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East Palo Alto beats election challenge

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REDWOOD CITY — East Palo Alto has survived a challenge to its new status as a city as a judge Wednesday upheld the results of the June 7 incorporation election.

The decision by San Joaquin County visiting Judge John Cruikshank came at the end of a bitterly contested trial, after lawyers for those favoring and opposing incorporation finished their closing arguments.

The election had been contested by a group of anti-incorporation residents who charged that the election, in which residents approved incorporation by 15 votes, was filled with fraud.

In making his ruling, Cruikshank said he was not convinced there had been fraud in the election. In the absence of fraud, he said, the election should stand.

Cruikshank did, however, invalidate eight votes in the election — three that had been chal-

lenged by San Mateo County and five that had been challenged by anti-incorporation residents. Cruikshank ruled that the votes should not count because the voters did not live in East Palo Alto.

A hearing has been set for Sept. 23 to determine how those eight ballots were voted and to retally the election vote totals accordingly. Invalidating those votes will not affect the outcome of the election.

Incorporation advocates who attended the trial were overjoyed by Cruikshank's ruling.

"It is a victory for the entire community," said City Councilman Ruben Abrica. "The city has survived its first challenge. The integrity of the city has been affirmed."

Paul N. McCloskey Jr., the lawyer representing anti-incorporation residents who contested the election, said he plans to appeal Cruikshank's decision.

"It has monumental significance because what he (Cruikshank) did was give a stamp of

approval for a campaign worker to go into the home of a voter and help that voter fill out his ballot," McCloskey said. "That sets a historic precedent and opens the absentee ballot process to tremendous opportunities of fraud and coercion."

Tom Adams, the lawyer representing the city of East Palo Alto, said during his closing arguments that McCloskey had failed to show any evidence of fraud or coercion in the June 7 election.

"Where was the fraud?" Adams asked. "There were no forgeries, no pattern of fraudulent behavior, no documents proving fraud, no third-party witnesses. I guess I don't understand the definition of fraud that is being used here."

The lawsuit was brought by members of the Citizens Coalition Against Incorporation Now. CCAIN members contended that non-residents voted, votes were cast by second-parties for

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others and ballots were illegally delivered to the San Mateo County clerk's office.

The CCAIN suit focused primarily on residents who had voted by absentee ballots.

Voters who cast their ballots at the polls narrowly defeated the incorporation measure, 1,688 to 1,599.

But absentee voters approved incorporation, 183-89, giving the measure a 15-vote victory. The absentee balloting was coordinated primarily by members of the East Palo Alto Citizens' Committee on Incorporation. EPACCI members helped many residents apply for and fill out their absentee ballots.

McCloskey originally had filed challenges to more than 300 votes. By the end of the trial, he was challenging less than 100. He had dropped complaints against the other votes, admitting he had no case against them.

Of the votes he did challenge, McCloskey argued that some were cast by non-residents and that other ballots were illegally hand-delivered to the county clerk's office.

McCloskey also tried to convince the judge that EPACCI campaign workers violated voters' right to a secret ballot by going to the voters' homes and helping them fill out their absentee ballots.

"This wasn't a case where a voter said, 'Come help me with my ballot,'" McCloskey said. "No case in California has ever upheld the right of campaign workers or candidates to go into voters' homes and help people vote. The peril of this process in the future is clear. The potential for fraud and coercion is absolutely enormous."

"Fraud is easy to allege, but hard to prove," Adams countered. "McCloskey has produced no hard evidence of fraud. Voter after voter testified that they gave their ballots to the campaign workers voluntarily. If a voter wishes to show their marked ballot to anyone, they can. Absentee balloting has become a valid avenue of campaign activity in California."

Throughout the trial and again Wednesday, Judge Cruikshank said he was upset by what he considered to be "harassment" of voters by McCloskey.

"The problem underlying the whole case is that people have been subjected to harassment," Cruikshank said.

Some of the witnesses who testified during the trial said they never would have voted if they had known they would be asked to appear in court.