SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Alameda County Taxpayers' Association et al Plaintiff/Petitioner(s) vs. City of Oakland et al Defendant/Respondent(s)	No. 23CV027685 Date: 10/02/2023 Time: 3:35 PM Dept: 14 Judge: Jenna Whitman ORDER re: Ruling on Submitted Matter filed by City of Oakland (Respondent) on 09/18/2023

The Court, having taken the matter under submission on 09/26/2023, now rules as follows:

The demurrer of Respondents/Defendants City of Oakland, et al. (collectively, respondents) to the Third Amended Petition for Writ of Mandate [CCP § 1085] and Complaint for Injunctive and Declaratory Relief [CCP §§ 526a, 527, and 1060] (Third Amended Petition or TAP) filed by Petitioners/Plaintiffs Alameda County Taxpayers' Association's and Marleen L. Sacks (collectively, petitioners) and respondents' motion to strike came on regularly for hearing on September 26, 2023. Petitioners appeared by Marleen L. Sacks. Respondents appeared by is Luke Edwards.

Having carefully considered the written submissions and oral argument of the parties, the court OVERRULES the demurrer as to the fourth cause of action (for violation of the Oakland Government Ethics Act), and SUSTAINS the demurrer as to the fifteenth cause of action (for failure to carry out duty, under City regulations, to investigate respondent Krystal Sams) and as to the sixteenth cause of action (for constitutional violations) WITHOUT LEAVE TO AMEND.

Respondents' motion to strike is GRANTED WITHOUT LEAVE TO AMEND.

Respondents' request for judicial notice is GRANTED. Petitioners' objections to Exhibits C and D are OVERRULED. Those exhibits were specifically invoked in the Petition, and thus incorporated by reference, as the source of "mandatory duties" allegedly owed by one or more respondents. (TAC ¶¶ 155-156.) Further, they are legislative enactments or regulations issued by a public entity in the United States, and are not reasonably subject to dispute and their contents are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (Evid. Code, § 452, subds. (d), (h).) Their contents are not hearsay if admitted for their independent significance, as opposed to for the truth of the matter asserted. (Evid. Code, § 1200, subd. (a).) The court therefore takes judicial notice of respondents' exhibits A-F.

PROCEDURAL BACKGROUND. Petitioners seek a writ of mandate and declaratory and injunctive relief, including an order invalidating and setting aside the results of the November

2022 mayoral election and requiring a new election. Petitioners allege: The Office of the City Clerk (where Sams was acting City Clerk) erroneously advised mayoral candidates that the date for filing their nomination paperwork was August 17, 2022, when in fact it was August 12. (TAP ¶ 8.) Upon discovering the error, on August 12, Sams contacted multiple mayoral candidates (who had appointments to file their paperwork the following week) inviting them to file immediately. (Ibid.) Certain mayoral candidates submitted their nomination papers later that same day, but after the 5:00 p.m. deadline set forth by the Election Code and Oakland Municipal Code. (TAP ¶ 9.) Petitioners allege that Sams accepted the paperwork late in violation of existing law and, to avoid possible employment discipline, permitted the paperwork to be time-stamped earlier than it was actually received. (TAP ¶¶ 9, 13-23, 87.)

Respondents demur to the fourth (violation of the Government Ethics Act), fifteenth (violation of Oakland Administrative Manual Instruction 523 and Section 5.10 of Personnel Manual) and sixteenth (violation of the due process clause of the California Constitution) causes of action.

Respondents also move to strike petitioners' prayer for relief for the court to issue a peremptory writ of mandate and injunctive relief to set aside the November 2022 mayoral election results and require a new election.

APPLICABLE LEGAL STANDARDS. "We treat the demurrer as admitting all material facts properly pleaded, but no contentions, deductions or conclusions of fact or law. We also consider matters which may be judicially noticed. Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (Blank v. Kirwan (1985) 39 Cal.3d 311, 318 [citations omitted].) As for the motion to strike, the court may, on any terms it deems proper, strike from any pleading "irrelevant, false, or improper matter" inserted into the pleading, as well as "all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc., § 436.)

ANALYSIS – DEMURRER: FOURTH CAUSE OF ACTION (Violation of Government Ethics Act (GEA)). Section 2.25.060 of the Oakland Municipal Code (OMC) prohibits a government employee from using her position or authority of her office "in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the [employee] or any other person." (OMC, § 2.25.060.A.2.) Petitioners allege that Sams violated this provision by accepting late candidacy paperwork, altering time stamps, and blaming faulty equipment, thereby concealing material information from her superiors with the intent "to avoid disciplinary action and possibly losing her job." (TAP ¶ 87.) In other words, she used her position or authority of her office to conceal her error, to induce or coerce her supervisors into providing her with a personal advantage or private gain, the avoidance of discipline.

Respondents contend that petitioners' reading of the ordinance is tortured. Sams, who allegedly concealed information to prevent her supervisors from learning anything, did not "induce or coerce" anyone to take favorable action on her behalf, as she was not directly acting upon them. (Mem. ISO Demurrer at p. 12; Reply Mem. at p. 3.) They also argue Sams did not act with the intent to induce or coerce someone else to benefit her personally, i.e., to "provide her" with anything; she acted with the intent to avoid something – a penalty. (Reply Mem. at p. 3.)

However, petitioners have pleaded that Sams acted to conceal an error from her supervisors in order to avoid potential employment repercussions. Under a broad reading of the ordinance, she induced her superiors to confer a "private advantage." Petitioners may indeed have stretched the language of the ordinance quite far, potentially to its breaking point, and reasonable minds might disagree as to whether this provision of the GEA was meant to address the type of allegations in this case. But respondents have not identified any language in the ordinance, rule of statutory construction, case law (construing this or any similar provisions), or legislative history showing that the GEA cannot be interpreted broadly to encompass petitioners' allegations. Without more, the court must conclude, for purposes of the demurrer, that petitioners have stated a cause of action. (OMC, § 2.25.080.C.4.) The demurrer to the fourth cause of action for violation of the Government Ethics Act, set forth in OMC section 2.25.060, is therefore OVERRULED.

ANALYSIS – DEMURRER: FIFTHEENTH CAUSE OF ACTION (Violation of Oakland Administrative Instruction 523 and Section 5.10 of Personnel Manual). Petitioners allege that on October 25, 2022, Sacks submitted a formal complaint to the City Auditor regarding the conflicting and allegedly inaccurate timestamps placed on the nomination paperwork of Sheng Thao and another candidate (Monesha Carter) by employees in Sams' office. (TAP ¶¶ 22-24.) When the City Auditor advised he lacked jurisdiction, Sacks sent a copy of her complaint to the City Administrator, Ed Reiskin (Sams' "official supervisor") on October 31 and filed a complaint to the Public Ethics Commission (PEC) on November 4, 2022. (TAP ¶¶ 24-25.) When Reiskin responded that the PEC was investigating, Sacks objected that "that OMC Section 2.08 and Administrative Instruction 523 obligated the City to conduct its own disciplinary investigation and to ensure proper discipline." (TAP ¶ 25.) Reiskin did not respond and the election proceeded on November 8, 2022. (Ibid.) After the election, Sacks also lodged a complaint against Sams with the City's Head of Human Resources, who also responded that the PEC was conducting an investigation. (TAP ¶ 27.) A few days later, the City certified the results of the election. (TAP ¶ 28.)

Petitioners allege that "[t]he City and its agents, including but not limited to the City Administrator, the Human Resources Director, and relevant department heads, had a clear and ministerial duty to recognize the allegations identified in the complaints as implicating the type of misconduct outlined in the Personnel Manual and the Administrative Instruction, to investigate the allegations... and to impose appropriate discipline." (TAP ¶ 158.) Petitioners seek both writ relief under Code of Civil Procedure section 1085 and injunctive and declaratory relief, apparently pursuant to Code of Civil Procedure 526a (taxpayer action). (TAP ¶ 158.)

A writ of mandate may be issued to compel a public agency or officer to perform a mandatory duty, but not to control discretion conferred upon the public agency or officer. (Ellena v. Department of Ins. (2014) 230 Cal.App.4th 198, 205.) This requires (1) a clear, present and usually ministerial duty upon the part of respondent, and (2) a clear, present and beneficial right of petitioner to the performance of that duty. (Ibid.)

Respondents contend that petitioners cannot allege facts showing City actors had a ministerial duty to investigate Sacks' complaint against Sams or to discipline Sams. They also assert that petitioners lack standing to seek a writ on this issue because petitioners are not "beneficially interested" in any investigation or discipline of Sams.

Petitioners oppose, contending they have pleaded, under Section 10.01 of the Personnel Manual, that when an employee fails to perform work in a satisfactory manner, the "appointing authority" or "department head" has the power and "duty to take action," specifically, disciplinary action. (Opp. Mem. at p. 7.) Thus, "somebody in the City had an obligation to look into the concerns and take appropriate action" and "they did not have the discretion to simply ignore those complaints." (Id. at 8.) They also argue that City actors do not have the discretion to "ignore concerns and sweep them under the rug." (Id. at 9.)

Neither the AI nor the Manual set forth ministerial duties. As this court previously explained, both require City actors to exercise discretion and judgment in determining what matters are worthy of investigation. (See 6/21/2023 Order, at pp. 5-6.) Even if there is mandatory language creating a duty, the duty is discretionary if the entity is required to exercise significant discretion to perform the duty. (Alejo v. Torklakson (2013) 212 Cal.App.4th 768, 780.) Petitioners allege respondents had a duty to take "appropriate disciplinary action" (TAP ¶ 158.) However, this was precisely the argument in Alejo, where the court of appeal found no ministerial duty. (Id. At p. 781 ["[b]ecause defendants must exercise significant discretion to perform their duty of taking "appropriate action," the duty is not ministerial..."].) (See also Los Angeles Waterkeeper v. State Water Resources Control Bd. (2023) 92 Cal.App.5th 230, 266 [when the law imposes a duty but does not direct how the duty is to be carried out, writ of mandate will not be issued to compel an agency to exercise its discretion to meet its obligations in a specific manner].)

Petitioners assert there was a duty to "take action," but do not identify specific language in either AI 523 or Manual section 10.10 identifying any specific action that must be taken. No language in either of those documents requires a full investigation into every report or wrongdoing, regardless of the actor's own assessment of the allegations and City resources available for such an undertaking. To the contrary, AI 523, section II provides that the instruction is "not intended to specifically address all disciplinary issues, but to act as a general outline of steps to follow on a department level." (RJN Exh. D, TAP ¶ 155.) And while Manual section 10.10 creates a "duty to take action," this duty is conditional. It applies "[w]hen an employee in the competitive civil service has failed or fails to perform in the duties of her/his position in a satisfactory manner, or has committed any act or acts to the prejudice of the public service, or has failed to perform any act or acts it was her/his duty to perform, or whose service rendered is below satisfactory standards, or who otherwise has become subject to disciplinary or other corrective measures". (RJN Exh. C, TAP ¶ 156.)

Nothing in these provisions indicates that appropriate "actions" are limited to a full investigation and disciplinary proceedings. Here, the City Administrator and head of Human Resources each declined to investigate specifically because petitioners had filed a formal complaint with the PEC (TAP ¶¶ 25, 27). They may have made a reasoned decision not to devote their own limited resources to the issue until the PEC investigation was complete. Thus, petitioners have not pleaded a claim for relief under Code of Civil Procedure section 1085, for failure to comply with, or abuse of discretion under, AI 523 or Manual section 10.10.

The demand for injunctive and declaratory relief under Code of Civil Procedure section 526a fails for essentially the same reason. Taxpayer suits are authorized only where the government

entity has a duty to act and has refused to do so, but if the government entity has discretion and chooses not to act, the court cannot interfere with that decision. (San Bernadino County v. Superior Court (2015) 239 Cal.App.4th 679, 686-87.)

After sustaining the demurrer to this cause of action in the prior petition, the court granted leave to amend "in an abundance of caution" due to the recent issuance of the Los Angeles Waterkeeper case. Petitioners have not remedied the defect in pleading and have not identified any additional allegations which would cure them. Thus, the demurrer to the fifteenth cause of action is SUSTAINED WITHOUT LEAVE TO AMEND.

ANALYSIS – DEMURRER: SIXTEENTH CAUSE OF ACTION (Violation of the California Constitution). Petitioners allege that the 2022 mayoral election suffered from two substantial and material irregularities which violated voters' constitutional right to due process. (TAP ¶ 162.)First, although a City Charter provision requires that voters be given the opportunity to rank all candidates unless voting equipment cannot feasibly accommodate that number, and City records suggest that the voting system was capable of allowing voters to rank ten candidates, voters were only allowed to rank five of the ten mayoral candidates.(TAP ¶¶ 28-37, 162.)Second, respondent Sams' decision to accept late-filed candidacy paperwork permitted three mayoral candidates to appear, illegally, on the ballot. (TAP ¶¶ 8-28, 87, 162.)

Respondents assert that post-election challenges are provided for exclusively in Elections Code section 16100, which petitioners failed to timely allege within the applicable statute of limitations and, further, that petitioners may not avoid section 16100 exclusivity by recasting their claims as constitutional claims. (Citing McKinney v. Superior Court (2004) 124 Cal.App.4th 951, 957-58 (McKinney).)

The court disagrees that the claimed irregularities fall within section 16100. Initially, the erroneous inclusion on the ballot of a candidate who did not win the election is not a claim enumerated by 16100. (Elec. Code, § 16100, subd. (b).) By contrast, the allegation that Thao was ineligible to appear on the ballot due to the late filing of her nomination paperwork might implicate subdivision (b): "[t]hat the person who has been declared elected to an office was not, at the time of the election, eligible to that office." 16100 concerns eligibility "to the office." However, Oakland's City Charter, which provides qualifications for the office of mayor, only requires the candidate to be a U.S. citizen over the age of 18, and a resident and qualified elector for 30 days. (Oakland City Charter, § 301). Thus, if it was error to list Thao on the ballot, it was not because she is was not "eligible to the office."

Alternatively, Thao's inclusion the ballot could potentially implicate section 16100, subdivision (f): "[t]hat the precinct board in conducting the election… made errors sufficient to change the result of the election as to any person who has been declared elected." Petitioner has not identified the precinct board or pleaded facts showing that the precint board committed the error of permitting Thao to be included on the ballot. (TAP ¶ 162 [identifying errors by City Clerk, not precinct board].) The "precinct board" refers to the board appointed by the County Registrar to oversee a particular voting center or precinct. (Elections Code, § 339(a).) This suggests subdivision (g) concerns errors in operating voting centers or precincts, for example, the receipt, processing and counting of ballots, which occur during and after the election – not preelection

activities such error asserted here and attributed instead to the City Clerk. Thus, petitioners have not alleged error by the "precinct board" which would give rise to a post-election challenge under section 16100. More likely, permitting Thao to appear on the ballot would have constituted a pre-election challenge pursuant to Elections Code section 13314, subd. (a)(1), which authorizes preelection writ relief for inter alia, the erroneous inclusion of a candidate on a ballot (but which is mooted by the passage of the election). (Friends of Sierra Madre v. City of Sierra Madre (2001) 25 Cal.4th 165, 193, citing authorities.) (As noted, the Petition admits petitioner Sacks was aware of the issues with the timeliness of Thao's nomination paperwork and raised them repeatedly with City officials prior to the election.)

For the same reason, petitioners' ranked choice voting claim (that voters were deprived of the ability to rank all 10 mayoral candidates) would not have been cognizable as a post-election challenge under section 16100 subdivision (f). Rather, it constitutes pre-election activity that was known in advance of the election and was subject to a challenge under section 13314.

Even so, it does not appear that post-election constitutional due process challenges to the validity of an election are entirely barred (as respondents contend). Rather, both pre-election claims and nonenumerated post-election claims may be pursued as constitutional election challenges, provided the allegations meet the applicable requirements (discussed below). (See McKinney, supra, 124 Cal.App.4th at 959 ["we do not think section 20021 [now section 16100] could foreclose a prohibitory mandamus action, even by a nonelector, if a nonenumerated act alleged in the petition and affecting the electoral machinery itself rendered the resulting enactment unconstitutional."], quoting Horwath v. City of East Palo Alto (1989) 212 Cal.App.3d 766, 775. See also Denny v. Arntz (2020) 55 Cal.App.5th 914, 922, fn. 5 [acknowledging that while statutory pre-election claims are mooted by the passage of the election, there is a possibility that the same claims, if based upon sufficiently egregious circumstances, may be pursued as post-election constitutional challenges].) (As noted below in connection with the motion to strike, certain equitable relief may be barred, depending upon the circumstances.)

The question, then, is whether petitioners' allegations, assumed true for purposes of demurrer, meet the stringent requirements needed to prove a constitutional violation. The Due Process clause of our State Constitution states in pertinent part: "A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws . . ." (Cal. Const. art. I, § 7.) (See TAP ¶ 161.) There are few state cases addressing constitutional election challenges and most of those cited by the parties involved inaccurate or misleading voter information or ballot materials. (See, e.g., People ex rel. Kerr v. Cnty. of Orange (2003) 106 Cal.App.4th 914; Owens v. Cnty. of Los Angeles (2013) 220 Cal.App.4th 107; Horwath v. City of East Palo Alto (1989) 212 Cal.App.3d 767.) Horwath, a seminal state case, generally instructs that a constitutional claim must be based upon an irregularity or illegality which goes to the fundamental fairness of the election, i.e., it "affect[s] the electoral machinery itself" and "'in fact prevented 'the fair expression popular will.'" (Horwath, 212 Cal.App.3d at p. 775.) In reviewing the circumstances in that case, the court of appeal sought to ascertain whether the voters were "prevented...from making informed choices" in the election. (Id. at 777.) Additional cases cited in the Petition are similarly inapposite. (See, e.g., Canales v. City of Alviso (1970) 3 Cal.3d 118 [considering the viability of a statutory, not constitutional, election challenge]; Davis v. County of Los Angeles (1938) 12 Cal. 2d 412 [finding no violation of underlying law in conducting

election and finding that election materials were not materially misleading]; Rideout v. City of Los Angeles (1921) 185 Cal.426 [holding any violations of various election laws were "not so gross or radical" to give rise to a presumption of unfairness and that they were in fact a negligible factor compared to voter carelessness and confusion].)

Respondents urge the court to consider challenges brought under the federal due process clause. Although petitioners object, our Supreme Court observed that state law will typically mirror federal analysis of "constitutional challenges to election laws" (Edelstein v. City & Cnty. of San Francisco (2002) 29 Cal.4th 164, 168), perhaps because our state due process clause is nearly identical to the federal one. (See U.S. Const. amend. XIV, § 1 ["nor shall any State deprive any person of life, liberty, or property, without due process of law"].)

Under federal law, "an election is a denial of substantive due process if it is conducted in a manner that is fundamentally unfair." (Bennett v. Yoshina (9th Cir. 1998) 140 F.3d 1218, 1226, internal citations omitted.) Federal courts distinguish "between "garden variety" election irregularities and a pervasive error that undermines the integrity of the vote. In general, garden variety election irregularities do not violate the Due Process Clause, *even if they control the outcome of the vote or election*." (Ibid., emphasis added.) "Mere fraud or mistake will not render an election invalid. However, a court will strike down an election on substantive due process grounds if two elements are present: (1) likely reliance by voters on an established election procedure and/or official pronouncements about what the procedure will be in the coming election; and (2) significant disenfranchisement that results from a change in the election procedures." (Id. at pp. 1226-1227 [noting that this is not an exhaustive list and other circumstances, such as failing to conduct a required election at all or "outrageous racial discrimination" are also recognized constitutional violations].)

Petitioners allege that two issues – failure to permit voters to rank all ten mayoral candidates and Sams' acceptance of late nomination papers – affected the fundamental fairness of the mayoral election. As to the Ranked Choice Voting (RCV) allegations (TAP ¶¶ 29-30, 162), for purposes of demurrer, the court assumes that the ranking limitation was an error and a violation of the City Charter. Even so, respondents correctly argue that there is no constitutional right to rank all candidates in a ranked choice voting (RCV) contest. Indeed, the Ninth Circuit Court of Court of Appeals has held that, in an RCV election, the failure to permit voters to rank as many candidates as are running does not, as a matter of law, constitute a violation of due process. (See Dudum v. Arntz (9th Cir. 2011) 640 F.3d 1098.) As explained in Dudum, even where voters are not able to rank all candidates, their votes are not discounted, uncounted, or diluted. (Id. at pp. 1107-1114.) Such a system imposes minimal, if any, burdens on voting rights. (Id. at p. 1114.) Here, although petitioners allege that the ranking limitation had its origins in negligence or fraud, there is no allegation that voters were surprised by the RCV system rules or the ranking limitation, or that the limitation prevented voters from making informed choices. (Horwath, 212 Cal.App.3d at p. 777.) Thus, even if the ranking limitation had its origin in negligence or fraud, it did not impair voters' constitutional right to fairly express their will. (See, e.g., Horwath, supra, 212 Cal.App.3d at p. 775 [election would be fundamentally unfair where irregularity prevented 'the fair expression popular will'"; Bennett, supra, 140 F.3d at p. 1226-1227 [gross negligence or fraud are not themselves sufficient to state constitutional claim].)

As for petitioners' allegations that Sams' acceptance of late nomination paperwork resulted in three candidates' unlawful appearance on the ballot (TAP ¶ 162), the inclusion of nonwinners on the ballot, if erroneous, does not register as a statutory violation, let alone a constitutional one. (McKinney, supra, at p. 960.) The inclusion of Thao, who was declared the winner, is a different matter, but even if as we assume for purposes of demurrer that the acceptance of Thao's nomination paperwork constituted gross negligence or fraud and impacted the election's outcome, that is insufficient to establish a constitutional violation. Petitioner must show that the inclusion of Thao on the ballot resulted in significant disenfranchisement of the electorate.

Although petitioners would have the court focus on Sams' wrongful conduct, the court must read and consider the complaint as a whole, considering all of its parts in context. (Blank, supra, 39 Cal.3d at 318.) This includes the allegations that Sams' office had advertised the wrong filing deadline, causing several candidates to schedule appointments after the actual filing deadline, and after realizing the mistake, Sams engaged in last-minute efforts (however misguided) to rectify this mistake. (TAP ¶ 8.)

In this context, Sam's decision to accept tardy nomination paperwork, even if erroneous or deceptive, had the effect of restoring fundamental fairness to the nomination process by excusing a technical defect that was precipitated by the Clerk's office. To be clear, the court does not sanction the unilateral and secretive manner in which this result was allegedly achieved; but that does not change the overall effect of Sams' conduct, which was to expand rather than impair the fair expression of popular will. (Horvath, supra.) By contrast, petitioners' demand to disqualify otherwise diligent candidates from appearing on the ballot and conduct a new election would undermine, rather than ensure, fundamental fairness in election procedures, penalizing candidates who were misled by the Clerk's Office, and would restrict rather than promote the fair expression of the popular will. Viewed through the lens of due process, petitioners' remedy could be considered worse than the underlying error. (See, e.g., Baber v. Dunlap (D. Me. 2018) 349 F.Supp.3d 68, 76; Bennett, supra, 140 F.3d at p. 1226.)

Finally, petitioners argue that if their due process claim fails, they have also pleaded a violation of Section 4 of Article II of the California Constitution, which provides that "[t]he Legislature shall prohibit improper practices that affect elections…." (See TAP ¶ 163.) By its terms, this provision merely obligates the Legislature to pass laws to protect the integrity of elections. Petitioners have not developed this argument or cited to any authority explaining how this constitutional provision could create an individual right to invalidate an election.

Accordingly, the demurrer to the sixteenth cause of action for violation of the California Constitution, set forth in Article I, Section 7, is SUSTAINED. As petitioners have proffered no new allegations to remedy the defects in this claim, the demurrer is sustained WITHOUT LEAVE TO AMEND.

ANALYSIS – MOTION TO STRIKE. Respondents move to strike petitioners' demand for a declaration that the election results are invalid and an order requiring a new election. The parties agree that this motion rises and falls with the demurrer to the Sixteenth Cause of Action. As that demurrer is sustained without leave to amend, the motion to strike is GRANTED WITHOUT LEAVE TO AMEND.

As noted, respondents argued that petitioners' constitutional claims are barred by their failure to timely seek available legal relief under applicable election code provisions. While the court disagrees that the claims are barred in their entirety, some forms of equitable relief may be. That is because the court, in considering possible equitable remedies, must balance "the severity of the alleged constitutional infraction" against "such countervailing equitable factors as the extremely disruptive effect of election invalidation and the havoc it wreaks upon local political continuity." (Soules v. Kauaians for Nukolii Campaign Comm. (9th Cir. 1988) 849 F.2d 1176, 1180.) Thus, even a plaintiff who is able to plead or prove a constitutional violation "will be barred from the equitable relief of overturning the results of the election" if they have failed, without adequate explanation, to timely pursue statutory claims. (Soules, supra, 849 F.2d at pp. 1180-1181.)

Here, the pleadings disclose that both the limitation on ranked choice voting and the alleged irregularities with respect Thao's nomination paperwork were known to petitioners in advance of the election. Petitioners argued at the hearing that they were prevented from pursuing any statutory claims before the election because certain underlying facts required further development. The court disagrees. Whether the ranking choice voting restriction imposed constitutional burdens does not turn on any violation of the City Charter or the terms of the City's voting systems contract, but rather upon the effects, if any, of such restrictions on the expression of the popular will. Petitioners have not pleaded that information regarding the rules and functioning of the RCV voting system were unavailable to voters before the election or that those rules were changed after the election.

Similarly, petitioners argued that the public could not have been aware that certain candidates' nomination paperwork was tardy, causing them to be illegally qualified for the ballot. However, the petition itself admits that petitioners were aware of those very irregularities in advance of the election, so much so that Sacks was able to lodge complaints with the City Auditor and City Administrator and file a formal complaint with the PEC before the election. (TAP ¶¶ 22-25.)

Petitioners have neither pleaded nor proffered a reasonable explanation for their failure to file preelection challenges to alleged defects which were known to them before the election. Even if petitioners could state a constitutional claim, the sought-after relief to set aside the election and require a new one would, based upon the allegations of the petition, be equitably barred. This provides a second, independent basis for granting respondents' motion to strike petitioners' demand to declare the election results invalid and require a new election.

Dated: 10/02/2023

Jenna Whitman / Judge

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp **FILED** Superior Court of California County of Alameda 10/02/2023 Chad Finke, Executive Officer / Clerk of the Court By: _____ Deputy L. Coleman
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	
PLAINTIFF/PETITIONER: Alameda County Taxpayers' Association et al	
DEFENDANT/RESPONDENT: City of Oakland et al	
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: 23CV027685

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order re: Ruling on Submitted Matter filed by City of Oakland (Responde... entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

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Chad Finke, Executive Officer / Clerk of the Court

Dated: 10/02/2023

By:

L. Coleman, Deputy Clerk

CERTIFICATE OF ELECTRONIC SERVICE
CODE OF CIVIL PROCEDURE 1010.6