

Gary,

I am representing councilmember Mike Alvarez. Mr. Alvarez is eligible to run as a councilmember from one of the newly-designed districts. There are at least four reasons why he can do so:

1. Representing a district is a different position than being an at-large councilmember. According to the city's website, the current population of Orange is 138,816. Previously a councilmember represented all those people and served the city at large; now he or she will represent approximately 23,120 people and have primary responsibility for the people of his or her district. That's a very different kind of representation, in both number and function. It is essentially running for a new office. The election process is also different. The ballot argument in favor of term limits in 1996 referred to "entrenched incumbents". The smaller the district, the tougher it is to be an entrenched incumbent. If there is a district with only 23,200 people in it, as opposed to 138,816 people, it is much easier for a challenger to walk precincts (when it's healthy to do so) and campaigns are much cheaper (because candidates are campaigning to one-sixth the number of people) and much more grass roots. No incumbent is safe or entrenched in small districts. A councilmember representing a district is much different than an at-large councilmember.
2. It is important in any analysis to consider that the city did not change to district elections because it wanted to, but because it was sued under the California Voting Rights Act (CVRA). The lawsuit was based on the fact that the prior council configuration and elections were illegal. See *Jauregui v. City of Palmdale* (2014) 226 Cal. App. 4th 781, where the court in a CVRA case ordered the city not to even count ballots cast under the at-large system. In a later Superior Court order, the court ordered an election to be held for all councilmembers, not just those whose terms were expiring. The court said, "The current members of the Palmdale City Council were elected through an unlawful election. The citizens of the City of Palmdale are entitled to have a council that truly represents all members of the community. . . . To permit some members of the council to remain who obtained their office through an unlawful election will not remedy the clear violation." (I have this ruling on file in my office).

In our situation, it would be inconsistent with the intent of the CVRA and the judgment in the CVRA case to have found that the at-large district elections were illegal and had to be remedied, and nevertheless apply those past illegal elections and illegal formations to bar Mr. Alvarez from running in a properly-constituted district. If the elections and formations were illegal, they should not count for anything.

3. The effect of changing to districts implicitly repealed the term limits measure. There is a good argument that the term limits measure was predicated on there being a gap of only two years after a councilmember had served two terms. But with district elections, there will be four years between terms, because a council seat in any district will only come up every four years. The requirement of districts, as a statewide matter under the California Voting Rights Act, supersedes the term limits law, which is only of local concern. See *Cawdrey v. City of Redondo Beach* (1993) 15 Cal. App. 4th 1212 (term limits measures are of local concern) and *Jaugerui v. City of Palmdale, supra* (enforcement of district elections under CVRA is of statewide concern).

Since the districts conflict with the two year gap, the districts enactment takes priority. Furthermore, the districts were added later in time, and supersede the term limits measure on that basis as well. See *Jaugerui, supra* at 806 (“Under these circumstances, the more specific and later enacted statute, section 14029, ordinarily must be enforced.”)

4. Similar to the prior point, the new four-year gap is a change in the conditions under which current councilmembers were elected. Since no term limits measure can be applied retroactively, changing the terms of the office triggers a new term. In other words, Mr. Alvarez is entitled to serve two terms where the four-year gap is part of the condition of the office. The definition of "consecutive" which included the two-year gap has been implicitly modified to mean four-years, even if the rest of the term limits measure remains. This could not be retroactively imposed.

Finally, any doubts should be resolved in favor of Mr. Alvarez. In *Pope v. Superior Court* (2006) 136 Cal. App. 4th 871, 876, the court said: “The Supreme Court has also held that the right to serve in a public office is a fundamental right of citizenship that cannot be restricted except by a clear declaration of law, “[T]he right to hold public office, either by election or appointment, is one of the valuable rights of citizenship.” (*Carter v. Com. on Qualifications, etc.* (1939) 14 Cal.2d 179, 182; accord, *Zeilenga v. Nelson* (1971) 4 Cal.3d 716, 720; see *People ex rel. Foundation for Taxpayer & Consumer Rights v. Duque* (2003) 105 Cal.App.4th 259, 265.) Moreover, the Supreme Court has held, ‘The exercise of this right should not be declared prohibited or curtailed except by plain provisions of law.’ (*Carter v. Com. on*

*Qualifications, etc., supra*, 14 Cal.2d at p. 182; accord, *People ex rel. Foundation for Taxpayer & Consumer Rights v. Duque, supra*, 105 Cal.App.4th at pp. 265 - 266; *Woo v. Superior Court, supra*, 83 Cal.App.4th at p. 977; *Lungren v. Davis* (1991) 234 Cal.App.3d 806, 830; *Helena Rubenstein Internat. v. Younger* (1977) 71 Cal.App.3d 406, 418.) The Court of Appeal has explained: “[T]he right to hold public office ... can be curtailed only if the law clearly so provides (*Carter v. Com. on Qualifications, etc., supra*,] 14 Cal.2d [at p.] 182; *Helena Rubenstein Internat. v. Younger*[, *supra*,] 71 Cal.App.3d [at p.] 418.”

Please feel free to contact me if you have any questions or would like to discuss this further. My cell number is 714-319-6029.

MARK S. ROSEN

Attorney at Law

600 W. Santa Ana Blvd, Ste. 814

Santa Ana, California 92701

Tel: 714-285-9838

Fax:714-285-9840

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