

1 **SIMAS & ASSOCIATES, LTD.**
Steven L. Simas (State Bar No. 150901)
2 Ryan M. Keever (State Bar No. 301204)
Frances E. Heredia (State Bar No. 352103)
3 7355 Morro Road, Suite 101
Atascadero, California 93422
4 805.547.9300 (telephone)
805.547.9302 (facsimile)
5 info@simasgovlaw.com

6 **Attorneys for Petitioner/Contestant Jennifer Estrada and Petitioner**
Greenfield Union School District

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF KERN

10 JENNIFER ESTRADA,
11 Petitioner/Contestant,
12 vs.
13 MERCY PEÑA,
14 Respondent/Defendant

15
16 JENNIFER ESTRADA and GREENFIELD
UNION SCHOOL DISTRICT,
17 Petitioners,
18 vs.
19 KERN COUNTY ELECTIONS DIVISION,
20 Respondent.

21
22 RICARDO HERRERA,
23
24 Real Party in Interest.
25
26
27

Case No.: BCV-24-104155

[Hon. Bernard C. Barmann, Jr.]

**PETITIONERS/CONTESTANTS’
RESPONSE IN OPPOSITION TO
RESPONDENT/DEFENDANT MERCY
PEÑA’S MOTION FOR ATTORNEYS’
FEES; MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
COUNSEL**

Hearing on Motion for Attorney’s Fees:

Date: June 2, 2025
Time: 8:30 a.m.
Division: H
Location: Metro Justice Building
1215 Truxtun Avenue
Bakersfield, California 93301

Case Management Conference:

Date: August 14, 2025
Time: 8:30 a.m.
Division: H
Location: Metro Justice Building
1215 Truxtun Avenue
Bakersfield, California 93301

Date Action Filed: December 4, 2024
Trial Date: TBD

1 COMES NOW, Petitioner/Contestant Jennifer Estrada (“Ms. Estrada”) and Petitioner
2 Greenfield Union School District (“GUSD” or “District,” collectively “Petitioners”) with their
3 OPPOSITION TO MOTION FOR ATTORNEYS’ FEES (“Opposition”) filed by
4 Defendant/Respondent Mercy Peña (“Ms. Peña” or “Defendant”) on April 15, 2025, and opposes
5 the Motion as follows:

6 **BACKGROUND**

7 The election at issue was held on November 5, 2024, and administered by Respondent Kern
8 County Elections Division (“County” or “Elections Division”). Petitioner Greenfield Union School
9 District (“GUSD” or “District”) learned from Respondent Elections Division, on December 3, 2024,
10 that Respondent County mailed out ballots that allowed voters who reside in Trustee Area D of
11 GUSD to improperly and unlawfully vote in Trustee Area C of the GUSD, materially impacting the
12 election, and violating the law as alleged in the Petition. Notwithstanding this error and despite
13 Petitioner GUSD’s original December 4, 2024 petition for writ of mandate and request for an
14 injunction to stop the certification, Respondent Elections Division moved forward and certified the
15 election results on December 5, 2024. As a result of the certification of the materially compromised
16 election results including the illegal ballots, Petitioner GUSD was required to seat Defendant to the
17 District’s Board of Trustees at their statutorily mandated organizational meeting held on December
18 18, 2024.

19 In an effort to safe-guard the integrity of their school district’s election, Petitioners asked the
20 Court to annul the election in accordance with Elections Code to provide a fair result for all parties
21 involved, because it was impossible to cure the 67 illegal ballots cast by voters from Trustee Area D
22 in the election for Trustee Area C, and because curing those illegal votes would not address the fact
23 that they *should not be counted towards the result in the first place*. During the course of the
24 litigation, Defendant was represented by “pro bono” counsel. Ultimately, this Court’s findings, on
25 February 7, 2025, confirmed the election. Ms. Peña’s attorneys are now seeking recovery of their
26 fees, which amount to \$44,165.00 in fees for their work performed in this case between January 10,
27 2025, and April 15, 2025.

1 **LEGAL ARGUMENT**

2 **A. Ms. Peña’s Decision to Litigate was to Protect Her Own Individual Interest and Not**
3 **the Public Interest**

4 In this case, Ms. Peña is attempting to recover attorney’s fees after entering a case to
5 preserve her position as the winner, based upon the illegal votes, and not to preserve the integrity of
6 the election. Tellingly, she is not seeking recovery of fees under Code of Civil Procedure section
7 1021.5, for fees in cases resulting in a public benefit, because she did not enter this case to protect
8 any public interest, only her own. In fact, she did not need to enter the case and incur attorney’s fees
9 as Ricardo Herrera, the former Board of Trustees member did not. The issue before the Court
10 involved the errors of the County Elections Division and how to address the illegally cast votes
11 under the Elections Code and case law interpreting it. All of the evidence in the case came from the
12 County. Although Mr. Herrera and Ms. Peña would be impacted by the outcome of the legal
13 interpretation, neither had evidence to offer regarding the integrity of the process or illegal votes.¹

14 While GUSD was seeking to ensure that illegal votes were not counted, and voters in its
15 Trustee Districts were not disenfranchised, thus asking the Court to help determine who the
16 rightfully elected candidate was, Ms. Peña’s legal advocacy in this matter only served her own self-
17 interest in keeping her seat on the Board. She now receives a stipend and health and welfare
18 benefits, in addition to the political power that her position represents.

19 Ms. Peña entered the office under a cloud of illegitimacy and pushed for litigation when it
20 was not necessary, and is now attempting to divert precious resources from GUSD, and from the
21 school children it serves, to pay her attorney’s fees. Between what GUSD has already spent and the
22 fees Ms. Peña is seeking to recover with this motion, the costs will have already surpassed the cost
23 of a special election, which is what GUSD originally sought as a remedy here. She could have
24 stepped back and watched the process play out. Real party in interest Mr. Herrera was only named
25

26 _____
27 ¹ Neither party was able to secure meaningful admissible evidence from the alleged voters in the impacted Trustee
Areas and the case was decided upon the Court’s legal interpretation.

1 as such in the case to satisfy requirements under the Elections Code. There are better places that
2 GUSD could spend this money than on Ms. Peña’s attorneys.

3 **B. The District’s Case Was Not Frivolous**

4 The test for determining whether a case or appeal is frivolous in California involves two
5 standards: subjective and objective. Under the subjective prong of test, the court assesses the party’s
6 and their attorneys’ motives for bringing the case and whether the case was prosecuted solely for an
7 improper motive, such as to harass the respondent or delay the effect of an adverse judgment.
8 (*Tomaselli v. Transamerica Ins. Co.*, (1994) 25 Cal. App. 4th 1766, 1773.)

9 The second test for determining if a case is frivolous is the objective prong of the test,
10 whether the case is so indisputably without merit that any reasonable attorney would agree it was
11 totally devoid of merit? ..." (*Ibid.*) In this second test, the court looks not at whether the attorney
12 acted in the honest belief he had grounds for the action, but “whether any reasonable person would
13 agree that the point is totally and completely devoid of merit, and, therefore, frivolous.” (*Estate of*
14 *Walters* (1950) 99 Cal. App. 2d 552, 558 [222 P.2d 100].)

15 Both tests fail here as the Court’s findings and detailed analysis in this case demonstrate. As
16 Hon. Bernard C. Barmann, Jr. stated in his decision, the evidence provided to him “clearly
17 establishes that illegal votes were cast in this election.” (Decision, at ¶ 23.)² Ultimately, Judge
18 Barmann concluded that there was insufficient evidence to make any firm determination “regarding
19 how the illegal votes were cast or whether and how they affected the election.” (Decision, at ¶ 24.)
20 Judge Barmann’s task was to decide based upon the evidence provided whether it “appears the
21 illegal votes affected the outcome of the election?” i.e., whether the illegal votes ‘appear sufficient
22 in number or effect to have altered the outcome of the election.’” (Decision, at ¶ 25, citing *Gooch v.*
23 *Hendrix* (1993) 5 Cal. 4th 266, at 282-283.) The Court weighed the evidence and applied the
24 analysis in *Gooch*, and found that there was not sufficient evidence to overturn the election.

25
26
27

² GUSD requests the Court take Judicial Notice of the Decision attached as **Exhibit A** pursuant to Evidence Code
section 452(d) as an official prior act of this Court.

1 Judge Barmann was given a difficult job to do. The weight of this legal analysis hinged on
2 the language in *Gooch* stating that the court can overturn an election if it “appears” that “illegal
3 votes affected the outcome of the election.” (*Gooch, supra*, 5 Cal. 4th at 282-283.) This language is
4 vague and open-ended, leaving it to the trier of fact’s own judgment to determine what kind and
5 how much evidence was sufficient to affect the outcome of an election. This case could have gone
6 either way, and was anything but clear cut.

7 To claim that GUSD’s case was frivolous is ridiculous and deserves no further
8 consideration. Judge Barmann requested multiple conferences with the parties, extensive briefing,
9 and wrote a lengthy decision that carefully weighed the facts against the relevant case law to
10 determine how to rule on this matter. Ultimately, he had to resort to a mathematical equation to
11 determine the likelihood, to the best of his ability, that the illegal votes could have impacted the
12 election. That is to say, the Court’s decision was not an easy one, as GUSD raised legitimate and
13 tricky questions of fact and law in good faith before the court regarding truly illegally cast votes.
14 The Court’s detailed opinion and analysis regarding how to assess the impact of illegal votes alone
15 shows that the case was not frivolous. A frivolous case is considered to be one that lacks a
16 reasonable justification under the law, unlike this one. The record and deliberations in this matter
17 show that GUSD’s arguments were well reasoned and brought in good faith, and to protect the
18 integrity of GUSD’s Board election and voters. (*Retzloff v. Moulton Parkway Residents’ Assn., No.*
19 *One*, 14 Cal. App. 5th 742.)

20 Objectively, GUSD would have no logical motivation to bring a frivolous case under these
21 circumstances. GUSD would not benefit one way or another as to which candidate ended up being
22 elected to the School Board. In fact, GUSD spent considerable resources in order to protect the
23 legitimacy of the election process in a matter with no legal means to recover those spent funds. The
24 relief GUSD sought—to quickly hold a special election and redo the election, was in no way
25 designed to harass Ms. Peña or delay the results of the election. The result would have the same
26 effect upon her opponent, Mr. Herrera.

27

1 Ms. Peña also argues that GUSD’s causes for action under its petition for writ of mandate
2 are frivolous as well. This ignores the fact that she was at no time a party to the writ petition, which
3 was against the County, and further ignores that the procedural nature of the case changed
4 drastically from when it started to when it ended. GUSD initially filed a writ petition seeking an
5 injunction to prevent the *County Elections Office* from certifying the results of the election until the
6 illegal votes could be removed or a new election take place. On December 5, 2024, the County
7 certified the results anyway. After preliminary conferences with Judge Barmann, and evolving
8 information from the County about the vote count and number, the parties discovered that a
9 Statement of Election Contest was necessary to allow the Court the remedy to possibly set aside the
10 election under the Election Code. This was a completely different legal process and rendered the
11 prior writ petition irrelevant. GUSD’s strategy also changed based on new information received
12 from the County as it conducted new vote counts contemporaneously with this litigation.

13 For Ms. Peña to complain about these causes of action is disingenuous and largely moot as
14 to the fees she incurred, as *she had not entered the case at this time, nor had she even retained legal*
15 *counsel*. Furthermore, when it became clear to GUSD that a different approach under the law was
16 warranted based upon remedies the Court could grant, the District added a Statement of Contest in
17 addition to relief under Code of Civil Procedure section 1085 to address the Court’s concerns and to
18 seek available remedies under the Elections Code.

19 C. Ms. Peña Was Not a District Employee for the Purposes of This Action

20 Ms. Peña’s argument that she should be entitled to attorney’s fees from GUSD as a Board
21 Member is misplaced as this is not an employment law issue, it is an election law issue. This is the
22 same line of thinking Ms. Peña had when she claimed that Petitioner GUSD should have
23 represented her and confirms that she was not concerned about a fair election –just her position.

24 Ms. Peña continues to inappropriately and inaccurately construe GUSD’s motivations in
25 taking legal action to begin with.³ In filing their initial petition, GUSD was not taking a side for or
26 against either candidate. Ms. Peña misconstrues that GUSD had taken up a position against her,

27 ³ Exhibit B-C to Request for Judicial Notice – Ms. Peña’s website posts.

1 when in fact GUSD was only seeking to ensure that an error committed by election officials was
2 corrected and the will of the people of District Area C was accurately represented in the democratic
3 process. “Preservation of the integrity of the election process is far more important in the long run
4 than the resolution of any one particular election.” (*Fair v. Hernandez* (1981) 116 Cal.App.3d 868,
5 881.) The issue at the heart of this litigation was the fairness of the election that Ms. Peña was
6 involved in as a candidate, not her status or conduct as an individual or as a GUSD employee.

7 Additionally, Petitioner GUSD never claimed that Ms. Peña did anything wrong personally.
8 In fact, it was not representing or advocating on behalf of any candidate. GUSD litigated this matter
9 in order to protect fairness of the election process and to address the illegal votes. The District only
10 included Ms. Peña as a respondent/defendant in order to conform to the requirements of Election
11 Code section 16400 which would allow the Court to rule on the election results. This is why Mr.
12 Herrera was only a real party in interest and not a party to this litigation. Both he and Ms. Peña
13 should have had equal stake and interest in determining who of the eligible voters of District C
14 voted for them.

15 Ms. Peña argues that she is entitled to legal defense by GUSD under California Government
16 Code § 995, but fails to establish why. Ms. Peña’s motion acknowledges that section 995 does not
17 define employee, and attempts to find other parts of the code that do, but fails to come up with any
18 definition that extends that definition to election candidates. Furthermore, Ms. Peña did not need a
19 defense, as she was not personally the subject of any legal action. GUSD was not suing her, as she
20 claims, but was seeking an order from the Court to set aside the results of the election that the
21 County conducted.

22 Finally, as Ms. Peña conceded in her motion, providing her with a legal defense would have
23 been a conflict of interest for GUSD, nor did she ask for GUSD to provide her with legal counsel at
24 any time.

25 **D. Ms. Peña’s Legal Fees Are Not Reasonable**

26 The court may reduce or deny requests for attorney’s fees if they are deemed unreasonably
27 inflated relative to the success of the claim and the damages awarded, and whether the level of

1 success justifies the hours expended. (*Chavez v. City of Los Angeles*, 47 Cal. 4th 970; *Gunther v.*
2 *Alaska Airlines, Inc.*, 72 Cal. App. 5th 334.) The court can also reduce a fee award when the services
3 provided were duplicative or excessive. (*Graciano v. Robinson Ford Sales, Inc.*, 144 Cal. App. 4th
4 140.) Here, it is impossible to tell if the fees claimed her were inflated, duplicative, or excessive,
5 because there is not enough information provided to make such a determination.

6 Ms. Peña's legal counsel claims that they incurred \$44,165.00 in fees for the work
7 performed in this case between January 10, 2025, and April 15, 2025. (Ms. Peña's Exhibit C.) This
8 is difficult to imagine that they were able to run up such a large bill when GUSD's counsel, who
9 entered the case well before Ms. Peña got involved, has only incurred \$37,862.05 in legal fees
10 between December 3, 2024, and May 18, 2025. (*See* Declaration of Steven L. Simas, at ¶ 4.) Ms.
11 Peña's attorneys did not file anything in this matter until January 13, 2025, and to date their docket
12 actions have consisted of filing their response to second amended writ, filing an answer, one case
13 management conference statement, one notice of remote appearance, and appearing in court two
14 times to argue their case. Compared to the significantly increased number of filings and
15 appearances the District's counsel made in this case, Ms. Peña's claim is clearly excessive,
16 especially for such a short amount of time.

17 Additionally, while Ms. Peña was technically successful in this case, the nexus between the
18 work her attorneys performed and the given result is tenuous at best. Because the GUSD's goal in
19 filing their writ petition and initiating this litigation was to ensure that illegal votes were not
20 counted in the election, and had nothing to do with who won the election, Ms. Peña's active
21 participation in the case had minimal if any impact whatsoever. Neither she nor her counsel offered
22 any evidence or legal argument that the Court was not already addressing. On top of that, the result
23 of the case was the adjudication of what to do with the illegal votes (which the Court held are
24 illegal) and the status quo remained intact. Ms. Peña did not win any damages or special relief. She
25 simply stayed in her position for which the County had certified her, which does not justify the
26 amount of fees being claimed here.

27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

PROOF OF SERVICE

Jennifer Estrada, et al., v. Mercy Peña, et al.

Kern County Superior Court Case No.: BCV-24-104155

The undersigned declares:

I am over the age of eighteen years, not a party to this action, and my business address is 7355 Morro Road, Suite 101, Atascadero, CA 93422.

On May 19, 2025, I served the following documents:

PETITIONER’S/CONTESTANT’S RESPONSE IN OPPOSITION TO MOTION FOR ATTORNEY’S FEES

on the interested parties in said action by transmitting a true copy thereof addressed as follows in the manner indicated below:

Marshall S. Fontes, Chief Deputy
Stephanie Virrey Gutcher, Deputy
Andrew C. Hamilton, Deputy
Kern County Administrative Center
1115 Truxtun Avenue, Fourth Floor
Bakersfield, California 93301
sfontes@kerncounty.com
sgutcher@kerncounty.com
ahamilton@kerncounty.com

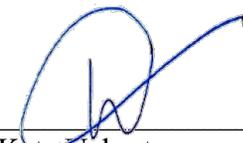
Robert H. Tyler
Julianne Fleischer
Advocates for Faith & Freedom
25026 Las Brisas Road
Murrieta, California 92562
btyler@faith-freedom.com
jfleischer@faith-freedom.com

Ricardo Herrera
5809 Canberra Avenue
Bakersfield, California 93307
ricardoherrera2995@gmail.com

X **By Mail:** I caused to be deposited an envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Atascadero, California. I am familiar with the mail collection practices of the law offices of Simas & Associates, Ltd, and pursuant to those practices the envelope(s) would be deposited with the United States Postal Service the same day.

X **By Email:** I transmitted the above document(s) to the above party(s) or attorneys’ email addresses of record in this action as shown above.

I declare under penalty of perjury that the foregoing is true and correct; same was executed at Los Angeles, California on May 19, 2025.



Kate Uckert