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**ELECTRONICALLY FILED**  
**1/13/2025 5:27 PM**  
**Kern County Superior Court**  
**By Vickie Fogerson, Deputy**

6 Attorneys for Attorneys for Respondent/Defendant **Mercy Peña**

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 8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 9 **FOR THE COUNTY OF KERN**

11 JENNIFER ESTRADA,  12 Petitioner/Contestant  13 v. 14 MERCY PEÑA  15 Respondent/Defendant
16 JENNIFER ESTRADA and GREENFIELD 17 UNION SCHOOL DISTRICT,  18 Petitioners  19 v. 20 KERN COUNTY ELECTIONS DIVISION,  21 Respondent
22 RICARDO HERRERA,  23 Real Party In Interest.

Case No.: BCV-24-104155  
*Hon. Bernard C. Barmann, Jr.*

**RESPONDENT/DEFENDANT’S  
 RESPONSE TO SECOND AMENDED  
 WRIT OF MANDATE**

Date: January 14, 2025  
 Time: 8:30 a.m.  
 Dept.: H

25 **I. INTRODUCTION**

26 Ms. Mercy Peña faced a massive uphill battle in her attempt to win a board of trustee position  
 27 on the Greenfield School District Board against the incumbent. Undaunted, Ms. Peña conducted an  
 28 entirely grassroots campaign, knocking on doors in Area C to meet constituents and earn their



1 support. Given her lack of backing, Ms. Peña had little-to-no funds to spend on advertising, hiring  
2 help, or to employ the tactics typically used to bolster support in an election.

3 Ms. Peña’s hard work paid off as she won a razor thin battle against all odds, bringing home  
4 a majority 1,012 votes over the incumbent’s 1,008 votes. Despite Ms. Peña running her campaign  
5 flawlessly, and entirely in accordance with the law, Petitioners now seek to overturn the election  
6 based on the Kern County Election division allegedly having counted 57 illegally cast votes.  
7 Petitioners request this Court order a new, special election to take place allowing them a second bite  
8 at the apple—and a renewed chance to advertise, go door-to-door, and employ the machinery  
9 available to an incumbent to try to win the election.

10 However, under the plain reading of the elections code and current caselaw, illegal votes can  
11 only be the basis for annulling an election where (1) there is evidence that, but-for the illegal votes,  
12 the defendant would not have won, or (2) the Defendant, or individuals on her behalf, committed  
13 intentional wrongful acts such that it can be inferred that the illegal votes were cast for her. Because  
14 Petitioners cannot demonstrate who the illegal votes were cast for or that Ms. Peña committed even  
15 a single wrongful act, Petitioners’ motion must be denied.

## 16 II. FACTS

17 Petitioners are Jennifer Estrada and Greenfield Union School District (“GUSD”). Jennifer  
18 Estrada is a voter in District C, who cast her vote in the November 5, 2024, election. GUSD is a  
19 public school district located in Kern County and governed by a board of trustees elected by the  
20 public.

21 Petitioners name Ms. Peña as Respondent/Defendant, but do not allege any misconduct by  
22 Ms. Peña or that Ms. Peña caused them any injury. Ms. Peña ran for and won a board position on  
23 GUSD’s board of trustees. Ms. Peña won her seat following her diligent work personally conducting  
24 her grassroots, door-to-door campaign. GUSD has instituted this suit to annul Ms. Peña’s position,  
25 despite her being a board of trustee member on GUSD school’s board—a clear conflict of interest.

26 Petitioners also name the Kern County Elections Division as a Respondent.

27 Petitioners’ allegations arise from the November 5, 2024, general election for the “Area C”  
28 board of trustees’ position on the GUSD. Petitioners allege that Ms. Peña won the election with a



1 total of 1,012 votes while real party in interest, Rircardo Herrera, received 1,004 votes. Petitioners  
2 allege that the Kern County Elections Division confirmed to them on December 3, 2024, via email,  
3 that the Division sent out 108 ballots to voters in “Area D” by mistake. Petitioners further allege  
4 that on December 17, 2024, a Kern County employee confirmed that 57 of the 108 ballots were  
5 returned but that it was not possible to determine which, if any, of the candidates each voted for.

6 Petitioners allege that on December 5, 2024, the vote was properly certified. On December  
7 18, 2024, Ms. Peña was sworn in as a member of the board of trustees for GUSD. Petitioners allege  
8 no intentional misconduct on the part of the Kern County Elections Division or Ms. Peña.

9 Petitioners request (1) order annulling and setting aside the election of Mercy Peña to the  
10 Board of Trustees pursuant Elections Code sections 16100(d), 16400, 16403, and 16500; and (2)  
11 writ of ordinary mandate pursuant to CCCP section 1060, and issue declaratory judgement under  
12 CCCP 1060 directing elections division to set aside its December 5, 2024, certification.

### 13 III. LAW

14 When interpreting the meaning of a statute, the fundamental task is to ascertain the aim and  
15 goal of the lawmakers as to effectuate the purpose of the statute. (*McAllister v. California Coastal*  
16 *Com.* (2008) 169 Cal. App. 4th 912, 928). There is a three-step approach to interpreting statutory  
17 language. At the first step, the court examines the language at issue, giving each word its ordinary,  
18 everyday meaning. (*Cummings v. Stanley* (2009) 177 Cal. App. 4th, 493 705-08.) If the meaning is  
19 free of doubt, uncertainty, or ambiguity, the task is complete and the statute controls.

20 Elections Code § 16100 generally provides generally that any elector of a political  
21 subdivision may contest any election for cause, including: “That illegal votes were cast.” (Elec.  
22 Code § 16100(d).) However, testimony regarding allegations of illegal voting is only sufficient  
23 when there is a statement that “in one or more specified voting precincts illegal votes were given to  
24 the defendant, which, if taken from him or her, will reduce the number of his or her legal votes  
25 below the number of legal votes given to some other person for the same office.” (Elec. Code §  
26 16402.) Furthermore, “[t]estimony shall not be received of any illegal votes, unless the contestant  
27 delivers to the defendant, at least three days before the trial, a written list of the number of illegal  
28

1 votes, and by whom given, which he or she intends to prove. No testimony may be received of any  
2 illegal votes except those that are specified in the list.” (*Id.*)

3 Pursuant to § 16203, an election:

4 [S]hall not be set aside on account of illegal votes unless it appears  
5 that a number of illegal votes has been given to the person whose right  
6 to the office is contested or who has been certified as having tied for  
7 first place, which, if taken from him, would reduce the number of his  
8 legal votes below the number of votes given to some other person for  
9 the same office, after deducting therefrom the illegal votes which may  
10 be shown to have been given to that other person.

11 For contests other than a recount, such as in the present case, when the grounds is that “[a]  
12 sufficient number of votes were illegal, fraudulent, forged, or otherwise improper, and that had those  
13 votes not been counted the defendant would not have received as many votes as the contestant.”  
14 (Elec. Code § 16440(c).)

#### 15 IV. ARGUMENT

##### 16 A. The School Board’s Counsel Is Required To Represent Ms. Peña And Cannot Properly 17 Bring Suit Against Her

18 Ms. Peña was certified as having been elected to a board member position on the Petitioner’s  
19 board of trustees on December 5, 2024, and officially became a board of trustees on December 18,  
20 2024. While Petitioners do not allege any misconduct on her part or injury caused by her, Petitioner  
21 GUSD seeks to annul her election to the board.

22 As an elected board member, she has a right for school counsel to represent her interests in  
23 her capacity as a board member. (Cal. Educ. Code § 35041.5.) Because Ms. Peña is not alleged to  
24 have participated in *any* wrongdoing, it is a clear conflict of interest that her counsel seeks to annul  
25 her election. This deprives her of rights and requires that she hire her own counsel if she wishes to  
26 properly defend herself. However, by suing to annul Ms. Peña’s position on the board, school  
27 counsel has demonstrated such bias that it cannot be trusted to adequately represent her.  
28 Accordingly, Ms. Peña requests that the School District be ordered to pay for her attorney’s fees.





1 **B. There Is No Evidence That, Had Any Alleged Illegal Votes Not Been Cast, Ms. Peña**  
2 **Would Not Have Still Won Her Election**

3 Even if there were illegally cast votes, the plain reading of the California Elections code does  
4 not provide a remedy when there is no evidence that Ms. Peña would not have won her election but  
5 for the illegally cast votes. While § 16100 provides that illegal votes may be “grounds for a contest,”  
6 the elections code provides several qualifications that bar Petitioners’ claim.

7 First, when contesting a general election, the testimony in support of an allegation of illegal  
8 voting is *sufficient* if it states “that in one or more specified voting precincts illegal votes were given  
9 to the defendant, which, if taken from him or her, will reduce the number of his or her legal votes  
10 below the number of legal votes given to some other person for the same office.”

11 Second, § 16402 further states that “testimony *shall not be received*” of any illegal votes,  
12 unless the contestant delivers to the defendant a written list of the number of illegal votes, and by  
13 whom given, which he or she intends to prove. (Emphasis added.) It further prohibits testimony to  
14 be received unless a contestant can identify who cast the illegal votes. This requirement  
15 demonstrates the clear intent of the legislature to prevent claims from being brought when a  
16 contestant cannot identify illegal votes with sufficient specificity.

17 Third, § 16203 requires that it appear that the Defendant received a number of illegal votes  
18 which, if taken from the Defendant, would change the outcome of the election.

19 In the present matter, Petitioners make no such allegations identifying who cast the illegal  
20 votes or who they voted for. Accordingly, if this case were to go to trial, Petitioners would not be  
21 able to provide any testimony regarding illegal votes. Furthermore, Petitioners seek a remedy other  
22 than a recount, which under § 16440(c) requires that contests grounds show “a sufficient number of  
23 votes were illegal . . . and that had those votes not been counted the defendant would not have  
24 received as many votes as the contestant.” Accordingly, Petitioners cannot sustain their burden of  
25 proof.

26 Finally, because Petitioners allege no intentional wrongdoing by the Kern County Elections  
27 Division or Ms. Peña, there is no “appearance” that the alleged illegal votes favored her. As  
28 discussed in greater detail in the following section, when a contestant can demonstrate that the



1 illegally cast ballots were instigated by the Defendant, or an interested party on her behalf, it is  
2 circumstantial evidence that the illegally cast ballots were predominately cast in favor of the  
3 Defendant. However, when the illegally cast ballots are simply the result of ordinary, bureaucratic  
4 mismanagement, no such implication arises.

5 **C. Petitioners’ Claims Also Fail Under Existing Case Law As They Do Not Allege Any**  
6 **Intentional Wrongdoing**

7 Petitioners cite *Bradley v. Perrodin* in support of their claim that the election should be  
8 annulled, and a new, special election should be held, but the case is materially different as it dealt  
9 with 16100(c) not (d) and involved intentional fraud by the candidate. ((2003) 106 Cal. App. 4th  
10 1153; *see also* SAP, ¶ 33.) In that case, two races were at issue, one for the mayor’s office between  
11 Bradley and Perrodin and one for the City Council position between Andrews and Irving. In the first  
12 matter, there was no allegation of illegal votes.

13 In the second matter, Irving defeated Andrews. Andrews subsequently brought a claim under  
14 Election Code Section 16100(c). (*Id.* at 1665.) The trial court found there was an inadvertent error  
15 on the ballot as “Irving” had incorrectly been placed ahead of “Andrews” on the ballot. (*Id.* at 1160–  
16 61.) The trial court *also* found that Irving had committed numerous, purposeful fraudulent acts so  
17 serious as to disqualify her under the provisions of Elections Code § 18501. This included  
18 knowingly soliciting non-citizens to vote, being present in absentee voter’s homes and telling them  
19 how to vote, soliciting non-qualified voter’s votes, and fraudulently registering non-citizens before  
20 assisting them in completing absentee ballots. (*Id.* at 1161.)

21 The appellate court noted that there were not enough illegal votes cast to change the results  
22 of the election. (*Id.* at 1170.) However, it upheld the annulment of the election because, under  
23 Elections Code § 16100(c), Irving had committed offenses against the electorate that “furnish  
24 independent statutory grounds for contesting and annulling the election, *separate and apart* from  
25 the effects of any illegal votes actually counted. (*Id.* at 67 [emphasis added].) The Court held that  
26 Irving’s violation of 16100(c) disqualified her from holding office for the entirety the term covered  
27 by the election. (*Id.* at 1176.)

28



1           *Bradley v. Perrodin* is entirely irrelevant to the present matter because it involved  
2 misconduct under Subsection 16100(c), not (d). The status of the illegal votes did not matter because  
3 Irving had committed fraudulent acts which constituted the basis for annulling the election  
4 regardless of any illegal votes that may have been cast. In the present matter, there is *no* allegation  
5 of misconduct under subsection (c).

6           Petitioners are likely to argue that *Gooch v. Hendrix* recognized an exception to the statutory  
7 requirement that a contestant must demonstrate that he would have won but for the illegally cast  
8 votes. ((1993) 5 Cal.4th 266.) In *Gooch*, a partisan group, “BAPAC,” intentionally committed  
9 elections fraud leading to “widespread illegal voting practices” that “permeated” the election. (*Id.*  
10 at 282.) This included coercing absentee voters to vote a certain way and “losing” certain absentee  
11 ballots. The court found that numerous candidates took part in the misconduct, including soliciting  
12 absentee votes in violation of elections laws. (*Id.* at 285–86.) However, the trial court was unable to  
13 determine who the illegal votes were cast for.

14           Regardless, the supreme court upheld the trial court’s annulment of the election based on  
15 what is now § 16203’s language. Specifically, the court held that the statute permits an election  
16 result to be set aside if “it appears” that a number of illegal votes have been given to the person  
17 whose right to office is contested. The held the language “it appears” allows an election to be set  
18 aside “where clear and convincing evidence established pervasive illegalities that permeated the  
19 election process” and “it nonetheless ‘appears’ the illegal votes affected the outcome of the  
20 election.” (*Id.* at 1169.) The Court held that the numerous findings of the trial court regarding the  
21 bad acts of BAPAC and the candidates combined to create “sufficient, essentially uncontroverted  
22 circumstantial evidence” in support of the conclusion that ‘it appeared’ the illegal votes affected the  
23 outcomes of the elections.” (*Id.* at 285.)

24           The Court also cited positively its prior holding in *Caneles v. City of Alviso* that there must  
25 be a showing “that illegal votes were sufficient in number to account for the result but also  
26 that illegal votes were cast in such a manner as in fact to determine the result.” ((1970) 3 Cal.3d  
27 118, 125.) In that case, there was circumstantial evidence the illegal votes were cast in support of  
28 the passage of ballot measure. Specifically, the signatures of the voters that cast illegal votes



1 appeared on a petition in favor of the petition at issue and, at trial, the individuals were not  
2 questioned whether they had changed their minds after signing the petition. (*Id.* at 127.)  
3 Accordingly, there was evidence that had they not illegally voted, the petition would not have  
4 passed.

5         The present matter is materially different than these cases because there is no evidence that  
6 the alleged illegal votes were more likely cast in favor of Ms. Peña than any other candidate. Unlike  
7 *Gooch* or *Caneles*, there is no evidence whatsoever that makes it “appear” that the illegal votes  
8 effected the outcome. Examples of fraud or intentional bad acts on behalf of Defendant or an  
9 interested party create the appearance that the illegal votes were cast in for the misbehaving party.  
10 In *Gooch*, the court held that “it appeared” that the votes were cast for the winning candidate because  
11 “all BAPAC supported candidates won handily in each and every one of the election contests” along  
12 with the numerous other facts found by the trial court of intentional fraudulent acts by BAPAC  
13 workers, including the “losing” of 269 ballots, coupled with elections violations by the candidates  
14 themselves. (*Gooch, supra*, 5 Cal. 4th at 285). Accordingly, there was significant circumstantial  
15 evidence that the illegal votes *caused* the defendants to win, even though they could not specifically  
16 be proven to have been.

17         However, these concerns are not present when simple bureaucratic mismanagement is the  
18 basis of any illegal votes. Accordingly, *Gooch* and *Caneles* are inapposite to the present matter.

19         Rather, *Singletary v. Kelley* is analogous to the present matter. ((1966) 242 Cal.App.2d 611.)  
20 In *Singleterry*, an election for a proposal to incorporate a city was held. Like the present matter, 27  
21 votes were found to have been cast by individuals not living in within the boundaries of the proposed  
22 city. Of those votes, it could not be determined how 14 of the ballots voted. The proposal was passed  
23 by a margin of 21 votes, meaning that the 14 votes could have been determinative (as they could  
24 represent a 28-vote swing.) Just like in *Gooch*, the court ruled based on what is now Section 16203’s  
25 language. (*Id.* at 612.) The court held that because there was no evidence either way regarding how  
26 the illegal votes were cast, the votes should be deemed to have been cast in proportion as the total  
27 votes—7 for and 7 against incorporation. (*Id.*)

28

1 Read together, *Gooch* and *Singletary* make it clear that for illegal votes to warrant annulling  
2 an election, there must be evidence of wrongdoing that, in turn, provides circumstantial evidence  
3 that the illegal votes were cast for the Defendant. If there is no such evidence, the proper approach  
4 is to assume that illegal votes were cast in the same proportion as legally cast votes. The present  
5 matter is analogous to *Singletary*, because like *Singletary*, there is no evidence of wrongdoing by  
6 any party or that the illegal votes were more likely cast for the contestant. Accordingly, the Court  
7 must assume that the illegally cast votes were cast in the same proportion as the legally cast votes,  
8 meaning that Ms. Peña is the clear winner. Accordingly, there is no basis for annulling the election.

9 **V. CONCLUSION**

10 Petitioners' failure to allege any wrongdoing on behalf of Defendants undermines their  
11 claims. Without any allegation of wrongdoing, there is no basis for a court to hold that it appears  
12 that illegally cast votes were cast for Defendant in a proportion that could have changed the outcome  
13 of the election. Rather, this Court must abide by the Supreme Court's ruling in *Singleterry* and deny  
14 Petitioners' writ. Ms. Peña further requests that this Court enter order for attorney's fees and costs  
15 for defending the present action.

16 DATED: January 13, 2025

ADVOCATES FOR FAITH & FREEDOM

17 By: 

18 Robert H. Tyler, Esq.

19 Attorneys for Respondent/Defendant **Mercy Peña**



1 **PROOF OF SERVICE**

2 I am an employee in the County of Riverside. I am over the age of 18 years and not a party  
3 to the within entitled action; my business address is 25026 Las Brisas Road, Murrieta, California  
4 92562.

5 On January 13, 2025, I served a copy of the following document(s) described as [TITLE]  
6 on the interested party(ies) in this action as follows:

7 **SEE ATTACHED SERVICE LIST**

8  **BY E-MAIL OR ELECTRONIC TRANSMISSION.** Based on a court order or an  
9 agreement of the parties to accept service by e-mail or electronic transmission, I transmitted  
10 copies of the above-referenced document(s) on the interested parties in this action by  
11 electronic transmission. Said electronic transmission reported as complete and without  
12 error.

13  **BY FACSIMILE TRANSMISSION.** Pursuant to agreement and written confirmation of  
14 the parties to accept service by facsimile transmission, I transmitted copies of the above-  
15 referenced document(s) on the interested parties in this action by facsimile transmission from  
16 (951) 600-4996. A transmission report issued as complete and without error.

17  **BY UNITED STATES POSTAL SERVICE.** I am readily familiar with the practice for  
18 collection and processing of correspondence for mailing and deposit on the same day in the  
19 ordinary course of business with the United States Postal Service. Pursuant to that practice,  
20 I sealed in an envelope, with postage prepaid and deposited in the ordinary course of business  
21 with the United States Postal Service in Murrieta, California, the above-referenced  
22 document(s).

23  **BY OVERNIGHT DELIVERY.** I enclosed the above-referenced document(s) in an  
24 envelope or package provided by an overnight delivery carrier and addressed as above. I  
25 placed the envelope or package for collection and overnight delivery at an office or a  
26 regularly utilized drop box of the overnight delivery carrier.

27  **BY PERSONAL SERVICE.** I caused copies of the above-referenced documents to the  
28 addressee(s) noted above served by process server.

I declare under penalty of perjury under the laws of the United States of America that the  
foregoing is true and correct and that I am an employee in the office of a member of the bar of this  
Court who directed this service.

*Susan Y. Kenney*

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Susan Y. Kenney



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