

Opinion

Supreme Court Near Decision on Cityhood

On December 9, 1985, one court room of the Federal Building in San Francisco was filled to capacity with people from East Palo Alto. Most were proponents of cityhood, but a sizeable contingent, many of them non-residents, were opponents of cityhood. All had come to hear and witness the latest round in the Wilks versus Mouton incorporation battle.

Seven members of the California Supreme Court: Chief Justice Rose Bird, Justices Allan Broussard, Joseph Grodin, Cruz Reynoso, Malcolm Lucas, and Stanley Most, were joined by San Francisco Judge Lilly Wing to consider oral arguments presented in this landmark case by Thomas Adams, attorney for the City, and Paul (Pete) McCloskey, attorney for the opponents of cityhood.

McCloskey stated that even though he believes the Court will rule in favor of his clients, for the most part absentee landlords and developers, he asked that the Court allow the City to remain in existence until a valid election can be held.

McCloskey's argument differs from that of Sid Wolinsky of Public Advocates. Wolinsky represents a group of Hawaiian farm workers who have a suit in the Hawaiian Supreme Court against a group of growers. They allege that the growers fraudulently used the absent voter process to win an election. Wolinsky filed an *amicus curiae* asking that the California Court rule against the City of East Palo Alto, but that the decision

be applied prospectively. This means that the East Palo Alto election would be allowed to stand, but that the decision would be applied to all future cases.

There are several interesting aspects in the Wilks versus Mouton suit. First, the only issue raised by the opponents, voter fraud, was soundly trounced by the trial jurist, Judge Cruikshank, and by all three members of the Appeal Court, Judges Racanelli, Newson, and Holmdahl. They concurred that there was NO evidence of voter fraud. Second, the Supreme Court agreed to hear the case. This suggests strongly that there was some disagreement with the decision of the Appeal Court. Third, if the suit is remanded to the trial court for a determination of those contested votes, this action would actually violate the constitutional guarantee of the secrecy of the ballot box. This guarantee is why the opponents of cityhood ostensibly instituted the court suit.

We are glad that the Sword of Damocles will finally be removed from over the City's head. It is extremely sad, though, that absentee landlords and real estate developers who didn't want regulation, and the criminal element who didn't want an effective local police department, were able to force the City to spend thousands of dollars in legal costs to defend its right to exist, and to ensure that the will of a majority of its citizens, opting on June 7, 1983 to incorporate this community, be upheld.