

State high court weighs case of Santa Cruz mayor

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The California Supreme Court must choose between the lesser of two evils in the lawsuit challenging the 1983 Santa Cruz City Council election.

Either it allows people to continue to vote where they no longer reside, or allows people to register to vote at a place they may be just passing through.

The court's dilemma was clear yesterday during "oral arguments" by the attorney representing Santa Cruz Mayor Jane Weed and the attorney representing a group of conservatives who challenged her election. The justices spent about an hour questioning the

attorneys, but gave no indication how they will vote.

The lawsuit, filed shortly after the November 1983 council election, alleges that more than 450 UC-Santa Cruz students voted at the university campus even though they had moved off campus and had no intention of ever returning there to live. Therefore, the challenge maintains, they could not use those addresses as their "domiciles" — the elections-law term for legal residence.

The student vote was crucial to Weed's election; she would have lost had many of the votes been invalidated.

Shortly after the suit was filed, then-Superior Court Judge (now Appellate Court Judge) Harry Brauer presided over a long trial in which he took testimony from each of the students involved.

Brauer determined that not enough students had voted illegally to change the election results.

The conservatives appealed, and the appellate court overturned the decision and the election, ruling that conservative candidate Bill Fieberling, who came in 145 votes behind Weed, was in fact the winner in the 1983 election. Weed was allowed to keep her council seat, however, while she pursued an appeal to the Supreme Court.

Oral arguments in the case were presented to the high court in San Francisco yesterday, nearly four years after Weed was elected. Her council term would have expired this November, but all council terms have been extended in Santa Cruz as part of a move to hold city elections in even years.

It was clear yesterday that the justices were quite familiar with the case, as they frequently interrupted the attorneys to ask their own questions.

Representing Weed, San Francisco attorney Gary Cohen argued that voters would be "disenfranchised" — essentially kept from voting — if prevented from casting ballots when in transition, as many of the UCSC students were who voted in 1983.

"If a person is without a home, I think the law is clear they still have a right to vote," Cohen said. If they have not yet established a new home, they maintain their right to vote at their old one, he said.

"A domicile is not lost until another one is gained," he argued.

Cohen also mentioned that since most of the students who moved from the campus remained within the city, they still would have voted and the outcome of the election would have been the same.

Justice Edward Panelli said the Supreme Court was less concerned with that specific set of facts than with the larger

issue of law, which would affect all California elections, including cases when people move from one jurisdiction to another.

Speaking for the conservatives, attorney Jonathan Coupal argued that once a person leaves a residence and clearly has no intention of returning, he or she can no longer use that address for voting purposes. Instead, such a person can vote wherever he or she is staying on the last day of voter registration before an election, even if it is a temporary residence, such as a campground.

"What we know about the old domicile is he doesn't even intend to return," Coupal said.

Justice Stanley Mosk summed up the problem.

"What we have is a choice between two fictions," the justice said. One is Coupal's suggestion that the person vote where he is staying, no matter how temporary that residence is. The other is Cohen's argument that the person vote at a place where it is known he or she plans never to live again.

"Between those two fictions, which is preferable?" Mosk asked Coupal.

The campground, came Coupal's reply, because it's "less of a fiction." At least the person plans to return there, if only that night, when the voter

registration card is filled out, Coupal said.

The problem with Cohen's argument that an old address may be used until a new domicile is established, Coupal said, is that it is indefinite. A person could use that address for years, though he no longer lives there, Coupal said.

Likewise, Cohen pointed out the fallacy he saw in Coupal's argument. Cohen suggested that Coupal's rule would allow people to register to vote in a city they were merely passing through.

Justice David Eagleson took a similar approach in his questioning of Weed's attorney. He asked Cohen if it would be more fair to allow people to vote where they are, rather than where they had last resided.

Cohen said it may be more fair, but it is contrary to state law.

"At least you know they're there," Eagleson said. "Here (in this case) they're voting in a place they never intend to return to."

But Justice Mosk questioned whether the idea of letting people register wherever they happen to be at the deadline for registering to vote would open the way to fraud.

"Doesn't that lend itself to a group of carpetbaggers moving in 28 days before an election to affect the results?" Mosk asked Coupal.

"It is (Cohen's) rule that stands a chance of creating great mischief," Coupal replied, because it would allow people to continually vote in a place they where don't live and don't intend to live.

During his rebuttal, Cohen urged the court not to overturn the 1983 election. He told the court that California's election code clearly states that in cases where there is some doubt whether a person is voting legally or not, it should be resolved in favor of the voter.

When Cohen was finished, Chief Justice Malcolm Lucas moved on to the next scheduled item, without any indication of when the court will decide on the Weed case. It is expected, however, that the court will issue its ruling before the end of the year.

REFERENCE

WATSONVILLE
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