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### Summary of Lorton v. Jones, 130 Nev. Adv. Op. 8

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## CONSTITUTIONAL LAW: TERM LIMITS

### **Summary**

The Court determined whether the limitations imposed under Article 15, Section 3(2) of the Nevada Constitution prohibit an individual who has served for 12 years or more as a council member from running for mayor of Reno.

### **Disposition**

Under Article 15, Section 3(2) of the Nevada Constitution, a term-limited council member is thereafter barred from being elected mayor of Reno.

### **Factual and Procedural History**

The City of Reno is a municipal corporation, governed under Nevada state laws through a charter approved by the Legislature. The Reno City Charter vests the city's legislative power in the city council, which consists of six city council members and the mayor. One of the city council members and the mayor represent the city at large, and the other members each represent one of Reno's five wards.

Jessica Sferrazza represented Ward 3 on the Reno city council for 12 years, ending in 2012. Dwight Dortch currently represents Ward 4 and will have served for 12 years when his term ends in 2014. Both Sferrazza and Dortch intend to run for mayor of Reno in the 2014 election.

Another citizen of Reno, George "Eddie" Lorton, also intends to run for mayor. Lorton filed a writ petition seeking extraordinary relief preventing the inclusion of either Sferrazza or Dortch on the 2014 ballot for the mayoral race. Lorton argues that because both Sferrazza and Dortch served or will have served 12 years as city council members, they are ineligible to run for mayor pursuant to Article 15, Section 3(2) of the Nevada Constitution.

### **Discussion**

Article 15, Section 3(2) of the Nevada Constitution prohibits an individual from being "elected to any state office or local governing body [if he or she ] has served in that office, or at the expiration of his [or her] current term [he or she] will have served, 12 years or more."<sup>2</sup>

#### *Writ relief*

Generally writ relief is not available when the petitioner "has a plain, speedy, and adequate remedy at law." However, the Court "may exercise its discretion to consider a writ petition when the petition presents a legal issue of statewide importance that needs clarification, and principles of judicial economy and public policy weigh in favor of considering the petition."

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<sup>1</sup> By Kylee Gloeckner.

<sup>2</sup> NEV. CONST. art. 15, § 3(2).

Although NRS 293C.186 allows a citizen to assert a challenge to a declared candidate on the ground that the candidate does not meet the qualifications for office,<sup>3</sup> Lorton argues that a challenge under the statute would not be timely resolved. The Court agrees, concluding “that this petition presents an issue of statewide importance for which judicial economy and public policy warrant consideration of the writ.”

### *Standard of review*

This case requires the Court to interpret the language of Article 15, Section 3(2). If the language is unambiguous, the Court simply applies its plain meaning. If the language is ambiguous, the Court may look at the provision’s history, public policy, and voter intent.

### *Article 15, Section 3(2)*

Article 15, Section 3(2) states that “[n]o person may be elected to any state office or local governing body who has served in that office” for 12 years or more.<sup>4</sup> In context, “that office” appears to refer to both “state office” and “local governing body.” In regards to “state office,” the provision uses the word “office” in both parts of the phrase, so it is clear that anyone who has served in a particular state office for 12 years or more may not serve any additional terms in that state office. However, in regards to a “local governing body,” the provision is less clear because the words “office” and “local governing body” have different meanings.

### *Lorton’s interpretation*

Lorton interprets Article 15, Section 3(2) to preclude individuals from serving more than 12 years in any combination of positions on a single local governing body. This interpretation does not fit the plain language of Article 15, Section 3(2) because it would either require the term “office” to mean something different from its customary meaning, or it would require the phrase “that office” to be replaced with “any office within that local governing body.”

### *Sferrazza and Dortch’s interpretation*

Sferrazza and Dortch interpret Article 15, Section 3(2) to only prevent individuals from serving in a distinct office within a local governing body for more than 12 years. This interpretation fails to consider that the provision refers to a “local governing body,” not an “office” on a local governing body. This approach would require the Court to “read words into Article 15, Section 3(2) that are not expressly there.”

Both of these inconsistent interpretations are reasonable; therefore, Article 15, Section 3(2) is ambiguous.

### *Context within Article 15, Section 3(2)*

The drafters could have used a wide variety of terms; however, they chose the terms “state office” and “local governing body.” Those terms indicate that, “at a state level, the drafters

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<sup>3</sup> NEV. REV. STAT. § 293C.186 (2013).

<sup>4</sup> NEV. CONST. art. 15, § 3(2).

intended to prevent election to a specific office, but at the local level, the intent was to preclude continuing service on the governing body generally.”

### *Purpose and public policy*

Proponents of Article 15, Section 3(2)'s limitations provision explained to voters that its purpose was to “stop career politicians.” Interpreting the provision to prohibit reelection to the entire “local governing body” rather than “an office on a local governing body” is in line with such a purpose. If one city council member whose term was limited in one ward could simply seek election to essentially the same position in a different ward, the provision's purpose could not be achieved.

Term-limit provisions related to the Nevada Legislature also provide helpful context. In both Article 4, Section 3(2) and Section 4(2) of the Nevada Constitution, the drafters included the phrase “from any district of this state” at the end of the provisions to preclude any question regarding prevention of reelection. Although Article 15, Section 3(2) does not include such language, it does state that the person may not be elected to the “local governing body,” indicating an intent to preclude election to the body as a whole.

The Court concludes, “[T]he drafters intended to preclude reelection to the local governing body as a whole when a member has served on that body for 12 years or more in any capacity. Thus, the question that remains is whether the mayor of Reno is sufficiently distinct from the city council to preclude application of Article 15, Section 3(2) to council members who may seek to run for mayor.”

### *Article 15, Section 11 and the Reno City Charter*

Article 15, Section 11 of the Nevada Constitution provides that a city's legally adopted charter controls with regard to “the tenure of office or the dismissal from office” of any municipal officer. The Court therefore gives effect to charter provisions that may be helpful when deciding if the mayor is part of the local governing body.

The Reno City Charter states that the city council is Reno's governing body and that the mayor is a member of the city council. Therefore, the mayor is a member of the local governing body. The charter identifies the mayor as a separate elective officer from the other city council members, and the mayor has additional duties that the other council members do not. However, the mayor is still considered a full and equal membership on the city council and primarily functions as a city council member.

Accordingly, the Court holds that “based on the provision of the Reno City Charter . . . the Reno mayor is a member of the ‘local governing body,’ subject to the same limitations that apply to the other city council members.”

### **Conclusion**

Under Article 15, Section 3(2) of the Nevada Constitution, a term-limited council member is thereafter barred from being elected mayor of Reno. Sferrazza and Dortch each will have served on the Reno city council for 12 years by the end of the current term. Thus, they are ineligible to be elected as Reno's mayor. Accordingly, the Court grants the petition and directs

the clerk of the Court to issue a writ of mandamus requiring respondents to exclude Sferrazza and Dortch from the ballot materials for the 2014 Reno mayoral election.<sup>6</sup>

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<sup>6</sup> Justice Pickering concurs with the majority and only writes to respond to the dissent. Justice Pickering believes that the dissent “does not adequately consider the meaning” of the terms “office” and “local governing body” within the context of Article 15, Section 3. Justices Saitta and Parraguirre dissent. They disagree with the majority’s conclusion that the office of Reno mayor is included in the term “local governing body,” noting specific differences between the responsibilities of the mayor and the duties of the other city council members.