

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Central Justice Center
700 W. Civic Center Drive
Santa Ana, CA 92702

SHORT TITLE: In re: Election of Mike Alvarez, City of Orange

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
SERVICE**

CASE NUMBER:
30-2020-01173235-CU-PT-CJC

I certify that I am not a party to this cause. I certify that a true copy of the above Notice Of Entry Of Corrected Judgment dated 02/25/21 has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practice and addressed as indicated below. This certification occurred at Santa Ana, California on 2/25/21. Following standard court practice the mailing will occur at Sacramento, California on 2/26/21.

JOHN R RUSSO
1745 SILVERWOOD ST
ORANGE, CA 92865

Clerk of the Court, by: Julia B. Almazan, Deputy

I certify that I am not a party to this cause. I certify that the following document(s), Notice Of Entry Of Corrected Judgment dated 02/25/21, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on February 25, 2021, at 2:34:06 PM PST. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

JUSTICE CENTER:

- ☒ Central - 700 Civic Center Dr. West, Santa Ana, CA 92701-4045
☐ Civil Complex Center - 751 W. Santa Ana Blvd., Santa Ana, CA 92701-4512
☐ Harbor-Newport Beach Facility - 4601 Jamboree Rd., Newport Beach, CA 92660-2596
☐ North - 1275 N. Berkeley Ave., P. O. Box 5000, Fullerton, CA 92838-0500
☐ West - 8141 13th Street, Westminster, CA 92683-4593

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

PLAINTIFF/PETITIONER: Michael MacIsaac

DEFENDANT/RESPONDENT: Mike Alvarez

In re: Election of Mike Alvarez

FEB 25 2021

DAVID H. YAMASAKI, Clerk of the Court

BY: Jalvarez DEPUTY**NOTICE OF ENTRY OF JUDGMENT**CASE NUMBER:
30-2020-01173235

To the above named parties and their attorneys of record:

You are notified that Judgment in the above entitled matter was entered on: 2/24/2021

Notice is given upon order by the Court under Code of Civil Procedure section 664.5. A filed-stamped copy of the Corrected Judgment is attached.

Exhibits, depositions, and administrative records shall be destroyed 60 days after the final determination of the action pursuant to Section 1952 of the Code of Civil Procedure.

CLERK'S CERTIFICATE OF MAILING

Kaufman Legal Group, APC
777 S. Figueroa Street, Suite 4050
Los Angeles, CA 90017

Mark S. Rosen
600 West Santa Ana Blvd., Suite 814
Santa Ana, CA 92701

John R. Russo
1745 N. Silverwood Street
Orange, CA 92865

I certify that I am not a party to this action and that this notice was mailed in accordance with Section 1013a of the Code of Civil Procedure. A copy of this Notice of Entry of Judgment was deposited in the United States mail, in a sealed envelope with postage fully prepaid addressed as shown above. The mailing and this certification occurred at (place) Santa Ana, California, on (date): February 26, 2021.

DAVID H. YAMASAKI, Clerk of the Court

By: Jalvarez DEPUTY CLERK

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3 KAUFMAN LEGAL GROUP, APC
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Tel: (213) 452-6565
5 Fax: (213) 452-6575

6 Attorneys for Contestant,
Michael MacIsaac

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

FEB 24 2021

DAVID H. YAMASAKI, Clerk of the Court

BY:  DEPUTY

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ORANGE
10 CENTRAL JUSTICE CENTER

11 MICHAEL MACISAAC,
12 Contestant,

13 v.

14 MIKE ALVAREZ; and DOES 1 through
100 inclusive,

15 Defendants.

Case No.: 30-2020-01176124-CU-PT-CJC

consolidated with
[Related to Case No.: 30-2020-01173235-CL-PT-
CJC] - LEAD CASE

Assigned for All Purposes to Hon. Nathan Scott –
Department C15

~~AMENDED~~ [PROPOSED] JUDGMENT

[Elections Code § 16000 et seq.]

Date: February 24, 2021
Time: 11:00 AM
Dept: C-15

Date Filed: December 23, 2020

17
18 AND CONSOLIDATED
19 CASE

KAUFMAN LEGAL GROUP, APC
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Los Angeles, CA 90017
Tel: (213) 452-6565 Fax: (213) 452-6575

Contestants John Russo and

Contestant Michael MacIsaac's challenge to Mike Alvarez's election to the Orange City Council on November 3, 2020, came before this Court for hearing on January 20, 2021, at 2:00 P.M.

Gary S. Winuk of Kaufman Legal Group remotely appeared as counsel of record for Contestant Michael MacIsaac and Mark Rosen remotely appeared as counsel of record for Defendant Mike Alvarez. Contestant John Russo represented himself.

This Court, having reviewed the briefs, declarations and exhibits submitted by the parties, and having heard the arguments of counsel, took the matter under submission. On February 4, 2021, the Court issued its Ruling and Statement of Decision granting Contestant's Election Contest, which is incorporated herein and attached hereto as Exhibit "A." Now, therefore,

IT IS HEREBY ADJUDICATED, ORDERED AND DECREED that:

Contestants John Russo and

1. Judgment is entered in favor of Contestant Michael MacIsaac and against Defendant Mike Alvarez;

2. The November 3, 2020 election for the Third City Council District in the City of Orange is annulled and set aside, and the Third District Council seat is therefore vacant;

3. The certificate of election issued by the Orange County Registrar of Voters to Defendant Mike Alvarez declaring him the winner of the November 3, 2020 election for the Third City Council District in the City of Orange is annulled;

4. Defendant Mike Alvarez is ineligible to be elected or appointed as a member of the Orange City Council in any Orange City Council District for a period of two years, pursuant to Title 2, Chapter 2.05 of the City of Orange Municipal Code;

Contestants are

5. Contestant is awarded his costs of suit, incurred herein; and

parties; Contestants

6. As prevailing party, Contestant shall be entitled to file an application seeking statutory attorneys' fees pursuant to Code of Civil Procedure Section 1021.5 and/or other authority, which shall be made under separate motion.

7. This judgment is stayed for 10 DAYS after time to appeal has expired.

Dated: February 24, 2021

By:

Hon. Nathan Scott

* An identical statement of decision was issued the same day in the now-consolidated case.

KAUFMAN LEGAL GROUP, APC

777 S. Figueroa St., Ste. 4050
Los Angeles, CA 90017
Tel: (213) 452-6565 Fax: (213) 452-6575

1 Respectfully Submitted,

2 Dated: February 19, 2021

KAUFMAN LEGAL GROUP, APC

4 By: 

5 STEPHEN J. KAUFMAN
6 GARY S. WINUK
7 Attorneys for Contestant,
8 Michael MacIsaac
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EXHIBIT "A"

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**

MICHAEL MACISAAC

Contestant,

v.

MIKE ALVAREZ,

Defendant.

30-2020-01176124

**RULING and
STATEMENT OF DECISION**

1 RULING

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

6 The contest is granted. Defendant's request for judicial notice 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. "No person shall serve more than two consecutive four-year
16 terms as a member of the City Council. No person who has served more than six
17 consecutive years as a member of the City Council . . . may serve an additional
18 consecutive term as a member of the City Council." (Orange Mun. Code §
19 2.05.010.) Terms or years "shall not be considered consecutive if the person
20 seeking the office has not held either office for two years." (Orange Mun. Code §
21 2.05.040.) Thus, councilmembers who serve consecutive terms face a two-year
22 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. (Verified stmt. ¶ 7; Opp. at
3 2, 10.) At the time, city council elections were “at large” – all Orange voters voted
4 on all City Council seats. (See, e.g., Orange Ord. No. 06-19.) The terms were
5 staggered 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; RFJN Ex. 3; 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. (RFJN
19 Ex. 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
28

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 §6812 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.⁸ *Woo* shows how the City could

26
27 ⁸ 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.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Central Justice Center
700 W. Civic Center Drive
Santa Ana, CA 92702

SHORT TITLE: Michael MacIsaac v. Mike Alvarez; and DOES 1 through 100 inclusive.

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
SERVICE**

CASE NUMBER:
30-2020-01176124-CU-PT-CJC

I certify that I am not a party to this cause. I certify that the following document(s), Statement of Decision dated 02/04/21, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on February 4, 2021, at 3:37:45 PM PST. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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Clerk of the Court, by: *J. Schwartz*, Deputy

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within entitled action. My business address is Kaufman Legal Group, 777 South Figueroa Street, Suite 4050, Los Angeles, California, 90017.

On February 20, 2021, I served the following document(s):

AMENDED [PROPOSED] JUDGMENT

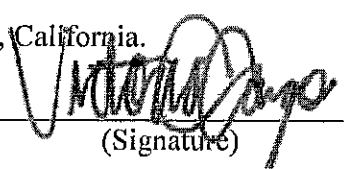
on all interested parties in this action, as stated on the attached Service List.

- ☐ (BY U.S. POSTAL SERVICE, 1013a, 2015.5 C.C.R.) By placing a true and correct copy of the aforementioned document(s) in a sealed envelope and placing it in the mail depository at my place of business with postage prepaid, addressed as listed on the Service List.
- ☐ (BY CERTIFIED MAIL DELIVERY) I served the above described documents in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon prepaid for CERTIFIED MAIL, Tracking No. _____, in the U.S. mail at Los Angeles, CA to the individuals on the Service List below.
- ☒ (BY ELECTRONIC DELIVERY) By transmitting/delivering a true and correct copy of the aforementioned document(s) to said parties at the electronic mail address(es) listed on the attached Service List.
- ☐ (BY HAND DELIVERY) I delivered the foregoing envelope by hand to the individual(s) on the attached Service List.
- ☐ (BY FACSIMILE) I served the document described herein on the interested parties in this action by transmitting a true copy thereof via facsimile from fax number (213) 452-6575 at [time], to the individual(s) on the attached Service List. The fax machine I used complied with Rule of Court 2.306, and no error was reported by the machine. Pursuant to Rule of Court 2.306(h)(4), I caused the machine to print a record of the transmission and have attached it hereto. Such transmission report was properly issued by the sending fax machine.
- ☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- ☐ (FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on February 20, 2021, at Los Angeles, California.

Victoria C. Caiazzo

(Type or print name)


(Signature)

KAUFMAN LEGAL GROUP, APC

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