

**FILED**

**APR 23 2026**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KINGS

NOORAH SOULESHY, CLERK OF COURT  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF KINGS

*Darlene Goumas*  
**Darlene Goumas** DEPUTY

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City of Avenal,  
Petitioner/Plaintiff

vs.

Lupe Villa et al,  
Respondent/Defendant

26CU0106

Ruling: Motion for Preliminary Injunction

The hearing came on regularly on April 23<sup>rd</sup>, 2026 in department two of the Kings County Superior Court. Considering all papers filed in support and in opposition to the motion, and the argument of the parties:

**IT IS HEREBY ORDERED:**

The exhibits and declarations filed by both sides establish an extensive series of communications and interactions between the City of Avenal (CITY) and the County of Kings, extending over an approximately 6 month period, regarding the recall election currently set for April 28<sup>th</sup>, 2026

1 The record is clear that pursuant to Avenal City Council resolutions the County  
2 administered the Avenal elections in each of the years for 2018, 2020, 2022, and 2024. At  
3 oral argument the CITY indicated that at least since 2008 the CITY has always used the  
4 County of Kings to administer the City elections. The only item on the April 28<sup>th</sup>, 2026 ballot  
5 is the recall election of four members of the current Avenal City Council.

6 On January 26<sup>th</sup>, 2024 The County Register of Voters (ROV) proposed to the CITY  
7 that the County handle all of the Avenal candidate filings. In May of 2024 there was a  
8 meeting between the ROV and members from the Cities of Avenal, Corcoran and Hanford.  
9 At the meeting an informal agreement was reached between the participants that the  
10 County would administer elections on behalf of the cities. The Avenal City Council did not  
11 publicly ratify or otherwise publicly affirm this agreement.  
12

13 On June 13<sup>th</sup>, 2025 Ms. Barajas, a resident of Avenal in Kings County, went to the  
14 Avenal City clerk to ask how to initiate a recall petition for some City Council members. The  
15 City clerk directed Ms. Barajas to the Kings County Elections office indicating the County  
16 Elections office handled recall and elections matters.  
17

18 On June 23<sup>rd</sup>, 2025 The Avenal City clerk sent an email to the County ROV  
19 requesting information for a recall petition.

20 On June 25<sup>th</sup>, 2025 The County ROV sent an email to Avenal estimating a recall  
21 election would cost between \$51,000 and \$66,000. Also on June 25<sup>th</sup>, 2025, pursuant to  
22 the directive of the Avenal City clerk, Ms. Barajas came to the Kings County ROV asking  
23 for information to initiate a recall of Avenal City Council members. The County ROV  
24 indicated to Ms. Barajas the recall would be handled by the City of Avenal and directed her  
25 back to the Avenal City clerk.  
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1 Sometime between June 25<sup>th</sup>, 2025 and July 11<sup>th</sup>, 2025 Ms. Barajas, again at the  
2 direction of the Avenal City clerk, appeared at the Kings County ROV seeking information  
3 on initiating a recall election for Avenal City Council members. On this occasion the County  
4 ROV provided Ms. Barajas with the information she was seeking.

5 On June 30<sup>th</sup>, 2025 Ms. Barajas submitted notices of intent to recall for members of  
6 the Avenal City Council. These notices were ultimately rejected by the County ROV.

7 On July 1<sup>st</sup>, 2025 the County ROV met with Avenal's City Manager, Mayor Preciado  
8 and Councilman Reynosa. Mr. Preciado and Mr. Renosa were subjects of the recall  
9 petitions. The meeting took place at the County Elections office. At the meeting the City  
10 representatives asked questions about the recall process, the steps the County Elections  
11 Office would be taking and the role the County ROV would play. At that meeting the County  
12 ROV indicated he would serve as the elections official for the recall election.

13 On July 11<sup>th</sup>, 2025 for the second time, notices of intent to recall were filed with the  
14 County ROV. Also, on July 11<sup>th</sup>, 2025 the Avenal City manager sent an email to the County  
15 ROV asking about the recall process and requesting the ROV let him know if new notices  
16 of intent to recall were filed with the ROV and asking when the seven day period to respond  
17 would start. On this same day the County ROV sent a reply email to the CITY that the  
18 County had validated enough signatures for a recall petition and the responses by the  
19 Council would be due in the County Elections office by 5:00 p.m. on July 18<sup>th</sup>, 2025.

20 On July 16<sup>th</sup>, 2025 the County ROV sent an email to the Avenal City manager  
21 reminding him that the Councils responses to the petitions were due in the County  
22 Elections office by 5:00 p.m. on July 18<sup>th</sup>, 2025. On July 16<sup>th</sup>, 2025 Councilwoman Gamez  
23 and Councilman Reynosa filed their response to the petition directly with the County ROV.  
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1 On July 17<sup>th</sup>, 2025 Mayor Preciado and Councilman Hernandez filed their responses  
2 to the petition directly with the County ROV.

3 On July 22<sup>nd</sup>, 2025 the CITY sent an email to the County ROV asking about adding a  
4 5<sup>th</sup> Councilman to the recall.

5 On November 21<sup>st</sup>, 2025 the County ROV sent an email to the Avenal City clerk  
6 indicating the County had validated a sufficient number of signatures for a recall election  
7 and he would present the certificates of sufficiency to the Council at the December 11<sup>th</sup>,  
8 2025 City Council meeting. Also, on November 21<sup>st</sup>, 2025 the CITY posted on their  
9 Instagram page that they were disappointed that the Kings County Elections office had  
10 validated the recall petitions.  
11

12 On December 11<sup>th</sup>, 2025 the County ROV attended the Avenal City Council meeting  
13 to present the certificates of sufficiency only to find the meeting had been cancelled  
14 because all four of the Council Members facing a recall election had not appeared so no  
15 quorum was present.  
16

17 On December 25<sup>th</sup>, 2025, on Christmas day when the County Offices were closed,  
18 the CITY faxed over a cease and desist letter. The letter for the first time asserted the  
19 County ROV did not have authority to administer the recall election.

20 Based on this series of events the Petitioner is seeking a prohibitory injunction to  
21 stop a recall election that is currently scheduled for April 28, 2026. ("It directs affirmative  
22 inaction by defendant, not affirmative action"; URS Corp. v. Atkinson/Walsh Joint Venture  
23 (2017) 15 CA5th 872, 884, 223 CR3d 674, 682—order prohibitory if its effect is to leave  
24 parties in same position]) In determining whether to grant the preliminary injunction the  
25 Court must evaluate two interrelated factors:  
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27 (1) the likelihood that the plaintiff will prevail on the merits at trial and  
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1 (2) the interim harm that the plaintiff would be likely to sustain if the injunction were  
2 denied as compared to the harm the defendant would be likely to suffer if the  
3 preliminary injunction were issued. [Smith v. Adventist Health System/West (2010)  
4 182 CA4th 729, 749, 106 CR3d 318, 335-336; see also Amgen Inc. v. Health Care  
5 Services (2020) 47 CA5th 716, 731, 260 CR3d 873, 884; Doe v. Regents of Univ. of  
6 Calif. (2024) 102 CA5th 766, 773, 321 CR3d 751, 756]  
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9 The Likelihood that the Plaintiff will Prevail on the Merits at Trial

10 The Petitioner (City of Avenal) argues that the County has been conducting a recall  
11 election without lawful authority to do so. Specifically, Elec. Code §10002, requires that the  
12 City Council pass a resolution granting the County the authority to conduct municipal  
13 elections, otherwise the County is acting without authority. Furthermore, Avenal Municipal  
14 Code § 2-6.102 also requires a written resolution of the governing body of the CITY  
15 whenever the City Council decides to outsource the CITY's election functions to a county.  
16

17 The County responds to this by arguing that there is an established practice of the  
18 City having the County run the elections. Specifically, there was an informal agreement  
19 made sometime in May 2024 between the City Clerks and the County where the County  
20 agreed to conduct the elections. The County Clerk and the City Clerk acknowledge the  
21 existence of this agreement. Furthermore, the County argues that the City of Avenal (CITY)  
22 should be barred from relief based on the doctrine of laches, unclean hands and substantial  
23 compliance.  
24

25 The Declaration of Lupe Villa (Registrar of Voters (ROV)) documents the contacts  
26 between the City and the County regarding the recall election. The City and the City  
27 Councilmembers were cooperative expressed no objection with the County handling the  
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1 recall election process from approximately June 30, 2025, when recall proponents  
2 submitted a Notice of Intention to seek a recall election up until December 11, 2025, when  
3 the ROV attempted to deliver the Certificate of Sufficiency which would have required the  
4 CITY to call an election, and a date be selected for the election to be held. After which the  
5 City Attorney faxed a cease and desist to the ROV, on December 25, 2025 claiming that  
6 the County was acting without authority.

7  
8 Due to technical errors with the fax machine the ROV and the County were not  
9 aware of the City's objections until January 20, 2026.

10  
11 Analysis

12 The CITY relies entirely on Elections Code §10002 to argue that the County had no  
13 authority to administer the recall election, however that code section uses directory  
14 language rather than mandatory language:

15 "The governing body of any city or district may by resolution request the board of  
16 supervisors of the county to permit the county elections official to render specified  
17 services to the city or district relating to the conduct of an election. Subject to  
18 approval of the board of supervisors, these services shall be performed by the  
19 county elections official."  
20

21 The term "may" does create some ambiguity in the section. In the Courts view this  
22 can fairly be read to mean the CITY, if they so desire, can seek to have the County  
23 administer their elections but they are not required to do so. It can also be read to indicate  
24 that they may use a resolution to ask the County to administer their election, but they are  
25 not required to make such a request through a resolution. The ambiguity calls into question  
26 whether Elections Code section 10002 is a mandatory or a directory provision and does  
27

1 that determination turn on the “specific services” being requested. Ultimately, under the  
2 facts of these proceedings it is a distinction without a difference.

3 “A violation of a mandatory provision vitiates an election. Departure from a directory  
4 provision does not render the election void if there has been substantial compliance with  
5 the law, and there is no indication that the result of the election was changed or the rights  
6 of the voters impaired by the violation.” (Daniels v. Tergeson (1989) 211 Cal.App.3d 1204,  
7 1208 citing Rideout v. City of Los Angeles (1921) 185 Cal. 426, 430–431, 197 P. 74.)  
8 “Whether a provision is mandatory or directory depends on the *character of the act*  
9 prescribed. If it goes to the substance or necessarily affects the merits or results of an  
10 election, the provision is mandatory. Provisions relating to the time and place of holding  
11 elections, the qualifications of voters and candidates and other matters of that character are  
12 mandatory.” (Daniels v. Tergeson (1989) 211 Cal.App.3d 1204, 1208 citing Atkinson v.  
13 Lorbeer (1896) 111 Cal. 419, 422, 44 P. 162; and see 28 Cal.Jur.3d, Elections, § 124, pp.  
14 608609.)  
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17 The statute specifically references that a city may request “specified services”  
18 related to the election be performed by the County. Here the informal agreement and past  
19 practices between the CITY and the County ROV involved the County managing and  
20 supervising the election *process*. There is nothing in the record to indicate the County has  
21 ever or is currently engaging in election services that would affect the merits or results of an  
22 election or the qualifications of candidates or voters. The “specified services” being  
23 provided by the County ROV are simply related to the process of having an election and as  
24 such are directory in nature, not mandatory.  
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1 In the instant proceedings the County appears to have been administering the recall  
2 election consistent with the Elections Code until Defendant's began objecting in December  
3 2025.

4 Here, the City cites the Elections Code to argue that the County was acting without  
5 authority, and the County does not assert any legal defense but instead argues equitable  
6 defenses. It is uncontested that City Officials expressed no objections to the County  
7 administering the recall election process from June 30, 2025 to December 25, 2025. At the  
8 outset, Dalilah Barajah, a proponent of the recall, was twice directed by the City Clerk to  
9 the County Elections office when she inquired about starting a recall election against four  
10 members of the City Council. Both the City Clerk and the County Clerk acknowledge that  
11 there was an informal agreement for the County to handle City elections (Exhibit 30 of the  
12 Administrative Record, transcript of 01/21/26 City Council Special Meeting in which City  
13 Clerk Maria Ortiz states that on 06/13/26 when Daliah Barajas came the City Clerk's Office  
14 to inquire about how to start a recall election, she informed her that the County handles  
15 elections. Furthermore, Ms. Ortiz acknowledges that in 2024 there was a verbal agreement  
16 between the City Clerks and the County that the County would administer elections, but this  
17 agreement was not ratified by the City Council. City Officials were in regular contact with  
18 the ROV, following his direction such as each of the City Councilmembers subject to recall  
19 filed a Response to Notice of Intention to Circulate Recall Petition by the July 18<sup>th</sup>, 2025  
20 due date directly with the County ROV (Exhibit M, O, P of the Lupe Villa Declaration). The  
21 City also publicly acknowledged the authority of the County to administer the recall election  
22 on social media (Exhibit U of the Lupe Villa declaration, November 21<sup>st</sup>, 2025 post on public  
23 Instagram "The City of Avenal is disappointed to learn that recall petitions against four duly  
24 elected City. Councilmembers: Mayor Preciado, Mayor Pro-Tem Gamez, Councilmember  
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1 Reynosa, and Councilmember Hernandez — have been validated by Kings County  
2 Elections.”) They did not express any objection to the process until December 25, 2025. On  
3 December 11, 2025 the ROV travelled to Avenal to deliver the Certificates of Sufficiency to  
4 each of the city councilmembers being subject to recall. The Certificates of Sufficiency  
5 would have required the City to select a date for the recall election within fourteen days.  
6 (Elec. Code §11240). Due to the City refusing to act, this triggered a mandatory duty for the  
7 County under Elec. Code §11241 to set a date for the election, which they did. The Board  
8 of Supervisors issued a resolution, dated 01/27/26, ordering the special election be held on  
9 04/28/26. (Exhibit 31, of the Administrative Record)  
10

11 It is difficult to see how the CITY would succeed on the merits when looking at the  
12 entirety of their course of conduct, as there was a prior informal agreement for the County  
13 to administer election and the City cooperated with the County for six months with the recall  
14 process but when it came time to set a date for the recall election, the City balked at the  
15 last minute, and began arguing that the County was acting without authority. The City did  
16 not begin arguing that the County lacked authority until Christmas day, when County offices  
17 would be closed.  
18

19 On 01/27/2026 the County set an election date for April 28<sup>th</sup>, 2026 and the City did  
20 not act until filing this mandamus action on March 4<sup>th</sup>, 2026. The City sat on their rights,  
21 giving great weight to the County’s claims of equitable defenses.  
22

23 Unclean hands are an equitable defense applicable when a petitioner has acted  
24 unconscionably, in bad faith, or inequitably in the matter in which they seek relief. (Salas v.  
25 Sierra Chemical Co. (2014) 59 Cal.4<sup>th</sup> 407, 432.) Injunctive relief is subject to the equitable  
26 defenses of “bad faith” and “unclean hands” when the party seeking the injunction has  
27 failed to act fairly in the matter for which remedy is sought. The petitioner must come to  
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1 court with clean hands or they will be denied relief, regardless of the merits of their claim.  
2 (Kendall-Jackson Winery, Ltd v. Sup. Ct. (E & J Gallo Winery) (1999) 76 CA 4<sup>th</sup> 970, 978).  
3 However, the unclean hands defense is disfavored when asserted against a public entity  
4 seeking an injunction if the defense would nullify a strong rule of public policy adopted for  
5 the benefit of the public. (Pittsburgh Unified School Dist. V. Commission On Professional  
6 Competence (1983) 146 CA3d 964, 980).

7  
8 In the current proceedings the application of the unclean hands doctrine would not  
9 nullify a strong rule of public policy adopted for the benefit of the public. On the contrary, it  
10 would promote a strong public policy of allowing our citizens to participate in our democracy  
11 by exercising their constitutional right to elect their representatives. The current conundrum  
12 for the CITY is entirely self-inflicted.

13  
14 It was the City who, admittedly, incorrectly directed Ms. Barajas to the County to  
15 start a recall petition. They did this not once, but twice. They then spent six months in  
16 communications with the County in what can only be described as working with the  
17 County's administering of that very recall election. Then for the first time on Christmas day,  
18 when County offices are closed, they first objected to the County administering the election.  
19 The CITY's position is essentially, we directed Ms. Barajas to the incorrect procedure to  
20 initiate a recall election and because she followed our directive and we incorrectly gave the  
21 appearance through word and conduct that that very recall election could be administered  
22 by the County rather than taking any required action ourselves, that election cannot take  
23 place. It appears to the Court that the County has a high likelihood of successfully asserting  
24 the unclean hands doctrine as a defense as to the merits of the petitioner's case.  
25

26 The same can be said for the defense of laches, which is an equitable defense when  
27 the petitioner engages in the combination of unreasonable delay and either acquiescence  
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1 in the complained of conduct or prejudice is present for the defendant because of that  
2 delay. Here the CITY unreasonably delayed in asserting that the County lacked the  
3 authority to administer the election and both acquiesced in the County administering that  
4 election for six months as well as the County suffering prejudice in the expenditure of  
5 funds, time, resources and personnel in administering the recall election as a result of that  
6 delay. From June 2025 to December 2025, City and County cooperated on the recall  
7 process without objection. On January 27<sup>th</sup>, 2026, due to the City's failure to act, the  
8 County called the election as required by Elections Code §11241. The City failed to initiate  
9 litigation or enjoin the progress of the recall until it filed the current litigation on March 4,  
10 2026.  
11

12 Finally, the defense of Substantial compliance also has merit as the County did all  
13 necessary steps to ensure compliance with the Elections Code. The City Clerk was  
14 directing recall proponents to the County, leading the County to assume that the City  
15 intended for the County to conduct the recall election pursuant to long standing past  
16 practice and the 2024 informal agreement. All actions by the City up until December 25,  
17 2025 indicated that the City expected the County would conduct the election. Here  
18 substantial compliance applies because the purpose of the statute is satisfied (County of  
19 Tulare v. Campbell (1996) 50 Cal.App.4th 847, 853.) because the language is directory  
20 rather than mandatory.  
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23 The interim harm that the plaintiff would be likely to sustain if the injunction were denied as  
24 compared to the harm the defendant would be likely to suffer if the preliminary injunction  
25 were issued.  
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1 The CITY indicates they would suffer great or irreparable harm in the form of a loss  
2 of autonomy because the County would have usurped their authority to run their own  
3 elections and the loss of a quorum. Their arguments are unpersuasive.

4 It is hard to identify great or irreparable harm when it does not appear the County  
5 “usurped” the CITY’s authority. This is particularly true given that since 2008 the CITY has  
6 willingly delegated the very authority to the County they now claim has been usurped and  
7 for six months during these proceedings behaved and communicated in a manner that  
8 indicates they were seeking the County’s administration of this recall election.  
9

10 The assertion they will suffer irreparable harm if they lose a quorum is also  
11 unpersuasive. First, it is entirely speculation that the results of the election would result in  
12 the loss of a quorum. Second, the Government Code requires a special election to be  
13 called immediately to fill the City Council vacancies.

14 Gov. Code §36512(c)(1) states:

15  
16 Notwithstanding subdivision (b) and Section 34902, a city may enact an ordinance  
17 that does any of the following: Requires that a special election be called immediately to fill  
18 every city council vacancy and the office of mayor designated pursuant to Section 34902.  
19 The ordinance shall provide that the special election shall be held on the next regularly  
20 established election date not less than 114 days from the call of the special election.

21 Gov. Code §1770, 1771, 1772, and 36512 are statutes that address what occurs in  
22 the case of a successful recall and provide further methods by which the City Council can  
23 function pending a special election after a successful recall has occurred. Further, there is  
24 at least one case in which the California Supreme Court found that after a recall election in  
25 which two city councilmembers were recalled and a third resigned, leaving two members,  
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1 the Supreme Court found that the two remaining members constituted a quorum to transact  
2 business. (Nesbitt v. Bolz (1939) 13 Cal.2d 677).

3 The County does not directly conduct a harm analysis in their pleadings. The  
4 Declaration of Mr. Villa does provide documents regarding the financial and time  
5 expenditures that have been made to conduct the election. Exhibit GG provides estimated  
6 costs of \$56,707 to conduct the recall election.

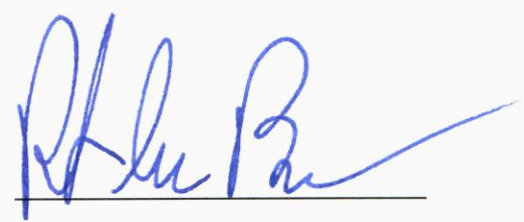
7  
8 However, the real harm would be to the voting public who would have their votes  
9 invalidated if a preliminary injunction were to be granted to stop the election. In balancing  
10 the harms, the Court considers not only the harm to the parties but also to third parties.  
11 (California State University Hayward v. National Collegiate Athletic Assn (1975) 47 CA3d  
12 533, 544). Courts have found the loss of the First Amendments freedoms, even for a  
13 minimal period of time, "unquestionably constitutes" an irreparable injury. (Elrod v. Burns  
14 (1976) 427 US 347, 373). The same would be true for the loss of the right to choose our  
15 elected officials by being denied your right to vote in an election.

16  
17 To grant the preliminary injunction would tell the voting public to go back to the  
18 municipality that misleads them initially and start the process over. To replicate the time,  
19 effort and resources already expended at the direction of that municipality to see if you can  
20 again qualify for a recall election. To trust the municipality that misleads you would faithfully  
21 and fairly determine whether this second effort was sufficient for a recall. The same  
22 Municipality which beginning on December 11<sup>th</sup>, 2025 appears to have begun attempting to  
23 subvert that recall election. Such a ruling would clearly undermine our democratic process,  
24 the public's confidence in our governmental bodies and would cause irreparable harm to  
25 the form of government.  
26

1 Here, it is hard to identify what the harm would be to the City of Avenal if the election  
2 were allowed to proceed forward. The Petitioner in this case is the City of Avenal, not any  
3 of the City Councilmembers who are subject to the recall election. The Councilmembers  
4 have a clearer claim of harm, because they are being subject to recall, and may lose their  
5 seats, but for the City itself, that harm is not clear. The County has a clearer cognizable  
6 harm, in that they have already expended the money, time and resources to conduct the  
7 election. Given the lack of cognizable harm to the City with some harm to the County, and  
8 the significant harm to the democratic process were the injunction to be granted, which  
9 would result in the disenfranchisement of those who have petitioned for the recall election  
10 and for those who have voted or will vote in the election, ***the request for a preliminary***  
11 ***injunction is denied.***

13 The matter is set for June 12<sup>th</sup>, 2026 at 0815 a.m. in dept. 2 for a Case Management  
14 Conference. between the City of Avenal (CITY) and the County of Kings, extending over an  
15 approximately 6 month period.

17 Dated: April 23<sup>rd</sup> 2026



Robert Shane Burns  
Judge of The Superior Court