

August 1, 2003

Justices of the California Supreme Court
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: *Juliano v. Long Beach Unified School District*
California Supreme Court No. S117216

To the Justices of the California Supreme Court:

Pursuant to Rule 28(g) of the California Rules of Court, the undersigned hereby submits this amicus curiae letter on behalf of the Center for Individual Freedom Foundation (CFIFF) and in support of Albert Juliano's pending petition for review of the decision of the Court of Appeal, Second Appellate District, Division Four, in Case No. S117216.

CFIFF is a non-partisan, non-profit organization that strives to protect and defend the individual freedoms and rights guaranteed by the Constitutions of the United States and of the several states. CFIFF is dedicated to the advancement of, among other constitutional precepts, the right of individuals to participate and freely vote in elections uninfluenced by government officials who may have a stake in the outcome of those elections. This right is a cornerstone both the United States and California Constitutions, as particularly expressed by this Court in *Stanson v. Mott* (1976) 17 Cal.3d 206. In furtherance of this constitutionally secured right, CFIFF urges this Court to accept Mr. Juliano's pending petition for review.

Mr. Juliano's case concerns the extent to which a government actor – such as a school district or its officials – may influence the popular vote on a school bond measure

without overstepping the bounds established in *Stanson*, statutory and constitutional law. This issue is one of increasing importance as California's school districts turn frequently to bond measures to raise funds to operate, grow and maintain their facilities. Indeed, on average, California voters decided approximately 60 school district general obligation bond issues a year between 1986 and 1999, and in the past few years the pace has increased to more than 70 a year. Add to that parcel tax measures and a much anticipated increase in bond and tax measures as federal and state funds dry up, and the number of elections is almost certain to grow even higher.

It is a fundamental precept of the United States and State Constitutions that no public official, whether the President of the United States or a school teacher, shall put the government's official imprimatur on the resolution of any ballot question. Yet, in the case at bar, the undisputed evidence shows that the school district stretched this fundamental precept beyond all limits by financing and operating a get-out-the-vote campaign aimed solely and expressly at likely bond measure supporters (including a targeted and systematic vote-by-mail program), sending letters in the names of school principals touting the benefits – but omitting any mention of the drawbacks – of the bond measure, and closely coordinating school district efforts with partisan bond measure advocates, all the while purporting to stay “within the law” by not spending public funds on these efforts. If the rule in *Stanson* – that the line between unauthorized campaign expenditures and authorized informational activities is to be determined by consideration of the style, tenor and timing of the activities – has any meaning, these governmental activities, by and through the public school district, must fall on the unauthorized, unlawful and unconstitutional side of the line.

Clearly, the Court of Appeal's allowance of these activities on the ground that there was no direct expenditure of public funds – a jurisprudential holding that we submit exalts form over substance – demonstrates that further guidance from this Court is needed. The last time this Court was asked to offer guidance in construing *Stanson* and its rule against government influence in elections was in 2000, when Californians for Scientific Integrity petitioned for review of the decision of the Court of Appeal in *Californians for Scientific Integrity v. Regents of the University of California* (July 6, 2000, C028522), review den. and opn. ordered nonpub. Oct. 6, 2000, S090769. The Court of Appeal had ordered its opinion published, but rather than grant review (for which two members of this Court voted), this Court ordered the opinion depublished. In the intervening years, this Court has stayed on the sidelines as the lower courts have struggled to draw the line between authorized and unauthorized governmental activities

in elections. In fact, not since *Keller v. State Bar* (1989) 47 Cal.3d 1152, has this Court expanded or clarified the landmark ruling in *Stanson*.

The case of *Juliano v. Long Beach Unified School District* demonstrates that the time is ripe for guidance in this area so critical to understanding the proper statutory and constitutional limits imposed on public actors seeking to involve themselves in political contests, and to the individual freedoms guaranteed by the United States and California Constitutions. As local governments and agencies throughout the State turn more frequently to their constituencies to tax themselves to raise money for schools and other local functions, the people must not be coerced to support a ballot measure by an official “government-approved” stamp, no matter how subtly it may be presented.

For the foregoing reasons, CFIFF urges the Court to grant Mr. Juliano’s pending petition for review.

Respectfully submitted,

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