



Judge allows Lawrence to report election results

By Brian Messenger

bmessenger@eagletribune.com

November 18, 2008 12:13 am

LAWRENCE — A judge has denied a request by defeated state representative candidate Marcos Devers to prevent the city from reporting its election results to the state by tomorrow's deadline.

Superior Court Judge Frances McIntyre ruled yesterday that Devers' allegations of election fraud were not substantive enough to change the outcome of the Sept. 16 Democratic primary, in which Devers lost to state Rep. William Lantigua by 399 votes.

Lantigua was unopposed in the Nov. 4 general election.

Devers, a former city councilor, has filed a civil lawsuit against Lantigua, Lawrence City Clerk William Maloney, and city Election Coordinator Rafael Tejada, alleging they allowed or assisted in the casting of as many as 65 illegal absentee ballots in the primary.

Devers' lawyer, Nicholas Guerrero, also requested an injunction on the reporting of election results. In her ruling, McIntyre stated it was unlikely Devers could prove the absentee voters "substantially failed to comply" with election laws, or that the outcome of the election would be in doubt as a result of the allegations.

Guerrero said his client will decide on how to move forward with the lawsuit in the next few days.

"The case isn't over," Guerrero said yesterday. "We lost at this preliminary level. All of the allegations of the complaint are still pending. The case continues to go on."

In affidavits submitted to the court, Guerrero argued that Lantigua, Maloney and Tejada conspired to allow illegal voters to register and cast absentee ballots at Tejada's Greenwood Street home. Other residents claimed Lantigua and his campaign workers tried to convince them over the phone and in person to vote illegally by absentee ballot.

Voters must be unable to go to the polls in their community in order to submit an absentee ballot under state election laws.

"We thought it was serious enough to bring to court and still think it's serious," said Guerrero. "The voters should be very concerned about the integrity of the process."

Lantigua yesterday said he was both pleased and disappointed the injunction was not handed down.

"I am somewhat disappointed," said Lantigua. "I was looking forward to having another election so I could kick his (butt) again."

Devers also lost to Lantigua in a 2006 bid for state representative.

Guerrera said the injunction was not issued mainly because the proper time to question the legitimacy of individual absentee ballots is at the polls on Election Day.

Guerrera said the Devers campaign failed to contest the use of the absentee ballots because it did not have enough staff and volunteers to monitor the polls.

McIntyre's ruling means the city clerk can report the Nov. 4 results to Secretary of the Commonwealth of Massachusetts Francis Galvin's office by tomorrow's deadline.

"Now that we've got that decision, I think it clears the way and we'll do it as soon as possible, certainly by the deadline," said Maloney.

Maloney and Tejada were represented in court by Boston-based attorney William McDermott.

City Attorney Charles Boddy said the city employs two full-time and two part-time lawyers, but hired McDermott for the case because he is an expert in the field of elections law.

"We always use outside counsel in election cases because it is a very particular area of law," said Boddy. "I think this litigation will be dealt with effectively and not with exorbitant cost."

Copyright © 1999-2008 cnhi, inc.