

ATTORNEY-GENERAL FOR THE STATE OF SOUTH AUSTRALIA v THE CORPORATION OF THE CITY OF ADELAIDE & ORS (A16/2012)

Court appealed from: Full Court of the Supreme Court of South Australia
[2011] SASCF 84

Date of judgment: 10 August 2011

Special leave granted: 11 May 2012

The second and third respondents were prosecuted in the Magistrates Court of South Australia after they preached and canvassed in Rundle Mall in 2009 without permission, in breach of clauses 2.3 and 2.8 of a by-law made by the first respondent (Adelaide). Those clauses read as follows:

2. *No person shall without permission on any road:-*

2.3 *preach, canvass, harangue, tout for business or conduct any survey or opinion poll provided that this restriction shall not apply to a designated area as resolved by the Council known as a "Speakers Corner" and any survey or opinion poll conducted by or with the authority of a candidate during the course of a Federal, State or Local Government Election or during the course and for the purpose of a Referendum; ...*

2.8 *give out or distribute to any bystander or passer-by any handbill, book, notice, or other printed matter, provided that this restriction shall not apply to any handbill or leaflet given out or distributed by or with the authority of a candidate during the course of a Federal, State or Local Government Election or to a handbill or leaflet given out or distributed during the course and for the purpose of a Referendum.*

The second and third respondents, who are members of a religious organisation called "Street Church", brought proceedings in the District Court seeking a declaration that the clauses were invalid. Judge Stretton declared the first three words of cl 2.3, "preach, canvass, harangue", and all of cl 2.8, to be beyond Adelaide's by-law making powers, but that the by-law could be saved by severing them.

Adelaide's appeal to the Supreme Court (Doyle CJ, White and Kourakis JJ) was dismissed. The Full Court held that the by-law was made "for the convenience, comfort and safety" of the inhabitants of the City of Adelaide as authorised by s 667(1)(9)(XVI) of the *Local Government Act 1934* (SA). The Court was not persuaded that the by-law, in its application to the regulated conduct, was such an unreasonable or disproportionate measure that it fell outside the legislative authority conferred by those words. It was not unreasonable to take the view that the regulated conduct, if left uncontrolled, would interfere with commercial activity and detract from the public's use of and enjoyment of Adelaide's streets.

However, the Court went on to find that the by-law was inconsistent with the implied constitutional freedom of political communication. It considered that an obligation to obtain permission to speak on political matters was incompatible with the system of democratic and responsible government established under the Constitution. Even though the by-law was reasonably appropriate and adapted to the convenience, comfort and safety of the inhabitants of Adelaide, it secured that objective in terms

which were calculated to restrict impermissibly public speech on political and governmental matters.

The appellant has served s78B Notices and the Attorneys-General of the Commonwealth, Western Australia, Victoria, New South Wales and Queensland are intervening in the appeal. The second and third respondents have filed Notices of Contention. The Human Rights Law Centre Limited has applied for leave to appear as *amicus curiae*.

The grounds of appeal include:

- The Full Court erred in holding that the words “preach”, “canvass” and “harangue” in clause 2.3 and the entirety of clause 2.8 of the Corporation of the City of Adelaide By-law No 4 – Roads are inconsistent with the implied constitutional freedom of political communication;
- The Full Court erred in taking into account the possibility that local council officers who administer the permit system may not have sufficient regard to the implied freedom in exercising their discretion about whether or not to grant a permit. It was erroneous for the Court to have regard to this and to assess the validity of the by law on the basis that it may be administered incorrectly.