



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: B73/2024
File Title: Babet & Anor v. Commonwealth of Australia
Registry: Brisbane
Document filed: Form 27F - Outline of oral submissions: A-G of NSW
Filing party: Intervener
Date filed: 07 Feb 2025

Important Information

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IN THE HIGH COURT OF AUSTRALIA
 BRISBANE REGISTRY
 BETWEEN:

B73/2024

RALPH BABET

First Plaintiff

NEIL FAVAGER

Second Plaintiff

and

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COMMONWEALTH OF AUSTRALIA

Defendant

**OUTLINE OF ORAL SUBMISSIONS OF THE
 ATTORNEY GENERAL FOR NEW SOUTH WALES, INTERVENING**

Part I Form of Outline

1. This outline is in a form that is suitable for publication on the internet.

Part II Propositions to be advanced in oral argument

- 20 2. In considering any burden imposed by s 135(3) of the Commonwealth Electoral Act 1918 (the **Act**) for the purpose of the implied freedom, it is important to bear in mind that the operation of the subsection turns on the voluntary action of the political party to deregister, not any characteristic of the party and not the content of any of its communication.

NSW Submissions (**IS**) [11], [30], [34], [39].

3. The voluntary decision to deregister made by a party caught by s 135(3) of the Act distinguishes it from other Parliamentary parties who may be mandatorily deregistered under s 136 and from new political parties seeking registration.

IS [39]; cf Plaintiffs' Reply Submissions (**RS**) [2], [5].

- 30 4. The position of a receiver of communication gives rise to no difficulty in requiring in all cases that there be an independent right or privilege to communicate before it can be said that communication is burdened. Just as Mulholland v Australian Electoral Commission

(2004) 220 CLR 181 (JBA Vol 4 tab 15) requires that the right to communicate in a particular way must exist independently of the law that limits that right, so must the right or entitlement to receive communication in a particular way: cf RS [7].

IS [6], [9]; cf Plaintiffs' Submissions (**PS**) at [65]-[66], RS [9].

5. The approach in Mulholland is consistent with the implied freedom being a freedom from restrictions on communicating on governmental and political matters in a way that the people otherwise could, rather than a freedom to communicate on such matters in a way that people otherwise could not.

IS [16], [18]; Mulholland at [179]-[183] (Gummow and Hayne JJ), [107]-[109] (McHugh J).

6. Voters or potential voters have no entitlement to receive information about a candidate's party affiliation on the ballot paper except in accordance with the Act. The printing of a candidate's party affiliation or logo on the ballot paper is also a communication as to that party's registration status under the Act.

IS [6]; cf RS [9].

Dated: 7 February 2025



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