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Cuming's supervisor seat could be declared vacant

By **TONY CARROLL**
Staff Writer

A county judge on Monday will address a demand to have Clyde Cuming ordered off the Yuma County Board of Supervisors.

Cuming's election "has been declared void," wrote Phoenix attorney Paul Stoller, representing Tony Reyes, a San Luis City council member who fell 23 votes short of unseating Cuming in November 1996.

The Arizona Appeals Court ordered Cuming's election set aside in December 1997 because the county improperly handled absentee ballots. In March, the state Supreme Court refused Cuming's petition to review the decision.

Meanwhile, an attorney for Cuming questioned how more than 1,200 voters could be disenfranchised when there has never been any proof of any problems with the absentee ballots.

Yuma County Superior Court Judge Phil Hall has scheduled a hearing on the matter at 11 a.m. on Monday.

Cuming said the board has a meeting Monday, and he expects he

will finish the day as one of its five members.

"Why would I leave?" the Republican asked. He said the board will begin working on the budget for the next fiscal year, and he believes his district needs representation.

Reyes, a Democrat, was unavailable Wednesday. But after the Supreme Court refused to hear Cuming's appeal, he told The Yuma Daily Sun that he has had his day in court and was looking forward to facing Cuming at the polls.

"All the issues in this motion have been resolved," Stoller wrote.

Now the court needs to declare a vacancy so voters in the district can elect a replacement in November.

Supervisors' elections can only be held in even-numbered years, and petitions for candidates wishing to run in the September primary election would have to be filed by June 25.

Cuming was declared the winner of the November 1996 general election by 23 votes. But without the 1,210 absentee votes cast in the race, Reyes would have won by 151 votes.

Reyes' attorneys challenged the election, claiming the votes couldn't legally be counted because County

Recorder Susan Marler had not compared signatures on the ballot envelopes with signatures on the voter-registration cards, as required by law.

Supervisors had not provided Marler with enough staff, she said.

Yuma County Superior Court Judge H. Stewart Bradshaw rejected Reyes' challenge before appeals judges reversed his decision.

Jack Meerchaum, a local attorney working on Cuming's case, told The Sun that a key question has never been addressed.

He said it's never been shown if there were enough questionable votes to make a difference.

"We're going to ask Judge Hall to review the ballot envelopes," he said.

He also said removing Cuming from the board would "essentially disenfranchise over 1,200 voters."

He said the action would deprive the absentee voters of their rights and could leave the county open to further litigation from voters, Cuming or even Reyes.

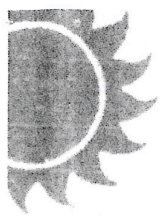
"They're telling 1,210 people their vote doesn't count?" Cuming asked.

Yuma Sun, Yuma, Arizona, US

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NEWSPAPERARCHIVE



Cuming election voided by judge

Yuma County supervisor says he'll be back on board by appointment

By **TONY CARROLL**
Staff Writer

Clyde Cuming took Monday afternoon off after a local judge declared his 1996 election to the Yuma County Board of Supervisors invalid.

But the Republican said he expects to be back on the board Wednesday, getting an appointment to sit as his own

replacement until a midterm election this fall.

At the end of their regular meeting on Monday, supervisors scheduled a special meeting for 12:30 p.m. Wednesday to discuss the ruling by Yuma County Superior Court Judge Phil Hall. The meeting will take place in the Supervisors Auditorium, 198 Main St.

Hall's order sets the stage for a September primary and November

general election to determine who will represent southern Yuma County on the board for the next two years. Cuming was in the second year of his third elected four-year term.

Tony Reyes, a Democrat who fell 23 votes short of unseating Cuming in 1996, successfully challenged the election's validity when the Arizona Court of Appeals agreed in December that county officials improperly handled 1,210 absentee votes.

Stephen Shadle, Cuming's attorney, said he probably would not appeal Monday's ruling.

When Cuming returned to Monday's board meeting from

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Yuma Sun, Yuma, Arizona, US

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CUMING

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court, he sat in the back of the room rather than with the other supervisors.

During the next break, Chairwoman Casey Prochaska said Cuming's district needs to be represented. "We're going into budget meetings," she said. "We have probably seven or eight special meeting days in May."

Yuma County Attorney David Ellsworth told The Yuma Daily Sun that state law directs the board on how to fill the seat until the next election.

The winner in the last valid election would fill the vacancy until the board appoints the replacement, he said. "There was a valid election six years ago," he said, noting that it was won by Cuming.

"I think I'll be on the board though December 31," Cuming said leaving Hall's courtroom. That would be the last day of the year 2000, he clarified, adding that he intends to beat Tony Reyes in an election over the seat this fall.

"Guess whose hat's the first in the ring," Cuming said of the upcoming election.

Reyes said he was happy with Monday's ruling but doesn't want supervisors to give Cuming a political advantage by appointing him to the board.

"When and if I run, I don't care who runs," he said, speaking long distance from an administrative training workshop outside of Baltimore.

He said he wasn't ready to announce his candidacy and give up his post on the San Luis, Ariz., City Council. A one-time mayor of the border city, he was re-appointed to the council in January.

Another Democrat said he will "most likely" run for Cuming's seat in the September primary. Frank Bernal, a northwest Yuma resident, said he has heard that his interest in running for Cuming's seat is shared by other Democrats.

Reyes finished first in the 1996 primary with 589 votes. Sylvia Ann Martinez collected 365, and Bernal tallied 216.

Cuming beat fellow Republican J.D. Worley 379-143 in the 1996 primary, before beating Reyes

1,861-1,838 in November. But excluding 1,210 absentee votes, Reyes would have won by 151 votes.

Shortly after the election, Reyes argued that the county had failed to follow state law, which required County Recorder Susan Marler to compare signatures on the ballot envelopes with voter registration signatures.

Superior Court Judge H. Stewart Bradshaw, who has since retired, rejected Reyes argument in December 1996. But the appeals court sided with Reyes a year later.

In March, the Arizona Supreme Court rejected a petition filed by Shadle to review the decision.

Shadle argued that holding a new election would disenfranchise the absentee voters. "We didn't have any evidence that there was an illegal vote," he said. He asked the judge to order the absentee envelopes be checked with registration signatures to see if there are at least 25 cases where they don't match.

Hall told Shadle that he should have made that argument to the court of appeals. He said the appeals court gave him little discretion, directing him to "set aside" the election.

"Set aside' means set aside," said Reyes' attorney Gerald Hunt. He said the county can't choose which election laws to follow. It wasn't Reyes, but the supervisors who broke the law by not providing Marler with the resources to check the signatures, he said.

Since the appeals court ruling, Marler has put together a procedure to check absentee ballot signatures. She said her staff couldn't do it in 1996 because there weren't enough people to answer requests for ballots countywide while checking signatures of the ones coming back.

Will her office check the signatures this fall?

Maybe, Marler told The Sun on Monday. "We'll have to have sufficient staff and funding to do the work."

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WE DELIVER!



Cuming back, as predicted

Supervisor told
to give up seat
on Yuma County
board returns
by appointment

By TONY CARROLL
Staff Writer

County supervisors returned Clyde Cuming to their board Wednesday, as Cuming said they would after he was removed by a local judge Monday.

Cuming missed most of Monday's Yuma County Board of Supervisors meeting after Superior Court Judge Phil Hall invalidated his 1996 election because the Arizona Court of Appeals found the county had mishandled absentee ballots.

By law, the Republican supervisor had to be replaced by another Republican. Democratic Supervisor Lucy Shipp said at Wednesday's special meeting. And no one else even came forward to be considered, she added while explaining her vote.

"No one had an opportunity," interrupted Supervisor Bob McClendon, the board's only other Democrat.

Minutes earlier from the audience county resident R.J. Wall twice asked to speak, once saying he had a Republican to nominate for the appointment.

Supervisors Chairwoman Casey Prochaska told him that no public comment would be allowed. "We have call to the public on Mondays," she said.

"I don't feel they're giving the people a fair shake," Wall told The Yuma Daily Sun after the meeting.

But Supervisor Jim Buster said

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■ State Republican chairman wants Yuma County recorder removed from office. Page 3

Cuming, Reyes can't expect to be alone on fall ballot

By TONY CARROLL
Staff Writer

Where some see a political rematch between Clyde Cuming and Tony Reyes, others are looking for political opportunity.

This fall's election to fill the south county supervisors' seat will be open to anyone who qualifies to get on the September primary election ballot. Yuma County Attorney David Ellsworth told the Yuma County Board of Supervisors Wednesday.

It won't be a special election, Ellsworth said. It will just be another race on the ballot that already includes the area's U.S. representative and a two-year term for the seat currently held by Jim Buster, whose district's population is based in central Yuma.

Buster, a Republican, said he has already taken out petitions. Candidates have until June 25 to turn them in.

After Superior Court Judge Phil Hall invalidated his 1992 election to the board on Monday, Republican Cuming announced that he would run this fall. He said he too has taken out petitions.

Cuming could face at least one challenge. District resident Craig Pauly was "ready, willing and able" to take the appointment to the board that supervisors gave Cuming Wednesday, said a friend R.J. Wall.

Wall said he attempted to nominate Pauly at Wednesday's special supervisors meeting when he was refused the right to

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before casting his vote that he didn't believe Cuming ever should have been gone. State law provides that the person elected in the last valid election would remain in office until replaced. Cuming's 1992 election to the board was valid, he said.

Deputy Yuma County Attorney John White said this situation required supervisors to appoint a replacement until voters elect someone to fill the last two years of Cuming's four-year elected term at the Nov. 3 general election.

Buster, who was appointed after Gary Pierce resigned just weeks into his term last year, also will have to run this fall to keep his seat for the next two years.

"I am concerned that the court vacated (Cuming's) position," Buster said. "These people chose Mr. Cuming over the former mayor of San Luis."

Tony Reyes, who is back on the San Luis City Council, challenged the legality of that election. In December, the appeals court determined Cuming's 1992 election was "uncertain." Contrary to state law, Yuma County Recorder Susan

Marler had not checked signatures on envelopes for the absentee votes that pushed him from a 151-vote deficit to a 23-point win over Reyes.

Speaking long distance from an administrative training workshop in Maryland, Reyes told The Sun that he was disappointed with the board's appointment on Wednesday. But he added, "It doesn't surprise me."

Cuming didn't show up to Wednesday's meeting and couldn't be reached for comment Wednesday or this morning.

McClendon charged that the rest of the board had their minds made up that they were going to put Cuming back on the board, just as they considered only Buster to replace Pierce.

Before the vote was taken, The Sun received a fax from the state Republican Party in Phoenix stating that Cuming would be re-appointed.

Shipp and Prochaska explained to McClendon and the audience that the board is preparing to put together its budget for the next fiscal year and needs an experienced supervisor to represent Cuming's

district.

"Clyde has budget experience," McClendon said. "We listened to him, and we're in a mess."

"We're not here to discuss the budget issue," Prochaska said.

"I wish we were able to go back and count the ballots," Buster said.

County Administrator Wally Hill later clarified that there is no way to determine how the absentee voters voted. Their ballots are now mixed with all the others. The envelopes are still in storage and could be checked to see if less than 23 bore questionable signatures, he said.

Cuming's attorney, Stephen Shadle, suggested that very thing to Hill on Monday. But the judge told Shadle he should have made that argument to the appeals court because their direction to him didn't give him the discretion to make such a ruling.

McClendon dissented in the 4-1 vote to re-seat Cuming. Although not elected, Hill had a vote under the state law pertaining to board vacancies. Ironically, Cuming voted against Hill when the board voted 4-1 to hire him.

BALLOT

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speak.

Wall said he plans to run, too — as a Democrat.

Frank Bernal, who lost to Reyes in the Democratic primary two years ago, attended Monday's court hearing and said he most likely will

run again this fall.

Democrat Sylvia Ann Martinez finished second to Reyes in the 1996 primary, before endorsing Cuming. She said she is seriously thinking about running again. "I don't want

Tony to get it," she said.

"The more the merrier," Reyes said on Wednesday. Reyes, though, said he is not ready to announce if he will be running. The announcement would cost him his seat on the San Luis City Council.

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NEWSPAPERARCHIVE

Reyes resigns seat on San Luis council

Plans in order for another run at supervisor

By **TONY CARROLL**
Staff Writer

SAN LUIS, Ariz. — Preparing for another run for the Yuma County Board of Supervisors, Tony Reyes resigned his post on the San Luis City Council Wednesday.

The resignation will be effective Saturday. That's the day Reyes plans to officially announce



REYES

his candidacy for Supervisor Clyde Cuming's county board seat, when U.S. Congressman Ed Pastor, a fellow Democrat, visits the border community.

Wednesday, he was less specific when he told the rest of the council, "I've got a bigger calling that's been weighing on my heart for a long time." After the meeting, he agreed that it should be obvious he would run. It was his lawsuit that forced this fall's election to fill the seat through 2000.

Cuming, the Republican incumbent representing southern Yuma County on the board, beat Reyes by 23 votes for a four-year term in November 1996. Last December, however, the Arizona Court of Appeals overturned the election after Reyes' attorneys argued that the absentee votes had not been properly handled.

County Recorder Susan Marler had not compared signatures on the incoming absentee ballot sleeves with signatures on the registration lists. Although the procedure is required by law, she said the county supervisors had not provided her with the staff to do so.

If the absentee votes would have been taken away, Reyes would have beaten Cuming by 151 votes.

Cuming's 1996 election was

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declared invalid, but he was re-appointed to serve through the next election by other county supervisors.

For Reyes to run, he must resign his council post, according to state law. He served on the council for 12 years, including 10 years as mayor, before his first run for supervisor. He was appointed again to fill a council vacancy about five months ago.

Cuming, who attended Wednesday's meeting, said Reyes is only getting another shot at his job because of a legal technicality. He said he didn't go take the election to court when he lost his first election for supervisor by 19 votes. But he added that he wasn't worried.

"I beat him once, and I'll beat him again," he told The Yuma Daily Sun.

"This wasn't just a technicality," Reyes said later. "I find it very, very tough to deal with the fact that Susie (Marler) is being made out to be the bad girl." The supervisors, who are controlled by the Republicans, could have provided her with the people she needed to do her job,

he said.

The real issue should be the "glaring philosophical differences" between the candidates, Reyes said. "I run because I really believe I can represent the people in my district better than Clyde can," he said.

Both candidates appear to have primary opposition from within their own party. Republican Craig Pauly has announced that he is running. Democrat R.J. Wall said Wednesday that he plans to file his nominating petitions before the end of the week.

Reyes' resignation also leaves an opening on the San Luis City Council. Mayor Pedro Julian said a new council member would have to be selected "from the good people of San Luis." He said he did not know when.

During the meeting, he thanked Reyes for his work on the council. "We appreciate you, Tony Reyes," he said.

Council member Jose Leonardo Suarez said he hoped Reyes would continue to help the council with his advice.

Cuming later said he was surprised in one respect that Reyes would resign from the San Luis City Council. "He has power here." In November's election, Cuming added, "he may not win."

Yuma Sun, Yuma, Arizona, US

May 28, 1998, Page 13

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NEWSPAPERARCHIVE

And the winner is ... oh, wait



Too many votes, not enough vote examiners may delay election results in Yuma County

By MICHELE COHEN
Staff Writer

Yumans may wake up the day after Tuesday's primary without knowing the final

outcome of local races.

Susan Marler, Yuma County recorder, will decide very late on election night if her staff can complete the review of questioned ballots in a couple of hours. If there are many ballots

to be checked by midnight, the Elections Department will resume vote tallying at 6 p.m. Sept. 9. Marler doesn't have enough people to operate shifts on election day.

"My staff said if after

working 18 hours straight, can they get some sleep," Marler said.

State law gives the county recorder 72 hours to complete her work.

The number of "to be

verified" ballots remaining after polls close at 7 p.m. Tuesday can't be predicted. The volume of early voting or absentee ballots that were dropped off at polls will be a major factor, Marler said.

Ballots that must be verified before they can be turned over to the elections department for counting are placed in mailbags and envelopes by poll workers.

For early voting ballots, the

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Yuma Sun, Yuma, Arizona, US

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VOTES

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recorder's office must make sure the signature on the cover matches that on file. Those dropped off at the polls will arrive with the regular ballots.

The handling of early voting ballots can have a substantial impact on the election outcome.

In April, Yuma County Superior Court Judge Phil Hall invalidated Republican Clyde Cuming's 1996 election to the Yuma County Board of Supervisors because the Arizona Court of Appeals found the county had mishandled absentee ballots. The recorder's office had not compared the signatures, which pushed Cuming from a 151-vote deficit to a

23-point win over Democrat Tony Reyes. Marler, a Democrat, has said the Republican-dominated board of supervisors failed to provide her with the staff to check absentee ballot signatures.

Ballots can become questionable for a variety of reasons.

For example, if a person ordered an early ballot and votes at the polls, the recorder's office must be sure the early ballot wasn't used.

The ballot of a voter whose name doesn't appear on the precinct registration roster must be verified as legitimate. The recorder's office must verify that a people who moved but didn't change their registration voted at the correct new precinct and didn't also vote at the old.

"It's new laws, new procedures as much as volume," Marler said.

Yuma Sun, Yuma, Arizona, US

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