



Superior Court of California
County of Kern

Date: 02/07/2025

Time: 8:00 AM - 5:00 PM

BCV-24-104155

GREENFIELD UNION SCHOOL DISTRICT VS KERN COUNTY ELECTIONS DIVISION

Courtroom Staff

Honorable: Bernard C. Barmann, Jr.

Clerk: Veronica Urena

**NATURE OF PROCEEDINGS: RULING RE: SECOND AMENDED PETITION FOR WRIT OF ORDINARY MANDATE;
COMPLAINT FOR DECLARATORY RELIEF AND PETITIONER/CONTESTANT'S STATEMENT OF ELECTION CONTEST
HERETOFORE TAKEN UNDER SUBMISSION ON JANUARY 31, 2025, INCLUDING FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

The Court makes the following findings and orders:

See attached ruling incorporated hereto and made a part hereof.

Copy of minute order sent based on Certificate of Service.

FUTURE HEARINGS:

February 14, 2025 8:30 AM Case Management Conference
Bakersfield Division H
Barmann, Bernard C., Jr.

RULING
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GREENFIELD UNION SCHOOL DISTRICT VS KERN COUNTY ELECTIONS
DIVISION

BCV-24-104155

Greenfield Union School District, et al. v. Kern County Elections Division, et al.

BCV-24-104155

Ruling on matter submitted January 31, 2025, including Findings of Fact and Conclusions of Law

Election Contest pursuant to Elections Code §§16100 et seq.

The Court does not intend the following analysis, facts, and history to be a Statement of Decision by the Court, but they are recited merely to give context to this ruling.

No Statement of Decision will be prepared as no party requested a statement of decision and specified the principal controverted issues to be addressed before the matter was submitted for decision and the trial concluded within one calendar day. (CCP § 632; Cal Rules of Ct 3.1590(n).)

INTRODUCTION

This case arises from a mistake by elections officials that resulted in up to 67 ballots being cast illegally in an election. The facts of the case are not in dispute. What is in dispute is whether, under California law, the election should be annulled or confirmed.

Petitioner/Contestant Jennifer Estrada and Petitioner Greenfield Union School District (“GUSD” or “District”) ask the Court to annul a school board election that was held in the General Election on November 5, 2024, and administered by Respondent Kern County Elections Division (“County” or “Elections Division”), in accordance with Elections Code. On December 3, 2024, the County advised GUSD that the Elections Division had mailed out ballots that allowed voters who reside in Trustee Area D of GUSD to improperly and unlawfully vote in Trustee Area C of the GUSD. The County certified the election results on December 5, 2024, notwithstanding that error. As a result of the certification of the election results, and as required by law, Petitioner GUSD seated Respondent/Defendant Mercy Peña to the District’s Board of Trustees at their statutorily mandated organizational meeting held on December 18, 2024.

According to the County, 124 ballots were mistakenly sent to persons residing in Trustee Area D to vote in the Trustee Area C election, and 67 of those ballots were returned. 2,016 votes were counted in this particular election. Because of the way ballots are processed, however, it is now impossible to determine which of those 67 illegal ballots actually included votes cast in the particular election at issue. It is also impossible to determine for which candidate any of those ballots were cast. The election was decided by a margin of 8 votes, with Mercy Peña receiving 1,012 votes and Ricardo Herrera receiving 1,004 votes. No party disputes these facts.

Petitioners and the Contestant contend that annulling the election is the only option because it appears impossible to cure the 67 illegal ballots cast by voters from Trustee Area D in the election for Trustee Area C, and because curing those illegal votes would not address the fact that they should not be counted towards the result in the first place. They contend that, as matters currently stand, many of the District’s constituents have been disenfranchised and the District’s Board is forced to operate without knowing the true outcome of the District Area C Trustee

election. They further contend that the County's actions have cast doubt upon District's operations and whether Ms. Peña was properly elected, and adversely impacted the District, both candidates, and local families and children and the community as a whole.

GUSD has represented to the Court that if the election is annulled the District will leave the District Trustee Area C seat vacant for the remainder of the year, until an election can be held in November 2025.

Respondent/Defendant Peña contends that Petitioners and the Contestant have not satisfied their burden of proof regarding annulment under Elections Code section 16203. That statute provides as follows:

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

(Elec. Code § 16203). Ms. Peña contends that there is insufficient evidence for the Court to conclude that “it appears that a number of illegal votes has been given to [Ms. Peña] which, if taken from [her], would reduce the number of [her] legal votes below the number of votes given to [Mr. Herrera], after deducting therefrom the illegal votes which may be shown to have been given to [Mr. Herrera].” Ms. Peña further contends that there is insufficient evidence for the Court to conclude that the illegal votes “appear” to have affected the outcome of the election. (See *Gooch v. Hendrix* (1993) 5 Cal.4th 266, 282-283.)

PROCEDURAL HISTORY

This case was commenced on December 4, 2024, when GUSD filed a Petition for Writ of Ordinary Mandate and Request for Stay and/or Preliminary Injunction and Complaint for Declaratory Relief against the Elections Division. GUSD sought, among other things, a writ of ordinary mandate under Code of Civil Procedure section 1085, directed to the Elections Division compelling it to correct the alleged legal defects in the election and improper attributing of votes from Trustee Area D prior to certifying the election results, and preventing it from certifying election results, a declaratory judgment regarding the duties of the Elections Division, and a temporary restraining order and preliminary injunction against the Elections Division enjoining them from certifying the election results on December 5, 2024, until the votes comply with the law.

Also on December 4, 2024, at 5:14 p.m., GUSD filed an ex parte application for a stay, temporary restraining order and order to show cause why a preliminary injunction should not issue. GUSD served notice of the ex parte application on the morning of December 5, 2024, with

the hearing noticed for December 6, 2024, at 8:30 a.m. in Division H of this Court. Also on December 5, 2024, shortly after noon, the County filed an opposition to the ex parte application, noting that the County's deadline for certifying the election was that same day and arguing that GUSD lacks standing to contest the subject election, that the County has no discretion delay certification, and that the County could not, as a practical matter, provide the relief requested because the illegally cast votes are indistinguishable from valid votes.

On December 6, 2024, this Court heard GUSD's ex parte application and denied the application without prejudice to a future application because, as both sides agreed, the County had certified the election the day before. The application for a TRO to block the certification was, in this Court's view, moot.

GUSD thereafter filed amended pleadings, the last of which was filed on December 20, 2024, and captioned as Second Amended Petition for Writ of Ordinary Mandate; Complaint for Declaratory Relief; and Petitioner/Contestant's Statement of Election Contest. This pleading asserted claims for relief on behalf of GUSD as well as Jennifer Estrada, and named additional parties Mercy Peña as a Respondent/Defendant and Ricardo Herrera as a Respondent. Ms. Estrada requested that this Court to issue an order annulling and setting aside the election of Respondent Mercy Peña to the Board of Trustees, Area C, of GUSD pursuant to Elections Code sections 16100(d), 16400, 16403, and 16500. Ms. Estrada also asked this Court to issue a writ of ordinary mandate pursuant to California Code of Civil Procedure Section 1085, and issue a declaratory judgment under California Code of Civil Procedure Section 1060 directing the Elections Division to set aside its December 5, 2024 certification of the November 2024 election, on the Grounds set forth in Elections Code section 16100(d) that "illegal votes were cast" in the election for Board of Trustees of GUSD, and based upon Respondent Election Division mistakenly sending 108 ballots to the incorrect residential district or area for the District's Board of Trustees election. The County filed an Answer to this pleading on December 23, 2024, admitting certain allegations, denying certain allegations, and asserting affirmative defenses.

On January 8, 2025, Petitioners filed an ex parte application requesting an expedited hearing on the Second Amended Petition. On January 9, 2025, the County filed a notice of "non-opposition" to the ex parte application, advising that the County did not object to an expedited hearing so long as it is held on a date when their counsel is available, and arguing that GUSD lacks standing and that the County is only a real party in interest. The County summarized the proceedings up to that point as follows:

This action was originally brought as a writ of mandate against the Respondent Kern County Elections Division (an improper defendant) by the Petitioner Greenfield Union School District (which lacked standing) to improperly halt the mandatory certification of election results. After multiple amendments, this action has morphed into an election contest between the proper parties, Contestant Jennifer Estrada and Defendant Mercy Peña. Greenfield USD has not let the County out of this matter, even though it has no role except as a real party of interest.

The court conducted a hearing on the ex parte application on January 10, 2025, and continued the matter to January 14, 2025. Petitioners submitted supplemental briefing on January 13, 2025. Also on January 13, 2025, Respondent/Defendant Mercy Peña submitted a response to the Second Amended Petition.

On January 14, 2025, the Court conducted a further hearing on the ex parte application for an expedited hearing. After conferring with counsel, the Court set the hearing on the election contest aspect of this case for January 31, 2025, at 1:30 p.m. in Division H. Counsel for Ms. Peña waived the requirements under Elections Code section 16501 that a citation be issued to Respondent Peña. The Court authorized Ms. Peña to file a supplemental brief and the other parties to file replies in advance of the January 31, 2025 hearing. The Court directed counsel for Petitioner to provide Ms. Peña's counsel with a copy of filings in this case. The Court also directed counsel for Kern County Elections Division to provide all parties by January 16, 2025, with a list identifying the 108 ballots mailed out improperly and a list of identifying information for the 57 ballots returned.

On January 21, 2025, Mercy Peña filed an Answer to the Second Amended Petition. On January 28, 2025, Petitioners filed a Reply in opposition to Ms. Peña's Answer.

The election contest came on for hearing before this Court on Friday, January 31, 2025. Ms. Peña was present in court. Her attorney, Mr. Tyler, was present via CourtCall video. Petitioners and the Contestant were represented by Mr. Simas, who also participated via CourtCall video. No court reporter was present to report the proceedings. No witnesses were called. The Court considered all the papers submitted by the parties. The Court heard the proofs and allegations of the parties as well as the arguments of counsel and thereafter took the matter under submission.

Pursuant to Elections Code section 16603, the Court is required to file its findings of fact and conclusions of law within 10 days after submission of the matter and immediately thereafter pronounce judgment "either confirming or annulling and setting aside the election." (Elec. Code § 16603.) Below are the Court's findings of act and conclusions of law, followed by a pronouncement of its judgment.

FINDINGS OF FACT

The facts are not in dispute.

Parties.

1. Petitioner/Contestant Jennifer Estrada is a resident of Bakersfield, California, a voter in that jurisdiction, and a qualified elector in District Trustee Area C of the GUSD who cast her vote in the November 5, 2024 election.

2. Petitioner GUSD is a public school district located within Kern County and governed by a Board of Trustees elected by the public. Petitioner GUSD administers nine elementary schools, three middle schools, and one community school, and serves approximately 9,000 students.

3. The District adopted a resolution whereby its Board of Trustees are elected by the residents of each Trustee Area, consistent with the Education Code. Specifically, on August 24, 2011, pursuant to Education Code 5019(c) and 5030(b), the Board of Trustees of the GUSD approved Resolution 12-1, which changed its system for electing trustees or governing board members from an “at-large” district to a “by-trustee” district. (See Superintendent Hendrix Decl., Jan. 8, 2025, ¶ 3 & Exh. A thereto.)

4. Respondent Kern County Elections Division is a division within Kern County charged with administering and certifying elections and results pursuant to Elections Code section 15372.

5. Respondent/Defendant Mercy Peña is the Trustee for Area C, who was sworn in on December 18, 2024, based upon the requirements of Education Code section 35143, which requires the District to conduct an organizational board meeting within a fifteen-day period that commences with the second Friday in December following the regular election.

6. Real Party in Interest Ricardo Herrera is the former incumbent Board of Trustees member for District Trustee Area C who ran against Respondent Ms. Peña in the election for District Trustee for Area C on the November 5, 2024, ballot.

The Candidates and the Election.

7. In 2016, GUSD Trustee Area C voters elected Ricardo Herrera as the Trustee for Area C of the District. He has served continually and been reelected since that time. Mr. Herrera ran for reelection in the recent November 5, 2024, election against Ms. Peña for the District Trustee Area C position. (Hendrix Decl., ¶ 4.)

8. On December 3, 2024, Petitioner GUSD became aware that Respondent Elections Division discovered “108 voters were assigned to the wrong trustee area in the District Area C race and were incorrectly allowed to vote in that race. All affected voters should have assigned to Trustee Area D.” (Auffant Decl., Dec. 4, 2024, ¶ 5.)

9. With the incorrect Trustee Area D ballots included in the tally, Ms. Peña won the election for Trustee Area C by 8 votes over incumbent Mr. Herrera. (Hendrix Decl., ¶ 5.)

10. Citing the Elections Code section 15372 deadline to certify the results by December 5, 2024, Respondent Elections Division certified the election results for Petitioner GUSD’s governing board. (*Id.*, ¶ 6.)

11. Per the District’s bylaws, the District is required to seat the certified winner of the election at an organizational meeting following the certification of a new Trustee election. (*Id.*, ¶ 9.) Accordingly, following the certification of the election results, GUSD seated the County-certified winner, Ms. Peña and replaced Mr. Herrera at its December 18, 2024, Board meeting. (*Id.*, ¶ 10.)

12. The only evidence regarding the election process supplied to the Court in this case is found in two Declarations by Elections Process Coordinator Jennifer Lozano of the County Elections Division. The first Declaration is dated January 10, 2025, and alleged the County improperly mailed 108 ballots to voters in the Trustee D Area, and 57 were returned. (Lozano Decl., Jan. 10, 2025, ¶¶ 2-3; Supp. Lozano Decl., Jan. 15, 2025, ¶ 3.) Ms. Lozano's analysis was based on the County's initial review of the mailing error. (*Id.*) Following an earlier hearing in this matter, the County updated the number of illegal ballots cast. In her Supplemental Declaration dated January 15, 2025, Ms. Lozano discovered upon subsequent review that 124 ballots were sent to voters in Trustee Area D and that 67 illegal votes were returned:

In total, 124 voters remained in Trustee Area C which should have been moved to Trustee Area D. A ballot was sent out to each of those 124 voters improperly allowing them to vote in the Trustee Area C election. Out of those 124 ballots, 67 ballot envelopes were returned. However, once a ballot is removed from an envelope, it cannot be traced to the voter and remains anonymous. It cannot be determined that each of those 67 ballots voted in the Trustee Area C election; only that the ballot was returned.

(Supp. Lozano Decl., ¶ 4.) Per the Court's request that the County provide a list of the reported 108 voters to whom ballots were improperly provided, Ms. Lozano submitted a supplemental declaration and a list of the 124 (up from the original 108) Trustee Area D voters who received the incorrect Trustee Area C ballots. (*Id.*, ¶ 6 & Ex. A.)

13. The details of what happened in the election, are as follows:

- a. An error occurred while processing ballots for the Greenfield Union School District Trustee Area C election. The boundary between Trustee Area C and Trustee Area D changed prior to the General Election. Following the change in the boundary, homes in Trustee Area C were moved to Trustee Area D in the County's election management system. However, certain homes which should have been moved in the County's election management system to Trustee Area D remained in Trustee Area C. (Lozano Decl. dated January 15, 2025, ¶ 2).
- b. It appears the error occurred in part because the updated Geographic Informational Services (GIS) used by the Elections Division was not keyed correctly into the Election Management System. In total, 108 voters remained in Trustee Area C which should have been moved to Trustee Area D. A ballot was sent out to each of those 108 voters improperly allowing them to vote in the Trustee Area C election. (*Id.* at ¶ 2).
- c. The records were reviewed, and it was confirmed that all 108 of the improper ballots were sent to voters. Out of those 108 ballots, 57 ballot envelopes were returned. However, once a ballot is removed from an envelope, it cannot be traced

to the voter and remains anonymous. It cannot be determined that each of those 57 ballots voted in the Trustee Area C election; only that the ballot was returned. (*Id.* at ¶ 4).

- d. On January 14, 2025, Ms. Lozano re-reviewed the voter list to provide the requested list of voters and the County revised its numbers. She noted that there were 124 ballots improperly mailed to the Trustee Area C voters and that 67 ballots were returned. (*Id.* at ¶¶ 3-4).
- e. She again confirmed that “It cannot be determined that each of those 67 ballots voted in the Trustee Area C election; only that the ballot was returned.” (*Id.* at ¶ 4).
- f. In the Greenfield Union School District Trustee Area C election, there were 2016 total votes cast. Mercy Peña received 1012 votes and Ricardo Herrera received 1004 votes. (Lozano Decl. dated January 10, 2025, ¶ 5; Supp. Lozano Decl. dated January 15, 2025, ¶ 5).

14. The Court finds that 67 people residing in Trustee Area D returned ballots with the Trustee Area C election on the ballot, but it is impossible to tell whether each of those 67 voters actually voted in the Trustee Area C election or for whom they voted.

15. There is no evidence, or even suggestion by anyone, that either of the two candidates or people associated with them had any involvement in the error affecting this election. Neither candidate engaged in any misconduct or is otherwise responsible for the current situation.

16. The illegal votes are the result of an error by the County and not the result of any fraud or other intentional violation of the law.

17. The only evidence submitted to the court that sheds any light on how any of those 67 votes were cast are submissions by the District and Ms. Peña regarding their respective post-election investigations. Petitioner GUSD retained private investigator A. Ace Pierce who attempted to interview all 67 voters from District D who voted in the Greenfield Union School District Board of Trustee Election, District Area C election to determine who they voted for. (Petitioner/Contestant Estrada’s and Petitioner GUSD’s Reply in Opposition to Respondent/Defendant Pena’s Answer Brief, Ex. F (All Pro Investigations report).) Of the 67 voters he reached out to, he was only able to obtain declarations from five of them attesting to how they voted in the election. His report indicates the reasons given for not giving an answer, which includes not being home, not remembering who they voted for, being bedridden and unavailable, moving to Texas, and being incarcerated, among others. Of those five declarations Mr. Pierce obtained, two of them voted for Ms. Peña, one voted for Mr. Herrera, one voted for “the democratic party,” and the last voted for “the republican party.” Neither candidate in this election was affiliated with a major party, so this offers no meaningful information as to for

whom these last two voters actually voted. In Ms. Peña’s brief, she describes her attempt to cure votes, wherein she called each of the 67 voters from District Area D who voted in the District Area C election. She did not obtain a single answer from any of the voters as to who they voted for in the election.

18. Recounting votes in this case would be impossible and futile, and calling the 67 people who returned the improper ballots as witnesses in a trial, as Ms. Peña suggests, would be a waste of time, not to mention likely an invasion of privacy and harassing. The results of Petitioner GUSD’s investigation, in conjunction with Ms. Peña’s own investigation, shows how futile a recount would be and how a traditional trial on this matter would not lead to a more accurate result. Although no party has briefed voter privacy issues, the Court doubts that a voter may be compelled to reveal in a public trial how they voted in an election given that ballots are generally secret and private.

CONCLUSIONS OF LAW

1. Pursuant to Education Code section 35143, the District is required to seat the certified winner of the election at an organizational meeting following the certification of a new Trustee election. As a result of the Respondent Elections Division’s certification of the results, the District had no choice but to seat the County-certified candidate Ms. Peña at its Board meeting on December 18, 2024.

2. “Strict rules embodied in the Elections Code govern a court’s review of a properly contested election.” *Gooch v. Hendrix* (1993) 5 Cal.4th 266, 277. “It is a primary principle of law as applied to election contests that it is the duty of the court to validate election if possible. That is to say, the election must be held valid unless plainly illegal. [Citations.]” (*Wilks v. Mouton* (1986) 42 Cal.3d 400, 404, quoting *Rideout v. City of Los Angeles* (1921) 185 Cal. 426, 430.)

3. As the California Supreme Court observed in *Gooch*:

Of competing importance, however, is the principle that, “preservation of the integrity of the election process is far more important in the long run than the resolution of any one particular election.” (*Fair v. Hernandez* (1981) 116 Cal.App.3d 868, 881 [172 Cal.Rptr. 379].) To this end, we have observed that, “The policy in favor of upholding elections appears in the cases in conjunction with the rule that ‘[t]echnical errors or irregularities arising in carrying out directory provisions *which do not affect the result* will not [void] the election.’ (*Davis v. County of Los Angeles* [(1938)] 12 Cal.2d [412,] 426 [84 P.2d 1034] (italics added [by Court in *Gooch*]); *Rideout v. City of Los Angeles, supra*, 185 Cal. at p. 430; *People v. Prewett* [(1899)] 124 Cal. [7,] 10 [56 P. 619].) Both the policy and the rule manifest the fact that ‘[c]ourts

are reluctant to defeat the fair expression of popular will in elections. . . .' (*Simpson v. City of Los Angeles* [(1953)] 40 Cal.2d [271,] 277 [253 P.2d 464]); neither has been invoked to uphold an election in the face of illegalities which affected the result--a situation in which the will of the people may be thwarted by upholding an election." (*Canales v. City of Alviso* (1970) 3 Cal.3d 118, 127 [89 Cal.Rptr. 601, 474 P.2d 417].)

4. California Elections Code section 16100 sets forth the possible grounds for an election contest as follows:

Any elector of a county, city, or of any political subdivision of either may contest any election held therein, for any of the following causes:

...

(d) That illegal votes were cast.

5. A "court's authority to invalidate an election is limited to the bases for contest specified in Elections Code section 16100." (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 192.)

6. Elections Code section 16402 provides as follows with respect to the form of a contest statement:

When the reception of illegal votes is alleged as a cause of contest, it is sufficient to state generally that in one or more specified voting precincts illegal votes were given to the defendant, which, if taken from him or her, will reduce the number of his or her legal votes below the number of legal votes given to some other person for the same office.

Testimony shall not be received of any illegal votes, unless the contestant delivers to the defendant, at least three days before the trial, a written list of the number of illegal votes, and by whom given, which he or she intends to prove. No testimony may be received of any illegal votes except those that are specified in the list.

7. The contestant of the election has the burden of proving the defect in the election by clear and convincing evidence (*Smith v. Thomas* (1898) 121 Cal.533, 536.)

8. "Illegal votes are votes which have not been cast in the manner provided by law." (*Gooch v. Hendrix* (1993) 5 Cal.4th 266, 279) (citing *Bush v. Head* (1908) 154 Cal.

277, 281-282 [97 P. 512]).) Education Code Section 5030(b) requires “that one or more members residing in each trustee area be elected by the registered voters of that particular trustee area.” Further, Elections Code section 14026(b) states that “‘District-based elections’ means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.” Since the GUSD governing body adopted the “by-trustee” resolution in 2011, all elections have proceeded in accordance with these requirements. Votes that do not comply with these Education Code requirements are illegal votes.

9. Elections Code section 1620 provides the following standard for when a court may set aside an election on account of illegal votes:

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

10. There were up to 67 illegal votes cast in this election, although the specific number of illegal votes cannot be determined because it is impossible to determine whether all 67 people who returned ballots actually voted in this particular election. It is also impossible to determine how many illegal votes were cast for Ms. Peña and how many illegal votes were cast for Mr. Herrera.

11. If the Court were to apply Elections Code section 1620 literally, based on the evidence presented to the Court the Court could not find that it appears that a number of illegal votes has been given to Ms. Peña which, if taken from her, would reduce the number of her legal votes to below the number of votes given to Mr. Herrera, after deducting therefrom the illegal votes shown to have been given to Mr. Herrera. But as the California Supreme Court made clear in *Gooch v. Hendrix* (1993) 5 Cal.4th 266, the analysis does not end there.

12. In *Gooch*, the Supreme Court addressed the question: May an election be annulled on clear and convincing evidence of illegal voting ***when it appears the illegal votes affected the outcome of the election***, but it cannot otherwise be determined precisely for whom the illegal votes were cast? The Court held that the then-controlling statute, the predecessor to Elections Code section 1620 with identical wording, authorizes the annulment of a contested election under such circumstances. (*Gooch*, 5 Cal.4th at 269 [emphasis added].)

13. The facts and circumstances of illegal votes giving rise to the *Gooch* case are significantly different from those here, but the case is nonetheless very instructive. The

illegal votes in *Gooch* were cast by absentee voters whose ballot applications had been solicited by members of a voter education project called the Black American Political Association of California (BAPAC). When the absentee ballots arrived, the voters were encouraged to vote in the presence of the BAPAC solicitor, who would offer advice on the candidates or issues. Although it was impossible to determine for which candidates the illegal votes were cast, the Supreme Court found sufficient uncontroverted circumstantial evidence that the illegal votes had affected the outcome of the election to justify annulling all of the election results. (*Id.* at p. 285.)

14. The elections at issue in that case were among 13 seats of smaller school district boards in the Fresno area that were targeted by an organized “Voter Education Project” that implemented voter registration and absentee ballot strategies. (5 Cal.4th at 271.) The court in that case concluded that 930 illegal ballots had been cast in five school board races and as to each race the illegal ballots could have affected the outcome of the election. (5 Cal.4th at pp. 270, 276.) Because the illegal ballots had been mixed in with the legal ballots, however, it was impossible to identify them and determine if those specific ballots had actually changed the results of the election. (*Id.* at p. 276.) The court nevertheless concluded that in light of “widespread illegal voting practices that permeated the election” on behalf of the winning candidates, the election results should be set aside. (*Id.* at p. 285)

15. The trial court in *Gooch* determined that there had been fraud and tampering with respect to 93 ballots that had been disqualified by clerk’s challenge and that another 930 absentee ballots were cast in violation of the governing statutes, and were therefore illegal and could not be counted. In each of the five elections at issue in *Gooch*, between 40 and 72 percent of the votes cast in the election were illegal votes. “The percentages of illegal ballots cast in each of the five school district contests (obtained by dividing the number of illegal-but-counted . . . ballots by the total number of ballots counted in each district) were as follows: Orange Center Elementary, 70/173 40 percent; Pacific Union Elementary, 310/632 49 percent; West Fresno Elementary, 369/509 72 percent; West Park Elementary, 76/176 43 percent; and Washington Union High School, 930/2224 42 percent.” (5 Cal.4th at 276.)

16. The trial court there, as in this case, recognized it could not determine with certainty how the illegal ballots were cast, and thus could not deduct the illegal votes from the defendants to see who received a majority of lawful votes for each office. (*Id.* at 276.) The trial court, “‘after careful consideration of the competing factors,’ including ‘the wholesale violation of the mandatory requirements of the absentee voting laws in this case,’ concluded the evidence showed ***the great majority of illegal-but-counted . . . ballots were voted for the defendants***, and had been ***sufficient to affect the election of many of them***.” (*Id.* [emphasis added]) The trial court annulled the consolidated elections and ordered new elections held forthwith, concluding “[a]nything less, under these facts, would result in a loss of public respect for and diminution of the integrity of the absentee ballot process” and would “tend to encourage even greater abuse of the process in future elections.” (*Id.*)

17. The Court of Appeal found substantial evidence supported the trial court's factual findings regarding the illegal ballots, but reversed the trial court. Focusing on the

language of then section 20024, the Court of Appeal concluded the results of the consolidated elections could not be set aside because it could not be determined for whom the illegal ballots were cast. (*Id.* at 277.) As the Supreme Court noted in its opinion, “[t]he irony of this conclusion was not lost on the Court of Appeal, which concluded: ‘The violations of election laws pertaining to absentee balloting in this case were pervasive and significant, yet the very nature and extent of the illegal voting renders any remedy illusory. The court is constrained by the statutory limitation on the authority to annul and set aside the election based upon illegal votes.’” (*Id.*)

18. The Supreme Court reversed the Court of Appeal. Addressing Elections Code former section 20024, which was identical to current section 16203, the Supreme Court in *Gooch* concluded, “We do not believe the Legislature intended that under circumstances such as these, where clear and convincing evidence established pervasive illegalities that permeated the election process, and where, although it cannot be determined on a vote-by-vote basis for whom the illegal votes were cast, it nonetheless ‘appears’ the illegal votes affected the outcome of the election, a trial court is without authority to annul and set aside the election results within its discretion under section 20086.” “In utilizing the phrase ‘it appears,’ we think the Legislature contemplated circumstances, such as those at hand, in which illegal votes cannot be attributed to any one candidate, but nevertheless ‘appear’ sufficient in number or effect to have altered the outcome of the election.” (*Gooch*, supra, 5 Cal.4th at pp. 282-283 construing Elec. Code, former 20024.)

19. The Court went on to explain how its interpretation of the statute is supported by its previous decision in *Canales v. City of Alviso* (1970) 3 Cal.3d 118 [89 Cal.Rptr. 601, 474 P.2d 417], in which the Supreme Court had reversed a trial court’s judgment upholding an election. The *Canales* case involved an election held to determine whether the City of Alviso should be consolidated with the City of San Jose. The election results were 189 votes in favor and 180 votes opposed to consolidation. (*Canales v. City of Alviso*, supra, 3 Cal.3d at 123-124.) Later, 21 votes were challenged by election contestants. “The trial court upheld the election after finding that ‘of the 21 challenged voters, 10 were disqualified by nonresidence in Alviso and one by virtue of a felony conviction; that of these 11 illegal votes, one was cast for and one against consolidation.’” (*Gooch*, supra, 5 Cal.4th at 283 [quoting *Canales v. City of Alviso*, supra, 3 Cal.3d at p. 125].) “The court could not, however, determine how the remaining nine illegal votes were cast. It therefore concluded the remaining nine votes should be apportioned by ‘tak[ing] half from each side--leaving a final tally of 183 1/2 votes in favor and 174 1/2 votes opposed to consolidation.’” (*Gooch*, 5 Cal.4th at 283-284) “Based on this conclusion, the trial court confirmed the election results.” (*Id.*)

20. The Supreme Court reversed the trial court’s judgment. As the Court explained in its later opinion in *Gooch*,

In reversing the [*Canales*] judgment, we acknowledged that section 20024 requires a showing that “illegal votes were sufficient in number to account for the result but also that illegal votes were

cast in such a manner as in fact to determine the result.” (*Canales v. City of Alviso*, supra, 3 Cal.3d at p. 126.) Nonetheless, after noting that the only evidence as to how the remaining nine illegal votes were cast were the signatures of the voters on the “petition by virtue of which the election was held,” we concluded such evidence, albeit circumstantial, was admissible on the question (citing *Robinson v. McAbee* (1923) 64 Cal.App. 709, 718 [222 P. 871]), that “[the] contestants met their burden as to the crucial nine votes,” and that “in the absence of any contrary evidence, the trial court erred in refusing to so find.” (*Canales*, supra, 3 Cal.3d at p. 126.)

We observed in *Canales* that, “[t]he policy in favor of upholding elections appears in the cases in conjunction with the rule that ‘[t]echnical errors or irregularities . . . which do not affect the result will not [void] the election.’ [Citations.]” (*Canales v. City of Alviso*, supra, 3 Cal.3d at p. 127 . . .) We further recognized that “neither [the policy nor the rule] has been invoked to uphold an election in the face of illegalities which affected the result--a situation in which the will of the people may be thwarted by upholding an election.” (*Id.*)

(*Gooch*, 5 Cal.4th at 284.)

21. Regarding the sufficiency of the evidence offered by the election contestants in *Canales*, the *Gooch* Court summarized its ruling in *Canales* as follows:

We rejected the respondents' claim that the election contestants' evidentiary showing, which was largely circumstantial (illegal voters had signed a petition to put the consolidation measure on the ballot), was insufficient to establish that the election had in fact been affected by the illegal votes. Opining that “a voter's signature on a petition urging that an issue be put on the ballot so that a certain result may be obtained is circumstantial evidence which is admissible to show that he in fact voted in favor of that result [Citation],” we concluded that the “[r]espondents had the same . . . opportunity to ask voters how they voted, but did not cross-examine the witnesses who testified that they signed the petition or favored consolidation to attempt to rebut [contestants'] circumstantial showing that the witnesses voted in accord with their signatures on the petition. [P] Although an elector who signed the petition may subsequently have changed his mind, respondents made no effort to show that this ever occurred in fact. As a result the record clearly contains substantial evidence tending

to show that all nine illegal votes were cast in favor of consolidation, and absolutely no evidence to the contrary. Accordingly, this judgment [confirming the election] must be reversed for lack of any evidentiary support. [Citation.]” (*Canales v. City of Alviso*, supra, 3 Cal.3d at p. 128.)

(*Gooch*, 5 Cal.4th at 284.)

22. The *Gooch* Court then compared the evidentiary showings in the trial courts in *Gooch* and *Canales*, and commented:

We are of the opinion that here, the election contestants made a much stronger circumstantial evidentiary showing that illegal votes affected the outcome of these consolidated elections than was made in *Canales*, supra, 3 Cal.3d 118. The widespread illegal voting practices that permeated this election--including fraud and tampering, the clearly established violations of sections 1006 and 1013, BAPAC's "loss" of 269 absentee ballots mailed to it by the Fresno County Clerk, the fact that nearly all of the candidates themselves, knowingly or otherwise, took part in the malconduct of "soliciting" absentee votes in violation of specific Elections Code provisions, the large percentages (40 percent to 72 percent) of illegal BAPAC absentee ballots cast and counted in each election, and the fact that all BAPAC-supported candidates won handily in each and every one of the election contests--together furnished sufficient, essentially uncontroverted circumstantial evidence in support of the conclusion that "it appear[ed]" the illegal votes affected the outcomes of the consolidated elections. (§ 20024.)

(*Gooch*, 5 Cal.4th at 284.)

23. In the present case, the evidence provided to the Court clearly establishes that illegal votes were cast in this election. There were as many as 67 illegal votes cast, though the precise number cannot be determined. The number of illegal votes is about 3.32% of the votes cast in the election (67/2016), a far smaller portion of the overall votes than in any of the five elections at issue in *Gooch*.

24. There is insufficient evidence for the Court to make any firm determination regarding how the illegal votes were cast or whether and how they affected the election. Other than the two people who informed Mr. Pierce that they voted for Ms. Peña and the one person who informed Mr. Pierce that they voted for Mr. Herrera, the Court has no way of determining how any of the other up to 64 illegal votes were cast. There is no direct or, as there was in *Canales*, circumstantial evidence, from which the Court can determine how those voters

actually voted or likely voted. In the absence of such evidence, the court is not authorized to annul the election on the basis of the illegal votes and instead must uphold the election.

25. Unlike the circumstances in *Gooch*, here there was no “wholesale violation” of election laws, or “fraud, tampering or overreaching” with respect to any ballots, and no evidence of “pervasive illegalities the permeated the election process.” (See *Gooch*, 5 Cal.4th at 281, 282.) And unlike in *Gooch*, there is no concern in the present case that upholding the election would tend to encourage abuse of the process in future elections. But such misconduct is not necessary for it to be appropriate for a court to annul an election. What matters is whether it “‘appears’ the illegal votes affected the outcome of the election,” i.e., whether the illegal votes “‘appear’ sufficient in number or effect to have altered the outcome of the election.” (See *Gooch*, 5 Cal.4th at 282-283.)

26. Unlike the trial court in *Gooch*, this Court does not have sufficient evidence from which it could find that “the great majority of illegal-but-counted” ballots, or even that a majority of the illegal-but-counted ballots, were voted for Ms. Peña. Nor is the evidence sufficient to support a finding that the illegal ballots “were sufficient to affect the election” of Ms. Peña. (See *Gooch*, 5 Cal.4th at 282.) While there were many more illegal votes (67) than the margin of the election (8), and therefore those illegal votes could possibly have affected the outcome of the election, it is impossible to determine that those illegal votes were mostly voted for Ms. Peña. Assuming all of the 67 ballots actually contained votes in this specific election, in order for those 67 votes to have affected the outcome of the election such that Ms. Peña would have fewer legal votes than Mr. Herrera, at least 38 of those 67 votes would have had to be cast for Ms. Peña (with no more than 29 going to Mr. Herrera). In that circumstance, Ms. Peña would have received 974 legal votes ($1012-38=974$) and Mr. Herrera would have received 975 legal votes ($1004-29=975$). But there is no evidence that the illegal votes were divided in that proportion, i.e., 56.7% for Ms. Peña ($38/67$) and 43.3% for Mr. Herrera ($29/67$). The overall vote before deducting the illegal ballots was split 1012 to 1004, i.e., 50.2% for Ms. Peña to 49.8% for Mr. Herrera. If the 67 illegal votes were split in the same proportion, they would have been 34 illegal votes for Ms. Peña and 33 illegal votes for Mr. Herrera, which would not alter the election result. We simply do not know, one way or another, whether or how those 67 illegal votes, which were 3.32% of the votes cast, affected the election. Thus, the Court cannot say that it “appears” that they affected the outcome any more than the Court could say definitively that they did not.

27. While the Court shares GUSD’s and the Contestant’s concerns that the illegal votes have impacted the integrity of the election, including casting some doubt as to which candidate may have actually won, and disenfranchising voters in the affected area, those concerns alone, i.e., in the absence of any evidence regarding how the illegal votes were cast, are not sufficient under the law to authorize this Court to annul the election. A competing concern is that if the Court were to annul the election that would disenfranchise all of the voters in Trustee Area C as long as that seat would be vacant since they would have no voice on the GUSD school board.

Other Procedural Issues.

Ms. Peña contends that GUSD's Second Amended Petition should be dismissed for failure to seek permission from her to do so or leave of Court before filing, and for not being properly pled as a Statement of Contest. The Court disagrees. This case began with the Petitioner GUSD filing an *ex parte* application seeking a temporary restraining order to prevent the County from certifying the results of the election. On December 5, 2024, the County moved forward to certify the election results. The *ex parte* application was heard on December 6, 2024, and denied as moot. GUSD then filed a Petition for Writ of Traditional Mandate to compel the County to perform its ministerial duties and fix its ballot-mailing error. The County claimed GUSD did not have standing to challenge the election. At that time, Ms. Peña was not yet a party. At the time of the initial filing, the information regarding the County's error in mailing out the 108 ballots to the incorrect Trustee Area of the District was developing and incomplete. Eventually, the parties focused on Elections Code sections 16100 and 16500, which require an elector or voter to challenge the results. The Petitioners and the County then adopted the view that the law required an election contest, not a writ petition, in order to remedy the situation and obtain the relief sought. To accomplish this, Petitioners filed the Second Amended Petition, and Petitioner Estrada filed her Statement of Contest of the Election. To comply with Elections Code §16400, Petitioner/Contestant Ms. Estrada and Petitioner GUSD added Respondent/Defendant Ms. Peña and Real Party in Interest Ricardo Herrera. Ms. Peña was not a party in the initial pleadings and therefore would have had no standing to object to GUSD's filing of its Second Amended Petition.

Ms. Peña also contended that she had not properly been served with process. The Court rejects this argument. Ms. Peña and her counsel appeared in court on January 14, 2025, and participated in the hearing to decide whether and when to set a hearing on the election contest, and related procedural matters. At that hearing, Ms. Peña's counsel, on her behalf, waived the requirements under Elections Code section 16501 for a citation to be issued as to Respondent Mercy Peña. The Court directed Petitioner's counsel to provide Ms. Peña's counsel copies of all filings in the case. All counsel, including Ms. Peña's attorney, agreed to the hearing and briefing schedule for the January 31, 2025, hearing on the election contest. Any arguments regarding defective service were waived.

Conclusion

For the reasons discussed herein, the Court's judgment is to confirm the election.

Judgment on the election contest aspect of this case will be entered separately.

GREENFIELD UNION SCHOOL DISTRICT VS KERN COUNTY ELECTIONS DIVISION
BCV-24-104155

CERTIFICATE OF SERVICE

The undersigned, of said Kern County, certify: That I am a Deputy Clerk of the Superior Court of the State of California, in and for the County of Kern, that I am a citizen of the United States, over 18 years of age, I reside in or am employed in the County of Kern, that I am not a party to the within action and that my business address is , that I served the **Minutes dated February 07, 2025** attached hereto on all interested parties and any respective counsel of record in the within action, following standard Court practices, by: (a) enclosing true copies thereof in a sealed envelope(s) with postage fully prepaid and depositing/placing for collection and delivery in the United States mail at Bakersfield, California; and/or (b) enclosing true copies thereof in a Kern County interoffice envelope(s) and placing for collection and delivery; and/or (c) by posting true copies thereof, to the Superior Court of California, County of Kern, Non-Criminal Case Information Portal (www.kern.courts.ca.gov); and/or (d) electronically transmitting true copies thereof by electronic service or e-mail. Service address(es) are indicated on the attached service list.

Date of Service: February 07, 2025

Place of Service: Bakersfield, CA

Sent from electronic service address: donotreply@kern.courts.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Tara Leal
CLERK OF THE SUPERIOR COURT

Date: February 07, 2025

By: Veronica Urena
Veronica Urena, Deputy Clerk

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