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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11 JOHN RANDO and MARIANO A.
12 RODAS,

13 Plaintiffs and Petitioners,

14 vs.

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

16 Defendant and Respondent,

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

19 Real Parties in Interest
20

Case No.: BS145904

**REAL PARTIES IN INTEREST
FRANK QUINTERO'S AND CITY OF
GLENDALE'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO THE PETITION**

DATE: January 7, 2014

TIME: 1:30 p.m.

Dept.: 85

[No Fee - Gov't. Code, § 6103]

21 Real Parties in Interest, Frank Quintero and City of Glendale submit the following
22 opposition to John Rando's and Mariano A. Rodas' Petition for Writ of Mandamus.
23

24 DATED: December 20, 2013

MICHAEL J. GARCIA, CITY ATTORNEY

25
26 By: 

ANDREW C. RAWCLIFFE
Attorneys for Real Parties in Interest
Frank Quintero and City of Glendale

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1 **INTRODUCTION**

2 Petitioners John Rando and Mariano Rodas seek to set aside Respondent Attorney
3 General's denial of their application to sue Real Parties in Interest Frank Quintero and City of
4 Glendale in *quo warranto* for Quintero's appointment to elected office. Petitioners claim that
5 the Attorney General abused her discretion in denying their *quo warranto* application and/or
6 that she had a ministerial duty to grant their *quo warranto* application against Real Parties in
7 Interest Quintero and the City. (Ex Parte Application (hereinafter "App.") at pp. 4:23-5:2;
8 5:10-21) Mandamus, however, may only issue upon a showing that the denial of the *quo*
9 *warranto* application was an extreme and clearly indefensible abuse of the Attorney General's
10 discretion. As explained below, the Attorney General's denial of Petitioners' *quo warranto*
11 application was proper and clearly not an extreme and indefensible abuse of her discretion.

12 **STATEMENT OF THE CASE**

13 Petitioners filed their application for leave to sue Quintero and the City in *quo*
14 *warranto* with the Attorney General on May 23, 2013. (Verified Petition ¶ 18) Real Parties in
15 Interest filed their opposition to Petitioners' *quo warranto* application on June 7, 2013. (Ex
16 Parte Application (hereinafter "App.") Exh. D) On June 17, 2013, Petitioners filed their Reply
17 in support of their *quo warranto* application. (App. Exh. E)

18 On October 25, 2013, the Attorney General denied Petitioners' application concluding
19 in an eight page opinion that Petitioners' proposed *quo warranto* action against Quintero and
20 the City did not raise a substantial legal issue and was not in the public interest. (App. Exh.
21 F).

22 In response, Petitioners filed this peremptory writ of mandamus challenging the
23 Attorney General's denial and requesting this Court order the Attorney General to grant
24 Petitioners' *quo warranto* application for leave to sue Quintero and the City.

25 **STATEMENT OF FACTS**

26 On April 2, 2013, the City held a municipal election that resulted in a vacancy on the
27 City Council. (Verified Petition ¶ 4) There were fourteen (14) months left on the term of the
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1 vacant Council seat. (App. Exh. F at p. 3 ¶ 2). Pursuant to Article VI, Section 13(b) of the
2 City's Charter, the Council was required to either appoint a council member within thirty
3 days or hold a special election within 120 days to fill the vacancy of the remainder of the
4 unexpired term. (App. Exh. A at pp. C-11-C12)

5 Because of the costs associated with holding a special election to fill the vacancy, the
6 Council decided to make an appointment to the vacant Council seat. (App. Exh. D at p. 2:26-
7 27)

8 On April 15, 2013, Quintero completed his term as City Mayor. (Verified Petition ¶ 7)
9 On April 23, 2013, the remaining members of the Council unanimously voted to appoint
10 Quintero to the vacant Council seat. (App. Exh. F at p. 3 ¶ 2) The unexpired term to which he
11 was appointed ends June 2014. (*Ibid.*)

12 Petitioners claim Quintero's appointment violates Article VI, Section 12 of the City's
13 Charter (hereinafter Section 12). Section 12 is entitled "Councilmembers holding other city
14 offices," and provides as follows:

15 A councilmember shall not hold any other city office or city employment except as
16 authorized by State law or ordinarily necessary in the performance of the duties as a
17 councilmember. No former councilmember shall hold any compensated city office or
18 city employment until two (2) years after leaving the office of councilmember.
19 (App. Exh. A at p. C-11)

20 Petitioners claim this section can only be interpreted as a two year term-limit or hiatus
21 period that prohibits council members from holding elective office upon expiration of the
22 term in office. However, the City has always interpreted Section 12 as only prohibiting a
23 council member from being employed by the City while holding elected office and for two
24 years after leaving elected office. It has never been interpreted as a prohibition on holding
25 elected office. (App. Exh. D at p. 12:16-18)

26 The Attorney General found that there were at least two interpretations of Section 12
27 and ultimately disagreed with Petitioners' interpretation that Section 12 constituted a two
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1 year ban or hiatus period on holding elective office. (App. Exh. F at p. 8 (“as is the case with
2 most legal propositions, there is room for some debate here as to the proper interpretation of
3 Section 12. Upon examining the language at issue in its full context, however, we do not
4 consider this question to be a close one.”))

5 As is demonstrated by her Opinion, the Attorney General carefully analyzed the
6 language of Section 12, the ballot pamphlet distributed to the electorate, other provisions of
7 the Charter, rules of statutory construction, the public’s interest in Petitioners’ proposed *quo*
8 *warranto* action, and Quintero’s fundamental right to hold elected office in reaching her
9 conclusion. (App. Exh. F)

10 ARGUMENT

11 I. THE STANDARD OF REVIEW OF THE ATTORNEY GENERAL’S OPINION

12 *Quo warranto* is a specific action by which one challenges “any person who usurps or
13 intrudes into, or unlawfully holds or exercises public office.” Nicolopulus v. City of
14 Lawandale (2001) 91 Cal.App.4th 1221, 1225, citing, Code Civ. Proc., § 803. “It is the
15 exclusive remedy in cases where it is available” and requires leave from the Attorney
16 General prior to initiation of the action. Id. (citation omitted); Intl Assn. of Firefighters v.
17 City of Oakland (1985) 174 Cal.App.3d 687, 693-698.

18 “The modern rationale [for requiring leave from the Attorney General to bring a *quo*
19 *warranto* action] is, [t]he remedy of *quo warranto* is vested in the People, and not in any
20 private individual or group, because disputes over title to public office are viewed as a public
21 question of governmental legitimacy and not merely a private quarrel among rival claimants.
22 . . .” Nicolopulus v. City of Lawandale, supra, 91 Cal.App.4th at p.1228. “Requiring leave of
23 the Attorney General also protects public officers from frivolous lawsuits. Id.

24 “There reposes in the Attorney General the right to exercise discretion in permitting
25 the institution of suit in *quo warranto*.” City of Campbell v. Mosk (1961) 197 Cal.App.2d
26 640, 642. “The exercise of discretion of the Attorney General in the grant of such approval to
27 sue calls for care and delicacy.” Id. at p. 650 “The Attorney General need not automatically
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1 grant leave to file any kind of suit presented to him if he does not in the exercise of his
2 discretion deem it a proper subject of litigation.” *Id.* at p. 647. Nor do debatable issues
3 inevitably lead to leave to sue in *quo warranto*. *Id.* at p. 650.

4 Based on these considerations, those courts that have addressed the subject have
5 unanimously held that for a court to issue a writ of mandamus compelling the Attorney
6 General to violate her “own judgment by ordering [her] to grant leave to commence a suit
7 against [her] own conviction and conscientious belief that such leave should not be given
8 should be exercised only when the abuse of the Attorney General in refusing leave is extreme
9 and clearly indefensible. When such an extreme case does not appear, a decree of a court
10 compelling [her] to act against [her] judgment is erroneous, and is itself an abuse of
11 discretion.” *City of Campbell v. Mosk* (1961) 197 Cal.App.2d 640, 646-647, *citing*, *Lamb v.*
12 *Webb* (1907) 151 Cal. 451, 454; *Intl Assn. of Firefighters v. City of Oakland*, *supra*, 174
13 Cal.App.3d; *Oakland Municipal Improvement League v. City of Oakland* (1972) 23
14 Cal.App.3d 165; *Nicolopulus v. City of Lawandale*, *supra*, 91 Cal.App.4th 1221.

15 It is important to note that in applying this standard of review there are no reported
16 instances of mandamus issuing in response to an Attorney General’s denial of *quo warranto*
17 action. See, *Intl. Assn. of Firefighters v. City of Oakland*, *supra*, 174 Cal.App. 687, 689.

18 **II. THE ATTORNEY GENERAL’S DENIAL OF PETITIONER’S *QUO***
19 ***WARRANTO* APPLICATION WAS NOT AN EXTREME AND CLEARLY**
20 **INDEFENSIBLE ABUSE OF HER DISCRETION**

21 For leave to sue in *quo warranto* to be granted, (1) there must be a substantial
22 question of fact or law appropriate for judicial resolution, and, if so, (2) the overall public
23 interest is served by allowing the *quo warranto* to be prosecuted. 85 Ops.Cal.Atty.Gen 101,
24 102 (2002); 83 Ops.Cal.Atty.Gen. 181, 182 (2000); 81 Ops.Cal.Atty.Gen. 98, 101 (1998).
25 Here, the Attorney General found that Petitioner’s *quo warranto* application did not raise a
26 substantial question of law or support the overall public interest. (App. Exh. 4 at p. 8
27 (“[u]pon examining the language at issues in its full conext, however, we do not consider this
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question to be a close one. . . .”)) Contrary to Petitioners’ claims, this conclusion was premised on well-established rules of statutory construction. There is no basis for arguing that the denial of their *quo warranto* application was an extreme and clearly indefensible abuse of the Attorney General’s discretion.

A. The Attorney General’s Finding that the Voters’ did not Intend To Place A Term-Limit/Waiting Period On Former Council Members to Hold Elected Office Was Not An Extreme And Clearly Indefensible Abuse of Her Discretion.

Petitioners concede that “[t]he voters’ intent in approving a measure is our paramount concern” when analyzing the City’s Charter. 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; (App. at p. 7:17-18) “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

1 considered, includes: “the ostensible objects to be achieved, the evils to be remedied, the
2 legislative history including ballot pamphlets, public policy, contemporaneous administrative
3 construction and the overall statutory scheme.” Int’s Fed’n of Prof’l & Technical Engineers,
4 AFL-CIO v. City of San Francisco, (1999) 76 Cal.App.4th 213, 224-225 (citations omitted).
5 In the end, “[t]he intent prevails over the letter, and the letter will, if possible, be so read as
6 to conform to the spirit of the act.” Ibid.

7 Contrary to Petitioner’s assertion, the language in Section 12 is ambiguous. As courts
8 have explained, “[t]he words ‘office’ and ‘public office’ have been variously defined by the
9 decisions throughout the nation, so that seemingly an exact definition is difficult.” Lymel v.
10 Johnson (1930) 105 Cal.App. 694, 696. “The words ‘public office’ are used in so many
11 senses that the courts have affirmed that it is hardly possible to undertake a precise definition
12 which will adequately and effectively cover every situation.” Id. at p. 697.

13 However, even if Section 12 can be read to prohibit ex-council members from
14 elective office, it is axiomatic that the literal construction of Section 12 cannot prevail over
15 the voters’ intent. See, Woo v. Superior Court, supra, 83 Cal.App.4th at p. 975; see also,
16 California School Employees Assn. v. Governing Board, supra, 8 Cal.4th at p. 340; see also,
17 Int’s Fed’n of Prof’l & Technical Engineers, AFL-CIO v. City of San Francisco, supra, 76
18 Cal.App.4th at pp. 224-225.

19 In deducing the voters’ intent, the Attorney General relied on the ballot pamphlet that
20 the electorate was provided to determine whether the Petitioner’s *quo warranto* application
21 raised a substantial question of law. 87 Ops.Cal.Atty.Gen. 176 (2004), 2004 WL 3185424 at
22 p. *2, citing, Raven v. Deukmejian (1990) 52 Cal.3d 336, 349; Woo v. Superior Court, supra,
23 83 Cal.App.4th at p. 975 (“a recognized aid in ascertaining voter intent is the ballot pamphlet
24 containing the information and arguments relied upon by the electorate in adopting the
25 language in question.”)

26 Based on the ballot pamphlet, the Attorney General properly found that Petitioner’s
27 could not fairly argue that the voters intended for Section 12 to prohibit former council
28

1 members from holding elected office for two years after leaving elected office. (App. Exh. F
2 at pp. 6-7) This conclusion was not extreme or clearly indefensible. See, People v. Cruz
3 (1996) 13 Cal.4th 764-775 (“The words of a statute are to be interpreted in the sense in
4 which they would have been understood at the time of the enactment.”)

5 Rather, it supported by the ballot pamphlet’s Impartial Legal Analysis and Arguments,
6 which state that the intent of Charter Amendment JJ was to extend the existing ban on
7 council members’ employment with the City beyond their term in elected office by two years.
8 It was also supported by the fact that the ballot pamphlet never contemplated or informed the
9 electorate that the second sentence of Charter Amendment JJ (the current Section 12) was or
10 could be interpreted as creating a two year hiatus period on former council members holding
11 elected office. (App. Exh. B)

12 It was also logical for the Attorney General to conclude that the electorate could not
13 have deduced that Charter Amendment JJ was intended to impose a two year hiatus period on
14 elected office based on the information the electorate had at the time of the election. The
15 ballot pamphlet did not define the phrase “compensated city office or city employment” as
16 including “elected offices.” (Ibid.)

17 Instead, the Impartial Legal Analysis and Arguments informed the electorate that the
18 stated purpose of the second sentence of Section 12 was to prohibit council members from
19 obtaining “employment” with the City for two years after leaving office. (Ibid.) In effect, an
20 extension of the existing ban on council members’ employment with the City for two years
21 after they left elected office and nothing more. (Ibid.)

22 Moreover, the examples provided to the electorate solidify this construction of Section
23 12’s second sentence. (Ibid.) The examples included positions with the legal department,
24 public health, and the City Manager. (Ibid.) Notably absent are any examples of elected
25 offices (such as the City Treasurer, City Clerk, and/or Council) that a former councilmember
26 would be disqualified from under Charter Amendment JJ. (Ibid.)

1 In fact, nothing in the ballot pamphlet made reference to Charter Amendment JJ
2 abrogating a former council member's Constitutional right to hold elected office. (Ibid.) This
3 omission in the City Attorney's Impartial Legal Analysis of Charter Amendment JJ is most
4 notable, because common sense dictates that if there was even a remote possibility that
5 Charter Amendment JJ imposed a limitation on holding elected office (a right afforded by the
6 Constitution) the City Attorney would certainly have addressed such an interpretation in his
7 Impartial Analysis.

8 He did not. The Arguments in favor and against Charter Amendment JJ did not. It,
9 therefore, can reasonably be deduced that the contemporaneous interpretation of the Charter
10 Amendment JJ was that it did not implicate the right to hold elected office. See, Riley v.
11 Thompson (1924) 193 Cal.773, 778. ("A contemporaneous construction by the officers upon
12 whom was imposed a duty of executing those statutes is entitled to great weight . . ."); Civil
13 Code, § 3535; Carter v. Comm'n on Qualifications of Judicial Appointments, (1939) 14
14 Cal.2d 179, 185.

15 In the end, the Attorney General's finding is supported by a fair and impartial reading
16 of the ballot pamphlet, which makes it clear that the electorate believed the second sentence
17 of Charter Amendment JJ was simply an extension of the existing ban on a sitting council
18 members' employment with the City for another two years after leaving elected office.
19 Despite Petitioners' best efforts to argue to the contrary, the Attorney General's Opinion is
20 neither extreme nor clearly indefensible. Moreover, as explained below, the Attorney
21 General was correct in finding that Petitioners' interpretation of Charter Amendment JJ
22 would have bizarre consequences.

23 **B. It was not an Extreme and Clearly Indefensible Abuse of Discretion for**
24 **the Attorney General to Find the Petitioners' Interpretation of Article VI,**
25 **Section 12 would lead to Bizarre Results**

26 Petitioners ignore the Attorney General's implicit finding that their interpretation of
27 Section 12 would have bizarre results. See, Woo v. Superior Court, supra, 83 Cal.App.4th at
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1 p. 975 (one cannot presume voters intend absurd and unreasonable consequences). As the
2 Attorney General a noted, if the stated purpose of Charter Amendment JJ was to impose a
3 term limit or hiatus period on holding elected office, Section 12 does not meaningfully serve
4 that purpose.

5 Under Petitioners' reading of Section 12, "[a]t most, Council member who fails to win
6 re-election would have to wait two years before running and serving again, but there is
7 nothing in the Charter to stop that person from serving forty years in a row the first time, and
8 forty years more the second time. This is not how term-limiting provisions generally work."
9 (App. Exh. F at pp. 5 ¶ 3, 6 ¶ 1)

10 For the Attorney General to find it bizarre that the electorate would intend the passage
11 of Proposition JJ as a hiatus or term limit provision when Section 12 does not meaningfully
12 serve that purported purpose is neither extreme nor an indefensible abuse of discretion.

13 **C. The Attorney General Properly Resolved all Ambiguity in Article VI,**
14 **Section 12 of the Charter in Favor of Councilman Frank Quintero's**
15 **Constitutional Right to Hold Elected Office**

16 It is beyond dispute that "the right to hold public office, either by election or
17 appointment, is one of the valuable rights of citizenship." Carter v. Comm'n on
18 Qualifications, etc., supra, 14 Cal.2d at p. 182. Accordingly, "[t]he exercise of this right
19 should not be declared prohibited or curtailed except by plain provisions of law." Ibid. "Any
20 ambiguity in a law affecting that right must be resolved in favor of eligibility to hold office."
21 Ibid.; Woo v. Superior Court, supra, 83 Cal.App.4th at 977 (citations omitted); 87
22 Ops.Cal.Atty.Gen 176 (2004), 2004 WL 3185424 at p. * 3 (citations omitted).

23 In this instance, neither the language nor the history of Section 12 shows any intent to
24 prohibit a council member from holding elected office by either appointment or election after
25 the completion or termination of his or her Council term. In light of this, it was proper for the
26 Attorney General to find there was not a substantial legal question as to whether Section 12
27 restricted Quintero's constitutional right to hold elected office.

1 **D. Petitioners’ Interpretation of Article VI, Section 12 is Unconstitutional**

2 While not addressed by the Attorney General, an interpretation of Article VI, Section
3 12 that prohibits former council members from holding elected office for two years is
4 unconstitutional under the Equal Protection’s Clause of the Fourteenth Amendment. See, De
5 Bottari v. Melendez (1975) 44 Cal.App.3d 910.

6 In De Bottari, the court struck down a local ordinance prohibiting recalled council
7 members from running for city council within a year of recall. Ibid. The court found “there is
8 an inextricable relationship between the right to vote and restrictions on candidacy,” and
9 although the statute did not classify according to suspect criterions there was a danger that
10 members of suspect groups may be especially vulnerable to recall. Id. at pp. 915, 918. In
11 applying strict scrutiny, “the court reviewed the interests that supported a temporary ban on
12 candidacy by recalled candidates and found them insufficient to sustain the restriction.”
13 Legislature v. Eu (1991) 54 Cal.3d 492, 522.

14 Like De Bottari, the City of Glendale’s Charter provides that “all elective officers of
15 the city shall be subject to recall as provided by the Charter.” Charter, Art. IV, § 2; see,
16 Charter, Art. XVIII, § 1. If, therefore, Article, VI, Section 12 restricted (as the Petitioners
17 advocate) former council members from holding elected office, Section 12 would disqualify
18 recalled council members from running for office in a subsequent special election. See,
19 Charter, Art. IV, § 13 (special election for a vacant elected position must be held within
20 either 120 or 180 days). This type of restriction on holding elected office is unconstitutional.
21 De Botarri v. Melendez, supra, 44 Cal.App.3d. at pp. 923-924.

22 **E. The Attorney General’s Denial of Petitioners’ Quo Warranto Application**
23 **Serves the Public Interest**

24 Even assuming Petitioners’ *quo warranto* application raised a substantial legal issue
25 (which it did not), the Attorney General properly found that Petitioners’ proposed suit did not
26 serve the public interest. “[I]t is well settled that the mere existence of a justiciable issue does
27 not establish that the public interest requires a judicial resolution of a dispute or that the
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1 Attorney General is required to grant leave to sue in *quo warranto*.” 75 Ops.Cal.Atty.Gen
2 287, 289 (1992). “As stated in City of Campbell v. Mosk, supra, 197 Cal.App.2d at p. 650:
3 “The exercise of the discretion of the Attorney General in the grant of such approval to sue
4 calls for care and delicacy. . . .” 79 Ops.Cal.AttyGen. 243 (1996), 1996 WL 676126 at p. *4.
5 In this instance, the public interest is not furthered by this *quo warranto* action for the
6 following two (2) reasons.

7 First, it is clear that this *quo warranto* action would discourage citizens from holding
8 elected office and/or, at the very least, discourage elected officials from taking positions
9 unpopular with the National Rifle Association. See, 74 Ops.Cal.Atty.Gen. 26, 29 (1991)
10 (Denying a *quo warranto* action against a council member who sought reelection after
11 serving two consecutive terms contrary to the provisions of the Charter because “it would not
12 be in the public interest to burden the parties, the city, and the courts with this dispute, and
13 that a contradictory disposition would discourage participation by citizens in holding public
14 office.”). It would also violate the First Amendment. See, Schroder v. Irvine City Council
15 (2002) 97 Cal.App.4th 174, 183, fn. 3 (voting is conduct qualifying for the protections
16 afforded by the First Amendment.)

17 Here, the circumstances surrounding the initiation of this *quo warranto* action suggest
18 that it is being brought in retaliation for Councilman Quintero’s vote in favor of an ordinance
19 that restricted the sale of firearms on municipal property and ended the Glendale Gun Show
20 (hereinafter “Ban”). The Council passed the Ban on March 19, 2013. (App. Exh. D at p.
21 13:19) Councilman Quintero was the City’s Mayor at the time and voted in favor of the Ban.
22 (App. Exh. D at p. 13:20-21) The Petitioners’ counsel, Sean Brady, was representing the
23 opponents of the Ban and threatened the City with litigation if it passed. (App. Exh. D at p.
24 13:21-22) Mr. Brady was explicit when he stated that the opponents would sue the City if
25 the Ban passed and warned that litigation would be costly. (App. Exh. D at p. 13:22-24)

26 Even the Petitioners, John Rando and Mariano A. Rodas, are affiliated with, and
27 ardent opponents of the Ban. (App. Exh. D at p. 13:25-26) During the City Council’s debate
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1 on the Ban, the Petitioners were among the most vociferous opponents of the Ban. App. Exh.
2 D at p. 13:26-27) Mr. Rando's commentary was especially inflammatory. (App. Exh. D at p.
3 13:27-28) Among the most inflammatory comments made during his four appearances before
4 the Council were: calling the Ban a racist and xenophobic law; implying that the council
5 members were supporting a new kind of racism; and engaging in numerous ethnic
6 stereotypes to illustrate his opposition to the Ban. (App. Exh. D at pp. 13:28-14:2)

7 In light of the circumstances surrounding this lawsuit, granting leave to sue *quo*
8 *warranto* would not only curtail the fundamental right to hold public office but would also
9 curtail Councilman Quintero's fundamental right to vote. See, Carter v. Com. On
10 Qualifications, etc, supra, 14 Cal.2d at p. 182; see also, Schroder v. Irvine City Council,
11 supra, 97 Cal.App.4th at p. 183, fn. 3. Being sensitive to these constitutional principles and
12 the corresponding rules of statutory construction that "holding public office . . . may be
13 curtailed only when the law clearly provides . . . [and] [a]ny ambiguity affecting the right to
14 hold public office is resolved in favor of eligibility to serve," dictates that the public interest
15 is better served by denying this application.

16 Second, the Petitioners' *quo warranto* action against Councilman Quintero will be
17 moot prior to its resolution. 87 Ops.Cal.Atty.Gen. 176 (2004), 2004 WL 3185424 at pp. *3-
18 *4. "A *quo warranto* may be filed 'only to right an existing wrong and not to try moot
19 questions.'" Id. at p. *3. *Quo warranto* applications have repeatedly been declined where the
20 alleged unlawful term of has expired, or the question of unlawfulness has become or will
21 become moot by subsequent events. Id. at pp. *3-*4.

22 Here, Councilman Quintero's term of office will expire in June 2014 (within 6 months
23 of the hearing). For all practical purposes, therefore, the judicial proceeding will likely not
24 conclude before the expiration of Councilman Quintero's term.

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1 CONCLUSION

2 For the foregoing reasons, the Real Parties in Interest respectfully request the Court
3 deny the Petition for writ of mandamus.
4

5 DATED: December 20, 2013

MICHAEL J. GARCIA, CITY ATTORNEY

6
7 By: 

8 ANDREW C. RAWCLIFFE
9 Attorneys for Real Parties in Interest
10 Frank Quintero and City of Glendale
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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.

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[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 20, 2013, at Glendale, California.

Sheila Redding

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