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Sauerbrey suffers legal setbacks in election trial

Judge rules against admitting some evidence

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Visibly angry after a day of legal setbacks, Republican Ellen R. Sauerbrey declared last night that her challenge to the November gubernatorial election was suffering in a court hearing more concerned with procedure than truth.

Mrs. Sauerbrey, who abruptly left the courtroom of Anne Arundel County Circuit Judge Raymond G. Thieme Jr. after a number of decisions went against her, complained bitterly on the courthouse steps.

"You bet I'm upset at the judge's ruling," Mrs. Sauerbrey said. "The procedure is getting in the way of what this trial is all about, and that

is getting to the truth."

Mrs. Sauerbrey said she was particularly angered by a ruling barring the introduction of what she called "dramatic evidence" from moving men who saw control keys left in voting machines after the Nov. 8 election, a potentially serious breach of voting security.

"I think this is devastating not to allow this," Mrs. Sauerbrey told reporters.

The ruling about voting machine testimony was just one of several setbacks to her case yesterday. They included:

■ Her assertion that some prison inmates had votes cast in their names was put on hold when the judge ruled that the prison record she was using was irrelevant because it listed prisoners incarcerated in December, not Election Day.

Although Judge Thieme told state officials to try to produce a list of Election Day prisoners, it was un-

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clear if such a list could be generated before the end of the trial, state lawyers said.

■ Judge Thieme also prevented Sauerbrey attorney John M. Carbone from introducing critical evidence about thousands of allegedly ineligible voters who may have moved without changing their registration.

In addition, the Sauerbrey camp's latest list of alleged dead voters appeared to be shrinking. Checking by *The Sun* found that no ballots were cast in the names of at least 32 people on her list of 89, according to election officials. And there appeared to be innocent explanations for several other names on the list.

Mrs. Sauerbrey is seeking to overturn the victory of Democratic Governor Parris N. Glendening, who won by a margin of 5,993 votes out of 1.4 million cast.

Her suit alleged that improprieties and possible fraud cost Mrs. Sauerbrey the election.

As Judge Thieme announced his ruling about the moving men, he said it was "grossly unfair" to the defense in the case to allow the two men, Tracy Campbell and Adrian England, to testify because they had not given sworn depositions to defense attorneys.

"I'm not about to trash my order," the judge said, referring to a schedule he laid out soon after the lawsuit was filed Dec. 27. "There has to be an orderly process to the trial."

Mrs. Sauerbrey said her effort has suffered by trial restraints imposed by Judge Thieme, who said he is determined to end the case by Friday, in time for a ruling before the scheduled inauguration of Mr. Glendening next Wednesday.

"I always thought a trial was supposed to get to the truth," Mrs. Sauerbrey said. "This is not a normal trial, folks. In a normal trial, evidence can be presented for as long as it takes."

Attorneys for Mrs. Sauerbrey spent most of yesterday taking testimony from Douglas P. Dallio, a New York City-based computer programmer who developed nearly all of her evidence by matching lists of voters against various data bases.

Mr. Dallio testified that his computer runs suggested that hundreds of voters should have been ineligible to vote.

Lawyers for Mr. Glendening and state elections officials have disputed the assertion.

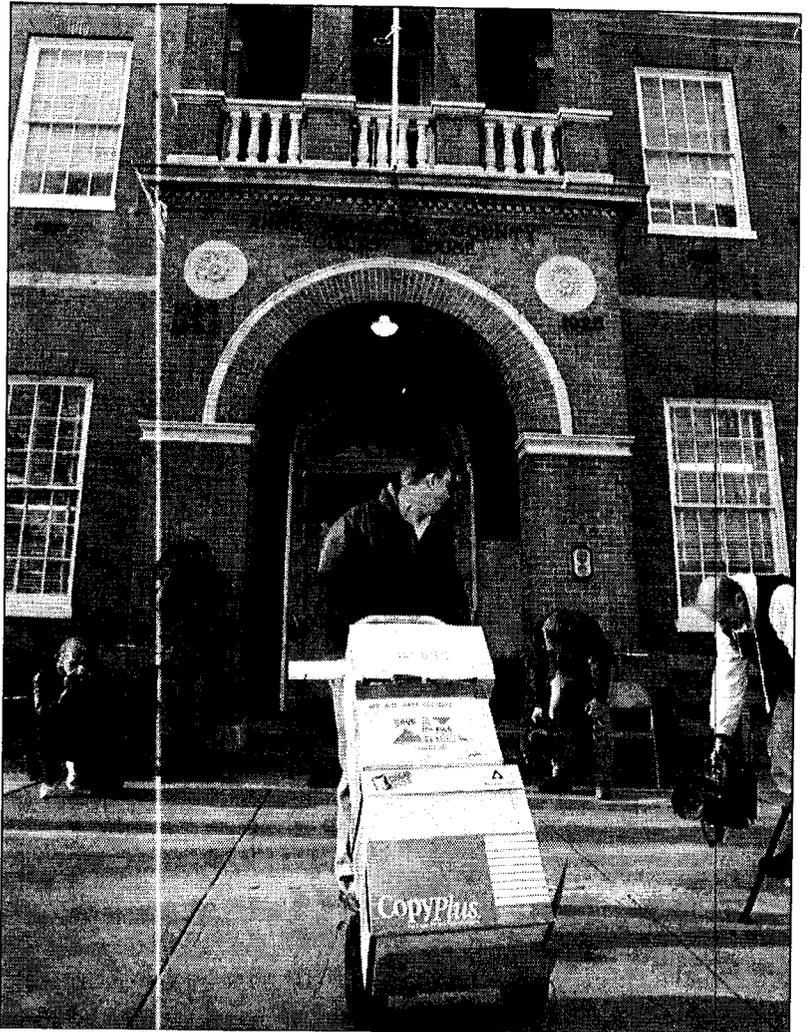
Mrs. Sauerbrey asked the two moving company employees to give an abbreviated version to the throng of media representatives outside the courthouse.

Mr. England and Mr. Campbell, both employees of the Guardian Moving and Storage Co., said they saw at least a dozen voting machines left unlocked during their pickups on election night.

The workers also claimed to have seen keys left in two machines, leaving them open for tampering — although both men said they didn't see anyone toying with the machines.

"I found a key in the side of one of the machines. Whether someone tampered with it, I don't know," Mr. Campbell told reporters.

Judge Thieme did allow one Guardian employee, Mike Forney, to testify, because he had given a



LLOYD FOX/SUN STAFF PHOTO

Dave Ruddy, a volunteer with the Republican National Committee, wheels boxes of documents into the courthouse.

sworn deposition to attorneys for Mr. Glendening Sunday. Mr. Forney testified that he had found two keys near one machine he helped take back to the city election warehouse. But he, too, said he saw no machine tampering.

Attorneys for Mr. Glendening said they have subpoenaed about 20 voters who appeared on a Sauerbrey list compiled from postal service change of address forms. By not changing their addresses in election records, they should have been ineligible to vote, according to Mrs. Sauerbrey's suit.

"What they're trying to say is that if you have a summer home in Martha's Vineyard and you have your mail forwarded there, and then come back and vote in Maryland, it shouldn't count," said Bruce L. Marcus, a Glendening attorney.

Like many of her vote challenges, the change of address argument has caused some of Mrs. Sauerbrey's supporters to turn against her.

"I had nothing against that lady [Mrs. Sauerbrey,] but I would never vote for her again," said Nancy Sevin of Oxon Hill, who along with her husband, Ali, is a registered Republican who voted for Mrs. Sauerbrey.

Mrs. Sevin said her son moved to Springfield, Va., two years ago, filed a change of address form, and ever since the post office has occasionally sent her mail to her son.

Now, she's been subpoenaed to testify that she was indeed a legitimate voter. "Let's get on with governing the state. I think it's ridiculous to be making this kind of a mess," Mrs. Sevin said. "To make us prove where we've lived for the last 30 years. It's such a nuisance."

On another front, problems

emerged in the Sauerbrey camp's list of 89 dead people in whose names votes were allegedly cast.

At *The Sun's* request, Baltimore County officials checked voting records for 37 names on the list. They found no votes were cast for 32 of them, said Doris Suter, the county's election administrator.

Of the five remaining names, Mrs. Suter said two represented voters who legitimately cast absentee ballots in the days before their deaths. The status of another listing is uncertain because two family members shared the same name and birth date, she said.

The check did show two ballots listed as being cast in the names of deceased people for which there is no explanation, Mrs. Suter said.

She said she believed that the discrepancies reflected errors by county election judges or election office clerks. "I think [Mrs. Sauerbrey] has people advising her wrong and they don't check with elections offices for procedures," Mrs. Suter said. "I would have been glad to work with them. It doesn't make her look great. She's cried wolf and it's sad."

Sun staff writers Melody Simmons and Norris P. West contributed to this article.