Case No. S260209

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

MICHAEL GOMEZ DALY and INLAND EMPIRE UNITED,
Plaintiffs and Respondents,

v.

BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY; ROBERT A. LOVINGOOD; JANICE RUTHERFORD; CURT HAGMAN; and JOSIE GONZALES,
Defendants and Appellants,

DAWN ROWE,
Real Party in Interest and Appellant.

After an Order by the Court of Appeal of the State of California,
Fourth Appellate District, Division Two
Case No. E073730

Appeal from the Superior Court of the State of California,
County of San Bernardino, Department 29, Honorable Janet M. Frangie
Case No. CIVDS1833846

ANSWER BRIEF ON THE MERITS

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INTRODUCTION

By requiring that local governments "act[]" and "deliberat[e] … openly," the Ralph M. Brown Act (Brown Act or Act; Gov. Code, § 54950 et seq.; all undesignated statutory references are to this code) manifests the rights of "[t]he people of this State … not [to] yield their sovereignty to the agencies which serve them" and to "remain[] informed so that they may retain control over the instruments they have created." (§ 54950.) To enforce these rights, and to give the Act " 'teeth' " (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 2674 (1985-1986 Reg. Sess.) as amended June 4, 1986, p. 4 (hereafter AB 2674 Analysis)), the Legislature has authorized "[t]he district attorney or any interested person [to] commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of [certain sections of the Act] is null and void" (§ 54960.1, subd. (a)).

This case concerns the scope and effect of that express statutory remedy. The Board of Supervisors of San Bernardino County (Board) and Dawn Rowe (collectively, Appellants) urge this Court to read into the Act's remedy an exception in cases involving the appointment of local officials, which Appellants contend may only be challenged with leave from the Attorney General to try the official's "title" through quo warranto. Appellants also seek to strip the Brown Act's remedy of its immediate and meaningful consequences, by asking the Court to allow local agencies to irreversibly reap the benefits of their violations of the Act while appellate proceedings are ongoing. Resolving either issue in favor of Appellants would be contrary to established law and seriously jeopardize the ability of individual citizens to vindicate their Brown Act rights.

Indeed, the exception that Appellants propose to the Act's remedy is inconsistent with the purpose and traditional application of quo warranto, as

well as the Brown Act itself. Quo warranto is a tool of the sovereign state "against any person who usurps, intrudes into, or unlawfully holds or exercises any public office." (Code Civ. Proc., § 803.) Courts have recognized that quo warranto provides the exclusive means of challenging an officeholder's *qualifications* or *fitness* for office—as opposed to the *process* by which the officeholder was elected or appointed—but only in the absence of other statutory or constitutional remedies. The common law doctrine of quo warranto exclusivity thus does not displace express statutory remedies like that provided by the Brown Act, which is directed at the conduct of local agencies and authorizes "any interested person" to bring mandamus actions declaring the decisions of local agencies—including agencies' appointments to public office—null and void. In fact, the Act specifically contemplates application of its transparency requirements and remedy to local-agency decisions regarding the appointments of "elected" or "legislative" officials (§ 54957, subd. (b)(4)), by exempting such decisions from provisions allowing closed meetings for actions involving government personnel.

Appellants' proposed exception not only would conflict with these plain terms of the Act, but would thwart the Legislature's unmistakable intent to provide individual citizens with a direct and expeditious means of challenging Brown Act violations, by ceding control over the Act's enforcement to yet another instrument of government. Granting the Attorney General—an elected official who is himself a political actor—such gatekeeper authority would negate the Legislature's deliberate choices to place responsibility for enforcing the Act's open-government mandates (including as to appointments) directly in the hands of the public, and to expressly provide that the remedy the public may obtain is to render acts taken in violation of the Act "null and void." The Board's attempt "to skirt

the spirit and letter of the law" should be soundly rejected. (AB 2674 Analysis, *supra*, at p. 4.)

The Court should also reject Appellants' effort to negate the Brown Act's remedy during the pendency of any appeal. An order declaring an action "null and void" neither requires affirmative action nor alters the status quo, which is measured from the last peaceable uncontested moment between the parties. Because the last such moment here occurred prior to the Board's unlawful appointment, and because, in any event, the nullification of that appointment renders it void of legal effect from the outset, the superior court's order is prohibitory rather than mandatory, and is not automatically stayed during the pendency of the appeal.

Resolution in Appellants' favor of either of the issues presented for review would severely undermine the efficacy of the statutory mandamus mechanism that the Legislature specifically authorized for enforcement of the Act. The undue delay (and potential deprivation of any Brown Act remedy) that would result from requiring members of the public to seek the Attorney General's permission to proceed in quo warranto before challenging an appointment made in violation of the Brown Act, or from staying the effectiveness of judgments under the Act until after the conclusion of all appeals, would render the Act's guarantees of public participation empty promises. That result would allow local agencies—which already are protected by the Brown Act's requirements that they be put on notice and have ongoing opportunities to cure and correct any violations—to circumvent the Act entirely and foreclose the possibility of effective challenge to illegal appointments.

The Court of Appeal's order denying Appellants' supersedeas petition should be affirmed.

FACTUAL BACKGROUND

On November 6, 2018, then-Third District Supervisor James Ramos was elected to the State Assembly. (Exh. 12 at p. 293.)[1] As a result, a vacancy would open on the Board when Ramos took office on December 3. In anticipation of that vacancy, the Board voted on November 13 to solicit applications from qualified electors to serve out the rest of Ramos's term—which expires on December 7, 2020 (Exh. 1 at p. 12)—and to publicly interview all eligible applicants. (Exh. 12 at pp. 293-294; see also Exh. 1 at p. 14 [County charter provision giving Board 30 days to fill Board vacancies, after which point vacancy is filled by Governor].)

The Board received 48 valid applications. (Exh. 12 at p. 294.) Rather than interview all eligible applicants as it had previously voted to do, on December 4, 2018, the Board decided (over one Supervisor's objection) to change course and interview only a select group of applicants. (*Ibid.*) At the same time, the Board also voted that, outside any noticed or public meeting, each Supervisor would submit up to 10 applicant names to the Board's Clerk, and the Board would then interview only those applicants who received at least two votes. (*Ibid*.)

The Board proceeded to exclude 35 applicants from consideration through this secret, seriatim vote. (Exh. 12 at pp. 294-295.) The votes were recorded on a similarly secret "Tally Sheet," which was disclosed only later, pursuant to a public-records request, and which shows the number of votes received by each applicant, but not the source of each vote. (*Id.* at p. 295; see Exh. 9 at p. 211.) To this day, the Board has not disclosed which applicants each Supervisor voted for.

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[1] All record citations are to the Exhibits to the Petition for Writ of Supersedeas unless otherwise specified.

The Board notified the 13 surviving "nominees" that they would be interviewed at a special Board meeting on December 11, 2018. (Exh. 12 at p. 295.) At the conclusion of these interviews, the Board selected five finalists and noticed a special meeting for December 13 to further interview the finalists and to appoint one. (*Ibid*.)

Prior to its December 13 meeting, the Board received two letters from a constituent protesting that the Board's secret balloting had violated the Brown Act. (Exh. 12 at pp. 295-296.) The constituent demanded that the Board cure or correct its violation by "voiding the secret ballot and 'allow[ing] the equal processing of all 48 applicants with equal time to give their speech to the Board' before" making an appointment. (*Ibid.*) Acting on its counsel's advice, the Board refrained from taking any action at the December 13 meeting. (*Id.* at p. 296.)

The morning of the Board's next regularly scheduled meeting on December 18, Michael Gomez Daly and Inland Empire United (Respondents) sent their own letter to the Board, identifying the winnowing of the applicant pool as a Brown Act violation because it was an impermissible serial communication and secret ballot. (Exh. 9 at pp. 173-175; see § 54952.2, subd. (b)(1) ["A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business …."]; § 54953, subd. (c)(1) ["No legislative body shall take action by secret ballot, whether preliminary or final."].)

Respondents demanded that the Board cure or correct its violations "by providing an equal opportunity for all candidates to interview with the Board." (Exh. 9 at p. 174.) Respondents explained that the Board could not simply purport to "reconsider[] all 43 eligible candidates at its December 18 Regular Meeting," because "where a legislative body has

engaged in secret fact finding—such as collectively interviewing candidates—re-taking a vote in a public meeting does not cure the Brown Act violation." (*Ibid.*, citing *Page v. MiraCosta Community College Dist.* (2009) 180 Cal.App.4th 471, 505 (*Page*).) Respondents further explained that "[b]ecause the selection of the 13 candidates to be interviewed on December 11 violated the Brown Act, any continuation of the process of filling the Third District vacancy that does not address the improperly selective interview process should be considered null and void." (*Ibid*.)

At its meeting later that day (see Respondents' Motion to Augment Record on Review, Exh. B), the Board voted to "[r]escind the December 10, 2018, establishment of an interview list of thirteen candidates" and "the December 11, 2018, establishment of a finalist list of five candidates." (Exh. 9 at p. 181.) The Board also purported not to rely on the interviews it had already conducted. (See *id.* at p. 182.) But the Board did not interview all previously unlawfully excluded candidates or otherwise meaningfully reopen the selection process. Instead, immediately after the Board supposedly rescinded its prior actions, the Board Chairperson moved to appoint Rowe. (Exh. 12 at p. 297.) That motion failed by a 2-2 vote. (*Ibid*.) The Board then voted to engage in an ad hoc interview process whereby each Supervisor would submit three applicants' names and the Board would interview any applicant who received at least one vote. (*Ibid*.) The Board proceeded to select the same five applicants it had previously identified as finalists, along with only one previously excluded applicant. (*Ibid*.)

Unsurprisingly, the interviews were brief, ranging from 7 to 17 minutes. (Exh. 12 at p. 298.) The Board interviewed the sole new finalist for only 10 minutes (compared to the 27 to 37 minutes each of the other five finalists were interviewed for on December 11 and December 18 combined (Exh. 7 at p. 137)), and three of the four Supervisors declined to

ask him a single substantive question. (Exh. 12 at p. 298.) The Board Chairperson—who had earlier moved to appoint Rowe immediately after the Board's purported rescission—declined to ask questions of *any* candidate. (*Ibid*.) When the Supervisors did speak, their comments and questions revealed unmistakable taint from the ostensibly rescinded actions. For example, Supervisors "explicitly referred to responses given by candidates during their previous interviews," and one Supervisor "openly acknowledged … he was relying on the preferences of the other Board Members as expressed during the December 10, 2018 secret ballot process." (*Id*. at pp. 298-299.) Even the candidates understood the interviews to be a continuation of the prior unlawful process: Two previously selected finalists declined to make statements to the Board "and instead, chose to rely on their previous remarks and invited questions" based on those remarks, while Rowe "took the opportunity to address a concern and clarify a response she had given during the December 11, 2018 interviews." (*Id.* at p. 298.)

Following these interviews, and without further public comment or discussion, the Board voted to appoint Rowe. (Exh. 12 at p. 299.) Two days later, although the Board had done exactly what Respondents' letter had cautioned would be insufficient to cure its violations, the Board responded to Respondents' letter by claiming it had taken "actions to cure and/or correct the actions" that Respondents had challenged. (*Ibid.*; see Exh. 9 at p. 177.)

PROCEDURAL HISTORY

On December 31, 2018, Respondents filed a verified mandamus petition pursuant to section 54960.1 asserting that the Board's appointment process had violated the Brown Act. (Exh. 2.) Appellants demurred to Respondents' petition on the grounds that quo warranto provided the exclusive procedure for challenging the Board's violations and that

Respondents had failed to state a claim under the Act. (Exh. 3.) After the superior court overruled Appellants' demurrer as to quo warranto's exclusivity but otherwise granted the demurrer with leave to amend (Exh. 8), Respondents filed an amended petition on April 8, 2019 (Exh. 9). Despite Respondents' efforts to have their petition promptly heard on the merits (see, e.g., Exh. 6 [seeking peremptory writ of mandate and noticing peremptory writ hearing for April 16, 2019]; Exh. 8 at p. 153 [recognizing Respondents' willingness to submit amended petition within 12 rather than 30 days]), Appellants again demurred on essentially the same grounds, including the quo warranto exclusivity claim that the superior court had already overruled (Exh. 18).

After overruling Appellants' second demurrer, the superior court finally heard Respondents' peremptory writ motion on June 28, 2019. (Exh. 10.) On September 18, the superior court issued a 27-page statement of decision holding that the process by which the Board appointed Rowe violated the Brown Act. (Exh. 12.) The court concluded that "[i]t is undisputed from the record that after the December 4, 2018 meeting, the BOARD MEMBERS conducted … an off-the-record seriatim meeting and vote." (*Id.* at p. 304.) The court further found that, "in violation of the open meeting requirement of the Brown Act, the BOARD did not provide a public record of the candidate lists provided by the BOARD MEMBERS." (*Ibid.*)

The court also found that "the purported corrective actions taken by the BOARD at the December 18, 2018 meeting were pro forma at best and did not constitute a cure." (Exh. 12 at p. 306.) Rather than " 'restore' the candidates to the positions they would have had absent the illegal actions" or " 'void' those actions such that they had no legal force or effect," the Board simply conducted "a 'ceremonial' hearing to satisfy the open meeting requirement, while continuing to rely on findings and votes

previously taken in secret," which "does not establish a 'cure' of the BOARD's previous violations." (*Id.* at p. 308, citing *Morrison v. Housing Authority* (2003) 107 Cal.App.4th 860, 876; *Page*, *supra*, 180 Cal.App.4th at p. 505.) Accordingly, the court determined that "[t]he appointment of Dawn Rowe as Third District Supervisor is null and void," granted Respondents' motion for a peremptory writ, directed Respondents to prepare a judgment consistent with its statement of decision, and set a show-cause hearing regarding Appellants' compliance with its pending judgment. (*Id.* at p. 317.) Although final judgment had not yet been entered, Appellants prematurely filed a notice of appeal. (Exh. 21 at p. 396.)

Respondents submitted a proposed judgment and peremptory writ on September 27, 2019. (Exhs. 13, 14.) The Board and Rowe each filed objections, which the superior court overruled. (Exhs. 15, 17, 18, 21, 23.) As relevant here, the court concluded that "[t]he provisions found in the proposed Judgment merely expound on the effect of this Court's decision to nullify, void, and rescind Rowe's appointment" (Exh. 21 at p. 398), and that most of Appellants' objections were "nothing more than improper motions for [reconsideration]" (*id.* at p. 401). On November 8, the court issued the judgment and peremptory writ as proposed (Exhs. 22, 23), and Appellants thereafter filed an amended notice of appeal (Exh. 24).

On November 21, 2019, Appellants applied ex parte to the superior court to vacate the show-cause hearing, confirm that the relief the superior court ordered was mandatory rather than prohibitory, and set a writ return date at least *sixty* days after the Court of Appeal's issuance of a remittitur. (Exh. 25; Respondents' Motion to Augment Record on Review, Exh. D.) In the alternative, and without explanation, Appellants sought a 30-day temporary stay of the judgment. (*Ibid.*) Following Respondents' opposition, the superior court denied Appellants' application but granted a

10-day temporary stay for Appellants to seek relief from the Court of Appeal.

Later that day, Appellants filed a supersedeas petition and request for immediate stay in the Court of Appeal. The Court of Appeal granted a temporary stay on November 26, 2019, but on January 8, 2020, lifted that stay and denied the petition. (Petn. for Review, Exh. A.) The Court of Appeal determined that, "upon a finding that the appellant Board of Supervisor's appointment of real party Dawn Rowe was null and void as arising out of a violation of the Brown Act [citation], the seemingly mandatory acts required in the superior court's injunction and writ of mandate are merely incidental to that finding and the injunction and writ of mandate are prohibitory in nature. [Citation.] The same finding of a null and void appointment means there was no change in status quo by the superior court's order." (*Id.* at p. 1.) In denying Appellants' alternative request for a discretionary writ of supersedeas, the Court of Appeal stated that "any injury to Appellants is not 'irreparable' and the potential injury to respondents becomes disproportionate relative to Appellants," and "Appellants have not facially demonstrated the merits of the issues they present." (*Id.* at pp. 1-2.)

Appellants filed a petition for review of the Court of Appeal's determination that the superior court's judgment and peremptory writ were prohibitory in nature and a request for an immediate stay in this Court. This Court issued a temporary stay and then granted review. In so doing, the Court asked the parties to brief two questions: whether Respondents had properly challenged the Board's unlawful appointment under section 54960.1 rather than through a quo warranto action, and whether the superior court's judgment was automatically stayed pending appeal.

ARGUMENT

I. Respondents properly challenged the Board's violations of the Brown Act pursuant to the Act's express remedy.

The Brown Act requires that "actions [of local agencies] be taken openly and that their deliberations be conducted openly." (§ 54950.) Consistent with this purpose, the Act imposes numerous restrictions on local agencies, including a requirement that "[a]ll meetings ... be open and public" (§ 54953, subd. (a)), and a prohibition on "action by secret ballot, whether preliminary or final" (*id.*, subd. (c)(1)). Moreover, although the Act allows local agencies to discuss certain personnel matters in closed session, it provides that this exception is inapplicable to "the appointment" of "any elected official" or "member of a legislative body," which remains subject to the Act's open-meeting requirements. (§ 54957, subds. (b)(1), (4).)

As originally enacted, the Brown Act did not provide for the nullification of actions taken in violation of the Act. Concerned that local agencies were thus "able to skirt the spirit and letter of the law, and … conduct public business without public participation," the Legislature amended the statute in 1986 to "put[] 'teeth' into the Brown Act." (AB 2674 Analysis, *supra*, at p. 4.) Specifically, the Legislature enacted section 54960.1, which provides that "[t]he district attorney or any interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 is null and void under this section." Pursuant to this plain language, Respondents sought a writ of mandate declaring the Board's appointment of Rowe—which violated section 54953, subdivisions (a) and (c)(1), among other provisions—null and void.

Despite section 54960.1's straightforward application here, Appellants contend that this statutory remedy is foreclosed by the purported availability of an action to try Rowe's title in quo warranto. But "[t]here are … many limitations on th[e] rule" that quo warranto is generally an exclusive procedure where it is available,[2] and "it cannot be applied in all cases." (*Stout v. Democratic County Central Committee of City and County of San Francisco* (1952) 40 Cal.2d. 91, 93 (*Stout*).) "The rule is not jurisdictional, and its application to a particular case involves only the exercise of sound legal discretion." *McKannay v. Horton* (1907) 151 Cal. 711, 716 (*McKannay*); accord 53 Cal.Jur.3d (2020) Quo Warranto, § 4.)

One limitation on quo warranto's exclusivity is where "constitutional or statutory regulations provid[e] otherwise." (*San Ysidro Irrigation District v. Superior Court* (1961) 56 Cal.2d 708, 714-715 (*San Ysidro*).) Another is where title to office is only "incidentally involved in a proceeding which a third party has a right to institute." (*McKannay*, *supra*, 151 Cal. at p. 715.) Both limitations apply here: The Brown Act prescribes mandamus as a means of nullifying the Board's unlawful appointment, and the resulting "inquiry as to whether [the Board] had obeyed the plain requirement of the law" in appointing Rowe is "not a matter of trying title to the office of [Rowe]" (*Klose v. Superior Court* (1950) 96 Cal.App.2d 913, 924 (*Klose*)). Thus, irrespective of whether quo warranto is available, it does not preclude Respondents' statutory mandamus action.

Nor do public policy concerns support broadening the scope of quo warranto's exclusivity to shield the Board's conduct from challenge under the Brown Act. Unlike quo warranto, which is controlled by "the Attorney

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[2] Appellants wrongly contend there is a *statutory* basis for quo warranto's purported exclusivity. (See OBM at p. 48.) No statute so provides. (See, e.g., Code Civ. Proc., § 803 ["An action *may* be brought by the attorney-general …." (italics added)].)

General's prerogative" (OBM at p. 52), section 54960.1 vindicates the rights of individual citizens to "retain control over the instruments they have created" and not to "yield their sovereignty to the agencies which serve them" (§ 54950), while being subject to a host of strict statutory conditions and safeguards that protect local agency actions from unreasonable or unwarranted attack. As this Court recognized in construing a parallel provision of an analogous statute, the Act's remedy thus strikes a "balance between two, at least potentially conflicting, objectives—to permit the nullification and voidance of certain actions, but not to imperil the finality of even such actions unduly." (*Regents of University of California v. Superior Court* (1999) 20 Cal.4th 509, 527 (*Regents*) [interpreting near-identical nullification remedy in Bagley-Keene Open Meeting Act (Bagley-Keene Act; § 11120 et seq.)].)[3] And "[w]hen, as here, that balance is not constitutionally offensive," there is no basis for upsetting it. (*Id.* at p. 534.)

A. The Brown Act authorizes Respondents' challenge to the Board's unlawful conduct.

As Appellants acknowledge (OBM at p. 34), quo warranto is exclusive only " '[i]n the absence of constitutional or statutory regulations providing otherwise.' " (*San Ysidro*, *supra*, 56 Cal.2d at pp. 714-715.) The Brown Act supplies such a statutory regulation: Section 54960.1's text plainly authorizes Respondents' mandamus petition, and all other indicators

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[3] Courts generally assign the same meaning to parallel provisions in the Brown Act and Bagley-Keene Act. (See, e.g., *Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 799 (*SCE*); *Travis v. Board of Trustees of California State University* (2008) 161 Cal.App.4th 335, 342; *Musaelian v. Adams* (2009) 45 Cal.4th 512, 517.) As discussed *post*, at pages 41-42, Appellants' proposed reading of section 54960.1's language would lead to especially absurd and illogical consequences under the Bagley-Keene Act.

of legislative intent confirm that the statutory text should be given its ordinary meaning. Thus, even presuming that the *Board's* violations of the Act could properly be the subject of a quo warranto action to try *Rowe's* title to office, the availability of such an action would not bar Respondents' section 54960.1 challenge.

1. Section 54960.1 prescribes the use of mandamus to nullify action taken in violation of the Act, including the appointments of elected or legislative officials.

Section 54960.1 provides that "any interested person may commence an action by mandamus" to invalidate "an action taken in violation of Section 54953," among other provisions of the Act.[4] The Act defines "action taken" as "a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance." (§ 54952.6.) The Board's secret ballot (and its resulting appointment of Rowe) fits squarely within this definition: The Board collectively decided behind closed doors to advance only certain applicants in the appointment process, and thereafter appointed Rowe based on its illegal winnowing of the applicant pool. Because such conduct violates section 54953 (see *ante*, at p. 21), section 54960.1 authorizes Respondents' mandamus action.

Appellants nevertheless contend that quo warranto provides the sole vehicle for addressing the Board's violations, because "principles of

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[4] Appellants mistakenly rely on the Meyers-Milias-Brown Act (MMBA; § 3500 et seq.). (OBM at pp. 38-39.) Unlike the Brown Act, the MMBA never expressly prescribed mandamus as a procedure for remedying violations. (See *Santa Clara County Counsel Attys. Assn. v. Woodside* (1994) 7 Cal.4th 525, 539.)

statutory construction show the Legislature did not intend the Brown Act to serve as … an exception" to quo warranto's purported exclusivity. (OBM at p. 48.) Citing this Court's admonition against presuming the Legislature " 'meant to overthrow long-established principles of law, unless such an intention is clearly expressed or necessarily implied,' " Appellants argue that section 54960.1 fails this test because it does not "expressly provide[] that it would apply where an appointment to public office had been made." (*Ibid.*)

But the Brown Act speaks with more than sufficient clarity to apply here. First, the Legislature plainly contemplated that section 54960.1 would apply to the Board's unlawful conduct. Not only does section 54960.1 incorporate the Act's broad definition of "action taken," but the Act elsewhere reflects the Legislature's understanding that it covered the appointment of officials such as Rowe. Section 54957 adopts a "personnel exception" to the Act's open-meeting requirements. (*Fischer v. Los Angeles Unified School Dist.* (1999) 70 Cal.App.4th 87, 95.) Among other things, this exception authorizes agencies "to consider the appointment … of a public employee" in closed session. (§ 54957, subd. (b)(1); see also *SCE*, *supra*, 31 Cal.4th at p. 799.) However, the statutory exception expressly excludes "elected official[s]" and "member[s] of a legislative body" from its definition of "employee." (§ 54957, subd. (b)(4).) Because it would be unnecessary to include such a carveout from the personnel exception if the Act did not otherwise encompass the appointment of such officials, it is evident that the Legislature understood that the Act would apply to the Board's appointment.

Second, the Legislature *has* clearly spoken to the types of actions that section 54960.1 does *not* render null and void. Besides limiting its terms to only certain Brown Act violations, section 54960.1 provides that "[a]n action taken … shall not be determined to be null and void if": (1)

"[t]he action taken was in substantial compliance with [the Act]"; (2) "[t]he action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement thereto"; (3) "[t]he action taken gave rise to a contractual obligation, including a contract let by competitive bid other than compensation for services in the form of salary or fees for professional services, upon which a party has, in good faith and without notice of a challenge to the validity of the action, detrimentally relied"; (4) "[t]he action taken was in connection with the collection of any tax"; or (5) "[a]ny person … or any agency or subdivision of the state alleging noncompliance with [the Act's notice provisions] had actual notice of the item [within certain timelines] prior to the meeting at which the action was taken." (*Id.*, subd. (d).) None of these exceptions applies here. And " 'if exemptions are specified in a statute, we may not imply additional exemptions unless there is a clear legislative intent to the contrary.' " (*Lopez v. Sony Electronics, Inc.* (2018) 5 Cal.5th 627, 635-636.) Absent any indication of such intent—and in light of the Act's unambiguous text—there is no basis for insulating the Board's illegal conduct from section 54960.1's reach.

Appellants further argue that section 54960.1 is not a statutory alternative to quo warranto because it is unlike other recognized exceptions to quo warranto's exclusivity, such as the Elections Code's election contest provisions. (OBM at pp. 49-51.) According to Appellants, those provisions "expressly authorize election challenges to try title to office" (*id.* at p. 49), and otherwise "indicate[] the Legislature's thoughtful consideration about a limited, express statutory exception to quo warranto's exclusivity" (*id.* at p. 50).

But there are no grounds for the arbitrary lines drawn by Appellants. A statute need not take any specific approach or be subject to any particular conditions to establish an exception to quo warranto's general exclusivity.

The rule that mandamus must yield to quo warranto is "merely a rule of procedure," and derives from the common law principle "that the writ of mandamus will issue only in cases where there is not another plain, speedy, and adequate, or specially prescribed statutory, remedy." (*McKannay*, *supra*, 151 Cal. at p. 716; see also *International Assn. of Fire Fighters v. City of Oakland* (1985) 174 Cal.App.3d 687, 693-694 (*IAFF*) [similar].) Because section 54960.1 "specially prescribe[s]" an action by mandamus to challenge violations of the Act—so that the common law principle requiring the absence of other remedies does not apply—nothing further is required. (*McKannay*, at p. 716; see also, e.g., *San Ysidro*, *supra*, 56 Cal.2d at pp. 714-715 [requiring only that "statutory regulations … provid[e] otherwise"]; *Barendt v. McCarthy* (1911) 160 Cal. 680, 683 [" '[The] statutory remedy, if there be such,' " is available in addition to " 'the common-law remedy by proceedings in the nature of a quo warranto.' "]; *Protect Agricultural Land v. Stanislaus County Local Agency Formation Com.* (2014) 223 Cal.App.4th 550, 558 [recognizing § 56103 as alternative to quo warranto even though, like Brown Act, it prescribes existing procedures instead of enacting entirely new enforcement scheme].)

In any event, the election contest provisions do not "expressly" refer to "title to office" or quo warranto. The specific provision Appellants cite applies broadly to "all issues arising in contested elections" and allows for a "judgment … confirming or annulling and setting aside the election." (Elec. Code, § 16603.) This language is akin to that used in section 54960.1, which similarly applies broadly to "an action taken … in violation of [certain provisions of the Act]" and provides for "a judicial determination that [the] action … is null and void." (§ 54960.1, subd. (a).)

Moreover, actions arising under section 54960.1 are also governed by "strict timelines" (OBM at p. 50) and other "numerous and detailed" (*id.* at p. 49) provisions. "Prior to any action being commenced pursuant to

subdivision (a), the district attorney or interested person [must] make a demand of the legislative body to cure or correct the action alleged to have been taken in violation of [the Act]." (§ 54960.1, subd. (b).) Such demand—which must "be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation" (*ibid.*)—must be made within 30 or 90 days, depending on whether the violation took place in open or closed session. (*Id.*, subd. (c)(1).) The legislative body then has 30 days to cure or correct its violation, or to inform the demanding party in writing that it will not do so. (*Id.*, subd. (c)(2).) Upon the earlier of such written notice or expiration of the cure-or-correct period, the demanding party has 15 days to commence an action. (*Id.*, subd. (c)(4); see also *id.*, subd. (c)(3).) If at any time during the pendency of such action, the legislative body cures or corrects its violation, the action must be dismissed with prejudice. (*Id.*, subd. (e).) And, as noted above, an action may not be invalidated if it is in "substantial compliance" with the Act. (*Id.*, subd. (d)(1).)

These provisions evince "the Legislature['s] … purpose to authorize the nullification and voidance of an action taken … in violation of the act's notice or open-and-public-meeting requirement, but only under strict conditions." (*Regents*, *supra*, 20 Cal.4th at p. 527 [discussing similar provisions in § 11130.3].) Although these conditions may differ from those governing election contests, they strike no less careful a "balance between … permit[ting] the nullification and voidance of certain actions" and "imperil[ing] the finality of even such actions unduly." (*Ibid.*) Thus, any distinctions between the Brown Act and the Elections Code are immaterial: Both statutory schemes amply "reflect[] careful consideration by the Legislature" (OBM at p. 50).

2. By enacting section 54960.1, the Legislature intended to provide a more effective alternative to previously existing remedies.

Prior to section 54960.1's enactment, "any action taken at a meeting in violation of the … Act [remained] nonetheless valid." (Legis. Counsel's Dig., Assem. Bill No. 2674 (1985-1986 Reg. Sess.) as amended June 4, 1986, p. 2.) As a result, "local agencies [were] able to skirt the spirit and letter of the law, and thus conduct public business without public participation." (AB 2674 Analysis, *supra*, at p. 4.) The Legislature adopted section 54960.1 to address this problem: By authorizing the use of mandamus to "render these actions null and void," the Legislature "put[] 'teeth' into the Brown Act." (*Ibid.*)

Section 54960.1 thus manifests the Legislature's intent to bolster the Act's enforcement scheme with a more effective remedy. Appellants nevertheless maintain that this remedy is foreclosed because "[m]andamus is not available where there is another plain, speedy, and adequate remedy" such as quo warranto. (OBM at pp. 47-48.)[5] But, again, this common law rule has no application where, as under the Brown Act, the Legislature "specially prescribe[s]" a mandamus action. (*McKannay*, *supra*, 151 Cal. at p. 716.) It would make especially little sense to apply the rule here, where the Legislature's enactment of section 54960.1 necessarily reflects its view that other available remedies are insufficient. (See AB 2674 Analysis, *supra*, at p. 4 [Legislature adopted section 54960.1 precisely because previously existing remedies failed to prevent local agencies from

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[5] The lone decision Appellants cite for this principle is inapposite. (OBM at pp. 47-48.) *Beames v. City of Visalia* (2019) 43 Cal.App.5th 741 merely observed that a "mandamus proceeding … is '[an]other proper proceeding for redress' "—as opposed to " 'an action at law' " or " 'suit in equity' "—under 42 U.S.C. § 1983. (*Id.* at p. 781, fn. 10.)

"skirt[ing] the spirit and letter of the law, and thus conduct public business without public participation."]; *Shoemaker v. Meyers* (1990) 52 Cal.3d 1, 22 ["If the Legislature had considered [existing remedies] to be adequate, it would not have been necessary to add [a different remedy].) If, as Appellants contend (OBM at p. 48), quo warranto was one such existing remedy, then it is not a plain, speedy, and adequate remedy for violations of the Act.

Other aspects of the Brown Act's legislative history confirm that the Legislature did not intend for quo warranto's regular use to enforce the Act. In 1969, the Legislature considered a provision that would have authorized "[a]n action in quo warranto … for the removal from office of such person[s]" who knowingly violate the Act. (Assem. Bill No. 2297 (1969 Reg. Sess.) § 5, as introduced Apr. 8, 1969.) Notably, the proposed amendment would have also authorized a court, as part of such a quo warranto proceeding, to "set aside any action taken at a meeting in violation of [the statute]." (*Ibid.*) But the Legislature ultimately declined to enact this provision. (See Stats. 1969, ch. 494, § 2, p. 1106.) Instead, the Legislature later chose to authorize an action by mandamus or injunction—not quo warranto—to invalidate actions that violate the Act. (§ 54960.1, subd. (a).)

That the Legislature rejected quo warranto as a tool for enforcing the Act is unsurprising given the fundamentally different interests quo warranto serves. Quo warranto originated as "a writ of right for the king" and was "frequently subverted from its legitimate purposes and used as a means of strengthening the king's prerogative at the expense of his subjects." (*IAFF*, *supra*, 174 Cal.App.3d at pp. 695, 696.) Though quo warranto "has evolved … its essential character is that it is still a prerogative of the sovereign state." (OBM at p. 32, citing *Citizens Utilities Co. v. Superior*

Court (1976) 56 Cal.App.3d 399, 406 ["[T]he remedy of quo warranto belongs to the state …."].)

In contrast, the Act establishes the rights of individuals *relative to* the state: "The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on … retain[ing] control over the instruments they have created." (§ 54950; see also Cal. Const., art. I, § 3, subds. (b)(1)-(2).) It would run directly counter to these principles to require individuals to seek leave from another agency in order to challenge violations of the Act, especially when section 54960.1 expressly provides for enforcement by "any interested person."

The Act contains other provisions indicating that the Legislature did not intend for quo warranto to be the exclusive method for challenging any violations of the Act. The Act requires potential claimants to first make a written "demand of the legislative body to cure or correct the [complained-of] action" (§ 54960.1, subd. (b)), and affords the legislative body a 30-day window to address its violation and thereby avoid litigation (*id.*, subd. (c)(2)). These conditions, however, would not attach to quo warranto actions to try title, insofar as they apply only to actions "commenced pursuant to [section 54960.1], subdivision (a)" (*id.*, subds, (b), (c)(4), (d)). Not only is quo warranto a distinct and independent action against "any person who usurps, intrudes into, or unlawfully holds or exercises any public office" rather than a local agency (Code Civ. Proc., § 803; see OBM at pp. 30-32 [quo warranto is separate "procedural vehicle … for addressing underlying substantive rights" that is subject to its own "guidelines"]), but

nothing in quo warranto's statutory or regulatory scheme requires adherence to conditions or procedures set forth elsewhere.[6]

Moreover, section 54960.1 does not contemplate that the Attorney General can challenge a Brown Act violation "upon his own information," as the quo warranto statute otherwise authorizes him to do (Code Civ. Proc., § 803). Section 54960.1 confers standing only on a "district attorney or any interested person"—and not the Attorney General—to "demand" that an agency "cure or correct" a violation of the Act (§ 54960.1, subds. (a), (b)), and then, absent cure or correction, to "commence an action by mandamus or injunction" (*id.*, subd. (a)).

The normal course of a quo warranto proceeding is also inconsistent with the Legislature's concern for the timely prosecution of Brown Act violations.[7] Whereas section 54960.1 requires that local agencies be

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[6] Any claim that section 54960.1's requirements apply under quo warranto would also be at odds with Appellants' argument that section 54960.1 does not apply to "challenges to the right to office." (OBM at p. 50.) Moreover, such a position would set an impermissible trap for the unwary, given the absence of any authority suggesting section 54960.1's application to quo warranto.

[7] Respondents' mandamus petition took an unusually long time to resolve because Appellants repeatedly sought to drag out the superior court proceedings. Appellants filed successive demurrers, including on grounds previously rejected by the court (Exhibits to Appellants' Motion to Augment Record on Review, Exh. E, p. 316 ["The Court does not see any reason to deviate from its prior ruling on the demurrer … and construes [Appellants'] renewed argument as an improper request for reconsideration."]); sought to preclude entry of the superior court's judgment on the clearly erroneous ground that the premature "Notice of Appeal of the Statement of Decision … divested [the superior court] of jurisdiction to enter a judgment" (Exh. 21 at p. 396); and objected to the judgment on grounds that were "heard, considered and rejected by [the superior court] during the writ proceeding" (*id.* at p. 401).

notified of violations within 30 or 90 days, depending on the nature of the violation (§ 54960.1, subd. (c)(1)), and allows only 15 days to commence a section 54960.1 action once it has accrued (*id.*, subd. (c)(4)), no similar restrictions apply to quo warranto actions. In fact, the Attorney General typically allows proposed defendants 15 days simply to *respond* to a quo warranto application (Cal. Code Regs., tit. 11, § 3; see also *id.*, § 4 [providing 10 more days for reply to proposed defendant's response]), and there appears to be no limit on how long the Attorney General may take to decide such applications (see *People ex rel. Lacey v. Robles* (2020) 44 Cal.App.5th 804, 812-813 [application filed in April; leave granted in December]; *Rando v. Harris* (2014) 228 Cal.App.4th 868, 873 (*Rando*) [application filed in May; leave denied in October]). Moreover, whereas mandamus actions can be resolved within as little as 10 days (see Code Civ. Proc., § 1088; see also *Disenhouse v. Peevey* (2014) 226 Cal.App.4th 1096, 1102 [noting, in discussing Bagley-Keene Act's near-identical remedy, that "a petition for writ of mandate is an authorized means of enforcing the Act and is consistent with the Legislature's intent to commence and resolve such enforcement actions promptly"]), quo warranto allows for no similar expeditious relief.[8]

Accordingly, had Respondents proceeded through quo warranto rather than section 54960.1, neither they nor the Attorney General would have been required to provide the Board with notice of its violations; to give the Board an opportunity to cure or correct its violations before filing suit; or to file suit in timely fashion. Given these material differences

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[8] Although the Attorney General may grant leave to sue on an expedited timeline "[i]n special cases and upon a sufficient showing of urgent necessity" (Cal. Code Regs., tit. 11, § 10; see also *id.*, § 3), there is no procedure for expediting judicial resolution of quo warranto actions as under Code of Civil Procedure section 1088.

between the two procedures, it is altogether unlikely that the Legislature intended for section 54960.1 to be foreclosed by quo warranto as Appellants suggest. (See *State Personnel Bd. v. Fair Employment & Housing Com.* (1985) 39 Cal.3d 422, 434 (plur. opn.) [differences between two remedial schemes defeat claim that availability of one remedy forecloses other remedy].)

Finally, Appellants' reliance on *Klose*, *supra*, 96 Cal.App.2d 913, and *IAFF*, *supra*, 174 Cal.App.3d 687, for the proposition that "quo warranto does provide a plain, speedy and adequate remedy" is misplaced. (OBM at p. 36.) " ' " 'The question whether there is a "plain, speedy and adequate remedy in the ordinary course of law" … is one of fact, depending upon the circumstances of each particular case.' " ' " (*Flores v. Department of Corrections & Rehabilitation* (2014) 224 Cal.App.4th 199, 206.) Neither *Klose* nor *IAFF* involved challenges to an appointment process; considered whether quo warranto is a sufficient remedy for purposes of the Brown Act; or addressed the use of mandamus expressly authorized by statute. And *Klose*'s observation that the quo warranto proceeding there would involve all necessary parties does not apply here (see *Klose*, at p. 925), insofar as Respondents' dispute is with the Board, which would *not* be a necessary party to a quo warranto action against Rowe (see, e.g., OBM at p. 33 [quo warranto requires only "notice to the office holder"]). Thus, *Klose* and *IAFF* have no bearing on whether quo warranto provides an adequate remedy in the instant case.[9]

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[9] A recent Court of Appeal decision also casts doubt on the proposition that an "extraordinary" remedy like quo warranto is available in "the ordinary course of law." (*Villery v. Department of Corrections & Rehabilitation* (2016) 246 Cal.App.4th 407, 415-416 [declining to find that "extraordinary remedy" of habeas corpus is available in "*ordinary* course of law"]; see *Gales v. Superior Court* (1996) 47 Cal.App.4th 1596, 1602 ["[T]he term

3. Article I, section 3 of the California Constitution requires the Court to construe the Brown Act broadly.

Even if the Legislature's authorization of Respondents' mandamus action were not so clearly established by the Act's text, purpose, and history, the California Constitution's directive that "[a] statute, court rule, or other authority … be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access" precludes Appellants' restrictive reading of section 54960.1. (Cal. Const., art. I, § 3, subd. (b)(2), added by Prop. 59, as approved by voters, Gen. Elec. (Nov. 2, 2004); see also *id.*, subd. (b)(1).) Prohibiting members of the public from challenging the appointments of officials under section 54960.1 would undoubtedly limit their right of access, insofar as it would require individuals to obtain government approval before vindicating such right and otherwise make it more difficult to enforce the Act. The Court should decline to adopt any such statutory interpretation. (See *National Lawyers Guild, San Francisco Bay Area Chapter v. City of Hayward* (Cal., May 28, 2020, No. S252445) 2020 WL 2761057, at *11.)

B. Quo warranto is not the exclusive remedy where, as here, any challenge to an officeholder's title is incidental to a distinct, predominant claim.

Quo warranto does not preclude Respondents' Brown Act challenge for an additional reason. The gravamen of Respondents' challenge was that the Board's process of filling its vacancy violated the Act. Respondents did not purport to try Rowe's title in the ordinary sense, insofar as they did not dispute Rowe's general qualifications or eligibility to serve on the Board (compare, e.g., *Hallinan v. Mellon* (1963) 218 Cal.App.2d 342, 344

'extraordinary remedy' … refers to writs of mandamus, quo warranto, habeas corpus, and other similar actions."]; OBM at p. 56 [quo warranto imposes "high bar … to bring the action in the first place"].)

[dispute over officeholder's residency]), or claim that any other individual was entitled to the vacant seat (compare, e.g., *Nicolopulos v. City of Lawndale* (2001) 91 Cal.App.4th 1221, 1226 [ousted officeholder sought restoration to seat]). Any arguable attack on Rowe's title was thus too incidental to trigger quo warranto's exclusivity. (See *Stout*, *supra*, 40 Cal.2d at p. 94; *McKannay*, *supra*, 151 Cal. at p. 715.)

Appellants contend that *Klose*, *supra*, 96 Cal.App.2d 913, compels a different conclusion because that case purportedly established that "title [is not] merely incidental … 'where there are no conflicting claimants and the appointing power has refused to determine the existence of the vacancy, and there is an incumbent claiming the office.' " (OBM at pp. 43-44.) But, again, *Klose* did not involve a challenge to an appointment *process*, and in fact *distinguished* cases involving challenges to an appointment based on the appointing entity's violations of applicable law. In such cases, *Klose* explained, it is "not a matter of trying title to the office of the … appointed [officeholder], but rather an inquiry as to whether [the appointing entity] had obeyed the plain requirement of the law" in making the appointment. (*Klose*, at p. 924 [describing such circumstances as "entirely dissimilar"].) Moreover, *Klose* plainly involved a direct challenge to title, insofar as the "underlying legal question" was "whether the incumbent met the residency requirement" to hold office. (OBM at p. 44; accord *Klose*, at p. 915.) Here, by contrast, Respondents do not allege that Rowe has usurped any office in her own right, but solely challenge the Board's conduct in appointing Rowe. Thus, *Klose* actually confirms that Respondents' action against the Board did not try Rowe's title directly, if at all.

Appellants further argue that Respondents' requested relief establishes that "[i]t was evident from the outset … that … Rowe's right to the Third District Supervisor seat has always been *the* issue in his case, not merely an 'incidental' one." (OBM at p. 45.) But the relief Respondents

requested (and the superior court granted) was entirely consistent with the Brown Act's nullification remedy and the County's charter. (See *ante*, at p. 14.) The fact that Respondents sought to prevent the Board from circumventing that remedy by identifying the necessary and logical consequences of a finding that the Board's actions were null and void does not materially alter the thrust of Respondents' action. (See *post*, at pp. 52-54.) Nor do Respondents' post-judgment efforts to prevent the Board from representing to the electorate that Rowe was the "incumbent" Third District Supervisor for purposes of the next supervisorial election—and thus further capitalize on its violations of the Act—establish that Respondents had any dispute with Rowe's qualifications or eligibility.

Indeed, Respondents initiated their challenge *before* the Board even appointed Rowe: As required by section 549601, subdivision (b), Respondents notified the Board of its violations of the Act and requested that the Board cure or correct such violations *prior* to the meeting at which the Board discussed the remaining applicants and ultimately selected Rowe. (Exh. 9 at pp. 173-175.) Respondents' notice did not mention Rowe or any other applicant, but merely asked the Board to "determine a process for selecting a candidate for the vacant Third District seat that is not tainted by the Board's past, unlawful actions." (*Id*. at p. 175.) The contents and timing of that notice establish that Respondents' action was always directed solely at remedying the Board's conduct, not at trying Rowe's title. The Court should therefore reject Appellants' attempt to shoehorn Respondents' Brown Act claims against the Board into a quo warranto action against Rowe.[10]

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[10] In any event, to the extent that any of the collateral relief Respondents sought could be viewed as seeking to try Rowe's title, that would mean only that the relief sought was inappropriate. It would not transform the

C. The Brown Act's remedy amply serves the public's interest in transparent, democratic, and orderly local governance.

Expanding quo warranto's exclusivity to reach Brown Act violations involving appointments to office—and thereby installing the Attorney General as gatekeeper of Brown Act rights—would negate the Act's grant of direct enforcement authority to "interested person[s]," while failing to serve any public purposes, because the Act already provides adequate safeguards against meritless claims.

A local agency's action is subject to nullification only in those uncommon circumstances where, as here, the agency commits a serious violation of the Act, receives fair notice of its violation, and nevertheless insists on reaping the rewards of its violation. (See § 54960.1, subds. (a), (d)(1)) [applying remedy only to nontrivial violations of specified provisions]; *id.*, subds. (b)-(c) [requiring written notice of violation and sufficient time to cure or correct]; *id.*, subd. (c)(4) [requiring filing of action within 15 days of accrual]; *id.*, subd. (e) [allowing agency to cure or correct violation during pendency of action].) As this Court observed in construing similar but less stringent conditions in the Bagley-Keene Act (compare, e.g., § 11130.3, subd. (a)), these restrictions ensure that "the finality of even … actions" taken in violation of the Act are not "imperil[ed] … unduly." (*Regents*, *supra*, 20 Cal.4th at p. 527; see also *ibid.* ["[The Legislature] … chose to craft a powerful weapon, but to restrict its range."].)

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nature of the action, which had an indisputably proper Brown Act objective: a judicial determination that the Board's secret ballot was null and void. (Cf. *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 196 ["Where a petitioner is not entitled to the relief sought, the court may grant appropriate relief."].)

Although section 54960.1 thus incorporates its own "substantive and procedural protections" for local agencies (OBM at p. 56), Appellants contend that allowing Respondents to challenge the Board's violations pursuant to section 54960.1 rather than quo warranto "would have disastrous consequences, far beyond this case, to all local governments and the public alike" (*id.* at p. 51). Appellants' primary argument is that the Attorney General's discretion to grant or deny leave to sue in quo warranto protects against "frivolous lawsuits and 'private quarrel[s].' " (*Id.* at p. 52.) But such discretion is of course not immune to political pressure or partiality. In fact, the League of California Cities—which filed an amicus letter in support of review in this case—opposed the 1969 bill that would have prescribed the use of quo warranto to enforce the Act because it believed "that the Attorney General has evidenced complete bias in connection with opinions under the Brown Act," and "much prefer[red] to rely on the courts rather than the Attorney General to determine whether there has been any violation of the [Act]." (Exec. Director and Gen. Counsel, League of Cal. Cities, letter to Judd Clark and copying Assemblymember William T. Bagley, sponsor of Assem. Bill No. 2296 (1969 Reg. Sess.), May 15, 1969, p. 1; see also *id.* at p. 2 ["We will oppose any attempt to apply quo warranto to [Brown Act] proceedings."].)

Moreover, the Act expressly protects against frivolous challenges: Even presuming that a vexatious litigant with a meritless claim is able to comply with section 54960.1's stringent preconditions for filing suit, the statute prohibits the invalidation of any "action taken … in substantial compliance with [the Act]" (§ 54960.1, subd. (d)(1)),[11] and authorizes

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[11] The Legislature included an identical exception in the Bagley-Keene Act for the express purpose of protecting agencies from unjustified attack (see Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of

award of costs and attorney's fees to prevailing defendants upon a "find[ing] that the action was clearly frivolous and totally lacking in merit" (§ 54960.5). Thus, Appellants' hyperbolic claims of "far"-reaching and "disastrous consequences" are unfounded.

Appellants also derogate the role that the "people" are intended to play in prosecuting violations of the Act, and otherwise distort the balance of democratic interests at stake in this case. By establishing that "[t]he district attorney or any interested person"—but not the Attorney General—"may commence an action by mandamus or injunction" under section 54960.1, the Legislature clearly contemplated that members of the public would bring such suits directly on their own behalf. Were quo warranto deemed the exclusive vehicle for addressing Brown Act violations involving appointments of local officials, the Attorney General would be thrust into an exclusive enforcement role not conferred by the Act.

The private-enforcement mechanism of section 54960.1 hardly "undermines" any "democratic functions." (OBM at p. 53.) To the contrary, establishing a private right of action under section 54960.1 is entirely consistent with the important democratic concerns that animate the Act. (See, e.g., § 54950 ["The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know."]; see also *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior*

Assem. Bill No. 214 (1985-1986 Reg. Sess.) as amended June 19, 1985, p. 3 ["The bill provides an exception for de minimus errors and thus should not threaten state agencies with frivolous litigation."]; see § 11130.3, subd. (b)(3)), and intended for the Brown Act to provide local agencies the same protection (see AB 2674 Analysis, *supra*, at p. 4 ["AB 2674 essentially conforms the Brown Act … to the amendments made [in 1985] to the Bagley-Keene Open Meeting Act … made by AB 214 …."]).

Court (2007) 42 Cal.4th 319, 333, fn. 6 ["The Brown Act serves … democratic purposes …." (citing § 54950)].)

Nor is it "unusual for the state to authorize citizen enforcement of state-adopted rules governing how the state and its subdivisions will conduct the public's business. Indeed, citizen actions may be authorized precisely because there may be particular procedures with which a subordinate public agency is reluctant to comply." (*Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal.5th 677, 731 [citing enforcement provisions of Brown and Bagley-Keene Acts, as well as administrative mandamus].)

This observation rings especially true when considering the logical implications of Appellants' arguments. Like the Brown Act, the Bagley-Keene Act provides that "[a]ny interested person may commence an action by mandamus … for the purpose of obtaining a judicial determination that an action taken … in violation of [certain provisions] is null and void." (§ 11130.3, subd. (a).) But if, as Appellants argue, this language incorporates an exclusive quo warranto action for violations pertaining to the appointment of public officeholders,[12] then the Attorney General would stand in the untenable position of deciding to sue the very agencies that he may be tasked to defend. Not only would Appellants' interpretation thus lead to absurd results (see *Flannery v. Prentice* (2001) 26 Cal.4th 572, 578 ["We avoid any construction that would produce absurd consequences."]), but it would fly in the face of the principles underlying our state's open-government laws by subjugating the individual right to governmental transparency to the "prerogative" of the government itself (see § 11120

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[12] The Bagley-Keene Act also applies to appointments of public officials. (See § 11126, subd. (b) [excluding "appoint[ments] to a public office" from Bagley-Keene's personnel exception].)

["The people of this State do not yield their sovereignty to the agencies which service them…. The people insist on remaining informed so that they may retain control over the instruments they have created."]; § 54950 [declaring same principles under Brown Act]).

That the Attorney General's resolution of a quo warranto application is itself subject to mandamus challenge does not alter these conclusions. (OBM at p. 33.) First, the need for such an additional proceeding—which would itself be subject to appeal—would all but preclude the timely relief that the Legislature clearly sought to provide under section 54960.1. (See *ante*, at pp. 32-33 [noting that action challenging Brown Act violation must be brought within 15 days of accrual, and may be resolved within as little as 10 days].) Second, courts have set an exceedingly high bar for overturning such decisions. (See, e.g., *Rando*, *supra*, 228 Cal.App.4th at p. 874 [requiring "extreme and indefensible abuse of discretion"]; *IAFF*, *supra*, 174 Cal.App.3d at p. 697 ["[N]o such instance of mandamus issuing can be found."].) Finally, even if a court were to order the Attorney General to grant leave to sue in time for it to make any difference, the Attorney General would retain an unacceptable degree of control over the action for purposes of the Act's private-enforcement scheme. (See Cal. Code Regs., tit. 11, § 8 ["The Attorney General may at all times, at any and every stage of the said proceeding, withdraw, discontinue or dismiss the same, as to him may seem fit and proper; or may, at his option, assume the management of said proceeding at any stage thereof."]; see also *id.*, §§ 7, 9 [establishing similar restrictions].)

Appellants further argue that the Brown Act's remedy must yield to quo warranto because "[q]uo warranto actions are subject to well-defined statutory and judicially-established procedures that provide certainty to the parties and the courts." (OBM at p. 53.) Again, however, Respondents' section 54960.1 action was subject to its own set of well-defined statutory

procedures. (See *ante*, at pp. 27-28.) Moreover, contrary to Appellants' suggestion, Respondents did *not* seek to invalidate any Board action voted on by Rowe following her unlawful appointment, and no such remedy is available. (See *In re Bunker Hill Urban Renewal Project 1B of Community Redevelopment Agency of City of Los Angeles* (1964) 61 Cal.2d 21, 42 ["The lawful acts of an officer *de facto* … are, if done within the scope and by the apparent authority of office, as valid and binding as if he were the officer legally elected and qualified for the office and in full possession of it."].) Further, any alleged "uncertainty" regarding whether the judgment took effect pending appeal, which Appellants complain reflected poorly on the Board (OBM at p. 55), will be clarified by this Court's decision on the automatic-stay issue.[13] It provides no basis for disregarding the statute's plain text in all future cases.

Appellants also offer no explanation for why the appointment of public officeholders warrants a purportedly greater degree of protection than the numerous other "high stakes" local-agency actions that may indisputably be challenged under section 54960.1. (OBM at p. 56.) *Hernandez v. Town of Apple Valley* (2017) 7 Cal.App.5th 194 (*Hernandez*), is instructive. There, the court invalidated a voter-enacted ballot initiative because the town council had failed to properly notice its discussion of a key item that contributed to its ultimate decision to place the measure on the ballot. (See *id.* at pp. 209, 213-214.) Certainly, a challenge seeking to overturn the apparent will of the electorate implicates the same interests in public participation, stable local governance, and certainty as a challenge to an appointment. That the challenge in *Hernandez* nevertheless proceeded

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[13] Any such uncertainty or cloud would be of the Board's own making. The Board could have cured its violations at any time before or during the litigation, but chose not to.

properly under section 54960.1 reveals the speciousness of Appellants' reliance on such interests.

II. The superior court's order was prohibitory and not automatically stayed pending appeal.

"An injunction is prohibitory which merely has the effect of preserving the subject of the litigation in *statu quo* …." (*Johnston v. Superior Court* (1957) 148 Cal.App.2d 966, 970.) An injunction is mandatory, by contrast, where it both "requires affirmative action and changes the status quo." (*Hayworth v. City of Oakland* (1982) 129 Cal.App.3d 723, 728 (*Hayworth*), emphasis added.) The Court of Appeal correctly held that the superior court's order was prohibitory, for two independent reasons:

First, this Court established over a century ago that the status quo is measured from the last peaceable uncontested moment between the parties, not—as Appellants contend—after a party has already begun its unlawful course of conduct. Here, the last actual peaceable, uncontested status—indeed, the status when Appellants were first alerted to their Brown Act violation and asked to correct it—was a vacancy in the position of Third District Supervisor.

Second, from whatever period the status quo is measured, it never changed here, because Rowe never lawfully held office. The Brown Act dictates that the Board's unlawful appointment of Rowe was "null and void." Because that appointment never had legal force, it never altered the status quo as measured from any point in time. Appellants' proposed contrary rule would, by permitting violating agencies to enjoy the fruits of their violation during the pendency of appeals, extract the teeth the Legislature added to the Brown Act in 1986.

A. The superior court's order was prohibitory, not mandatory.

1. The status quo is measured from the last peaceable, uncontested status between the parties.

Appellants argue that the status quo should be measured at the moment the superior court entered its order, when Rowe was unlawfully serving on the Board, making the injunction mandatory. But this Court framed the proper status quo analysis in 1916, when it held that the status quo is defined as " 'the last actual peaceable, uncontested status which preceded the pending controversy.' " (*People v. Hill* (1977) 66 Cal.App.3d 320, 331 (*Hill*), quoting *United Railroads of San Francisco v. Superior Court* (1916) 172 Cal. 80, 87 (*United Railroads*).)

As this Court explained in *United Railroads*, *supra*, 172 Cal. 80, "[t]here is no magic in the phrase 'maintaining the *status quo*' which transforms an injunction essentially prohibitive into an injunction essentially mandatory." (*Id.* at p. 87.) In that case, the plaintiff successfully enjoined San Francisco from using railcars on a portion of its tracks and related infrastructure in excess of the number provided for in the parties' contract. San Francisco argued that because it had "for several months" been operating excessive numbers of railcars under a claim of right without having been prevented from doing so, it "was in legal possession of the interest claimed and, consequently, the injunction, though prohibitory in form, requiring it merely to cease operating such cars, is, in effect, an order directing the city to relinquish its possession of the incorporeal hereditament and, therefore, mandatory in character." (*Id*. at p. 86.) This Court disagreed, explaining that "the phrase [status quo] has been defined to mean 'the last actual peaceable, uncontested status which preceded the pending controversy[,]'" and that "[t]here was no such uncontested possession" because "petitioner [had] protested before beginning its action, protested vigorously against the misuse of its property,

and only brought its action when its protests were disregarded." (*Ibid.*) Although San Francisco was wrongfully using the contested lines when the case was filed and the injunction was entered, that did not alter the status quo: "It is not easy to perceive what more the plaintiff should have done in the assertion and maintenance of its rights. Nor, upon the other hand, can it be perceived how the conduct of the city officials conferred upon the city any new rights." (*Ibid.*)

The same is true here. Respondents "protested before beginning [their] action" by sending a letter before Rowe's appointment alerting the Board to its Brown Act violation, and "only brought [their] action when [their] protests were disregarded." (*United Railroads*, *supra*, 172 Cal. at p. 87; compare Exh. 9 at pp. 173-175.) Respondents could not have done anything more "in the assertion and maintenance of [their] rights." (*United Railroads*, at p. 87.) The Act's requirement that local agencies be given an opportunity to cure and correct violations rendered it impossible for Respondents to seek injunctive relief before the Board's action became final. Like Appellants, every Brown Act defendant, after failing to cure its violation, will argue on appeal that the relevant status quo is the state of affairs *after* it took the unlawful action. Respondents' approach would thus undermine the Brown Act's force by permitting violating agencies to enjoy the fruits of their violations during the pendency of any appeal.

Since *United Railroads*, California courts have routinely identified the last uncontested status as the relevant point for purposes of determining the status quo. (See *Butt v. State of California* (1992) 4 Cal.4th 668, 674-677 [injunction preventing school district from canceling final weeks of school term was prohibitory, not mandatory; treating relevant status quo as full school year, rather than uncertain period immediately prior to entry of injunction]; *Youngblood v. Wilcox* (1989) 207 Cal.App.3d 1368, 1372, fn. 1 [injunction preventing club from excluding members was prohibitory

because "premise of the complaint was that the Youngbloods were lifetime members of the Club, and that Mission Hills acted improperly in preventing them from exercising their rights as members"]; *Hill*, *supra*, 66 Cal.App.3d at p. 331 [reciting *United Railroads* standard and holding that "status quo to be established is that which existed before appellant started using the prohibited words"]; see also 42 Am.Jur.2d (2020) Injunctions § 5, fn. 4 ["A prohibitory injunction maintains the status quo, which is generally described as the last, uncontested status which preceded the parties' controversy."]; *Integrated Dynamic Solutions, Inc. v. VitaVet Labs, Inc*. (2016) 6 Cal.App.5th 1178, 1184 [same]; *People ex rel. Brown v. iMergent, Inc.* (2009) 170 Cal.App.4th 333, 343 (*iMergent*) [same]; *14859 Moorpark Homeowner's Ass'n v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1408 [same]; *Voorhies v. Greene* (1983) 139 Cal.App.3d 989, 995 [same].)

Contrary to this line of authority, Appellants argue that the relevant time for measuring the status quo is the moment the injunction is *entered*, rather than the last peaceable moment between the parties. But while some Court of Appeal decisions may recite this standard (see OBM at pp. 60-61), in all such cases the status quo would have been the same whether measured at the moment of the last uncontested status or when the injunction was entered.[14]

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[14] *URS Corp. v. Atkinson/Walsh Joint Venture* (2017) 15 Cal.App.5th 872 addressed an attorney disqualification order. The court held that the appropriate measuring point for the status quo—the last peaceable, uncontested status—was not the filing of the underlying lawsuit, but the filing of the disqualification motion that was the subject of the injunction. (*Id*. at p. 886; see also *Paramount Pictures Corp. v. Davis* (1964) 228 Cal.App.2d 827 [at time dispute arose and at time injunction entered, defendant was under separate exclusive contract, validity of which was undisputed and which injunction would have forced defendant to break]; *Clute v. Superior Court* (1908) 155 Cal. 15 [at time dispute arose and at

The judgment here directed the Board to cease engaging in a continuing unlawful course of conduct contested by Respondents from the outset. That is a prohibitory injunction. (See *Dry Cleaners & Dyers Institute of San Francisco & Bay Counties v. Reiss* (1936) 5 Cal.2d 306, 309 ["An order or decree restraining the further continuance of an existing condition does not take on the character of a mandatory injunction merely because it enjoins the defendants from continuing to do the forbidden acts."]; *Oiye v. Fox* (2012) 211 Cal.App.4th 1036, 1048 ["An injunction designed to preserve the status quo as between the parties and to restrain illegal conduct is prohibitory, not mandatory ...."].) This Court should reaffirm the rule that the status quo for purposes of determining the nature of an injunction is measured from the last peaceable uncontested status between the parties.

2. There is no reason for this Court to modify its rule regarding the status quo.

Appellants' proposed identification of the relevant status quo would undermine the purposes of both the automatic-stay rule and the Brown Act. The automatic stay pending appeal " 'protect[s] the appellate court's jurisdiction by preserving the status quo until the appeal is decided. [It] prevents the trial court from rendering an appeal futile by altering the appealed judgment or order by conducting other proceedings that may affect it.' " (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 189.) A prohibitory injunction likewise exists to maintain the status quo and is accordingly not stayed pending appeal. (*Hayworth*, *supra*, 129 Cal.App.3d at pp. 727-728.)

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time injunction entered, defendant was acting under valid contract as employee of corporation, and contested whether plaintiffs possessed authority to remove him and require transferal of corporate property].)

Appellants argue that a stay would better preserve the Court of Appeal's jurisdiction and prevent the appeal from becoming moot. (OBM at pp. 61-62.) But here, the *stay* made the appeal moot. The superior court found that the Board violated the Act when it appointed Rowe and that the appointment was therefore null and void. Pending appeal—and during the rest of the unlawfully appointed term—the judgment either would take effect (requiring that Respondents engage in a lawful, transparent process for filling the vacancy or permitting the Governor to fill it, as required by the County's charter) or be stayed (permitting Rowe to serve the rest of a term to which the superior court had found her unlawfully appointed). Either way, one party could suffer the loss of their ability to obtain relief if the appeal were to extend beyond the term to which Rowe was appointed.

Appellate courts "must contemplate the possibility of affirmances as well as reversals" (*Sun-Maid Raisin Growers of Cal. v. Paul* (1964) 229 Cal.App.2d 368, 376), and Appellants offer no persuasive reason why preservation of their rights on appeal carries greater weight than the rights of the party that prevailed in the superior court. Indeed, " '[i]t would seem to be preposterous that a party could be deprived of the whole fruit of the judgment by the lawless act of the defeated party pending an appeal' " and " 'see the subject matter of the litigation destroyed, so that if he succeeds in affirming the judgment it will be a barren victory.' " (*United Railroads*, *supra*, 172 Cal. at p. 90.) But that is exactly what happened here: The stay of the judgment itself rendered the appeal moot, by allowing Appellants to run out the clock on the term to which Rowe was unlawfully appointed, and depriving the Third District's citizens of the transparency and participation they were entitled to in the lawful selection of their representative for the remainder of Ramos's term. Appellants may have secured their right to review, but Respondents lost theirs. Appellants fail to explain why this

result is just or consistent with the purpose of the stay pending appeal: to preserve the status quo.[15]

Appellants further urge that measuring the status quo from the moment an injunction is entered will "serve[] the orderly functioning of the courts." (OBM at p. 64.) In reality, it would invite chaos. A party concerned about an impending lawsuit after a dispute has arisen—or even concerned about an impending injunction in an ongoing lawsuit—would be incentivized to act to modify the status quo before the other party could file a complaint, seek injunctive relief, or obtain an order, transforming what would be a prohibitory injunction into a mandatory one. And a party fearful that the status of a dispute might be altered if it waited too long to seek an injunction would be incentivized to sue, often prematurely. For that reason, other jurisdictions, like California, agree that the appropriate measuring point for the status quo is the last uncontested status between the parties.[16]

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[15] Further, the absence of an automatic stay does not deprive local agencies of the opportunity to seek to stay a judgment through a writ of supersedeas, as Appellants did here.

[16] (See, e.g., *Arizona Dream Act Coalition v. Brewer* (9th Cir. 2014) 757 F.3d 1053, 1061 ["[T]he 'status quo' refers to the legally relevant relationship between the parties before the controversy arose."]; *Washington v. United States Department of State* (W.D.Wash. 2018) 318 F.Supp.3d 1247, 1251, fn. 3 ["A prohibitory injunction maintains the status quo, which is generally described as the last, uncontested status which preceded the present controversy."]; *SEIU Healthcare Pennsylvania v. Com*. (2014) 628 Pa. 573, 595-596 [" '[T]he relevant standard requires that an injunction must address the status quo as it existed between the parties before the event that gave rise to the lawsuit, not to the situation as it existed after the alleged wrongful act but before entry of the injunction.' "]; 43A C.J.S. (2020) Injunctions § 27 ["If an act of one party alters the relationship between that party and another, and the latter contests the action, the status quo cannot be the relationship as it exists after the

3. Because Rowe never lawfully held the seat, the status quo never changed.

The superior court's injunction is prohibitory for a separate and independent reason: As the superior court held, the Board's failure to abide by the Act's requirements, despite being on notice of the violation and failing to cure, rendered the Board's action "null and void" from the outset. (See § 54960.1.) Having never had legal effect, the Board's appointment did not alter the status quo. Thus, the injunction's provisions neither required the performance of any affirmative acts nor modified the status quo.

This has been the rule in California for decades. In *People ex rel. Boarts v. City of Westmoreland* (1933) 135 Cal.App. 517 (*Westmoreland*), for example, the superior court issued an order in a quo warranto action declaring that a city had never legally come into existence, and the Court of Appeal held that the accompanying injunction was therefore "essentially negative in character." (*Id.* at p. 521.) Echoing Appellants' arguments, the *Westmoreland* petitioner argued that the judgment was stayed pending appeal because, although couched in prohibitory language, it was mandatory in substance because it "change[d] the status which was enjoyed by petitioner at the time the judgment was rendered" and "disturb[ed] the relative position or rights of the parties." (*Id*. at p. 520.) The court disagreed, holding that because the superior court found that the petitioner "had never legally come into existence," "its legal status subsequent to that time [of alleged incorporation] has not been changed by the judgment."

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action."]; see also *Mass. Mut. Life Ins. Co. v. Associated Dry Goods Corp.* (N.D.Ind. 1992) 786 F.Supp. 1403, 1427; *Martin v. Eggert* (1988) 174 Ill.App.3d 71, 77; *Indiana Educ. Employment Relations Bd. v. Mill Creek Classroom Teachers Ass'n* (Ind. 1983) 456 N.E.2d 709, 712; *State v. Sw. Bell Tel. Co*. (Tex. 1975) 526 S.W.2d 526, 528; *Anderson v. Town of Waynesville* (1932) 203 N.C. 37, 46.)

(*Id*. at p. 521.) Because it had never "been established that [the city] ever enjoyed the status of a legally constituted municipality," the superior court's order requiring the city to wind up its affairs (which entailed incidental affirmative action) did not alter the status quo and was thus prohibitory in nature. (*Id*. at pp. 520-521.) Here, too, because the Board never lawfully appointed Rowe, the injunction forbidding Rowe from voting and participating in Board affairs was prohibitory, not mandatory. (See also *Hernandez*, *supra*, 7 Cal.App.5th 194 [where town council violated Act at meeting at which it placed voter initiative on ballot, that action, and election itself, were "null and void"].)[17]

Because the Board's appointment was null and void, the injunction preventing Rowe from serving on the Board is not mandatory and was not stayed pending appeal. The injunction preventing Rowe from serving in an office to which she was never lawfully appointed neither requires an affirmative act nor alters the status quo.

Moreover, there is a limited exception to this rule when any mandatory provision is merely incidental to a prohibitory provision, in which case the ancillary mandatory provisions remain effective pending appeal. (See *People v. Mobile Magic Sales* (1979) 96 Cal.App.3d 1, 13 [injunction prohibiting mobile home park from continuing to display model

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[17] *Dosch v. King* (1961) 192 Cal.App.2d 800, which concerned the disputed ownership of a business, is not to the contrary. There, the Court of Appeal determined that because the plaintiff had never lawfully transferred possession of his business to the counterparty, the injunction preventing the counterparty from operating the business did not alter the status quo and was prohibitory. (*Id*. at pp. 804-805.) Here, as in *Dosch*, the order prohibiting Rowe from holding office did not "contemplate[] a change in the relative rights of the parties" (*id*. at 804), and accordingly was a prohibitory injunction. (See also *iMergent*, *supra*, 170 Cal.App.4th at p. 343 [injunction is prohibitory where it does not compel party to violate contract or to surrender any lawfully held rights].)

mobile homes was prohibitory, even though it required affirmative act of removing model homes currently displayed, because removal was "incidental to the injunction's prohibitive objective to restrain further violation of a valid statutory provision"]; *Jaynes v. Weickman* (1921) 51 Cal.App. 696, 699-700 [requirement that defendant remove trade names from place of business and vehicles did not make otherwise prohibitory injunction mandatory].)

Here, the superior court's order declaring the Board's appointment "null and void," and its injunctive provisions "prohibiting [Appellants] from allowing Rowe to participate in an official capacity in any meetings or Board actions, and from registering or otherwise giving effect to any further votes cast by Rowe," as well as "from making any appointment to the position of Third District Supervisor of the San Bernardino Board of Supervisors," were all prohibitory in nature. (Exh. 22 at p. 408.) While other portions of the judgment, which required the Board to rescind its appointment and to seat any person appointed by the Governor, appear on their face mandatory because they require affirmative action, they did not alter the status quo. Rather, they were simply the legal consequences of the undisputedly prohibitory provisions: Because the seat is vacant, the order to rescind the appointment gives effect to the prohibitory relief, and the order to seat anyone lawfully appointed by the Governor is similarly a legal consequence flowing from the vacancy of the position. In other words, the former merely returns the Board to the position it was in before it chose not to cure or correct its violations of the Act and instead appoint Rowe, and the latter merely orders the Board to obey its own charter, which requires

that absent (a lawful) appointment after passage of 30 days, the Governor shall make the appointment. [18]

B. The exception to the automatic-stay provision for quo warranto actions is irrelevant.

Finally, Appellants contend that the statutory quo warranto exception to the automatic-stay rule supports their view that the entire judgment is stayed pending appeal. They reason that, if an order preventing someone from serving in office were prohibitory, there would be no need for the statutory exception. But the exception provides no support for Appellants' argument.

Initially, the statutory remedies in a quo warranto action sweep far more broadly than what the court ordered here. When a court finds that a defendant in in a quo warranto action unlawfully holds office, it is statutorily authorized to impose mandatory relief: it may order the person to pay a fine (Code Civ. Proc., § 809), and may issue a judgment on behalf of a challenger claiming right to the office, in which case that person is entitled to take the oath of office and claim it for him or herself (*id*., § 806). That is in contrast with the Brown Act's express remedy of declaring a local-agency action null and void.

Moreover, a dispute in quo warranto may arise in a situation where the officeholder whose qualifications are the subject of the challenge lawfully held office for some period of time, before committing some act

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[18] The remaining, prohibitory provisions of the judgment that prevent Rowe from serving in a seat to which she was never lawfully appointed would remain in effect regardless whether these two provisions are stayed pending appeal. That the result would be the same—with the Board's act null and void and the seat remaining vacant—underscores that these two provisions are ancillary to and give effect to the prohibitory provisions of the judgment.

that rendered them ineligible for office. In such cases, a court might deem the relief awarded in quo warranto mandatory.

Quo warranto and Brown Act cases also have different purposes and different remedial scopes and may arise at different times relative to the underlying dispute. The quo warranto exception to the rule that mandatory relief is ordinarily stayed pending appeal therefore sheds no light on whether the prohibitory relief at issue here should be stayed pending appeal. (See also, e.g., *Dan's City Used Cars, Inc. v. Pelkey* (2013) 569 U.S. 251, 264 ["Exceptions to a general rule, while sometimes a helpful interpretive guide, do not in themselves delineate the scope of the rule."].) The Legislature's judgment that mandatory quo warranto relief takes effect while an appeal is pending does not support Appellants' argument that the superior court's decision should be stayed during the pendency of this appeal.

CONCLUSION

For the foregoing reasons, the Court of Appeal's order should be affirmed.

DATED: July 20, 2020

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DATED: July 20, 2020

/s/ Stacey Leyton
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CASE NUMBER: S260209
CASE NAME: *Daly, et al. v. Board of Supervisors of San Bernardino County, et al.*

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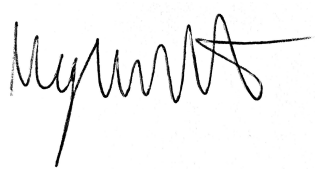

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STATE OF CALIFORNIA
Supreme Court of California

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