

East Palo Alto incorporation opponents ask higher court to overturn judge's ruling

By Thomas G. Keane
Times Tribune staff

As expected, opponents of East Palo Alto's incorporation have filed an appeal with the state First Appellate District in San Francisco, asking the higher court to overturn a judge's ruling upholding the June 7 incorporation election.

Paul N. McCloskey, attorney for the appellants, is arguing that visiting Judge John Cruikshank reached "three unique conclusions of first impression," when Cruikshank ruled in October that there had been no fraud, forgery or tam-

pering of votes in the cityhood election.

Cruikshank said at the conclusion of the trial that he was not convinced there had been fraud in the election, and in the absence of fraud, the result should stand.

However, in his final ruling, the judge did invalidate eight votes in the election — three that had been challenged by San Mateo County and five that had been challenged by anti-incorporation residents. He ruled the votes should not count because the voters did not live in East Palo Alto.

McCloskey represents East Palo Alto residents, including City Coun-

cil member Gertrude Wilks, and several landlords.

Those opposing the community's incorporation again are contesting the validity of crucial absentee ballots.

Those who voted in person at polling places June 7 rejected incorporation by a vote of 1,678 to 1,599, but absentee voters approved the measure, 183 to 89, swinging the election in favor of incorporation, 1,782 to 1,767.

The brief submitted to the court Friday by McCloskey argues that "six proponents of incorporation

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used an entirely new method of absentee ballot campaigning, previously unknown or at least unrecorded in California election history."

The brief continues, "procedures to obtain those 94 absentee ballots, however, squarely violate California Constitutional or statutory provisions designed to protect the secrecy and integrity of the absentee ballot process."

Superior Court testimony from absentee voters and from members of the pro-incorporation group who helped those voters cast their ballots are excerpted in the brief.

The brief argues, in part, that several ballots were not secretly cast and therefore illegal, that 46 ballots hand-carried to the county

clerk's office by a second party should be ruled illegal, and that 17 ballots were cast by people who did not live in East Palo Alto during the required 29-day period before the election.

McCloskey said this morning that the key issue of the case involves ballot secrecy, and whether voters had the right to waive that privilege. Waiver, the brief holds, is an "intentional relinquishment" of a known right. And since many of the voters were elderly, unsophisticated and uneducated, they may not have waived the secrecy privilege intentionally, McCloskey said.

The attorney said he is "cautiously optimistic" about the case. He has asked the court to give it some priority so that they can hear it by late February or early March.

Tom Adams, the lawyer representing East Palo Alto, was unavailable for comment today.

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