MICHAEL J. GARCIA, CITY ATTORNEY
ANN M. MAURER, GENERAL COUNSEL – LITIGATION (SBN 179649)
ANDREW C. RAWCLIFFE, DEPUTY CITY ATTORNEY – LITIGATION (SBN 259224)
613 E. Broadway, Suite 220
Glendale, CA 91206
Telephone: (818) 548-2080
Facsimile: (818) 547-3402

Attorneys for Proposed Defendants,
FRANK QUINTERO and CITY OF GLENDALE

BEFORE THE ATTORNEY GENERAL

OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA on the RELATION of JOHN RANDO and MARIANO A. RODAS, Plaintiff, vs. FRANK QUINTERO, individually and in his official capacity as Glendale City Councilmember; CITY OF GLENDALE, Defendants.	Opinion No.: 13-504 *(Assigned to Deputy Attorney General, Marc J. Nolan)* **PROPOSED DEFENDANTS' OPPOSITION TO RELATORS JOHN RANDO'S AND MARIANO A. RODAS' APPLICATION FOR LEAVE TO SUE IN QUO WARRANTO** *[Filed Concurrently With Verified Statement Of Facts; Index Of Exhibits]*

Proposed Defendants, CITY OF GLENDALE and FRANK QUNITERO, hereby submit the following opposition to Relators, JOHN RANDO's and MARIANO A. RODAS', application for leave to sue in quo warranto.

DATED: June 7, 2013

MICHAEL J. GARCIA, CITY ATTORNEY

By: _____
ANDREW C. RAWCLIFFE
Attorneys for Proposed Defendants

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The timeline concerning Councilman Frank Quintero's appointment and the language of the City of Glendale's Charter are not in dispute. However, as demonstrated below, the Relators' interpretation of Article VI, Section 12 is misguided, unconstitutional, and contrary to both the voters' intent and the City's longstanding, well-established interpretation. Moreover, this lawsuit is a baseless attempt by the opponents of a ban on the possession of firearms on municipal property, and their attorneys, to exact retribution against Councilman Quintero and the City of Glendale for voting in favor of an ordinance that restricted the sale of firearms on municipal property and banned the operation of the Glendale Gun Show at the Civic Auditorium. The Attorney General, therefore, should decline the request for leave to sue in quo warranto.

II. BACKGROUND FACTS

A. Councilman Frank Quintero's Appointment was Made Pursuant To Article VI, Section 13(b) of The City of Glendale's Charter

On April 2, 2013, the City of Glendale held a municipal election. (Verified Statement of Fact No. 2 (hereinafter "VSOF")) Councilman Rafi Manoukian, who had 14 months left on his term, was elected City Treasurer. (VSOF No. 3) This resulted in a vacancy on the City Council. (VSOF No. 4)

Pursuant to Article VI, Section 13(b) of the Charter, the Council was required to either appoint a councilmember within thirty days or hold a special election within 120 days to fill the vacancy for the remainder of the unexpired term. (VSOF No. 5) Article VI, Section 13 did not and does not impose any limitations on who the Council can appoint to fill a vacancy on the Council. (VSOF No. 6) The only limitation to elected office is found in Article VI, Section 1, which provides that "[e]ach candidate for member of council shall be a qualified elector pursuant to State law." (VSOF No. 7)

Because the cost of holding a special election to fill the vacancy was approximately $800,000, the Council decided to make an appointment to the vacant Council position. (VSOF No. 8) In making the appointment, the Council reached out to six former mayors, requesting that they apply for the vacant position. (VSOF No. 9) The rationale being that a former mayor was

unlikely to run in a future election but would have sufficient institutional knowledge to help with the city's business. (VSOF No. 10) On April 23, 2013, the Council unanimously appointed Councilman Quintero, who had retired as Mayor of the City on April 15, 2013, to the vacant Council position. (VSOF No. 11) His term ends in June 2014 (12 months). (VSOF No. 12)

B. The Intent Behind Article VI, Section 12 of the City of Glendale Charter Did Not Contemplate Any Limitation on Holding Elected Office

Article VI, Section 12 of the Charter (hereinafter "Section 12") is entitled "City Councilmembers holding other offices." (VSOF No. 14) The electorate amended Section 12 by Charter Amendment JJ on November 2, 1982 to provide:

> "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 may hold any compensated city office or city employment until two (2) years after leaving the office of councilmember."

(VSOF No. 18)

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

> "No members of the council shall be eligible to any office of employment, except an elected office, during a term for which he was elected."

(VSOF No. 19)

The ballot pamphlet that was distributed to the electorate did not contemplate or inform the electorate that Charter Amendment JJ's two year hiatus on City employment applied to elected office. (VSOF No. 20) Instead, the ballot pamphlet explained that the primary emphasis of Charter Amendment JJ was to clarify that Section 12's ban on employment only applied to employment with the City and had no effect on outside employment. (VSOF No. 21) It also explained that the second sentence of Charter Amendment JJ extended Section 12's ban on city employment for an additional two years after the councilmember left elected office. (VSOF No. 22)

As explained in the City Attorney's Impartial Legal Analysis, this amendment was necessary because prior to Charter Amendment JJ a strict reading of Section 12 would have prohibited councilmembers from holding any outside employment. (VSOF No. 23) A ban on

councilmembers holding employment would result in absurd consequence for a part-time Council. The legal opinion at the time, therefore, was that Section 12 applied only to City employment. (VSOF No. 24) Accordingly, the stated purpose of Charter Amendment JJ was to clarify that Section 12 was intended to prohibit a councilmember from holding City employment at the same time he or she was serving a Council term.

The ballot argument in favor of Charter Amendment JJ, which was signed by the five Councilmembers, explained that the purpose of the second sentence of Section 12 was to prohibit councilmembers from using undue influence to obtain *employment* with the City after leaving office. (VSOF No. 25) In other words, the second sentence extended the prohibition on councilmembers' employment with the city for an additional two years after leaving elected office.

Specifically, the ballot argument in favor of Charter Amendment JJ stated as follows:

> "The amendment clarifies the language in the present Charter which leaves in question the right of a council person to be employed while on the Council. It clearly states that a council member may not hold another city office nor may a council member use his influence to obtain *employment* with the City until two years after leaving his council office. (emphasis added)

(VSOF No. 26)

Nothing in the Impartial Legal Analysis or Arguments pertaining to Charter Amendment JJ contemplated that extending the ban on city employment for two years after a councilmember left office would also impact (or ban) a councilmember's constitutional right to hold elected office for two years after leaving office. (VSOF No. 27) For instance, the Argument against Charter Amendment JJ focused solely on the prohibition that the Charter Amendment JJ imposed on ex-councilmembers obtaining employment with the City. (VSOF No. 28)

Specifically, the ballot argument against Charter Amendment JJ stated as follows:

> "This two-year restriction against a dedicated, experience ex-council-person continuing to serve the City of Glendale is without merit. [¶] What truly valid reason could there be for the people of the city to handicap themselves by having to wait two years to receive the services of someone who may be needed 'right now'? [¶] Couldn't an attorney who has had four or more years on the council become a most valuable part of the legal department? Perhaps even the manager? [¶] Couldn't a doctor work for the

> public health as an employee? [¶] Why not even a city manager, if the office was available? [¶] With no logical reason for the to limit its own freedom by this proposed change, vote 'no' and give it ever possible advantage to secure the best talent available.

(VSOF No. 28)

C. A Charter Amendment that Would Prohibit Former Councilmembers From Holding Elected Office for Two Years was Contemplated But Rejected in 1996

In 1995 through 1996, the Council debated placing a term-limit Charter Amendment on the ballot that included a two year hiatus period before serving on Council again. (VSOF No. 53). The City Attorney was directed to prepare a ballot measure to amend the Charter that provided in pertinent part:

> No person shall be eligible to serve another full or partial term until at least two (2) years has elapsed without the person having served as an elected or appointed Councilmember (or School Board or College Board member should either or both consent by October 1, 1996), since the time the person has completed serving two consecutive full terms.

(VSOF No. 54)

During the Council's debate on term-limits, consistent opposition was voiced to amending the Charter to impose term-limits on elected office. (VSOF No. 55) A competing proposal called the Voter's Rights Amendment was even submitted to the Council on February 20, 1996. (VSOF No. 56) The Voter's Rights Amendment was an anti-term-limit proposal that would amend the Charter to explicitly state that there are no term-limits on elected office and would abrogate the Council's power to impose such limitations. (VSOF No. 57)

In analyzing the legality of the Voter's Rights Act, the City Attorney noted "that this is somewhat an idle or redundant act in that the Charter currently does not limit the number of terms that an elected official may serve." (VSOF No. 58) The City Attorney reiterated these comments to Council when he explained during the meeting that he found it a "redundant or idle act. [Because] . . . right now [the Charter has] no term limits for elected officials and restating that in more specific terms is essentially a redundant act." (VSOF No. 59)

After six meetings, the Council unanimously withdrew the Charter Amendment that would have imposed a term-limit and a two year hiatus period on elected offices. (VSOF No. 60)

III. LEGAL STANDARD

For leave to sue in quo warranto, (1) there must be a substantial question of fact or law appropriate for judicial resolution, and if so (2) the overall public interest is served by allowing the quo warranto to be prosecuted. 85 Ops.Cal.Atty.Gen 101, 102 (2002); 83 Ops.Cal.Atty.Gen. 181, 182 (2000); 81 Ops.Cal.Atty.Gen. 98, 101. As addressed below, the Relators cannot establish the two part test employed to grant leave to sue in quo warranto.

IV. THE RELATORS' APPLICATION DOES NOT RAISE A SUBSTANTIAL FACTUAL OR LEGAL DISPUTE

There is no factual dispute and the well-established rules of statutory construction affirm Councilman Quintero's right to hold public office. See, 87 Ops.Cal.Atty.Gen. 176 (2004), 2004 WL 3185424 at p. * 2; 79 Ops.Cal.Atty.Gen. 243 (1996), 1996 WL 676126 at p. *4 . The Attorney General has recognized in published opinions the following rules of statutory construction are dispositive when evaluating similar requests for leave to sue in quo warranto. See, Ibid.

A. It Was Not the Voters' Intent To Place A Term-Limit/Waiting Period On Former Councilmembers to Hold Elected Office

First and foremost, "[t]he voters' intent in approving a measure is our paramount concern." 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. "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 considered, includes: "the ostensible objects to be achieved, the evils to be remedied, the legislative history including ballot pamphlets, public policy, contemporaneous administrative construction and the overall statutory scheme." Int's Fed'n of Prof'l & Technical Engineers, AFL-CIO v. City of San Francisco, (1999) 76 Cal.App.4th 213, 224-225 (citations omitted). In the end, "[t]he intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.'" Ibid.

Here, the phrase "compensated city office or city employment" in the second sentence of Section 12 is unquestionably ambiguous. As courts have explained, "[t]he words 'office' and 'public office' have been variously defined by the decisions throughout the nation, so that seemingly an exact definition is difficult." Lymel v. Johnson (1930) 105 Cal.App. 694-696. "The words 'public office' are used in so many senses that the courts have affirmed that it is hardly possible to undertake a precise definition which will adequately and effectively cover every situation." Id. at p. 697.

Ironically, the Relators make this point clear by relying on extrinsic aids such as Article IV, Sections 1 and 3 in arguing that the plain language of the phrase "compensated city office or city employment" prohibits Councilman Quintero from holding elected office. (Relators' App., p. 3:13-15) While Article IV, Section 1 defines councilmembers as officers and Section 3 allows for compensation, Section 12 does not incorporate Sections 1 or 3 by reference. Moreover, other sections of the Charter generally make a distinction between officers and elected officers when a provision is intended to apply to elected offices. See, Charter, Art. IV, § 2 (utilizes the term

elective officer); see also, Charter, Art. IV, § 6 (is entitled terms of "elective officers"); see also, Charter, Art. VI, § 13 (utilizes the term elective office), attached as Exh. 4.

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

In that vein, the courts and the Attorney General have consistently found "a recognized aid in ascertaining voter intent is the ballot pamphlet containing the information and arguments relied upon by the electorate in adopting the language in question." 87 Ops.Cal.Atty.Gen. 176 (2004), 2004 WL 3185424 at p. *2, citing, Raven v. Deukmejian (1990) 52 Cal.3d 336, 349; Woo v. Superior Court, supra, 83 Cal.App.4th at p. 975;

Here, the ballot pamphlet is particularly instructive in deducing the voters' intent, because the voters could not have contemplated an interpretation of Section 12 that they were never provided. People v. Cruz (1996) 13 Cal.4th 764-775 ("The words of a statute are to be interpreted in the sense in which they would have been understood at the time of the enactment.") As is set forth in Section II(B), supra, the Impartial Legal Analysis and Arguments stated that the intent of Charter Amendment JJ was to extend the existing ban on councilmembers' employment with the City beyond their term in elected office by two years. The ballot pamphlet never contemplated or informed the electorate that the second sentence of Charter Amendment JJ (the current Section 12) was or could be interpreted as creating a two year hiatus period on former councilmembers holding elected office. (VSOF Nos. 14-28)

Nor could the electorate have deduced that Charter Amendment JJ was intended to impose a two year hiatus period on elected office. The ballot pamphlet did not make reference to Article IV, Sections 1 or 3. (VSOF No. 72) Nor did the ballot pamphlet define the phrase "compensated city office or city employment" as including "elected offices." (VSOF No. 73)

Instead, the Impartial Legal Analysis and Arguments informed the electorate that the stated purpose of the second sentence of Section 12 was to prohibit councilmembers from

obtaining "*employment*" with the City for two years after leaving office. (VSOF Nos. 14-28) In effect, an extension of the existing ban on councilmembers' employment with the City for two years after they left elected office and nothing more.

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

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

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

More importantly, a fair reading of the ballot pamphlet makes it clear that the electorate believed the second sentence of Charter Amendment JJ was simply an extension of the existing ban on a sitting councilmember's holding employment with the City for an additional two years after they left elected office. The electorate never contemplated (nor were they informed) that the second sentence Charter Amendment JJ would impose a two year hiatus on holding elected office. Moreover, as is explained below, any such reading of Charter Amendment JJ would have

bizarre consequence and would constitute an unconstitutional restriction on holding elected office.

B. The Relators' Interpretation of Article VI, Section 12 Is Unconstitutional And Would Lead To Bizarre Results

An interpretation of Article VI, Section 12 that prohibits former councilmembers from holding elected office for two years is unconstitutional under the Equal Protection's Clause of the Fourteenth Amendment. See, De Bottari v. Melendez (1975) 44 Cal.App.3d 910.

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

Like De Bottari, the City of Glendale's Charter provides that "all elective officers of the city shall be subject to recall as provided by the Charter." Charter, Art. IV, § 2; see, Charter, Art. XVIII, § 1. If, therefore, Article, VI, Section 12 restricted (as the Relators advocate) former councilmembers from holding elected office, Section 12 would disqualify recalled councilmembers from running for office in a subsequent special election. See, Charter, Art. IV, § 13 (special election for a vacant elected position must be held within either 120 or 180 days). This type of restriction on holding elected office is unconstitutional. De Botarri v. Melendez, supra, 44 Cal.App.3d.

Beyond being unconstitutional, the Relators' interpretation would also lead to the bizarre result of prohibiting ex-councilmembers from running for elected office. See, Woo v. Superior Court, supra, 83 Cal.App.4th at p. 975 (one cannot presume voters intend absurd and unreasonable consequences).

For example, the City will hold a municipal election in June 2014 to elect Councilman Quintero's successor. (VSOF Nos. 13) This election is within two years of the date that

Councilman Quintero originally stepped down as Mayor. (VSOF Nos. 11, 13) Assuming, therefore, Councilman Quintero did not accept his appointment, but, nevertheless, decided to run for the open Council position in June 2014, he would be ineligible to do so under the Relators' construction of Section 12. Nowhere in the record, however, is there any indication that Section 12 was intended as a prohibition on ex-councilmembers running for elected office. Needless to say, therefore, interpreting Section 12 in such a manner would lead to the bizarre and unreasonable result of disqualifying potential candidates for elected office.

Under established rules of statutory construction, Section 12 is to be construed in a way that avoids a constitutional infirmity (See, McClung v. Employment Dev. Dept't. 34 Cal.4th 467,477) and/or bizarre results. See, Woo v. Superior Court, supra, 83 Cal.App.4th at p. 975. The two examples above demonstrate the Relators' interpretation of Section 12 flies in the face of these canons of statutory construction.

C. All Ambiguity In Article VI, Section 12 of the Charter Must Be Resolved In Favor Of Councilman Frank Quintero's Constitutional Right To Hold Elected Office

Even if, however, the Relators' interpretation is held constitutional and the two examples are not considered bizarre, "the right to hold public office, either by election or appointment, is one of the valuable rights of citizenship." Carter v. Comm'n on Qualifications, etc., supra, 14 Cal.2d at p. 182. Accordingly, "[t]he exercise of this right should not be declared prohibited or curtailed except by plain provisions of law." Ibid. "Any ambiguity in a law affecting that right must be resolved in favor of eligibility to hold office." Ibid.; Woo v. Superior Court, supra, 83 Cal.App.4th at 977 (citations omitted); 87 Ops.Cal.Atty.Gen 176 (2004), 2004 WL 3185424 at p. * 3 (citations omitted).

In this instance, neither the language nor the history of Section 12 shows any intent to prohibit a councilmember from holding elected office by either appointment or election after the completion or termination of his or her Council term. As such, Section 12 must still be construed in favor of Councilman Quintero's right to hold elected office.

///

D. The City Council Does Not Engage In Idle Acts That Would Create Superfluous Legislation

Because "[t]he Legislature is presumed not to engage in 'idle act[s]," the proposed 1996 Charter Amendment on term-limits is particularly instructive in interpreting Section 12. People v. Fowley (2000) 82 Cal.App.4th 784, 788-789.

As indicated above in Section II(C), supra, the City Council held six meetings on a measure "that would limit the terms of Councilmembers to two consecutive terms with the ability to later seek office after two years have elapsed without the individual having been in office as a Councilmember." (Exh. 23 p. 1, ¶ 3) If Section 12 truly imposed a two year hiatus period on holding elected office (as the Relators argue), the Council would have never directed the City Attorney to draft such a measure. Id. This is true, not only because it is an idle act, which wasted time (6 City Council Meetings over a year long period) and money, but also because its passage would have made the second sentence of Section 12 superfluous and redundant. People v. Fowley, supra, 82 Cal.App.4th at p. 788-789 ("Courts should avoid constructions which render statutory language superfluous or unnecessary.")

Based on the public record, the current City Attorney, the '95-'96 City Attorney, and the '82 City Attorney are all in accord. The Charter does not impose any limitations (not term-limits or hiatus periods) on holding elected office. This long standing and consistent opinion on the subject should be afforded great weight. See, Carter v. Comm'n on Qualifications, etc., supra,14 Cal.2d at p. 185 ("the contemporaneous interpretation thus placed on concededly vague and uncertain provisions . . . under familiar rules of construction such practical interpretation, extending over a long period of time, is entitled to great weight.")

V. GRANTING LEAVE TO SUE IN QUO WARRANTO WOULD NOT SERVE THE PUBLIC INTEREST

Not only does the Relators' application to sue in quo warranto fail to raise a substantial legal or factual dispute, it does not serve the public interest. While the City does not believe the Relators have raised a justiciable issue, even if they had "[i]t is well settled that the mere existence of a justiciable issue does not establish that the public interest requires a judicial resolution of a dispute or that the Attorney General is required to grant leave to sue in quo

warranto." 75 Ops.Cal.Atty.Gen 287, 289 (1992). "As stated in City of Campbell v. Mosk (1961) 197 Cal.App.2d 640, 650: "The exercise of the discretion of the Attorney General in the grant of such approval to sue calls for care and delicacy. . . ." 79 Ops.Cal.AttyGen. 243 (1996), 1996 WL 676126 at p. *4. In this instance, the public interest would not be furthered by this quo warranto action for the following two (2) reasons.

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

Here, the circumstances surrounding the initiation of this quo warranto action suggest that it is being brought in retaliation for Councilman Qunintero's vote in favor of an ordinance that restricted the sale of firearms on municipal property and ended the Glendale Gun Show (hereinafter "Ban"). The Council passed the Ban on March 19, 2013. (VSOF No. 61) Councilman Qunintero was the City's Mayor at the time and voted in favor of the Ban. (VSOF No. 62) The Relators' counsel, Sean Brady, was representing the opponents of the Ban and threatened the City with litigation if it passed. (VSOF No. 67) Mr. Brady was explicit when he stated that the opponents would sue the City if the Ban passed and warned that litigation would be costly. (VSOF No.68)

Even the Relators, John Rando and Mariano A. Rodas, are affiliated with, and ardent opponents of the Ban. (VSOF No. 69) During the City Council's debate on the Ban, the Relators were among the most vociferous opponents of the Ban. (VSOF No. 70) Mr. Rando's commentary was especially inflammatory. (VSOF No. 71) Among the most inflammatory comments made during his four appearances before the Council were: calling the Ban a racist

and xenophobic law; implying that the councilmembers were supporting a new kind of racism; and engaging in numerous ethnic stereotypes to illustrate his opposition to the Ban. (Ibid.)

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

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

Here, Councilman Quintero's term of office will expire in June 2014 (within 12 months). For all practical purposes, therefore, the judicial proceeding will likely not conclude before the expiration of Councilman Quintero's term. Accordingly, the Relators' application should be denied.

VI. CONCLUSION

For the foregoing reasons, the City of Glendale and Councilman Quintero respectfully request that the Attorney General deny the Relators' application for leave to sue in quo warranto.

DATED: June 7, 2013

MICHAEL J. GARCIA, CITY ATTORNEY

By: _____
ANDREW C. RAWCLIFFE
Attorneys for Proposed Defendants

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State 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.

On June 7, 2013, I served the foregoing document described as **PROPOSED DEFENDANTS' OPPOSITION TO RELATORS JOHN RANDO'S AND MARIANO A. RODAS' APPLICATION FOR LEAVE TO SUE IN QUO WARRANTO** on THE INTERESTED PARTIES named below by enclosing a copy in a sealed envelope addressed as follows:

C.D. MICHEL SEAN A. BRADY MICHEL & ASSOCIATES, LLP 180 E. OCEAN BLVD., SUITE 200 LONG BEACH, CA 90802	Attorneys for Plaintiff

[ ] **(BY MAIL)** I deposited the envelope with the United States Postal Service with the postage fully prepaid.

[x] **(BY MAIL)** I placed the envelope for collection and mailing on the date shown above, at this office, in Glendale, California, following our ordinary business practices.

I am readily familiar with this office's practice of collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service in a sealed envelope with postage fully prepaid.

[ ] **(BY FACSIMILE)** By transmitting a copy of the above listed document by a "FAX" machine to the FAX number listed above and/or on the attached mailing list.

[ ] **(BY E-MAIL)** By transmitting a copy of the above listed document via e-mail to the e-mail address listed above and/or on the attached mailing list.

[ ] **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the offices of the addressee.

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

[ ] **(Federal)** I declare under penalty of perjury that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 7, 2013, at Glendale, California.

Sheila Redding