

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 74

21STCP02372

ANDRE SPICER vs ISAAC GALVAN

May 27, 2022

2:50 PM

Judge: Honorable Michelle Williams Court

CSR: None

Judicial Assistant: C. Guerrero

ERM: None

Courtroom Assistant: R. Cruz

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

The Court, having taken the matter under submission on 04/21/2022 for Hearing - Other Re: Whether Evidence Should Be Reopened, now rules as follows:

Summary

After certification of the results in an election for the office of City of Compton, Member of the City Council, District Two in the June 1, 2021, general municipal election which indicated that defendant Isaac Galvan had received the highest number of votes, the contestant, Andre Spicer, contested the election.

The court finds that four (4) illegal votes were cast for defendant Galvan in the June 1, 2021, City of Compton, Member of the City Council, District Two general municipal election and counted. These votes must therefore be deducted from Defendant's tally, leaving Contestant Spicer with the highest number of legal votes by a margin of 854 to 851. Pursuant to Elec. Code, § 16703 the Court declares Contestant elected to the Compton City Council representing the Second Council District.

Counsel for the contestant is ordered to prepare a judgment in conformity with this order.

Discussion

“The purpose of an election contest is ‘to ascertain the will of the people at the polls, fairly, honestly and legally expressed.’ [Citation.]” (Friends of Sierra Madre v. City of Sierra Madre (2001) 25 Cal.4th 165, 192 [105 Cal.Rptr.2d 214, 19 P.3d 567].) “ ‘It is a primary principle of law as applied to election contests that it is the duty of the court to validate the election if possible. That is to say, the election must be held valid unless plainly illegal.’ ” [Citation.] The contestant has the burden of proving a defect in the election by clear and convincing evidence.

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[Citation.]

“[An] election must be held valid where technical errors or irregularities did not affect the result” (Salazar v. City of Montebello (1987) 190 Cal.App.3d 953, 958–959 [235 Cal.Rptr. 708]; see also Gooch v. Hendrix (1993) 5 Cal.4th 266, 278 [19 Cal.Rptr.2d 712, 851 P.2d 1321]; Canales v. City of Alviso (1970) 3 Cal.3d 118, 127 [89 Cal.Rptr. 601, 474 P.2d 417]; Nguyen v. Nguyen (2008) 158 Cal.App.4th 1636, 1662–1663 [70 Cal.Rptr.3d 753]. An election shall not be set aside on account of eligible voters being denied the right to vote, unless it appears that a sufficient number of voters were denied the right to vote as to change the result. (Elec. Code, § 16201, 16202, 16203, 16402.5.)

Los Angeles County Registrar Recorder/County Clerk’s Appearance as a Real Party in Interest

The Statement of Election Contest alleges, in part, that illegal votes were cast in one or more precincts; that eligible voters who attempted to vote in accordance with the laws of the state were denied their right to vote; that the precinct board in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election; and that there was an error in the vote-counting programs or summation of the ballot counts. All of these allegations implicate the regularity of election procedures and the performance of the County’s election officials. Because the Los Angeles County Registrar Recorder/County Clerk’s participation in the proceedings would ensure a more complete and efficient presentation of evidence and argument regarding the conduct of county election officials challenged by Spicer, the court exercised its discretion to allow the County to appear in this litigation as a real party in interest.

Sua Sponte Motion to Reopen to Admit Additional Evidence

The parties submitted their closing briefs on March 28, 2022. The court was engaged in another trial at that time and was not able to read the briefs until the afternoon of March 30, 2022. In its closing brief, the County purported to “correct” the record. Specifically, registrar witness Tanya Ramirez appeared at trial and testified the ballots cast in the election at issue and the ballot envelopes had been destroyed. Further, counsel for the registrar represented to the court that the uncounted ballots had been destroyed. Sometime between the close of evidence on March 22, 2022, and the electronic submission of its closing brief the afternoon March 28, 2022, the County discovered the ballots and ballot materials had not been destroyed and had been relocated.

Upon reading the County’s brief on March 30, 2022, the court instructed the court clerk to schedule a hearing with the parties on April 1, 2022 (March 31, 2022, was a court holiday).

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Counsel for Andre Spicer filed a supplemental closing brief addressing this new information. At the April 1, 2022, hearing, counsel for Isaac Galvan requested leave to file a supplemental brief.

Following the April 1, 2022, hearing, the court recalled the case from submission and granted defendant's request for leave to file a supplemental brief. At that time, the court set a further hearing to discuss whether evidence should be reopened on April 19, 2022, at 10:00 a.m., which was continued to April 21, 2022, at the request of both parties.

Defendant Galvan did not file a supplemental brief.

The court conducted the further hearing without reopening evidence on April 21, 2022, and again took the matter under submission.

Request for Judicial Notice

The Registrar-Recorder/County Clerk requests judicial notice of the "Recount Request Form 2021" completed by plaintiff Andre Spicer in the recount of the June 2, 2021 City of Compton Municipal Election, City Council District 2 contest and the Civil Subpoena (Duces Tecum) for Personal Appearance and Production of Documents, Electronically Stored Information, and Things at Trial or Hearing and Declaration dated March 11, 2022, issued in the action entitled Andre Spicer v. Isaac Galvan, Los Angeles Superior Court Case No. 21STCP02372.

The request is GRANTED as to the existence of the documents and the legal effect thereof. (Evid. Code, § 452,(c); El Rancho Unified School Dist. v. National Education Assn. (1983) 33 Cal.3d 946, 950 [192 Cal.Rptr. 123, 663 P.2d 893] n.6; Hogen v. Valley Hospital (1983) 147 Cal.App.3d 119, 125 [195 Cal.Rptr. 5] ("The records and files of an administrative board are properly the subject of judicial notice.").)

Findings and Conclusions

The court makes the following findings and conclusions:

Andre Spicer and Isaac Galvan were opposing candidates for the office of City of Compton, Member of the City Council, District Two in the June 1, 2021, general municipal election. On June 22, 2021, at its regular meeting held on that date, the Compton City Council adopted a resolution by a 3-2 vote declaring the results of the general municipal election held on June 1, 2021. Among other items, the resolution declared that Defendant Galvan was elected as Member of the City Council for District Two by a vote of 855 to 854 over Contestant Spicer. On July 21,

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2021, Spicer filed this verified Complaint/Statement of Election Contest pursuant to Elec. Code, § 16400 et seq. on the grounds that: (i) Defendant Galvan has offered a bribe or reward for the purpose of procuring his election, or has committed other offenses against the elective franchise defined in Division 18 (commencing with Elec. Code, § 18000 (Elec. Code, § 16100,(c)); (ii) that illegal votes were cast in one or more precincts (Id.); (iii) that eligible voters who attempted to vote in accordance with the laws of the state were denied their right to vote (Id.); (iv) that the precinct board in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election (Id.); and (v) that there was an error in the vote-counting programs or summation of the ballot counts (Id.).

Vote Count as of June 22, 2021

Galvan was elected as City of Compton, Member of the City Council, District Two by a vote of 855 to 854 over Contestant Spicer. (Testimony of Tanya Ramirez)

Illegal Votes

On February 25, 2022, Spicer filed and served his Preliminary Illegal Vote List challenging 12 votes. The subject votes were cast by: Isaac Jacob Galvan, Jace Jonathan Dawson, Kimberly Chaouch, Toni Sanae Morris, Barry Kirk Reed, Reginald Orlando Streeter, Aaron Shephard, Brandon Cruse, Robert Lee Phillips, Jr., Jordan Farr Jefferson, Ronda Smith, and Lucretia Diamond Williams.

Tanya Ramirez, head of the Los Angeles County Registrar-Recorder Vote by Mail Section testified pursuant to subpoena.

Kimberly Chaouch Cast an Illegal Vote for Defendant Galvan

According to the official records of the Los Angeles County Registrar's office, as testified to by Tanya Ramirez, Ms. Chaouch was one of at least five people who registered to vote from Jace Dawson's two-bedroom apartment at 3021 N. Santa Fe Avenue, Apartment #3, in April 2021, just before or on the date of the April Compton primary election; three other voters registered using that same address on April 20, 2021 but did not include any apartment number.) Ms. Ramirez also confirmed that Ms. Chaouch voted in both the April and June 2021 Compton elections, and that her ballots were counted in both elections. In an admission against her penal interest, Ms. Chaouch stated in her June 7, 2021, tape-recorded phone call with Alysia Rivers and LaKeisha (Nina Jo) Childs (Exh. 6) that "I actually live in Los Feliz" but that Jace Dawson "had me vote for him using his personal address, yes. And there's a couple more that are using

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his personal address as well. Jace is the only person that lives there.” On that same date,

Ms. Chaouch also reviewed and approved an email sent to the County Registrar in her name (Exh. 1, p. 5) in which she likewise confessed that “[a]lthough I am a resident of Los Feliz, Jace Dawson registered me to vote at his address” Ms. Chaouch subsequently entered a plea of nolo contendere to a felony of violation of Elec. Code, § 18100, subdivision (a) — willfully causing or allowing oneself to be registered as a voter, knowing that he or she is not entitled to registration — and the court found that there was a factual basis for the plea. (Exh. 9, p. 9.) No evidence was presented by Defendant to refute any of this evidence.

Ms. Chaouch cast her ballot for Defendant Galvan. She admitted she voted illegally for Defendant in her written email to the Registrar (see Exh. 1, p. 5 [“During this time I voted for Emma Sharif and Isaac Galvan along with at least 20 other friends of Jace who also do not live in Compton.”] [emphasis added]) and in her telephone conversation with Alysia Rivers (see Exh. 6, pp. 2 [“Oh, it’s my vote also that was included. And also included for the Galvan election as well.”] & 5 [“The second vote for the run-off was Galvan and, um, Emma Sharif.”]). Chaouch registered from Dawson’s Compton address and was hired by Dawson to work on Galvan’s campaign. (See Exh. 6, pp. 5 [“Then during the general election Jace hired me to work on Isaac Galvans [sic] campaign for 1 week I was told we were doing this to stop the long-standing corruption that would only continue if Andre Spicer were to be elected”]; 11 [“More recently the City Councilman Isaac Galvan has employed her to reach the constituents here in the city of Compton, as a phone banker 05/26/2021 thru Election night 06/02/2021.”].)

Tonya (Toni) Morris Cast an Illegal Vote for Defendant Galvan

Tanya Ramirez testified that the County Registrar’s records confirmed that Ms. Morris registered to vote from Jace Dawson’s apartment at 3021 N. Santa Fe Avenue in April 2021, after having previously been registered on Imperial Highway. Ms. Ramirez also confirmed that the Registrar’s records showed that Ms. Morris voted in the June 2021 Compton election, and that her ballot was counted in the election. Ms. Morris testified and admitted that she actually lived at the Imperial Highway address outside the City of Compton, and that she had lived there continuously for 5 1/2 years. Ms. Morris likewise admitted that she gave Jace Dawson the necessary information to allow him to register her to vote in Compton, and that she signed and gave Dawson her vote-by-mail ballot so he could vote it for her in the June election. Ms. Morris subsequently entered a plea of no contest to a felony of violation of Elec. Code, § 18100, subdivision (a) — willfully causing or allowing oneself to be registered as a voter, knowing that he or she is not entitled to registration — and the court found that there was a factual basis for the plea. (Exh. 4, p. 8.) No evidence was presented by Defendant to refute any of this evidence.

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Ms. Morris' ballot was cast for Defendant Galvan in the June Compton election. Ms. Morris testified that she first provided Mr. Dawson with the information necessary for him to register her to vote in Compton. Mr. Dawson was able to register Ms. Morris online based on the identifying information she gave him, using his own apartment address in Compton as her address. Then, when the vote-by-mail ballot was mailed to his apartment, he brought it to Ms. Morris to have her sign it, and she gave the ballot back to him to vote in the June election for her. This was apparently the same method that Dawson used with a number of other individuals by illegally registering and then casting ballots for Galvan in the names of people who did not actually reside in Compton as evidenced by the numerous texts from Dawson to Galvan in the days leading up to the June election in which he states, for example, "I have the ballots [sic] but they didn't fill it out or sign it so I have to track them down to sign the ballot at least" (Exh. 3, p. 4) and "I'm waiting for them to sign but I have the ballots" (ibid.).

Reginald Streeter Cast an Illegal Vote for Defendant Galvan

Tanya Ramirez testified the County Registrar's records confirmed that Mr. Streeter registered to vote from Jace Dawson's apartment at 3021 N. Santa Fe Avenue on April 20, 2021, after having previously been registered for five years at 5317 Cimarron Street in Los Angeles. Ms. Ramirez also confirmed that the Registrar's records showed that Mr. Streeter voted in the June 2021 Compton election, and that his ballot was counted in the election. The Registrar's records also showed that on September 29, 2021 — shortly after Mr. Streeter was charged with voter fraud by the District Attorney's office — he re-registered back at the 5317 Cimarron Street address. That is the same address at which Mr. Dawson himself re-registered on August 6, 2021.

Mr. Streeter never actually lived in Mr. Dawson's Compton apartment. Maria Torres, who lived across the hall from Mr. Dawson and knew him, testified he lived alone in his apartment and that she never saw Mr. Streeter live there and never heard of him. No evidence was presented by Defendant Galvan rebutting the above evidence or in any way supporting or suggesting that Mr. Streeter resided at the 3021 N. Santa Fe Avenue address in Compton.

The circumstantial evidence supports a finding that Mr. Streeter's ballot, like those of all the other non-Compton residents recruited by Mr. Dawson to vote in the June 1, 2021, Compton election, was voted for Defendant Galvan. Mr. Streeter registered to vote in Compton using Mr. Dawson's apartment as his address; both Mr. Streeter and Mr. Dawson re-registered to vote after the June election at the same Los Angeles address of 5317 Cimarron Street. Mr. Streeter and Mr. Dawson knew each other, and Mr. Streeter was a participant in the plan to illegally register non-Compton residents to vote in Compton and to have them cast their votes for Galvan in the June election.

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Jordan Farr Jefferson Cast an Illegal Vote for Defendant Galvan

Tanya Ramirez testified that the County Registrar’s records confirmed that Mr. Jefferson registered to vote from Jace Dawson’s apartment building at 3021 N. Santa Fe Avenue on April 20, 2021, but provided no specific apartment number and that his vote was cast and counted in the June 2021 election. Two other persons (Aaron Shephard and Brandon Cruse) also registered to vote from that same apartment building on that same date. As Ms. Ramirez explained, their registration dates of April 20, 2021, indicate that they must have registered conditionally while voting in person at a voting center in the April 21, 2021, Compton primary election.

Ms. Ramirez further testified that all three of these voters had their registrations placed on “inactive” status in July or August 2021 after official election materials (most likely the vote-by-mail sample ballot booklet for the June election) that had been mailed to them at the Santa Fe Avenue address were returned to the Registrar’s office as “undeliverable,” indicating that these individuals no longer lived at that address. Further confirmation that none of these three individuals ever lived in the Santa Fe Avenue apartment building was provided by Maria Torres, who testified that although she had gotten to know the other residents of her apartment building, including Mr. Dawson, she had never met or heard of Mr. Jefferson, Mr. Shephard, or Mr. Cruse. Although all three of these individuals cast ballots in the April primary election, only Mr. Jefferson voted in the June 1, 2021, Compton election, and his vote was counted by the Registrar. The evidence set forth above establishes that Mr. Jefferson’s vote in that election was illegal because he was not domiciled in the City of Compton at the time of the June election, if ever.

Circumstantial evidence establishes Mr. Jefferson’s vote was cast for Defendant Galvan. There is substantial evidence showing that Jace Dawson registered a large number of people unlawfully in April 2021 using the Santa Fe Avenue address as their residences so that they could cast ballots for him in the April primary election and then continued in a conspiracy with Defendant Galvan to have those same persons cast ballots for Galvan in the June election. Given the unusual timing of Mr. Jefferson’s registration and his use of the same Santa Fe Avenue apartment building that Mr. Dawson used for other persons whose illegal registrations he solicited and whose ballots he arranged to be voted for Defendant Galvan, the only reasonable conclusion is that Mr. Jefferson was part of the plan orchestrated by Mr. Dawson and that his ballot was also voted for Defendant in the June election.

Denial of the Right to Vote

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Upon receiving a vote by mail ballot, Elec. Code, § 3019 requires the elections official to compare the signature on the identification envelope with the signature appearing on the voter's affidavit of registration or any previous affidavit of registration of the voter or the signature appearing on a form issued by an elections official that contains the voter's signature and that is part of the voter's registration record.

If upon conducting the comparison of signatures the elections official determines that the signature possesses multiple, significant, and obvious differing characteristics when compared to all signatures in the voter's registration record, the signature shall be rejected only if two additional elections officials each find beyond a reasonable doubt that the signature differs in multiple, significant, and obvious respects from all signatures in the voter's registration record. If the officials determine that the signatures do not compare, the identification envelope shall not be opened, and the ballot shall not be counted. The elections official shall send by first-class mail notice to the voter of the opportunity to verify the voter's signature no later than 5 p.m. two days prior to the certification of the election. The notice shall include a return envelope, with postage paid, for the voter to return a signature verification statement. Elec. Code, § 3019

The elections official shall not reject the vote by mail ballot if the voter delivers, in person, by mail, by fax, or by email, the signature verification statement signed by the voter and the elections official receives the statement no later than 5 p.m. two days prior to the certification of the election, or the voter, before the close of the polls on election day, completes and submits a signature verification statement to a polling place within the county or a ballot drop off box and if upon conducting the comparison of signatures the elections official determines that the signatures compare. In that case, the elections official shall deposit the ballot, still in the identification envelope, in a ballot container in the elections official's office. Elec. Code, § 3019

The Los Angeles County Registrar-Recorder/County Clerk followed the procedures required by Elec. Code, § 3019. However, it made an error in doing so with respect to the ballot cast by Nilaja Bush.

When the signature on Ms. Bush's ballot envelope is compared to that on her registration form, both contain the same loop that Ms. Bush uses for her last name; the only difference is that Ms. Bush's voter registration includes her full first name whereas her current signature consists only of the loop that she had previously used for her last name. Ms. Bush testified that her signature had changed over time, and she produced a copy of her Driver's License (Exh. 5) that contained an exact match to her signature on the vote-by-mail ballot cast in her name.

Tanya Ramirez — the chief official in the Registrar's office responsible for processing vote-by-

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mail ballots — testified that, had she reviewed Ms. Bush’s ballot during the canvass of the June 1, 2021, election, she would have counted Ms. Bush’s ballot based on the similarities she observed in the signatures on the ballot envelope and affidavit of registration. That is what Elec. Code, § 3019 requires. Only if the elections officials “find beyond a reasonable doubt that the signature differs in multiple, significant, and obvious respects from all signatures in the voter’s registration record” should a vote-by-mail ballot be rejected, and the vote not counted. (Elec. Code, § 3019, subd. (c)(2).)

The Registrar’s office made an error in its initial determination during the canvass of the June 1, 2021, election that Ms. Bush’s ballot should not be counted; she was an eligible voter, and her ballot was a legal vote.

Ms. Bush testified at trial but refused to state who she voted for. The court has considered whether to order the Registrar’s Officer to retrieve and open Ms. Bush’s vote-by-mail ballot envelope and to count her ballot in the Compton Second District City Council election by adding it to the tally of the candidate for whom it was cast but declines to do so because, but for an oversight by the Registrar’s office, her ballot would have been destroyed in the ordinary course of business and because it is not necessary to do so for purposes of adjudicating this election contest.

“Where it can be determined who received the highest number of legal votes, a trial court in an election contest has no authority to take any action other than declaring elected the person with the most legal votes. This is consistent with the rule that an election will not be annulled if it can be confirmed on any reasonable basis.” *Stebbins v. Gonzales* (1992) 3 Cal.App.4th 1138, 1142–1143 [5 Cal.Rptr.2d 88], citing *Wilks v. Mouton* (1986) 42 Cal.3d 400, 404 [229 Cal.Rptr. 1, 722 P.2d 187]; *Davis v. Los Angeles County* (1938) 12 Cal.2d 412, 426–427 [84 P.2d 1034].)

ORDER

The court finds that four (4) illegal votes were cast for defendant Galvan in the June 1, 2021, City of Compton, Member of the City Council, District Two general municipal election and counted. These votes must therefore be deducted from Defendant’s tally, leaving Contestant with the highest number of legal votes by a margin of 854 to 851. Pursuant to Elec. Code, § 16703 the Court declares Contestant elected to the Compton City Council representing the Second Council District.

Counsel for the contestant is ordered to prepare a judgment in conformity with this order.

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An Order to Show Cause Re: re entry of judgment is scheduled for 06/24/2022 at 08:30 AM in Department 74 at Stanley Mosk Courthouse.

The clerk is directed to give notice.

Certificate of Mailing is attached.