



## HIGH COURT OF AUSTRALIA

25 March 2022

### RUDDICK v COMMONWEALTH OF AUSTRALIA [2022] HCA 9

On 9 March 2022, the High Court answered questions stated in a special case concerning whether items 7, 9, 11 and 14 of Sch 1 to the *Electoral Legislation Amendment (Party Registration Integrity) Act 2021* (Cth) ("the 2021 Amendments") which amended the *Commonwealth Electoral Act 1918* (Cth) were invalid, in whole or in part, on the grounds that they infringed the implied freedom of communication on government or political matters, or precluded the direct choice by the people of senators and members of the House of Representatives contrary to ss 7 and 24 of the *Constitution*. Today, the High Court published reasons for that decision.

The *Commonwealth Electoral Act* permitted registered parties to have their name, abbreviation and logo printed on the ballot paper next to the name of a candidate endorsed by the party. Items 7 and 9 of the 2021 Amendments imposed a requirement that the name, abbreviation or logo of a party applying for registration must not, subject to limited exceptions, contain a word that is in the name or abbreviation of a prior registered party without that party's consent. By items 11 and 14, an existing party could not remain registered under its name if an earlier registered party objected to the existing party's name or logo and that name or logo contained a word that was in the name or abbreviation of the earlier registered party. The special case concerned the application of the 2021 Amendments to the Liberal Democratic Party. If applied to the Liberal Democratic Party, it would be precluded from using "Liberal" on the ballot paper in a federal election.

The plaintiff, Mr Ruddick, is the lead Senate candidate endorsed by the Liberal Democratic Party for New South Wales. In the 2013 federal election, the Liberal Democratic Party appeared first on the New South Wales Senate ballot paper, and substantially to the left of the "Liberal & Nationals". In that election, the Liberal Democratic Party received approximately three times the vote share it received in its next best election and exceeded its expected vote share by 5.5 percentage points, or almost 241,000 votes. Mr Ruddick admitted, in his pleading, that some voters unintentionally voted for the Liberal Democratic Party instead of the Liberal Party because they were confused as to the party affiliation of Liberal Democratic Party candidates. An issue was whether it could be inferred that a significant part of the increase in that vote was due to the confusion caused by the similar party names.

The Court, by majority, held that items 11 and 14 did not infringe the implied freedom or preclude the direct choice by the people of senators and members of the House of Representatives. A threshold issue was whether the 2021 Amendments burdened informed electoral choice or the ability to communicate on government or political matters. The constraint implied by the requirement of "choice" is that the people must have the ability to make an informed choice. Proof that a law burdens the implied freedom requires that the existing freedom is curtailed or restricted in some way. The purpose of the 2021 Amendments was to reduce voter confusion, and their likely effect was to improve the clarity, and hence the quality, of electoral choice and communication on government or political matters. As none of the facts stated in the special case addressed items 7 or 9, it was unnecessary for the Court to answer the stated questions in respect of those items.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*