

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT
CIVIL ACTION
No. 22CV532

WILMER PUELLO-MOTA

vs.

CITY OF HOLYOKE, et al

HAMPDEN COUNTY
SUPERIOR COURT
FILED

SEP 30 2022

Harold J. Jones
CLERK OF COURTS

**DECISION AND ORDER ON MR. PUELLO-MOTA'S MOTION FOR PRELIMINARY
INJUNCTION**

Plaintiff Wilmer Puello-Mota is an elected and incumbent City Councilor for the City of Holyoke and brings this action against the City of Holyoke, the Holyoke City-Council, and Mayor Joshua Garcia (collectively "Holyoke") seeking an adjudication that Holyoke permit him to maintain his status as a Holyoke City Councilor.

Mr. Puello-Mota seeks a preliminary injunction ordering that Holyoke permit him to fulfill his elected responsibilities as a City Councilor. Holyoke maintains that he forfeited his status as a City Councilor under City Ordinance Section 46 which states in relevant part: "The conviction of the incumbent of any such office of a crime punishable by imprisonment shall operate to create a vacancy in the office held by him". A non-evidentiary hearing was held on September 27, 2022.

In order to prevail on a request for preliminary injunctive relief, Mr. Puello-Mota bears the burden of showing: (1) his likelihood of success on the merits; (2) that he will suffer irreparable harm if the injunctive relief sought is not granted; and (3) that his harm, without the injunction, outweighs any harm to the party being enjoined. *GTE Products Corp. v. Stewart*, 414

Mass. 721, 722-723 (1993); *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 616-617 (1980).

No one disputes that Mr. Puello-Mota was elected as a City Councilor in Holyoke and that his term has not expired. Holyoke maintains that by operation of section 46 he was divested of his status, or ousted, as a City Councilor by operation of law. In this regard, the Court finds that Holyoke bears the burden of proving that the Mr. Puello-Mota has been convicted of a crime punishable by imprisonment. Holyoke has failed to meet its burden.

On September 2, 2020, Mr. Puello-Mota was arrested in Rhode Island and charged with certain crimes punishable by imprisonment. He was arraigned, appointed counsel, plead not guilty and granted bail. While at liberty on that case, on or about May 3, 2022, Mr. Puello-Mota was once again arrested in Rhode Island for other distinct and subsequent Rhode Island offenses. Almost immediately on May 10, 2022, Rhode Island moved to revoke his bail on the first case pursuant to Rhode Island Rule of Criminal Procedure 46(g). On May 20, 2022, Mr. Puello-Mota was arraigned on the second set of charges and plead not guilty. Mr. Puello-Mota was granted bail in the second case.

Rhode Island pursued the bail revocation on the first case. A violation of bail hearing was scheduled for the first case for June 2, 2022, and continued for "further investigation". Subsequently, hearings were scheduled and continued until on August 10, 2022, Mr. Puello-Mota admitted to violating a condition of his release and had his bail revoked for a period of ninety (90) days pursuant to Rhode Island R. Crim. P. 46 (g)(1). The court has not been provided with a transcript of that hearing.

Holyoke maintains that he was sentenced to ninety days incarceration for a contempt of court. The phrase is used in the record but as far as this court can discern, Rhode Island uses the

phrase “contempt” for a violation of a release condition. The docket reflects that Mr. Puello-Mota admitted to being a “violation” and was thus declared a violator by the Rhode Island Superior Court. He was remanded to an Adult Correctional institution. There is a box on the form for “guilty” which is not checked. There are fields on the form for the “sentence” and it is not filled out. There is a box on the form for a change of plea that is similarly blank.

It is undisputed that Mr. Puello-Mota faces two sets of serious criminal charges in Rhode Island. He has plead not guilty and under our system of laws is entitled to and maintains a presumption of innocence until Rhode Island proves his guilt beyond a reasonable doubt. He stands before the court presently having not been convicted of any crime punishable by imprisonment. There is no indication as to any scheduled trial date in Rhode Island. He served, or is serving, a period of incarceration after a bail revocation earlier this summer. Mr. Puello-Mota has met his burden and is entitled to a preliminary injunction prohibiting Holyoke or anyone acting on its behalf from stopping him from performing his official duties as a duly elected City Councilor in Holyoke. He is entitled to all the rights and privileges of the office until further Order of the Court.

As far as the balancing of the relative harm to the parties, this factor also favors Mr. Puello-Mota, and to a certain degree the citizens of Holyoke. As all agree, Mr. Puello-Mota is presumed innocent of the charges in the two Rhode Island cases. He should not be divested of his role as a City Councilor on this evidence. His ward is currently unrepresented. He is apparently being excluded or prohibited from fulfilling his role as an elected official in Holyoke. The court is not persuaded that any harm would befall Holyoke or its citizens by allowing Mr. Puello-Mota from performing his duties as a City Councilor pending trial or resolution of the Rhode Island

cases. Of course, the voters have the ultimate say in whether he keeps his position before a jury in Rhode Island decides his guilt or innocence.

CONCLUSION AND ORDER

For the foregoing reasons, the plaintiff's motion is **ALLOWED**. It is further **ORDERED** that Holyoke and anyone acting on its behalf is preliminarily enjoined and prohibited from interfering or denying Mr. Puello-Mota from enjoying the rights and privileges of his elected office.



MICHAEL K. CALLAN
Justice of the Superior Court

DATE: 9/30/22