

City election with - - stands challenge

By JOHN McNICHOLAS
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SANTA CRUZ — Superior Court Judge Harry Brauer has upheld the contested City Council election, leaving Jane Weed in her seat on the council and the progressive council majority intact.

But in a written decision released this morning, the judge warned those who voted at UCSC while living elsewhere that, in the future, they must vote where they live.

Brauer left a wide-open door for the losing side to appeal the decision, outlining for them the very point of law which could be interpreted to swing the decision the other way. Losing attorneys Tim Morgan and John Bohrer said this morning it would be up to the 22 people who filed the suit to decide whether to start the expensive and lengthy appeals process.

"Everyone expected a Solomon-like de-

cision from Judge Brauer," Morgan said, "and I believe that's what he came up with. I would feel a lot worse if he hadn't basically said in the opinion, 'Listen guys, don't do this again.'"

Although Brauer upheld two-thirds of the disputed votes, he sternly rebuked the voters — mostly students — who cast ballots in the four UCSC precincts last November while living elsewhere.

Had the challenge been brought before the election, it might well have nullified the votes of those who lived off campus, Brauer indicated in a 21-page decision filed this morning.

He stressed "in the clearest terms" the law allows him to reject the challenge only because it was brought after an election. The intent of the law is to uphold elections, he wrote, and a judge should not overturn the will of the people or the Legislature.

During the trial, 335 of the approximately 460 votes challenged in the suit came under scrutiny. Brauer ruled 110 of those were illegally cast. Had he found 182 illegal votes, the election and the City Council seat would have gone to conservative Bill Fieberling. Brauer was subtracting illegal votes from the candidates' totals in the 9-1 ratio with which the progressives won the four precincts. Fieberling came in sixth in a field of eight, 145 votes behind Weed.

Mitchell Page, a lawyer defending the election, had maintained that most of the challenged voters who cast ballots on campus lived within city limits anyway. The outcome of the election would have been the same had they voted in the correct precinct or on campus, Page argued.

This reading of the will of the voters was his "strongest argument," Brauer told Page on the final day of the three-and-a-half month trial.

But it won't work twice, Brauer indicated. "Except for persons who intend to return to campus to live and those who have no other place to roost, the witnesses and others similarly situated are well advised to bestir themselves, and . . . vote in the future in the precinct in which they live."

The issue of legal residence was crucial in the case, and the law conflicts on this issue. The Elections Code states a person's official residence, or "domicile," is a place where habitation is fixed, where the person intends to remain and to which they intend to return.

However, the California Government Code provides that "a residence cannot be lost until another is gained." Most of the students testified they did not intend to move back to campus.

Brauer decided, "Even if a voter has left his residence with the intention not to return to it, that residence remains his domicile as long as he has not acquired a new one." This was one of the main stanchions of the defense argument.

Brauer also ruled that the 24 witnesses who said they were camping in the campus woods, staying in vehicles on campus or in dorms with other students were entitled to vote on campus.

In what one attorney called "an invitation to appeal," Brauer wrote that if an appellate court were to hold that a domicile is abandoned when one leaves with no intent to return, then 225 votes are illegal — enough to swing the election.

Morgan said a pre-election challenge, which Brauer suggested could have nullified the students' votes, was demanded by the county Grand Jury just days before the November election. But the challenge was blocked by Assistant County Counsel Jonathan Wittwer, to whom Morgan imputed "a strong ideological bias to the left."

Morgan said, "I'm outraged by that," and pledged to challenge votes at the polls in upcoming elections "until we get this problem straightened out."

Wittwer said this morning, "I'm a registered Democrat; does that make me a wild-eyed radical?"

The reason he advised against the challenge, he said, was the grand jury had not presented enough evidence to constitute a legal basis for the challenge.

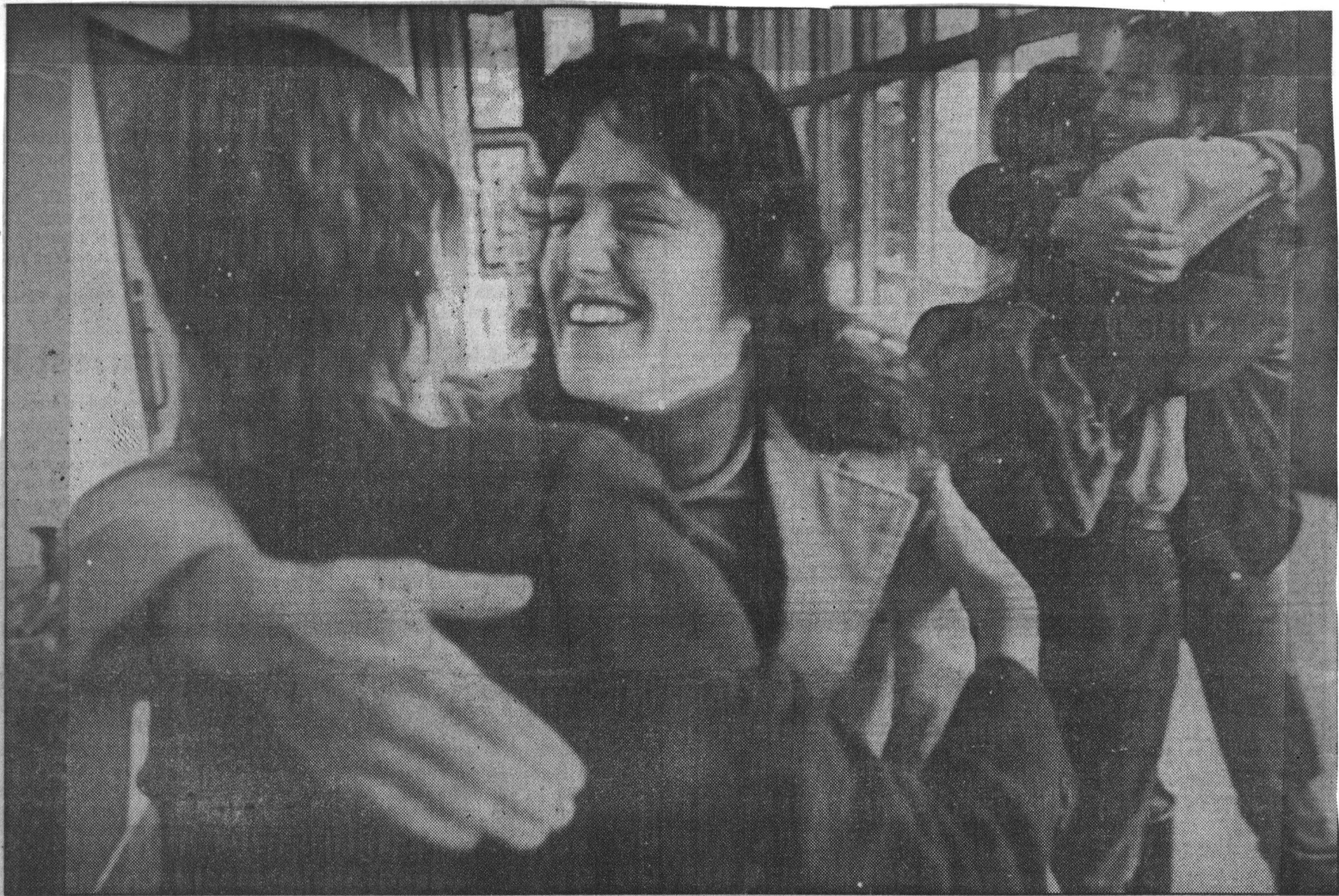
Brauer took the students to task for their reasons for voting on campus, instead of at their residences. They testified campus was the focus of their activities, their campus mailbox was their most permanent address, and that it was most convenient.

The arguments carried no legal weight, he said, and he called the "preoccupation with convenience . . . singularly unappealing."

"I sat in wonder as I observed student after student make this point unselfconsciously, without giving the slightest sign of appreciation of the privilege of living in one of a handful of countries in which a voter can enter a polling booth secure in the knowledge that the defeated incumbent will promptly and peaceably vacate his seat of power. Ask a Pole whether he would be willing to get out of bed a half hour earlier twice a year for such a boon."

REFERENCE

[REDACTED]



Bill Lovejoy/Sentinel

City Councilwoman Jane Weed hugs a supporter after learning the election results were upheld this morning.