

IN THE SUPREME COURT OF THE STATE OF FLORIDA
CASE NO. 76345

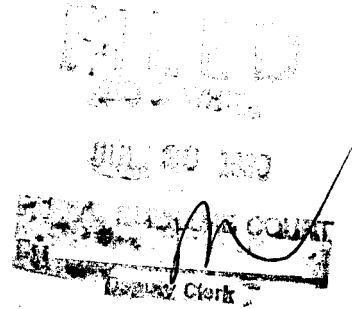
SCHOOL BOARD OF PALM
BEACH COUNTY,

APPELLANT,

VS.

JACKIE WINCHESTER,
Supervisor of Elections,

Appellee.



*Appeal from the District Court of Appeals in the State of Florida
In and for the Fourth District*

AMICUS BRIEF OF ERIC J. JOHNSON
CANDIDATE FOR SCHOOL BOARD, DISTRICT SIX,
PALM BEACH COUNTY, FLORIDA

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STATEMENT OF THE CASE AND OF THE FACTS

This Amicus brief is filed on the behalf of Eric J. Johnson, qualified candidate for Palm Beach County School Board, District **Six**. On July 12, 1990, Circuit Court Judge Edward Rogers ruled that non-partisan elections in Palm Beach County for the School Board were unconstitutional.

This matter came before the District Court of Appeal of the State of Florida for the Fourth District on the Appellant's Motion for Emergency Relief. The District Court of Appeal affirmed Judge Roger's decision declaring Palm Beach County School Board's races had to be partisan to be in compliance with the constitution of the State of Florida. However, they entered a stay of the enforcement of that ruling until the Supreme Court of the State of Florida had an opportunity to review the case.

The stay entered by the Fourth District Court of Appeal has had a chilling effect on Eric J. Johnson, candidate for Palm Beach County School Board, Seat **Six**. Mr. Johnson based upon Judge Roger's ruling filed and qualified as a Republican and paid the filing fees of a partisan race on July 16, 1990. His declaration of party affiliation is based upon his constitutional right of free speech and is in compliance with existing Florida law as set forth in the constitution, as delineated by Judge Roger's decision, and as affirmed by the Fourth District Court of Appeal.

Should the Supreme Court chose to review this case on appeal, it will likely cause

additional confusion in the election process. Although the Supreme Court should rightfully affirm the two lower court's decisions, such an affirmation coming after review would cause the scheduled non-partisan election to be voided and causing a special election to be had.

ARGUMENT

The Circuit Court Judge, and the per curiam order of Fourth District Court of Appeal was eminently correct in finding that Palm Beach County School Board elections should be partisan.

The lower Courts relying on Kane vs. Robbins, 556 So.2d 1381 (Fla. 1989), held that Article 3, Section 11(a)(1) of the Florida constitution prohibits with certain exceptions the enactment of special laws pertaining to constitutional officers which the Kane Court said included School Board Members. In the Palm Beach County situation, nonpartisan elections of all of the present members of the School Board are void. Further, pursuant to the aforementioned case and constitutional section it is proper that partisan elections be held for all members of the School Board.

The School Board argument pertaining to Palm Beach County having been a chartered county, thus allowed to adopt non-partisan School Board races fails too due to the adoption of its charter after a public referendum was held pertaining to partisan School Board elections. Specifically in 1971 adoption by referendum of non-partisan School Board elections occurred before the 1980 adoption of the charter by Palm Beach County.

The issue before the lower courts is primarily a question of law and constitutional interpretation of Florida Constitution of Article 3, Section 11(a)(1).

A special election would cost tax payers of Palm Beach County countless thousands of dollars and additionally place confusion and disrespect upon the election process.

A refusal to review this case would turn the elections back into partisan elections as guaranteed by the constitution and the case law and shift the election process back to its rightful date, November 6, 1990.

The uncertainty and confusion created by the appeals process and the staying of the lower courts order, places in jeopardy fundraising activities by this candidate. Additionally it creates the potential for violation of existing non-partisan election laws, forces expenditure of campaign funds for partisan/non-partisan regulations, hampers fundraising activities and speaking engagements based upon party affiliation and non-partisanship. Further it prevents the freedom of expression and freedom of speech for the declaration of one's party affiliation.

CONCLUSION

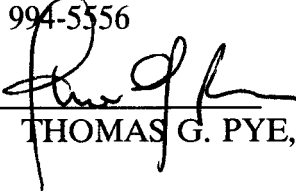
The Supreme Court has clearly ruled on this question before it and should decline review of this appeal and let the Circuit Court decision stand. The trial court and the court of appeals were eminently correct in their findings that the Florida constitution and Florida case law prohibits Palm Beach County under the present set of circumstances from holding non-partisan School Board elections. Failure to affirm those decisions would cost the tax payers of Palm Beach County Thousands of Dollars, infringe upon the rights of candidates and be the cause of general confusion in the election process.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing brief has been furnished to Abbey Hairston, Esquire, Palm Beach Gardens, Denise Dietel, Esquire, Assistant County Attorney, and Steven Mayans, Esquire, on this 25 day of July, 1990.

Respectfully submitted,

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