herself with
6 determining the strength of the arguments in order to grant their application. (See 25 Ops. Cal.
7 Atty. Gen. 237, 240 [citing 17 Ops. Cal. Atty. Gen. 46, . Gen. 87' 17 0. Cal Atty. Gen. 136; 19
8 Ops. Cal. Atty. Gen. 46) (stating "in passing on applications for leave to sue in *quo warranto*, the
9 Attorney General ordinarily does not decide the issues presented, but determines only whether or
10 not there is substantial question of law or fact which calls for judicial decision").

11 Thus, the dispute over the legal effect of Glendale's Charter provision here, being a matter
12 of public interest, meets the requirements for being granted leave to sue in *quo warranto*.

13 **1. Relators Raise an Issue of Law Which Should Be Decided by a Court:**
14 **Whether Defendant Quintero's Appointment to the Glendale City**
Council Violated the City's Charter

15 Article VI, Section 12 of the Glendale City Charter provides as follows:

16 A councilmember shall not hold any other city office or city
17 employment except as authorized by State law or ordinarily necessary
18 in the performance of the duties as a councilmember. **No former**
19 **councilmember shall hold any compensated city office or city**
employment until two (2) years after leaving the office of
councilmember. (1982.)

20 Relators contend that the second part of this provision clearly and unambiguously bars
21 Defendant Quintero from being eligible to hold compensated office in Glendale within two years
22 of his having left his office as a Glendale councilmember on or about April 15, 2013. (VSO, ¶7.)

23 And thus, his appointment to the City Council (a compensated City office – (VSO, ¶ 13) on or
24 about April 23, 2013 (a mere eight days after he left office) violated Article VI, Section 12 of the
25 Glendale City Charter. (VSO, ¶ 17.)

26 In advising the City Council to the contrary, City Attorney Garcia opined that the Charter
27 provision's language is not necessarily controlling, and that its legislative history must be
28 considered to determine its true intent. (VSO, ¶ 15.) He concluded, in sum, that reading Article

VI, Section 12 literally as to prevent a former councilmember, such as Defendant Quintero, from being appointed to fill the current councilmember vacancy would be improper because the legislative history did not clearly show such was the voter's intent. (VSOF ¶¶ 14-17.)

He further opined that because the legislative history was not sufficiently clear that it intended such an effect, reading the Charter to preclude Mr. Quintero's appointment would also be contrary to public policy as an unwarranted restriction on Mr. Quintero's constitutional right to be appointed to office. (VSOF, ¶ 18.)

a. A Court Should Decide the Plain Meaning of Article VI, Section 12 of the Glendale City Charter to Determine its Effect

Because the language of Article VI, Section 12 of the City's Charter clearly and unambiguously prohibits Defendant Quintero from holding compensated office in the City of Glendale within two years of April 15, 2013, City Attorney Garcia's argument to the contrary necessarily looks beyond the plain language of the Charter provision. The rules of statutory interpretation preclude that approach.

When addressing the rules of charter construction, the California Supreme Court has held that "we construe the charter in the same manner as we would a statute." *Domar Elec., Inc. v. City of Los Angeles*, 9 Cal. 4th 161, 171, (1994) (citing *C.J. Kubach Co. v. McGuire*, 199 Cal. 215, 217 (1926)). Accordingly, the court first looks to the language of the charter and gives effect to "its plain meaning." *Id.* (citing *Burden v. Snowden*, 2 Cal.4th 556, 562 (1992)).

"If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters)."

Lungren v. Deukmejian, 45 Cal. 3d 727, 735 (1988); *see also Pope v. Superior Court*, 136

Cal.App.4th 871, 875-76 (2006) (Where the language in a law is clear and unambiguous, the court will "presume the city council and the voters intended the meaning apparent on its face and our inquiry ends there.").

In sum, a court should decide whether, Article VI, Section 12's plain language controls and, if so, whether it forbids or permits Defendant Quintero's appointment.

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1 **b. To the Extent it Is Even Relevant, a Court Should**
2 **Decide the Meaning of Article VI, Section 12's**
3 **Legislative History**

4 Even assuming that the plain language of the Charter provision is not dispositive, it is
5 unclear how the legislative history supports City Attorney Garcia's position that Defendant
6 Quintero's appointment is allowed under Article VI, Section 12. City Attorney Garcia refers to the
7 Charter provision as a "typical revolving door policy" the general intent of which was to prevent
8 former councilmembers from exerting "undue influence" in obtaining paid positions within the
9 City. Yet, he provides no explanation why Defendant Quintero's situation should be excluded
10 from that description when it seems it could conceivably be the epitome of what voters intended
11 to prevent, i.e., councilmembers bypassing expensive and difficult elections to be appointed.¹

12 Moreover, City Attorney Garcia fails to cite any concrete example of language in the
13 legislative history that shows voters did not intend to preclude appointments of a former city
14 councilmember. Nor does he even cite to anything that would expressly allow such appointments
15 either. He seems to assert that the legislative history's mere *omission* of an express statement (as
16 opposed to a contrary one) contemplating this exact situation precludes its inclusion.

17 As such, Proposed Relators believe the legislative history's meaning does not support City
18 Attorney Garcia's position here, because "[w]here the words of the charter are clear, we may not
19 add to or alter them *to accomplish a purpose that does not appear on the face of the charter or*
20 *from its legislative history.*" *Domar Elec.*, 9 Cal. 4th at 172 (emphasis added). A purpose cannot
21 appear through an omission, which is what City Attorney Garcia's conclusion rests on, and is thus
22 wrong. In any event, the effect of Article VI, Section 12's legislative history on whether
23 Defendant Quintero is holding office in violation of Glendale's City Charter is a question
24 appropriate for a court to determine.

25
26 ¹ While Relators are not accusing Defendant Quintero, or any councilmember, of having
27 engaged in such a conspiracy, it is reasonable to assume that the voters intended to preclude the
28 appointment of former councilmembers back on the council within two years of leaving office
29 for this exact reason.

1 **c. A Court Should Decide Whether Proposed Relators' View of**
2 **Article VI, Section 12 Is Constitutionally Precluded**

3 City Attorney Garcia asserts that interpreting Article VI, Section 12 of the City's Charter
4 as Proposed Relators do would be a violation of Defendant Quintero's constitutional right to hold
5 public office. Proposed Relators, on the other hand, contend that while there is a fundamental
6 right to hold public office either by election or appointment, this right may be restricted by a clear
7 declaration of law, *See Lungren v. Deukmejian*, 45 Cal. 3d 727, 735 (1988), and that Article VI,
8 Section 12 of the City's Charter is such a clear declaration of law that squarely falls within the
9 parameters of a lawful limit on the right to hold office and thus does not unduly infringe upon Mr.
10 Quintero's constitutional right.

11 A court should decide this question of law, since its resolution impacts both the residents
12 of Glendale seeking to vindicate their Charter, as well as potentially Defendant Quintero's
13 constitutional rights.

14 Based on the foregoing, it is clear that the Proposed Relators' application contains
15 substantial questions of law deserving of review by a court.

16 **2. Relators' Proposed Action in *Quo Warranto* Is in the Public Interest**
17 **of the Residents of the City of Glendale, as it Seeks to Vindicate the**
18 **Charter for Which They Voted**

19 The existence of substantial issues of law alone has generally been viewed as presenting a
20 sufficient public purpose to warrant the granting of leave to sue in *quo warranto*, absent other
21 overriding considerations. 90 Ops.Cal.Atty.Gen. 82 (2007). See also, 85 Ops.Cal.Atty.Gen. 90,
22 93-94 (2002); 82 Ops.Cal.Atty.Gen. 78, 81-82 (1999); 81 Ops.Cal.Atty.Gen. 94, 98 (1998).) This
case is no exception.

23 To the contrary, there could be no more important consideration in this context than the
24 public's interest in how it is governed. And that is the question here: i.e., whether the Charter
25 amendment adding Article VI, Section 12 that was adopted by the people of Glendale precludes
26 Defendant Quintero from remaining on the City Council or not. As City Attorney Garcia
27 concedes, Glendale residents' purpose in voting to amend the City's Charter in 1982 was to
28 prevent a "revolving door" policy whereby former city council members would try and use

1 influence to obtain a position in the City. (VSOF, ¶ 16.) While City Attorney Garcia contends the
2 appointment of Mayor Quintero is not the type of situation contemplated by the Charter, a court
3 should decide whether the Glendale voters' intent was something other than what the plain
4 language of the Charter says; especially considering the complete lack of ambiguities in Article
5 VI, Section 12 and dearth of legislative history contradicting its plain meaning.

6 Based on the foregoing, Relators have presented a prima facie case for leave to sue
7 Defendants Quintero and the City in *quo warranto*.

8 **B. Both Councilmember Quintero and the City of Glendale Are Each Proper**
9 **Defendants**

10 Mr. Quintero is a proper defendant since he is the one actually holding the public office
11 that he was unlawfully appointed to. Cal.Civ.Proc.Code § 803. Relators believe that the City of
12 Glendale is also a proper Defendant in this action. The Attorney General has routinely granted
13 leave to sue a city in *quo warranto* where the petitioners were challenging the legitimacy of a city
14 council action affecting the franchise under the Meyers-Milias-Brown Act. *See Int'l Assn. of Fire*
15 *Fighters v. City of Oakland*, 174 Cal. App. 3d 687, 698 (Ct. App. 1985) (holding that "an action
16 in the nature of quo warranto constitutes the exclusive method for appellants to mount their attack
17 on the charter amendments based upon the city's failure to comply with the Meyers-Milias-Brown
18 Act"); accord *People ex rel. Seal Beach Police Officers' Association v. City of Seal Beach*, 36
19 Cal. 3d 591, 595 (1984); see also 95 Ops.Cal.Atty.Gen. 31 (June 11, 2012).

20 It would make little sense if cities were subject to in *quo warranto* actions for failing to
21 comply with general law concerning elections and ballot measures, but not their own charters.
22 Moreover, it was the City, via the City Attorney and the City Council, that put Defendant
23 Quintero in this position, perhaps due to no fault of his own. Accordingly, Proposed Relators
24 believe that the City of Glendale is a proper defendant in this action in addition to Defendant
25 Quintero.

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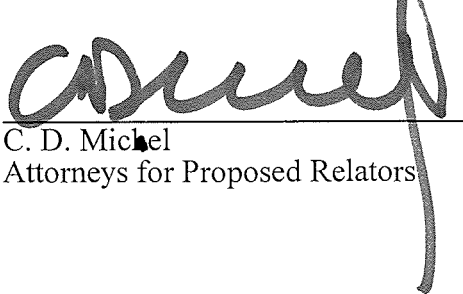
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1 **IV. CONCLUSION**

2 For the foregoing reasons, Defendant Quintero's appointment to the Glendale City
3 Council violated the City's Charter. *Quo warranto* is the proper and exclusive method for
4 remedying this harm. Therefore, proposed Relators respectfully request that their application for
5 leave to sue in *quo warranto* be granted.

6 Dated: May 23, 2013

MICHEL & ASSOCIATES, P.C.

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10 Attorneys for Proposed Relators
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