

East Palo Alto cityhood election legal

By Don West
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REDWOOD CITY — The election in which East Palo Alto won its cityhood was legal, Superior Court Judge John Cruikshank has ruled.

In his decision yesterday, he said he found no evidence of fraud in the June election, which had been contested by Councilwoman Gertrude Wilks and real estate man Arn Cenedella, both incorporation opponents.

He did invalidate eight of the 3,549 votes cast in the election because the voters failed to meet residency requirements. He ordered the eight to testify on Sept. 23 at 10 a.m.

Incorporation, which had been approved by a bare 15-vote margin, had been challenged on the basis that non-residents cast ballots and that fraud had been committed in the handling of absentee ballots.

Pete McCloskey, attorney for the challengers, had asked that about 100 ballots be tossed out. Most were absentee ballots turned over to election officials by people other than voters. Three pro-incorporation workers had handled the absentee ballots before turning them over to the county clerk's office.

McCloskey argued yesterday that this violated the voters' right to a secret ballot.

"Without that right to secrecy, what's to prevent a union leader from calling in his union members and telling them, 'Tonight's the night we're going to mark our absentee ballots, and this is how we are going to do it,'" McCloskey argued.

Tom Adams, attorney for the City of East Palo Alto and the four council members named as defendants, contended that the voters had a right to waive their right to secrecy and had done so willingly.

McCloskey should be making his arguments before the state Legislature, not the courts, Adams said.

He contended that the Legislature had set up procedures that allowed friends or campaign workers to assist voters in marking their ballots. Throwing out such ballots now would disenfranchise those voters, he said.

Cruikshank invalidated the eight votes on the grounds that they were cast by non-residents. If the voters can be brought to court, they will be asked how they voted, so that the final election tally can be adjusted.

As for allegations of fraud, the judge said the challengers had failed to provide any proof of this.

McCloskey said he planned to appeal the judge's decision to a higher court.

Cruikshank said he would not "legislate from the bench" and called on the state Legislature to make needed reforms in the absentee ballot regulations.

"There are some things that worry me, but I am going to leave those to the Legislature and there are bills being considered right now that solve some of the problems," he said.

"I am having problems with how you protect the sanctity of the home using absentee ballots. How they are going to solve that is a serious problem."

There had been testimony that pro-incorporation campaign workers went to people's homes to show them how to use absentee ballots, marking some of the ballots as instructed by the voter.

Cruikshank made no secret of his displeasure with some of the tactics on both sides, saying voters were harassed in such a way that could make them drop out of future elections.