

Judgment due over which way election challenge is going

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SANTA CRUZ — The first indication of which way the city election trial will go was due to come out of court today.

Superior Court Judge Harry Brauer Thursday agreed to tell attorneys whether he thinks statements from the first — and so far only — UCSC student to testify supports the defense or the plaintiffs.

The trial is a challenge to November's City Council election. If successful, the challenge could change the philosophical bent of the council from the progressive to the moderate.

Attorneys said the decision, which Brauer was due to make at 3 p.m., will be a barometer, giving them an idea how to handle the rest of the case. "It will affect how much scrambling will be done in the next few weeks," said John Bohrer, an attorney on the plaintiff's side. The decision is for information only, and will not be binding.

Defense attorneys Robert Taren and Mitchell Page requested the preliminary judgment.

Attorneys agreed the testimony of student Amy Mullins, who took the stand Thursday, is typical of many of the 457 students whose votes are contested.

Morgan has subpoenaed 100 stu-

dents, but said he will call all 457 if necessary to prove his case.

But he said this morning that he would not call many more students if the judge indicates that Mullins' testimony could prove to be sufficient.

The first student to take the stand Wednesday did not testify, but invoked the Fifth Amendment's protection against self-incrimination. He is under investigation by the District Attorney's office for voter fraud, attorneys said.

The original lawsuit alleged 472 votes cast in the four UCSC precincts were illegal because the voters did not live there. Most are student votes. Testimony by UCSC housing officials turned up 14 contested names who legally lived on campus during the Nov. 8 election, bringing the number of contested votes to 458.

Morgan says, except for one student who apparently voted twice, there was no intent to defraud — rather a "failure to comply with simple, straight-forward voter registration procedures."

Mullins, a senior in chemistry at Kresge College, told the court she had moved to Kresge College in 1980 and registered to vote the next spring. She used the college address on her voter registration, and though she has moved several times in subsequent years, she did not notify the county

clerk of her address changes, or re-register in the precinct where she actually lives.

The testimony goes to the heart of the case for both the challengers and the defense. By law, students may vote in the precinct where they are "domiciled." Page and Taren hold the students have established what the law terms a domicile at their colleges, and may vote in those precincts.

But attorneys Tim Morgan and Bohrer, working for the 22 voters who brought the challenge to overturn the progressive's City Council majority narrowly retained last November, say the students didn't comply with the elections code. They contend the domiciles of the students were not in the four university precincts, and therefore, the votes are illegal.

Intent is at the heart of the domicile question. The election code states a person may have several "residences," where "habitation is fixed for some time," but where the person does not intend to remain.

A person can have only one "domicile."

A domicile, the code states, is the place where "habitation is fixed," where the person intends to remain, and to which, when the person is

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absent, he or she "has the intention of returning."

Mullins said she uses her parents' Southern California address on her driver's license, her Kresge address on her checks and on a city library card, and she receives personal mail at a Western Court address to which she moved a last January. She lived at another city address from September to January, she said. She spends nearly all her time at school, she testified, and eats one meal and sometimes two on campus. But her chemistry studies keep her at a central campus building rather than at Kresge proper, she said.

After her first year at UCSC, she worked in Montana for the summer. Last summer, she worked in Catalina, where she intends to work again this summer. She told the court after she graduates in 1985, she intends to return to her parents' home until she decides what to do.

Page cited the elections code, saying a person can live in places other than one's domicile temporarily. If the person intends to return, he or she does not lose the domicile. He says until one intends to establish a new domicile, the old one remains valid.

Mullin said she retained the Kresge address "because I knew it would always be there, as long as I was a student. It was a more stable place."

But Morgan says the elections code states a person who has moved any time up to 29 days before the elections must re-register.

Should Morgan win his case, the majority on the City Council could swing from progressive to moderate.

Jane Weed, newly-elected council member, came in fourth out of eight candidates running for four seats.

Finishing behind her was former mayor Bruce Van Allen and moderate-slate candidate Wilson "Bill" Fieberling. If the 458 contested votes were subtracted from the totals in the 9-1 proportion in which they were cast on campus, Fieberling would move from 145 votes behind Weed to 22 votes ahead of her, and would take her seat on the council. That would swing the 4-3 majority to the moderates and conservatives.

The trial, adjourned today, is scheduled to resume Monday at 9:30 a.m.