

**SUPREME COURT OF LOUISIANA**

**NO. 99-C-3605**

**DAVID G. ADKINS**

**versus**

**LESTER SHIELDS “BUDDY” HUCKABAY, III, SHERIFF;  
W. FOX McKEITHEN, HONORABLE SECRETARY OF STATE;  
THE HONORABLE JERRY FOWLER, COMMISSIONER OF ELECTIONS**

**JOHNSON, J., Concurring**

I agree with the conclusion reached by the majority that it is impossible to determine the results of this runoff election, and because of this impossibility a new general election should be held between the candidates. I write separately to express my views on the application of La. Rev. Stat. Ann. § 18:1432(A).

Since the adoption of our current Election Code, this Court has addressed the application of La. Rev. Stat. Ann. § 18:1432(A) on two occasions. First, in *Kelly v. Village of Greenwood*, 363 So. 2d 887 (La. 1978), and most recently in, *Savage v. Edwards*, 98-2929 (La. 12/18/98), 722 So. 2d 1004. In *Kelly*, we determined that the statutory scheme in La. Rev. Stat. Ann. § 18:1432 was in accord with the pre-election code jurisprudence which provided an alternative for candidates who could not prove that “but for” the irregularity he would have been elected. Under the pre-election code jurisprudence, it was recognized that “if the Court finds the proven frauds and irregularities are of such a serious nature as to deprive the voters of the free expression of their will, it will decree the nullity of the entire election--even though the contestant might not be able to prove that he would have been nominated but for such fraud and irregularities.” *Garrison v. Connick*, 291 So. 2d 778, 781 (La. 1974), quoting, *Dowling v. Orleans Parish Democratic Comm.*, 102 So. 2d 755 (La. 1958).

*Savage* presented an opportunity for this Court to provide clear guidance to the lower courts on when an election may be declared void under La. Rev. Stat. Ann. § 18:1432(A). Instead of seizing this opportunity to give direction to trial courts faced with fraud or irregularities, the Court relied on numerical calculations and concluded that “the number of votes proven to have been cast illegally or fraudulently was not sufficient to change the result of the election.” *Savage*, 722 So. 2d at 1004. While the case at hand presents the situation where the number of proven irregularities exceeds the margin of victory, I am still of the opinion that a trial judge is not limited to strictly numerical considerations in declaring an election void. *See id.* at

1007 (Johnson, J., dissenting). In determining whether to declare an election void under La. Rev. Stat. Ann. § 18:1432(A), a judge can and should consider whether the proven frauds or irregularities are of such a serious nature so as to deprive the voters of the free expression of their will.

While the Louisiana Election Code provides no procedure for the disqualification of local election supervisors (Registrars of Voters, Clerks of Court, etc.), prudence would dictate that the State Commissioner of Elections, the State Board of Election Supervisors, or the Secretary of State provide some monitoring of the new general election ordered by this Court. A system of monitoring would ensure that the irregularities found in the prior election and the potential ethical conflicts created by the relationship between the Clerk of Court and one of the candidates (husband and wife) do not impact the new election.