

THE SUTTON LAW FIRM

December 30, 2022

VIA EMAIL & OVERNIGHT DELIVERY

Mr. Tim Dupuis
Alameda County Registrar of Voters
1225 Fallon Street, Room. G-1
Oakland, CA 94612

RE: Oakland School Board District 4 Election

Dear Mr. Dupuis:

We represent Nick Resnick, a candidate for the Oakland Unified School District Board of Directors, District 4, in the November 2022 election, and the presumptive winner of that election. Please direct all correspondence regarding Mr. Resnick and the District 4 election results to my attention.

We understand – based on your Wednesday, December 28, 2022 telephone call to Mr. Resnick, the press release posted on the Registrar’s website that same day, and subsequent press reports – that your office re-tabulated the election results for all of the ranked-choice voting elections in the County,¹ and that the District 4 election results in this second tabulation differ from the results of the official canvass which your office announced on or about December 8, 2022 and the Oakland City Council certified on December 20, 2022.

We have several questions and legal concerns about your office’s actions with respect to the re-tabulation of the District 4 election results. Most notably, we are not aware of any legal authority in the state Elections Code, Alameda County law, Oakland law, or otherwise which allows the Registrar’s office to re-tabulate election results or take any other actions vis-a-vis the results of an election after it completes the official canvass and the results are certified by the local governing body.

We also question why your office failed to notify Mr. Resnick and the other District 4 candidates, as well as the candidates in the other local elections conducted pursuant to ranked-choice voting, of the potential issue with the vote-counting software before making the

¹Our understanding is that ranked-choice voting is used for races in the Oakland Unified School District, the City of Oakland and the City of San Leandro.

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decision to re-tabulate the results, or why Mr. Resnick and these candidates were not afforded due process or given the opportunity to provide input before this decision was made.

We also have several questions and legal concerns about how and whether the re-tabulation affects the official election results. Though you evidently told Mr. Resnick in your telephone call with him on Wednesday that the second tabulation resulted in different vote counts for Mr. Resnick and the other two candidates, you did not inform him as to whether he is still the official winner of the race.

Our understanding of the law is that the results of an election can only be challenged after the completion of the official canvass and official certification by either a recount (Cal. Elec. Code sections 15600 et seq.) or an election contest (Cal. Elec. Code sections 16000 et seq.). To date, Mr. Resnick has not been informed of any recount or election contest.

In order to better understand what transpired, we respectfully request all documents in your office's possession regarding the decision to re-tabulate the election results. More specifically, please consider this letter an official request under the California Public Records Act (Cal. Govt. Code sections 6250 et seq.) for the following documents relating to any and all actions taken and decisions made by your office on or after December 21, 2022 with respect to the District 4 election:

1) all correspondence, including but not limited to, emails, text messages, letters and telephone logs, between you or any employee or representative of the Registrar's office, and any employee or representative of: (1) FairVote or the California Ranked Choice Voting Coalition; (2) Mike Hutchinson, Pecolia Manigo, and/or their School Board campaigns; (3) the Oakland Unified School District; (4) the Registrar's election system "vendor" (as referenced in the December 28, 2022 press release); (5) the Secretary of State's office; (6) the Oakland City Clerk or other Oakland City employees or officials; and/or (7) other Alameda County employees or officials.

2) all records relating to the re-tabulation of the elections results for the November 8, 2022 Oakland School Board and City of Oakland races.²

²Given the sensitivity of this matter, we request that you provide us with these documents as soon as possible next week, and before the 10-day response period provided in the Public Records Act.

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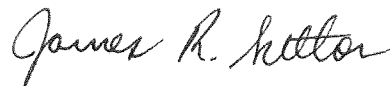
Finally, we respectfully request that the Registrar's office not take any other actions or make any further pronouncements regarding the District 4 election results unless and until we have had the opportunity to fully research all relevant facts and law and discuss them with you and County Counsel, or unless and until you are explicitly authorized to take such action by a court.

* * *

On the one hand, time is of the essence with respect to this situation because Mr. Resnick is scheduled to be sworn into office on January 9, 2023, has another School Board orientation session on January 4, and is eligible to be covered by the School District's healthcare plan as of January 1. On the other hand, unless and until we are officially informed of a change in the official election results by a court or government body authorized to make such a decision, we will assume that Mr. Resnick is the District 4 School Board member-elect, and he will continue to act as such in order to protect the rights of District 4's residents and the interests of the District's students.

We look forward to hearing from you about this important matter at your earliest convenience.

Sincerely,



James R. Sutton

cc: Ray Lara, Esq., Alameda County Counsel's office
Josh Daniels, Esq., OUSD General Counsel
Barbara Parker, Esq., Oakland City Attorney
Steven Reyes, Esq., Secretary of State Chief Legal Counsel
Gary Yee, Oakland School Board President
Dr. Kyla Johnson-Trammell, OUSD Superintendent

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