

1984

# Judge will not ignore illegal ballots

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Sentinel Staff Writer

SANTA CRUZ — Superior Court Judge Harry Brauer said Monday he must overturn the November 1983 City Council election if enough illegal votes are found. He said in court that voting in the wrong precincts, the allegation on which the challenge rests, is not a technicality which can be ignored.

If illegal votes are subtracted from the candidates' totals in the same ratio in which they were cast in the contested UCSC precincts, 182 illegal votes would be enough to take the victory from progressive Jane Weed and give it to moderate Bill Fieberling. Along with that seat goes the council's 4-3 liberal majority.

Brauer, who is hearing the challenge without a jury, cited a unanimous decision by the California Supreme Court which overturned an election on the basis of six votes cast in the wrong precinct, due to a mistake on the part of the registrar of voters.

Brauer said that so far, an equal number of legal votes and illegal votes have been revealed by voter testimony. But, he said, he has not decided on the legality of most of the votes cast by the 170 witnesses called so far in the trial. He did not say precisely how many of those votes he considers illegal, saying only there are "more than 20."

"A significant number were entitled to vote on campus," he said, "and a significant number were not entitled to vote on campus. I haven't decided how many fall into each category."

Weed won the council seat by just 144 votes over moderate Fieberling. In the four UCSC precincts, where the 459 challenged ballots were cast, voting was 9-1 in favor of Weed and Bruce Van Allen. The 182 votes, if subtracted from the totals in a 9-1 ratio as the challenging attorneys have requested, would swing the election to Fieberling.

Plaintiffs' attorneys Tim Morgan and John Bohrer, who rested their

case Monday, say 459 voters cast illegal ballots in the four UCSC precincts last November. The voters, mostly students, did not live on campus where they voted, they say. But defense attorneys contend the voters established legal residence, or "domicile," on campus and retained that domicile when they moved away.

Election law defines domicile as the place where habitation is fixed, where the person intends to remain and to which the voter intends to return when absent. Defense Attorney Mitchell Page contends that until a new domicile is established, the previous one is retained.

Morgan and Bohrer subpoenaed 300 voters of the 459 they say cast ballots in the UCSC precincts while living off campus. Only 170 of those voters could be located. But Morgan produced housing records showing another 161 people who voted on campus had not lived there for more than a year. This means their votes are illegal under the Elections Code, Morgan contends.

It is now up to defense attorneys to

find those witnesses and to prove their votes were not illegal. Page argued the burden of producing witnesses should not shift to him, but Brauer said if 160 voted on campus who hadn't lived there for a year, "they ought to come and tell us why."

Brauer disagreed that people camping in the woods or staying illegally on campus automatically established or retained a legal residence there. The right to vote, he said, rests on a person having a domicile in the place where the vote is cast. "I have doubt," Brauer said, a "surreptitious, transitory and illegal sojourn can rise to the dignity of the domicile."

Defense attorney Robert Taren said after court his team may be able to contact 100 or more of the voters Morgan was unable to reach. The defense case will last for four to six weeks, he said.

Brauer denied a defense motion Monday to have the case thrown out because the challengers had not offered enough evidence to support their allegations.

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