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John Rando, et al. v. Kamala Harris
BS 145904

Tentative decision on petition for peremptory writ of mandate: denied

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Petitioners John Rando ("Rando") and Mariano A. Rodas ("Rodas") seek a peremptory writ of mandate compelling Respondent Kamala Harris (the "Attorney General" or the "AG") to grant Petitioners' quo warranto application permitting Petitioners to sue Real Parties-in-Interest Glendale City Councilmember Frank Quintero ("Quintero") and the City of Glendale ("City").

The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

A. Statement of the Case

Petitioners commenced this proceeding with a verified petition for alternative writ of mandate, seeking to have the Attorney General grant their application for leave to sue in quo warranto pursuant to CCP section 803 in order to challenge the title of Real Party-in-Interest, Quintero, to the City's office of Council member.

1. The Petition

the Petition alleges in pertinent part as follows.

On April 2, 2013, the City held its municipal election to elect, among others, a City Treasurer and three City Councilmembers. The terms of three council members, including Quintero, had expired in April 2013, leaving three positions for which the voters could cast their ballot. Quintero did not run for re-election. The election results were finalized on or about April 11, 2013, the new councilmembers took office, and Quintero's term as city councilmember officially terminated.

Rafi Manoukian ("Manoukian"), a sitting council member at the time of the April 2, 2013 election, ran for the position of City Treasurer and won. When Manoukian assumed the position of City Treasurer on or about April 15, 2013, a vacancy resulted on the City Council.

Per Article VI, Section 13(b) of the City Charter, any vacancy on the City Council must be filled via appointment by the majority vote of the remaining members of the City Council. Any appointment to the City Council not made within 30 working days of the vacancy mut be filled by a special election called by the City Council within 120 days.

Approximately eight days after Quintero left office, the City Council appointed him under this provision to fill the vacancy left by Manoukian. Quintero's appointed term lasts until the next election in June 2014.

On May 23, 2013, Petitioners filed an application with the Attorney General for leave to sue in quo warranto, seeking to remove Quintero from office because his appointment violated City Charter section 12, which provides that "[n]o former councilmember shall hold any compensated city office or city employment until two (2) years after leaving the office of councilmember."

On October 25, 2013, the Attorney General issued an opinion denying Petitioners' application on the grounds that it was not in the public interest to burden the courts with the question of whether Quintero's appointment violates City Charter section 12. The Attorney General cited two reasons for this conclusion: (1) the extrinsic evidence strongly suggests that City Charter section 12 does not apply to "elective offices" and Petitioners' proposed lawsuit

would likely fail; and (2) Petitioners' lawsuit would likely not be resolved by a court before Quintero's appointed term ends in June 2014.

Petitioners allege that the Attorney General committed a clear abuse of her discretion, particularly since the Attorney General delayed in ruling on Petitioners' application for five months.

2. The Alternative Writ

On November 13, 2013, the same day Petitioners filed their petition, the court granted Petitioners' *ex parte* application for an alternative writ of mandate and order to show cause re why a peremptory writ of mandate should not issue.

B. Standard of Review

A party may seek to set aside an agency decision by petitioning for either a writ of administrative mandamus (CCP §1094.5) or of traditional mandamus. CCP §1085. A petition for traditional mandamus is appropriate in all actions "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station...." CCP §1085.

A traditional writ of mandate under CCP section 1085 is the method of compelling the performance of a legal, ministerial duty. Pomona Police Officers' Assn. v. City of Pomona, (1997) 58 Cal.App.4th 578, 583-84. Generally, mandamus will lie when (1) there is no plain, speedy, and adequate alternative remedy, (2) the respondent has a duty to perform, and (3) the petitioner has a clear and beneficial right to performance." Id. at 584 (internal citations omitted). Whether a statute imposes a ministerial duty for which mandamus is available, or a mere obligation to perform a discretionary function, is a question of statutory interpretation. AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health, (2011) 197 Cal.App.4th 693, 701.

Where a duty is not ministerial and the agency has discretion, mandamus relief is unavailable unless the petitioner can demonstrate an abuse of that discretion. Mandamus will not lie to compel the exercise of a public agency's discretion in a particular manner. American Federation of State, County and Municipal Employees v. Metropolitan Water District of Southern California, (2005) 126 Cal.App.4th 247, 261. It is available to compel an agency to exercise discretion where it has not done so (Los Angles County Employees Assn. v. County of Los Angeles, (1973) 33 Cal.App.3d 1, 8), and to correct an abuse of discretion actually exercised. Manjares v. Newton, (1966) 64 Cal.2d 365, 370-71. In making this determination, the court may not substitute its judgment for that of the agency, whose decision must be upheld if reasonable minds may disagree as to its wisdom. Id. at 371. An agency decision is an abuse of discretion only if it is "arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair." Kahn v. Los Angeles City Employees' Retirement System, (2010) 187 Cal.App.4th 98, 106. A writ will lie where the agency's discretion can be exercised only in one way. Hurtado v. Superior Court, (1974) 11 Cal.3d 574, 579.

No administrative record is required for traditional mandamus to compel performance of a ministerial duty or as an abuse of discretion.

C. Governing Law

1. Quo Warranto

CCP section 803 provides:

> "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."

Quo warranto -- "by what authority?"-- lies to test the usurpation of an office or exercise of a franchise or office. The attack is made on the procedural regularity of office or franchise already in effect. *See* International Assn. of Fire Fighters, Local 55 v. Oakland, ("International") (1985) 174 Cal.App.3d 687, 694 (quo warranto challenge to city police and fire pension and compensation measures that had taken effect). A quo warranto action under CCP section 803 provides the sole means for a private citizen to challenge the unlawful holding of public office. Nicolopulos v. City of Lawndale, ("Nicolopulos") (2001) 91 Cal.App.4th 1221, 1225. Title to an office cannot be tried by mandamus, injunction, certiorari, or declaratory relief. Ibid.

A quo warranto action may be brought by the Attorney General, on his or her or her own information or on the complaint of a private party. CCP §803. A private citizen seeking leave to sue need only have a general public right, not an individual right to enforce. International, *supra*, 174 Cal.App.3d at 697. The action *must* be brought whenever the Attorney General "has reason to believe" that the conditions exist, or when the Attorney General is directed to do so by the Governor. CCP §803. Although the word "must" suggests a mandatory duty, the qualifying language "has reason to believe" provides the Attorney General with discretion to refuse to sue where the issue is debatable. International, *supra*, 174 Cal.App.3d at 697. # Frivolous

The remedy of quo warranto is vested in the People, and not in any private individual or group because disputes over title to public office are a public question of governmental legitimacy and not just a private quarrel among rival claimants. Nicolopulos, *supra*, 91 Cal.App.4th at 1228. A chief object of the requirement of leave to sue "protects public officers from frivolous lawsuits." Id. at 1229. The Attorney General's determination whether to grant leave to file a lawsuit in the name of the people of the State of California involves the exercise of discretion, and a court should compel the attorney general to violate her own judgment by ordering her to grant leave to commence a suit "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. "Only in the event of an extreme abuse of the discretion should the courts annul the Attorney General's decision." City of Campbell v. Mosk, ("City of Campbell") (1961) 197 Cal.App.2d 640, 651 (Attorney General's refusal to file quo warranto over annexation of property in battle between cities was not extreme abuse of discretion).

A complaint in a quo warranto proceeding may set forth the claim of the person rightly

entitled to the office, and the judgment may determine that right. CCP §§ 804, 805, 806. The rights of multiple claimants may be adjudicated in a single action. CCP §808. If the defendant is adjudged guilty of the usurpation, the judgment must be rendered excluding the defendant from the office, with costs, and the court in its discretion may impose a fine not exceeding $5,000. CCP §809. Damages suffered by the rightful party may be recovered in a separate action. CCP §807.

2. The City Charter

Art. VI, Section 12 of the City Charter ("section 12") 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."

Art. VI, section 13(b) of the City Charter ("section 13(b)") provides as relevant:

> "Any vacancy occurring in the council shall be filled by a majority vote of the remaining members of the council. ... If any appointment to the council, city clerk or city treasurer is not made within thirty (30) working days of the vacancy, then council shall immediately call for a special election to be held within one hundred twenty (120) days for the purpose of filling such vacancy, unless the earliest next general municipal election or next county or statewide election with which a city election may be consolidated is no more than one hundred eighty (180) days from the call for special election. A person appointed to fill a vacancy shall serve until such time as a successor may be elected at the earliest of the next general municipal election, or the next county or statewide election, with which a city election may be consolidated. The elected successor shall hold office for the remainder of the unexpired term."

D. Analysis

1. Statement of Facts

The underlying facts pertinent to the Attorney General's decision are undisputed.

The current language in section 12 stems from Proposition JJ ("Prop. JJ"), a ballot initiative passed by the voters in November 1982 which amended section 12. The pertinent language in amended section 12 provides: "No former councilmember shall hold any compensated city office or city employment until two (2) years after leaving the office of councilmember."

On April 2, 2013, the City elected a City treasurer and three council members. Quintero had held one of the three council member seats, and his term expired in April 2013. Quintero did not run for re-election, and his term as City council member officially terminated in April 2013.

Manoukian, who was a sitting council member, ran for City treasurer in the same election

and won. When Manoukian assumed the position of City treasurer on or about April 15, 2013, a vacancy resulted on the City Council.

Approximately eight days after Quintero left office, the City Council appointed him under section 13(b) to fill the vacancy left by Manoukian. Quintero's appointed term lasts until the next election in June 2014.

2. Petitioners' Argument

Petitioners contend that the Attorney General committed an extreme and clearly indefensible abuse of discretion in interpreting the amended section 12 to permit the appointment of Quintero to fill a vacancy on the City Council eight days after his term had expired, and by determining that the public interest would not be served by Petitioners' quo warranto lawsuit. Petitioners contend that the phrase "any compensated city office" in section 12 includes the elective office of City councilmember. According to Petitioners, once Quintero's term as councilmember expired, section 12 required that he wait at least two years before he could be elected (or appointed) to the office of councilmember.

3. The Attorney General's Opinion

Petitioners' argument was addressed by the Attorney General, who concluded that section 12 could be required as Petitioners argue to impose a two-year ban on a former council member holding any compensated position, including an elected office.

The Attorney General concluded, however, that this plain language interpretation is not supported by an obvious public purpose. Smith Decl., Ex. A ("Ex.A"), p. 5. If section 12 was intended to be a term-limiting provision, it is atypical and largely ineffective. Id., p.4, n.12.[1]

The Attorney General noted that there is an alternative interpretation of section 12:

> "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. 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." Id., pp. 4-5.

The Attorney General found the language of section 12 to be ambiguous, and looked to the voters' intent in passing Prop. JJ. Ex.A, pp. 5-6.

At the time of Prop. JJ's passage, section 12 contained an express elective office exception from the ban on former councilmember public employment.[2] Id., p.6. According to

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[1]The Attorney General's decision notes that a term limits measure for City councilmembers was considered but rejected by the City Council in 1996. Ex. A, p. 5, n.18.

[2]"No members of the council shall be eligible to any office or employment, except an elected office, during a term for which he was elected." Smith Decl., Ex. A: pp. 6-7.

the official ballot pamphlet,[3] the purpose of Prop JJ was to clarify that (1) sitting council members could obtain outside employment while serving on the City Council, which is a part-time body, and (2) council members were only banned from obtaining other City employment. In addition, the measure would extend the ban on other City employment for two years after leaving office. Id., p.6. Nothing in the pamphlet suggested that a former council member would be prohibited from seeking elective office for two years. Id, p.7.

The ballot argument in favor of Prop. JJ focused on prohibiting a councilmember from "using his influence to obtain employment with the City until two years after leaving his council office." Id., p. 6. The ballot argument said nothing about elective office.

The Attorney General concluded that, while Prop. JJ was ambiguous, the ballot materials and the Charter as a whole indicated that the voters intended in Prop. JJ to prohibit a councilmember from using his or her influence to gain non-elective City employment when he or she leaves office. Id, p.7.

The Attorney General relied on the fact that the eligibility to hold public office is a fundamental right in California, which may not be curtailed except by plain provisions of law. Any ambiguity must be resolved in favor of holding public office, and a two-year ban on elected office would have to be stated more explicitly. Id., p.7.

While there is room for debate, the Attorney General did not consider the question close, and the public interest would not be served by burdening the courts. The mere existence of a debatable issue is not enough to require judicial resolution through quo warranto. Id., p.8.

4. The Timing of Quo Warranto

The Attorney General does not have a ministerial duty to approve quo warranto applications. Only in the event of an extreme abuse of the discretion should the court overrule the Attorney General's decision. City of Campbell, *supra*, 197 Cal.App.2d at 651. In deciding whether to grant leave to sue in quo warranto, the Attorney General considers (1) whether the application has raised a substantial question of fact or issue of law which should be decided by a court and (2) whether it would be in the public interest to grant leave to sue. 95 Ops. Cal. Atty. Gen. 50, 54 (2012); 76 Ops. Cal. Atty. Gen. 169, 171 (1993). "[I]t is not the province of the Attorney General to pass upon the issues in controversy, but rather to determine whether there exists a state of facts or questions of law that should be determined by a court." 72 Ops. Cal. Atty. Gen. 63, 69 (1989).

Petitioners contend that the Attorney General determination that the public interest would not be served by their quo warranto lawsuit in part due to the short amount of time in which Quintero would remain in office. Acknowledging that the Attorney General has denied quo warranto application where an official is nearing the end of an elected term, Petitioners point out that Quintero was appointed, not elected. They argue that the Attorney General's five month delay in making her decision was unreasonable, and they should not be punished by her failure.

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[3]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. 89 Ops.Cal.Atty.Gen. 176, 178 (2004); Raven v. Deukmejian, (1990) 52 Cal.3d 336, 349.

Mot. at 13.

The Attorney General's opposition does not address the issue of her delay. In his opposition, Quintero only weakly argues without any evidence that in seeking a quo warranto action Petitioners are motivated to punish him for voting in favor of a City restriction on the sale of firearms. Quin. Opp. at 12.

It is not clear that the Attorney General's opinion relied on the June 2014 expiration of Quintero's term as a basis to justify denial of quo warranto. The opinion merely states that this fact "only reinforces our conclusion that the public interest is best served by denying leave to sue." Ex.A, p.8. Reinforcement is not the same thing as reliance.

To the extent that the Attorney General did rely on the shortness of Quintero's remaining term to support a conclusion that the public interest does not favor quo warranto, the court agrees with Petitioners that she could not fairly to do. When Petitioners sought leave to sue on May 23, 2013, one month after Quintero took office. The application was made when Quintero had 13 months left on his appointed term. A denial of the application five months later on the ground that Quintero's term will end in June 2014, before judicial proceedings could conclude, is a self-fulfilling prophecy. Petitioners would have had more time to address the issue had the Attorney General acted with alacrity. Moreover, as Petitioners argue, it is not necessarily true that judicial proceedings could not be completed before Quintero's term ends.

The timing of a quo warranto action does not support denial of Petitioners' application.

5. Substantial Question of Fact or Law

a. The Attorney General's Discretion to Consider the Merits

Petitioners contend that the Attorney General's opinion acknowledges that Petitioners raised a question of law, but deviated from the standard practice that, "in passing on applications for leave to sue in quo warranto, the Attorney General ordinarily does not decide the issues presented, but determines only whether or not there is a substantial question of law or fact which calls for judicial decision." Mot. at 6 (citing 19 Op.Cal.Atty.Gen. 46).

Certainly the interpretation of section 12 constitutes a question of law. The Attorney General noted that section 12 is ambiguous, and devoted a fair amount of effort in considering extrinsic materials: the ballot initiative arguments and voter pamphlet. The Attorney General concluded that while Petitioners' application raises a question of law, it did not raise a *substantial* question of law:

> "As is the case with most legal propositions, there is room for some debate here as to the proper interpretation of section 12. Upon examining the language at issue in its full context, however, we do not consider this question to be a close one..." Smith Decl., Ex. A, p.8.

Despite Petitioners' argument to the contrary, 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. Thus, she appropriately considered the merits in deciding whether the legal issue was sufficiently substantial for a court to decide.

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b. Whether the Attorney General Abused Her Discretion in Interpreting Section 12

Petitioners contend that, even if the Attorney General may consider the merits in evaluating whether there is a substantial question, her decision to adopt the interpretation of section 12 as only prohibiting a council member from stepping immediately from his or her elected office into other City employment, and not other elective office, is unsupported by the plain meaning of the provision, which applies to "compensated City office or City employment," including the office of council member. The Attorney General's interpretation, which inserts a *de facto* exception for elective office, is an unwarranted rewriting of the provision. Mot. at 8-9. It also conflicts with the City Charter because (a) section 12's term "city office" would have a different meaning than that term is used in the rest of the City Charter and (b) the City Charter expressly distinguishes between "elective" and "non-elective" offices in other provisions. Mot. at 10.

The Attorney General had the discretion to employ the tools of statutory construction in determining whether an application raises a substantial question of law. If such tools resolve the matter, then the Attorney General was entitled to find that no substantial question of law has been raised and deny the application. Put another way, the mere fact that the Attorney General recognized two possible interpretations of section 12 does not impose on her the ministerial duty to grant the application. A debatable issue does not inevitably produce quo warranto. City of Campbell, *supra*, 197 Cal.App. 2d at 650. To hold otherwise would foreclose the Attorney General's exercise of discretion on whether the debatable issue should be presented to a court. Ibid.

The Attorney General knows when the interpretation question is substantial, she should grant the application for quo warranto. In 95 Ops. Cal. Atty. Gen. 77 (2012), 2012 Cal.AG LEXIS 11, a statutory interpretation case regarding eligibility to serve as a director of a healthcare district while serving in another job, the Attorney General wrote:

> "Although we have employed many of the tools of construction at our disposal, we believe that this matter is properly within the province of a court. Again, our role is not to decide the question of Rubin's eligibility to hold the office of PMHD Director. Rather, 'the action of the Attorney General is a preliminary investigation, and the granting of the leave is not an indication that the position taken by the relator is correct, but rather that the question should be judicially determined and that quo warranto is the only proper remedy.' 'We believe 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 Rubin is such an employee at ECRMC. We deem these issues to be appropriate for judicial resolution." Id., p. 21.

In this case, the Attorney General relied on the official ballot pamphlet, the ballot argument, Prop. JJ's failure to clearly state that elective employment would be banned, and the inconsistency of section 12 operating as a term limit to conclude that section 12's intent was to prevent a council member form using his or her influence to obtain City employment and the

provision did not ban a former council member from seeking elected City office.

The office of council member is presumably a compensated position with the City, and the plain language of the ordinance would suggest that Quintero could not hold a new City council member position for two years. However, the overriding consideration is voter intent. *See* California School Employees Assn. v. Governing Board, (1994) 8 Cal.4th 333, 340. Where the literal construction of a law would result in absurd consequences, the courts will not presume that the voters intended that construction. *See* Woo v. Superior Court, (2000) 83 Cal.App.4th 967, 975. In that circumstance, extrinsic evidence of the voters' intent must be considered despite the unambiguous language of the enactment. "'The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act'" Ibid. (citations omitted).

The 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. Petitioners' plain language interpretation of section 12 -- banning a former council member from seeking elected City office for two years -- would lead to an odd result. If so interpreted, section 12 would permit a council member to seek re-election to his or her office of council member for an indefinite number of terms. Or, as in Manoukian's case, the council member could seek election to the office of City treasurer while in the middle of a council member term. But a council member whose term has expired would be forced to wait two years before seeking elective City office. There does not seem to be any public goal or purpose to such a result, which would in no way provide the perceived public benefits of term limits. Certainly, Petitioners do not articulate such a public purpose for this interpretation.

The argument made by Petitioners that the term "City office" in section 12's two-year ban on "any compensated City office or City employment" necessarily includes an elected office is a fair one. Mot. at 10. As Petitioners note, this is particularly true since the term "city office" is used in the immediately preceding sentence of section 12. Ibid. Petitioners further note that Prop. JJ eliminated section 12's exception for elective office for employment by a council member, and a redlined version of the two provisions is listed in the voter pamphlet. Ibid.

Neither party cites to any City ordinance defining "City office," but the term generally includes both elected and appointed offices. However, this fact is not dispositive. While the scope of the term "office" generally includes elected office, Quintero is correct that the ballot materials for Prop. JJ focus on council member employment with the City, not election to City office. Quin. Opp. at 8. The City Attorney analysis of Prop. JJ notes that existing section 12 has been interpreted to prohibit any officer or employment by the City, and the amendment will remove the ambiguity. Mot., Ex.B. The argument in favor of Prop. JJ discusses only issues of employment by the City, not election. Ibid. And the argument against Prop. JJ discusses the importance of a former council member with expertise to find employment with the City's public health or legal departments, or as city manager. There is no reference to election.

The Attorney General acknowledged that Prop. JJ was not precise, but looked to the voters' intent of curbing the improper use of influence to gain employment and law that the right to hold public office is a fundamental right which may not be curtailed except by clear provisions of law. She concluded that any ambiguity must be resolved in favor of the officeholder, and a ban on holding elective office would have to be stated more explicitly to be given effect. Ex.A, p.7.

The court agrees. Prop. JJ was intended to prevent former council members from using their influence to obtain employment from the City. The extrinsic evidence shows that voters did not intend to impose a term limit on council members, and Petitioners have presented no rationale why the voters would have wanted section 12 to ban former council members from running for elected office.[4] The Attorney General did not commit an extreme and clearly indefensible abuse of discretion in interpreting the amended section 12.

c. The Attorney General Was Not Obligated to Approve a Non-Frivolous Application

Petitioners contend that the issue of section 12's ambiguity must be resolved by a court. They argue that both the Attorney General and Quintero admit that Petitioners' interpretation is "plausible," and thus not frivolous. The Attorney General's gatekeeper function was fulfilled and she had an objective "reason to believe" that the office had been illegally usurped. Therefore, she was required to let a court decide. Reply at 6-7.

This argument concerns the extent of the Attorney General's duty. The test for quo warranto is whether there is a substantial issue of fact or law for a court to decide concerning the interpretation of section 12 after application of rules of construction, including the legal presumption in favor of Quintero's right to hold public office. The Attorney General concluded that the issue was not substantial (in her words "close"), and therefore the public interest would not be served by a quo warranto action.

Petitioners rely on language in Lamb and Nicolopulos to conclude that the purpose of the requirement that a private party obtain the Attorney General's leave to sue is to weed out frivolous or vexatious claims against public officials. Reply at 3.

This is not quite a fair statement. Lamb concluded that "a chief object" in requiring leave is to prevent vexatious prosecutions. 151 Cal. At 456 (citation omitted). Nicolopulos cited the Attorney General for the statement that the leave requirement "also 'protects public officers from frivolous lawsuits.'" 91 Cal.App.4th at 1229. Thus, neither case states that weeding out frivolous claims is the *only* purpose of the leave requirement.

To the contrary, Nicolopulos expressly notes that the remedy of quo warranto 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. Nicolopulos, *supra*, 91 Cal.App.4th at 1228. The requirement for leave to sue, therefore, 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. The Attorney General must have reason to believe that the private party is raising a substantial issue furthering the public interest before authorizing a lawsuit in the People's name. *See* City of Campbell, *supra*, 197 Cal.App.2d at 648 ("In the exercise of his discretion the Attorney General must essentially determine whether the

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[4]Petitioners argue that the voters pamphlet side-by-side redline comparison of the existing section 12 and proposed Prop JJ shows that the voters intended to delete the exemption from elective office. Mot. at 11. However, the redline merely compares a completely stricken section 12 with the proposed Prop. JJ, and no inference can be drawn from it. Ex.B.

public interest would be subserved by the institution of the suit."). The considerations for this judgment exceed the simple factor of a non-frivolous claim.

The importance of the public interest was discussed in International, which drew a distinction between cases in which the proposed relator is asserting his own rights (such as a former officerholder who allegedly is wrongly ousted) as opposed to the rights of the general public. 174 Cal.App.3d at 697-98. The International court stated it would not hesitate to issue mandamus to correct an arbitrary decision by the Attorney General in a properly supported case by an aggrieved private party. Id. at 697. But the court cited to a treatise stating that, in a case of "purely public interest" the Attorney General's discretion is "arbitrary and uncontrollable, and his refusal to act does not confer on a private person a right to proceed." Id. at 698 (citing 74 C.J.S., Quo Warranto, §18, pp. 203-04).[5]

At a minimum, the Attorney General's discretion in deciding the public interest is affected by whether the proposed relator is asserting private or public rights. Petitioners have no private legal grievance against Quintero's appointment, and assert only the general public right to question his office. The Attorney General 's discretion is greater in such a circumstance, and arguably is unfettered.

Consequently, this is not a case where mandamus will lie to correct the Attorney General's abuse of discretion. While Petitioners' interpretation is plausible, the Attorney General's duty requires a more searching inquiry than ascertaining plausibility for decision by a court. There must be a real and substantial issue of fact or law for a court to decide, and it must be in the public interest to do so. The Attorney General's decision is not an extreme and clearly indefensible abuse of discretion.[6]

E. Conclusion

There was no abuse of discretion in the Attorney General's denial of Petitioners' application to pursue a lawsuit in quo warranto. The provision in question, section 12, is ambiguous in light of the ballot material. While Petitioners' position is plausible, they do not

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[5]As Petitioners acknowledge (Reply at 6), no reviewing court has upheld mandamus to correct denial of a quo warranto application. The court observed in International:

> "[T]his 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, no such instance of mandamus issuing can be found." 174 Cal.App.3d at 697.

[6]Petitioners further argue that the Attorney General must objectively exercise her discretion that there is "reason to believe" that an office was illegally usurped, and not her subjective opinion. Reply at 5-6. This contention is unsupported. The Attorney General relied on objective facts in concluding that there was not a reason to believe Quintero illegally usurped his office.

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 extreme and clearly indefensible abuse of discretion in denying the application as not in the public interest. The petition for writ of mandate is denied.

The Attorney General's counsel is ordered to prepare a proposed judgment, serve it on Petitioners' counsel for approval as to form, wait 10 days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for February 4, 2014.