

October 19, 2000

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

MARVIN HENDRIX v. JUAN CARLOS VARGAS
FOURTH DISTRICT COURT OF APPEAL, CASE NO. D033759
SAN DIEGO SUPERIOR COURT CASE NO. 722726

MARVIN HENDRIX v. CITY OF SAN DIEGO
FOURTH DISTRICT COURT OF APPEAL, CASE NO. D034603
SAN DIEGO SUPERIOR COURT CASE NO. 727909

INTRODUCTION

The litigation of the above-entitled matters, challenges to Councilmember Vargas' 1998 election and eligibility to serve in office, have been successfully concluded.

FACTS

Both of these cases were brought by Petitioner Marvin Douglas Hendrix, a local attorney, who contended that Councilmember Juan Vargas is barred by the term limits provisions of City Charter section 12(f) from serving in office during the 1998-2002 term. Petitioner did not run against Mr. Vargas in the June, 1998, election, nor did he institute any legal proceedings challenging the election prior to it, but instead filed these cases after Councilmember Vargas was elected to office. Petitioner contended that Mr. Vargas had already served two terms in office prior to the 1998-2002 term, and that he was, therefore, ineligible to take the office to which he was elected in June of 1998.

On February 16, 1993, Councilmember Vargas was elected in a special election to fill the vacancy in District Eight caused by the departure from that office of now U.S. Congressman Robert Filner. Mr. Vargas was subsequently elected in a September 21, 1993, special primary election to serve the remainder of Mr. Filner's unexpired 1991-1995. On September 19, 1995, Mr. Vargas was elected in a municipal primary election for the 1995-1998 term. On June 2, 1998, Mr. Vargas was elected in a municipal primary election for the 1998-2002 term. It is Councilmember Vargas' eligibility for that 1998-2002 term that was contested in the lawsuits.

CONTENTIONS

Petitioner contended that Councilmember Vargas is barred by the term limits provisions of the City Charter from serving during the 1998-2002 term for the following, alternate reasons:

1. That Mr. Vargas' first two terms in office (filling the vacancy caused by Filner's departure; serving the remainder of Filner's unexpired 1991-1995 term), although each admittedly less than two years and also admittedly interrupted by the September 21, 1993, special election, should be combined into a single term of more than two years; or, in the alternative,

2. That the beginning date of Mr. Vargas' second term in office (serving the remainder of Mr. Filner's unexpired 1991-1995 term) should be considered to be October 11, 1993, the date the election results were declared, and not December 6, 1993, the date Mr. Vargas was actually sworn in and took office. (That suggested manipulation of the starting date would make Mr. Vargas' second term more than two years and thus subject to the term limits provisions.)

The City and Councilmember Vargas denied Petitioner's allegations, and contended that:

1. Petitioner lacked standing to contest Mr. Vargas' 1998 election because he was not an elector of District Eight;

2. Petitioner was barred from contesting the election because he had failed to timely file any pre-election challenges to Mr. Vargas' eligibility to run for office;

3. Councilmember Vargas' first two terms in office were separate and distinct terms of less than two years each, and that there is no logical reason or legal authority to combine them into one term of more than two years; and,

4. Mr. Vargas' second term in office began, as mandated by the City Charter, on the first Monday in December following his election, and not on the arbitrary date proposed by Petitioner.

LITIGATION

Petitioner's Election Contest, *Hendrix v. Vargas*, San Diego Superior Court Case No. 722726 (*Hendrix I*), was fully briefed and proceeded to trial on October 21, 1998, before the Honorable Thomas J. Whelan, then Presiding Judge of the San Diego Superior Court. Judge Whelan determined that Petitioner lacked standing to contest the election since he was not an elector of City Council District Eight, and that he was barred from prosecuting his election contest because he had failed to pursue any pre-election challenges to Mr. Vargas' eligibility to run for office. Based on those findings, Judge Whelan dismissed the Election Contest. Petitioner subsequently filed numerous, unsuccessful post-trial motions, and eventually appealed. The case was briefed and argued to the Fourth District Court of Appeal, which affirmed the lower court's ruling dismissing the case. A copy of the appellate court's July 19, 2000, unpublished opinion is attached.

During the course of Petitioner's post-trial motions in *Hendrix I*, Petitioner attempted to amend his complaint to file a writ alleging that the City of San Diego was unlawfully allowing Councilmember Vargas to occupy his office. When he was denied permission to so amend his

complaint, Petitioner filed another case, *Hendrix v. City of San Diego*, San Diego Superior Court Case No. 727909 (*Hendrix II*). The City demurred to that complaint, contending that it was identical to the previous complaint, that the issues of standing and unreasonable delay decided against Petitioner in that previous case were applicable to the new case and binding on Petitioner, and that Petitioner's only remedy was to pursue his appeal of that earlier case rather than institute a new case. The Superior Court agreed and dismissed the case. Petitioner appealed that ruling as well, but the Fourth District Court of Appeal affirmed the lower court's dismissal of the case, holding that Petitioner's lack of standing also barred him from pursuing his writ petition. A copy of the appellate court's September 21, 2000, unpublished opinion is attached.

Petitioner has recently sought review of the appellate court rulings by the California Supreme Court, but it is doubtful that such review will be granted.

Deputy City Attorney Francis M. Devaney handled both cases in both the trial court and the appellate court on behalf of the City and Councilmember Vargas.

Respectfully submitted,

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CASEY GWINN
City Attorney

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ATTACHMENT
RC-2000-10