

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

JOHN RANDO and MARIANO A. RODAS,

Petitioners and Appellants,

vs.

KAMALA HARRIS, individually and in her official
capacity as Attorney General;

Respondent and Appellee,

FRANK QUINTERO, individually and in his official
capacity as Glendale City Councilmember; CITY OF
GLENDALE,

Real Parties in Interest.

Case No. B254060

COURT OF APPEAL - SECOND DIST.

FILED

FEB 03 2014

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Deputy Clerk

Los Angeles County Superior Court, Case NO. BS145904
The Honorable James C. Chalfant, Judge

MOTION FOR CALENDAR PREFERENCE

C. D. Michel - S.B.N. 144258
Sean A. Brady - S.B.N. 262007
Michel & Associates, P.C.
180 East Ocean Blvd., Suite 200
Long Beach, CA 90802
Telephone: 562-216-4444
Facsimile: 562-216-4445
Email: CMichel@michellawyers.com

Attorneys for Plaintiffs/Appellants

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Attorneys for Plaintiffs/Appellants

INTRODUCTION

Petitioners-Appellants John Rando and Mariano Rodas (“Appellants”) appeal an order denying their petition for a writ of mandate to correct the Attorney General’s abuse of discretion in denying their quo warranto application seeking to challenge the unlawful usurpation of office by Glendale city councilmember Frank Quintero. Because this appeal involves two matters of great public concern: (1) the scope of the Attorney General’s discretion to deny private citizens access to the courts to challenge the eligibility of an officeholder under their municipal charter, and (2) whether a sitting councilmember is currently holding office unlawfully, and because time is of the essence, as this issue may become moot on June 26, 2014, when Quintero’s term ends, Appellants hereby move this Court for calendar preference pursuant to California Rules of Court § 8.240. Additionally, since Appellants challenge the appointment of councilmember Quintero to what is normally an elective office, this appeal may be entitled to calendar preference under Code Civ. Proc., § 44.

I. FACTS

Article VI, Section 12 of the City of Glendale’s charter provides that “No former councilmember shall hold any compensated city office or city employment until two (2) years after leaving the office of councilmember.” Appellants, are residents of Glendale who sought to enforce this provision against former Councilmember Frank Quintero when his former colleagues on the City Council appointed him back to the Council just

eight days after his term as an elected councilmember had expired. Quintero's current term ends June 26, 2014. (Brady Decl., ¶8)

As a preliminary matter, however, Appellants had to file an application with the California Attorney General requesting permission for leave to sue in *quo warranto* (Code Civ. Proc., §803).¹ After a five month delay, the Attorney General issued an opinion denying Appellants' quo warranto application. 13 Cal. Daily Op. Serv. 12415 (Oct. 25, 2013). (Brady Decl., ¶¶12, 15)

After the Attorney General denied Appellants' quo warranto application, Appellants immediately sought a writ of mandate to correct her abuse of discretion in the Superior Court. Recognizing the importance of the issue Appellants raised and the urgency in resolving it, the Superior Court granted Appellants' ex parte alternative writ application and expedited the briefing and hearing schedule. (Brady Decl., ¶ 16)

The Superior Court held a hearing on January 7, 2014. On January 15, 2014 Superior Court Judge, James Chalfant signed an order and issued an opinion denying Appellants' petition for a writ of mandate, which Appellants received in the mail on January 20, 2014. Appellants filed a notice of appeal on January 22, 2014. (Brady Decl., ¶

¹ An action may be brought by the attorney-general, in the name of the people of this state, upon his own information, or upon a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise, or against any corporation, either de jure or de facto, which usurps, intrudes into, or unlawfully holds or exercises any franchise, within this state. And the attorney-general must bring the action, whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the governor.

¶ 20, 22)

II. ANALYSIS

California Rules of Court, Rule 8.240 provides:

A party seeking calendar preference must promptly serve and file a motion for preference in the reviewing court. As used in this rule, "calendar preference" means an expedited appeal schedule, which may include expedited briefing and preference in setting the date of oral argument.

Appellants respectfully request this Court grant a preference on the calendar for this matter pursuant to CRC, Rule 8.240. Specifically, Appellants ask that the Court shorten time for the Attorney General and Real Parties in Interest (the City of Glendale and Frank Quintero) to respond to Appellants' opening brief from 30 days under California Rules of Court, Rule 8.212 to ten (10) days. Appellants can submit a Reply thereto within three (3) days of being served with Respondents' brief. Appellants further request that the Court calendar this matter for a hearing or final resolution at the Court's earliest convenience.

The Attorney General and Real Parties in Interest have indicated that they oppose any expedited briefing schedule, but, at this time, do not oppose Appellants' request for calendar preference as to the hearing date on this matter. (Brady Decl., ¶ 24)

Because this appeal presents a question of what, if any, ability a citizen has to enforce their City Charter, this appeal presents a matter of great importance to the public. While quo warranto proceedings are rare they represent an essential tool for private citizens to make sure their representatives are legitimately in office, which is vital in our

constitutional form of government. Each day of delay in the prosecution of this appeal exacerbates the harm to Appellants and the residents of Glendale, as they are currently forced to be governed by Concilmember Quintero, who may be unlawfully holding office.

In contrast, there will be no undue prejudice to any of the parties in this matter from the expediting of a decision in this appeal, as there is a pure question of law at issue, which the parties have thoroughly briefed in the lower court. The Attorney General should know and be able to quickly articulate the scope of her authority in ruling on quo warranto applications.

Moreover, the urgency of this matter has only grown since the Superior Court's denial of Appellants' request for a writ of mandate. June 26 is rapidly approaching and absent an expedited hearing, Appellants will be denied their opportunity to vindicate their city charter in court. The Attorney General has acknowledged that the relatively short amount time left in Quintero's term is a problem here, which was part of the reason she denied Appellants' quo warranto application. See, 13 Cal. Daily Op. Serv. 12415.

Additionally, this case may also be entitled to calendar preference because the Appellants are challenging the appointment of councilmember Quintero to elective office. (Code Civ. Proc., § 44.)² Even if it is not, CCP § 44 indicates a public policy in favor of

² Appeals in probate proceedings, **in contested election cases**, and in actions for libel or slander by a person who holds any elective public office or a candidate for any such office alleged to have occurred during the course of an election campaign shall be given preference in hearing in the courts of appeal, and in the Supreme Court when transferred thereto. All these cases shall be placed on the calendar in the order of their date of issue, next after cases in which the people of the state are parties. (Emphasis added)

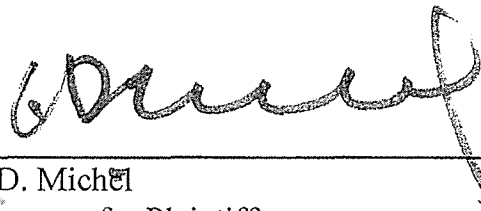
promptly resolving issues involving the legitimacy of public officials like the one presented here.

CONCLUSION

For these reasons Appellants respectfully request this Court expedite the briefing and hearing schedule in this matter as outlined above.

Dated: January 29, 2014

MICHEL & ASSOCIATES, P.C.

A handwritten signature in dark ink, appearing to read "C. D. Michel", is written over a horizontal line. The signature is fluid and cursive.

C. D. Michel
Attorneys for Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, Claudia Ayala, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Blvd., Suite 200 Long Beach, CA 90802.

On January 29, 2014, I served the foregoing document(s) described as

MOTION FOR CALENDAR PREFERENCE

on the interested parties in this action by placing

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

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

Executed on January 29, 2014, at Long Beach, California.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 29, 2014, at Long Beach, California.



CLAUDIA AYALA

SERVICE LIST

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

Mark R. Beclomgton, Supervising Deputy Attorney General Susan K. Smith, Deputy Attorney General Office of the Attorney General 300 S. Spring Street, Suite 1702 Los Angeles, CA 90013 Email: Susan.Smith@doj.ca.gov Attorney for Defendants	Attorney for Defendant Kamala Harris
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Andrew C. Rawcliffe Deputy City Attorney, Litigation Glendale city Attorney's Office 613 E. Broadway, Suite 220 Glendale, CA 91206 Email: ARawcliffe@ci.glendale.ca.us Attorneys for Defendants	Attorney for Defendant/Real Party in Interest Frank Quintero and the City of Glendale
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Honorable James C. Chalfant Los Angeles Superior Court Stanley Mosk Courthouse 111 North Hill Street Los Angeles, CA 90012 Department 85	Judge
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Clerk of the Court Los Angeles Superior Court Stanley Mosk Courthouse 111 North Hill Street Los Angeles, CA 90012	Clerk
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FIRM:

MICHEL & ASSOCIATES, P.C.
180 E. OCEAN BLVD.
SUITE 200
LONG BEACH CA 90802
PH: 562/216-4444

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VS.
DEFENDANT: Kamale Harris et al

COURT: Court of Appeal
JUDICIAL DIST: Second District
CITY: Los Angeles CASE #: BS145 904

APPROVED DIRECT BILLING:

CARRIER NAME:

ADDRESS:

CITY, STATE, & ZIP:

ADJUSTER:

INSURED:

CLAIM NUMBER:

DATE OF LOSS:

LIST ALL DOCUMENTS:

HEARING
DATEFEES PAID/
DATEFEES
ATTACHED

- 1) Civil Case Information Statement
- 2) Motion for Calendar Preference
- 3) Declaration In Support of motion for Calendar Preference

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