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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
CENTRAL DISTRICT

JOHN RANDO and MARIANO A.
RODAS,
Plaintiffs and Petitioners,

vs.

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

Defendant and Respondent,

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

Real Parties in Interest.

CASE NO.

**VERIFIED PETITION FOR
ALTERNATIVE WRIT OF MANDATE**

Date: November 13, 2013
Time: 8:30 a.m.
Dept. 82, 85, or 86

Petitioners John Rando and Mariano Rodas respectfully apply by this verified petition for an alternative writ of mandamus under Code of Civil Procedure section 1085, directed at the above-named Respondent.

PARTIES

1. Petitioners John Rando and Mariano Rodas are residents of the City of Glendale, California who seek to have the Attorney General grant their application for leave to sue in quo warranto pursuant to Cal. Civ. Proc. Code § 803, in order to challenge the title of Real Party in Interest, Frank Quintero to the office of Councilmember of the City of Glendale.

2. Respondent, California Attorney General Kamala Harris denied Petitioners' quo warranto application and is subject to the court's power to compel compliance with a legal duty under Code of Civil Procedure section 1085 for abusing her discretion in doing so.

3. Real Parties in Interest are Frank Quintero and the City of Glendale. The order sought by this petition directly affects real parties because they would be subject to a quo warranto lawsuit challenging the appointment of Frank Quintero in violation of the City Charter if the petition is granted.

STATEMENT OF FACTS

4. On April 2, 2013, the City of Glendale held its municipal election to elect among others, a City Treasurer and three City Councilmembers.

5. Three councilmembers, including Councilmember Quintero had terms that expired in April 2013, leaving three councilmember positions for which the voters could cast their ballot. Councilmember Quintero did not run for re-election.

6. On or about April 11, 2013, the City of Glendale finalized the election results.

7. On April 15, 2013, the new councilmembers took office, and Councilmember Quintero's term as city councilmember officially terminated.

8. Rafi Manoukian, a sitting Glendale city councilmember at the time of the April 2, 2013 election, ran in the election for the position of City Treasurer and won.

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

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

11. At the city council meeting on April 16, 2013, the councilmembers discussed how to determine who to appoint to fill the vacant seat. Councilmember Quintero's name was raised as a possible candidate. Concerns were raised that Article VI, Section 12 of the Glendale City

1 Charter might preclude appointment of Councilmember Quintero because two years had not yet
2 lapsed since the ending of Councilmember Quintero's former term on April 15, 2013.

3 12. Article VI, Section 12 of the Glendale Charter was amended by Glendale voters in
4 the City's 1982 election via Charter Amendment JJ, and currently provides:

5 A councilmember shall not hold any other city office or city
6 employment except as authorized by State law or ordinarily necessary
7 in the performance of the duties as a councilmember. No former
8 councilmember shall hold any compensated city office or city
9 employment until two (2) years after leaving the office of
10 councilmember. (1982.) (**Exhibit A**)

11 13. Prior to Charter Amendment JJ's passage, Section 12 provided:

12 "No members of the council shall be eligible to any office of employment,
13 except an elected office, during a term for which he was elected." (**Exhibit B**)

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

17 15. On April 23, 2013, approximately eight (8) days after he had left office, the City
18 Council appointed Councilmember Quintero to fill the vacancy.

19 16. California Code of Civil Procedure section 803 requires private citizens like
20 Petitioners to apply for leave to sue in quo warranto before they challenge the legality of
21 someone's holding a public office.

22 17. On May 23, 2013, Petitioners filed an application with the Attorney General for
23 leave to sue in *quo warranto*, seeking to remove Councilmember Quintero from office because
24 they believe his appointment violated Section 12.

25 18. The Attorney General did not rule on Petitioners' application for leave to sue in
26 quo warranto until October 25, 2013, more than five months later, denying Petitioners' application
27 because in her view the question of the validity of Councilmember Quintero's appointment is not
28 in the public interest. (Exhibit F). The Attorney General bases this conclusion on her view that the
phrase, "*any compensated City office*," as used in the Glendale charter provision, which
Petitioners seek to enforce, is ambiguous as to whether it contemplates "*elective offices*" like
councilmember, and that, as such, the provision's legislative history must be considered to
determine its true meaning, and because that history strongly suggests the provision does not apply

1 to “*elective* offices,” Petitioners’ proposed lawsuit would likely fail, making it not in the public
2 interest to burden the courts with this question.

3 **FIRST CAUSE OF ACTION**
(WRIT OF MANDATE– Code Civ. Proc. § 1085)

4 19. Petitioners refer to and re-allege all of the above paragraphs and by this reference
5 incorporates those paragraphs as though fully set forth at length.

6 20. Respondent has a clear legal ministerial duty to not abuse her discretion in deciding
7 whether to grant applications for leave to sue in quo warranto.

8 21. By denying Petitioners’ quo warranto application, which presents a legal question
9 that is in the public interest, on erroneous and unjust bases, Respondent abused her discretion in
10 violation of her legal duty.

11 22. Respondent’s abuse of discretion is demonstrated by her erroneous decision to
12 ignore the plain meaning of the provision at issue, finding the words “No former councilmember
13 shall hold any compensated city office or city employment until two (2) years after leaving the
14 office of councilmember” to not bar the appointment of a former councilmember to the council
15 within two years of leaving office because she contends “city office” likely does not include
16 councilmember. By finding the clear language of Article VI, Section 12 of the Glendale City
17 Charter to be ambiguous without proper legal support and subsequently denying Petitioners’ quo
18 warranto application based thereon, Respondent abused her discretion in violation of her legal
19 duty. Respondent further abused her discretion by waiting five months to issue her denial of
20 Petitioners’ quo warranto application and using the supposed short time remaining in Quintero’s
21 appointed term as a basis for finding a court should not hear Petitioners’ case.

22 23. Petitioners, as Residents of Glendale are beneficially interested parties because
23 they are forced to be governed by a councilmember who is holding office in violation of
24 Glendale’s charter.

25 24. Petitioners do not have a plain, speedy and adequate remedy to challenge
26 Respondent’s decision to deny Petitioners’ quo warranto application other than the relief sought.
27 Petitioners have exhausted all their legal remedies by applying for leave to sue in quo warranto
28 and therefore this petition represents Petitioners’ only available legal remedy to enforce Article

1 VI, Section 12 of the Glendale City Charter. The writ Petitioners seek from this Court would
2 provide them with their only remaining legal avenue to remove that councilmember from office.

3 25. If the Court allows Respondent's decision to deny Petitioners quo warranto
4 application to stand, Petitioners will be irreparably harmed as they will be denied any opportunity
5 to have their day in court to enforce their City Charter, under which they are required to live and
6 to challenge the illegal usurping of office by the City of Glendale and Councilmember Frank
7 Quintero.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Petitioners respectfully prays:

10 1. That an alternative writ of mandate issue under seal of this court, compelling
11 Respondent to grant Petitioners' quo warranto application permitting Petitioners to sue Real
12 Parties in Interest, City of Glendale and Frank Quintero, or, in the alternative, to show cause
13 before this Court, at a time and place then or thereafter specified by Court order why Respondent
14 has not done so and why a peremptory writ should not issue;


15 2. On return of the alternative writ and hearing on the order to show cause, that a
16 peremptory writ of mandate issue under seal of this Court compelling Respondent to grant
17 Petitioners' quo warranto application permitting Petitioners' to sue Real Parties in Interest, City of
18 Glendale and Frank Quintero;

19 3. For costs of suit incurred herein; and

20 4. For such other and further relief as this court may deem proper

21 Dated: November 8, 2013

MICHEL & ASSOCIATES, P.C.

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23 _____
24 Sean A. Brady
25 Attorney for Plaintiffs and Petitioners
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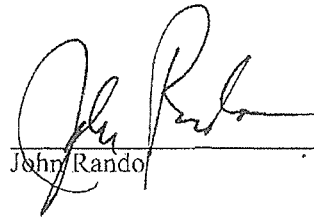
VERIFICATION

I JOHN RANDO, the undersigned say:

I have read the above EX PARTE APPLICATION FOR ALTERNATIVE WRIT OF
MANDATE and I am familiar with its contents. I am informed and believe that the matters stated
therein are true and on that basis verify that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the above is
true and correct and that this verification is executed on November 6, 2013.

Date: November 6, 2013


John Rando