



## PRESS-REGISTER

### Claims heard about disputed election for mayor of Evergreen, Ala.

#### Attorneys allege many illegal votes cast for incumbent and challenger

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EVERGREEN — Mobile County retired Circuit Judge Edward McDermott heard claims Monday and Tuesday that voters cast hundreds of illegal ballots in the August municipal election that pitted incumbent Larry Fluker against Pete Wolff III in the mayor's race.

A day after the Evergreen City Council on Oct. 15 declared incumbent Mayor Fluker winner of the

Oct. 7 runoff by two votes, challenger Pete Wolff III filed a contest claiming "malconduct, fraud and/or corruption" cost him the race. Both sides presented evidence in the initial hearing this week.

One man testified from his wheel chair that he never cast a vote in the election, but that his name appears as having voted absentee, officials said, only one of hundreds of votes attorneys have questioned. James Anderson, who represents Wolff, said it's possible some 400 votes that were counted are illegal.

Fluker's attorney, Edward Still of Birmingham, said he is aware of some 100 votes that he believes should not have been counted.

"I think we came a long way in this hearing," said Anderson. "I've never seen a more messed-up voting list in all the years I've been doing this."

Anderson said 128 people voted who were not listed on the Alabama secretary of state's official list of registered voters. Anderson said Alabama law that went into effect in January 2007 mandates that any voter must be registered and on that official list to be eligible to vote.

"The city did not use that list," Anderson said, "but rather created its own list of names that were typed out, some handwritten. Some 35 people were allowed to vote that did not appear on the city's list of registered voters, and 19 of those do not appear on any registered voter list."

Anderson said he believes more than 100 people were illegally excluded from voting "because of the action of election officials." He also claimed absentee ballots were not witnessed properly, some were forged, and some had conflicting information.

One man with advanced Alzheimer's disease registered to vote on the last day possible, then cast a ballot with the same witnesses listed on all forms. Some people voted in the wrong districts because election officials had outdated address information. The judge will decide if those votes count since the mayor's race was run at large.

Still said the judge will issue rulings on the voting list question, absentee voting issues and others in the coming weeks so attorneys know which evidence will be required.

"The major evidence I presented this morning was testimony from people who had problems with absentee voting," Still said. "There was testimony from people we thought had moved into the city and registered to vote who only claimed to be residents, who were not in fact residents."

Attorneys will present arguments next month on the issues ordered by McDermott.

A decision on who is legally entitled to hold office could be months in coming, officials said, as the judge sifts through arguments about which ballots should count and which ones should not.

Fluker will continue to serve until a resolution is reached.

Contests are legal challenges of certified election results. The plaintiff, generally the loser in the election, files the action within five days of the certified result, naming the winner as the defendant. The action is filed in the county where the election took place, and a circuit judge presides over the proceeding.

In a contest, the plaintiff must prove illegal votes were cast or raise other allegations that would change the outcome of the vote. Judges can overturn election results, dismiss the contest as invalid or order a new election. The ruling can be appealed to higher courts.

Fluker, Evergreen's first black mayor, claimed Wolff used racist ads to divide the town. Wolff raised questions of mismanagement and said Fluker created an anti-business climate in an already economically strapped area.

Wolff finished the Oct. 7 vote count two ahead of Fluker with 1,025 to Fluker's 1,023. When 10 provisional ballots were discovered, the final count was postponed to allow the Conecuh County registrar to verify the ballots.

Eight were deemed by the registrar to be qualified voters, but when City Attorney Terry Davis examined the absentee ballots Tuesday, he discovered one voter had not indicated why the ballot was cast absentee, and one did not have proper witnesses. Of the provisional ballots counted, Wolff received one vote while Fluker got five, giving Fluker two more than Wolff in the final count.

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