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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
FEB 04 2021
DAVID H. YAMASAKI, Clerk of the Court
BY: _____, DEPUTY

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE**

JOHN RUSSO,

Contestant,

v.

MIKE ALVAREZ,

Defendant.

30-2020-01173235

**RULING and
STATEMENT OF DECISION**

1 **RULING**

2 Contestant John Russo’s challenge to Mike Alvarez’s election to the Orange
3 City Council came regularly for hearing on 1/20/21. The court heard argument and
4 took the matter under submission. After considering all of the briefing and
5 argument, and good cause having been shown, the court now rules.

6 The contest is granted.

7 The court sets a status conference on 2/24/21 at 10 am in Dept. C15 to
8 discuss entry of judgment. The parties are invited to file and serve proposed
9 judgments consistent with this ruling no later than 2/19/21. Contestant shall give
10 notice.

11 **STATEMENT OF DECISION¹**

12 The facts are undisputed.

13
14 The City of Orange imposed term limits on City Council members by
15 initiative in 1996. (Aff. at p. 2, Ex. A.) “No person shall serve more than two
16 consecutive four-year terms as a member of the City Council. No person who has
17 served more than six consecutive years as a member of the City Council . . . may
18 serve an additional consecutive term as a member of the City Council.” (Orange
19 Mun. Code § 2.05.010.) Terms or years “shall not be considered consecutive if the
20 person seeking the office has not held either office for two years.” (Orange Mun.
21 Code § 2.05.040.) Thus, councilmembers who serve consecutive terms face a two-
22 year hiatus before they can run again.

23
24 ¹ The court will “explain[] the factual and legal basis for its decision as to each of
25 the principal controverted issues at trial.” (Code Civ. Proc., § 632; accord Cal.
26 Rules of Court, rule 3.1590(c)(1).) It does so without exploring every dispute,
27 recounting every fact, or citing every pertinent authority. (See *In re Marriage of*
28 *Balcof* (2006) 141 Cal.App.4th 1509, 1531; see also *Muzquiz v. City of Emeryville*
(2000) 79 Cal.App.4th 1106, 1125.)

1 Alvarez was elected to the City Council in 2012 and 2016, serving two
2 consecutive four-year terms from 2012 through 2020. (Aff. at p. 3; Ans. at p. 2.)
3 At the time, city council elections were “at large” – all Orange voters voted on all
4 City Council seats. (See, e.g., Orange Ord. No. 06-19.) The terms were staggered
5 so some seats came up for election every two years.

6 The City replaced at-large elections with district elections by ordinance in
7 2019. (See Orange Ord. No. 06-19; Aff. Ex. C; see also Gov. Code § 34886.) It
8 created six City Council districts. (See Orange Mun. Code § 2.02.020.) Three
9 districts hold City Council elections every four years starting 2020, including the
10 District 3 seat that Alvarez won. (See Orange Mun. Code § 2.02.030(A), (B).) The
11 three remaining districts held an election for a two-year term in 2020, to be
12 followed by elections every four years starting 2022. (See Orange Mun. Code §
13 2.02.030(C).)

14 The redistricting ordinance and resulting code sections were silent on term
15 limits. No initiative revising term limits to address district elections was
16 submitted to the voters.

17 Alvarez won a City Council district election in 2020, commencing his third
18 consecutive term on the City Council after serving eight consecutive years. (Aff.
19 Ex. E; Ans. at p. 2.)

20 The legal standard is straightforward.

21 “Any elector of a . . . city . . . may contest any election held therein” on the
22 ground “[t]hat the person who has been declared elected to an office was not, at
23 the time of the election, eligible to that office.” (Elec. Code, § 16100.)² Courts
24 should validate elections ““if possible.”” (*Wilks v. Mouton* (1986) 42 Cal.3d 400,
25 404.) The contestant must show the election is defective by clear and convincing
26 evidence. (*Ibid.*) Here, the facts are undisputed, leaving only a question of law.

27 ² All further statutory references are to the Elections Code unless otherwise stated.
28

1 Even so, “[a]ny ambiguity in a law affecting [the] right [to hold elective office]
2 must be resolved in favor of the eligibility to hold office.” (*Woo v. Superior Court*
3 (2000) 83 Cal.App.4th 967, 977.)

4 Contestant has shown Alvarez was ineligible for a 2020 City Council seat as
5 a matter of law. As of the 2020 election, Alvarez had both “serve[d] more than two
6 consecutive four-year terms as a member of the City Council” and “served more
7 than six consecutive years as a member of the City Council.” (Orange Mun. Code
8 § 2.05.010.) He was therefore ineligible from “serv[ing] an additional consecutive
9 term as a member of the City Council.” (*Ibid.*)

10 Alvarez’s procedural objections fall short. Contestant has a statutory right
11 to challenge an election in court on the ground the “the person who has been
12 declared elected to an office” – the winner – was ineligible at election time. (§
13 16100; accord § 16401 [filing deadlines calculated from declaration of election
14 result].) Alvarez’s cited case holds only that a challenge to a losing candidate’s
15 eligibility must be made before the election. (See *McKinney v. Superior Court*
16 (2005) 124 Cal.App.4th 951, 954, 960; accord *Pease v. Zapf* (2018) 26 Cal.App.5th
17 293, 301, fn. 9.) Contestant is not challenging a losing candidate here.

18 While a separate procedure exists for the City Council itself to “judge”
19 member qualifications (§ 36812), “that word implies a factual dispute” over such
20 qualifications as a councilmember’s age or place of residence. (*Polis v. City of La*
21 *Palma* (1992) 10 Cal.App.4th 25, 28.) Here there is no factual dispute, but a pure
22 question of law.

23 Moreover, “the jurisdiction conferred upon the city council” by this statute
24 “is not exclusive, but is concurrent with that of the superior court.” (*McGregor v.*
25 *Board of Trustees of Town of Burlingame* (1911) 159 Cal. 441, 447 [construing
26 similar former statute].) That is made clear by section 36812.1, which allows –
27 but does not require – a contest statement to be filed with the city council. If the
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1 contestant elects to file a statement with the city council, then the city council
2 must await to see if a contest statement is later filed with the court. There is no
3 indication section 36812 forbids the court from determining candidate eligibility
4 or otherwise upsets the extensive statutory scheme for adjudicating election
5 contests in court. (See, e.g., §§ 16400 [contest statement must be “file[d] with the
6 clerk of the superior court”], 16440-16442 [superior court jurisdiction and service
7 of filed affidavit in contests challenging candidate eligibility], 16500 [“[t]he
8 presiding judge shall forthwith designate the time and place of hearing . . .”].)

9 Alvarez is not helped by *Woo*. That case held a city’s term limits continued
10 to include an exemption omitted in a new city charter. (See *Woo, supra*, 83
11 Cal.App.4th at pp. 969-970.) Applying the amendment’s plain language would
12 have deprived the city council of its quorum -- 7 out of 15 councilmembers were
13 reelected in reliance on the exemption. (See *id.* at pp. 975-976.) Resorting to
14 extrinsic evidence to avoid this absurdity, *Woo* relied upon ballot materials stating
15 that “the existing term limits would be ‘retain[ed].’” (*Id.* at p. 977.) Thus, the
16 exemption survived the revised charter.

17 This case presents the converse situation. Alvarez is not asserting term
18 limits generally survived redistricting. He asserts the opposite, that redistricting
19 impliedly repealed the term limits. But unlike in *Woo*, no absurdity appears from
20 applying the pre-existing term limits. Nor has Alvarez provided any persuasive
21 extrinsic evidence the City or its voters intended redistricting to reset or loosen
22 term limits.

23 If anything, *Woo* undercuts Alvarez’s arguments. Alvarez contends his prior
24 terms under the at-large system shouldn’t count because representing a district is
25 different in kind than representing an entire city.³ *Woo* shows how the City could

26
27 ³ Alvarez also asserts his prior terms were illegal, but that wouldn’t mean he didn’t
28 serve them. “I was illegally elected” seems a paradoxical defense to term limits.

1 have addressed this. The exemption in *Woo* expressly excluded terms served
2 before the charter was amended: “These limitations on the number of terms of
3 office shall apply only to terms of office which begin on or after July 1, 1993.”
4 (*Woo, supra*, 83 Cal.App.4th at p. 970, italics omitted.) In contrast here, no
5 evidence shows the City took steps upon redistricting in 2019 to exclude from
6 term limits any terms served under the at-large system. (See § 9217 [the voters
7 may amend ordinances proposed by initiative or that they approved].) The City
8 could have asked the voters to approve an amendment to bar persons from serving
9 only “more than two consecutive . . . terms as a Council member *from any*
10 *particular district.*” (*Pease, supra*, 26 Cal.App.5th 293, 299, italics added.)

11 The City completed the 2019 redistricting without taking any such steps.
12 Redistricting left untouched the plain prohibition on serving “more than two
13 consecutive four-year terms as a member of the City Council” or “more than six
14 consecutive years as a member of the City Council.” (Orange Mun. Code §
15 2.05.010.) There is no statutory ambiguity to resolve in Alvarez’s favor.

16 Finally, Alvarez contends he is retroactively denied the two-year hiatus he
17 anticipated before the redistricting, and now faces a four-year hiatus. But no
18 change in hiatus is inherent in the adoption of district elections. Three district
19 seats come up for election every two years. (See Orange Mun. Code § 2.02.030(A)-
20 (C).) If Alvarez objects to the District 3 seat coming up for election in 2024
21 instead of 2022 like some districts, his remedy was to challenge the redistricting –
22 not to run for a third consecutive term. In any event, three district seats will
23 come up for election in 2022. Term limits will not bar Alvarez from running for
24 one of those seats.