



HIGH COURT OF AUSTRALIA

14 May 2025

BABET AND ANOR v COMMONWEALTH OF AUSTRALIA
PALMER v COMMONWEALTH OF AUSTRALIA
[2025] HCA 21

On 12 February 2025, the High Court unanimously answered questions of law reserved for its consideration in two special cases to the effect that s 135(3) of the *Commonwealth Electoral Act 1918* (Cth) ("the Act") does not impair direct choice by the people contrary to ss 7 and 24 of the Constitution, impermissibly discriminate against candidates of a political or Parliamentary party that has deregistered voluntarily or infringe the implied freedom of political communication. Today, the High Court published its reasons for those orders.

Section 135(3) of the Act renders a political party that was formerly registered under Pt XI of the Act and that has voluntarily deregistered ineligible for reregistration until after the general election next following the deregistration. Section 135(3) is in Pt XI of the Act, headed "Registration of political parties", which provides for voluntary registration, on application, by an eligible political party. Voluntary registration under Pt XI affords political parties the potential to receive public funding, as well as the benefit of streamlining of the nomination process and the entitlement to have its registered name (or registered abbreviation of that name) and registered logo printed on ballot papers adjacent to the names of candidates endorsed by it and, if it has endorsed a group of two or more candidates for election to the Senate, to have its registered name (or registered abbreviation of that name) and registered logo printed on ballot papers adjacent to the square printed "above the line" in relation to the group. Importantly, registration under Pt XI also triggers, under Div 5A of Pt XX of the Act, annual disclosure obligations on the part of registered political parties, and "associated entities" of registered political parties.

The plaintiffs in each matter were associated with the United Australia Party ("UAP"). Having earlier been a political party registered under Pt XI of the Act, the UAP endorsed candidates for election to all divisions in the House of Representatives in the general elections held in 2019 and in 2022 and also endorsed candidates for election to the Senate in each State and Territory. After the 2022 general election, the UAP was voluntarily deregistered under s 135(1) of the Act. On 29 November 2024, Senator Babet made an application for reregistration of the UAP, which was subsequently denied by reference to the operation of s 135(3). The validity of s 135(3) was put in issue in two proceedings commenced by writs of summons in the original jurisdiction of the High Court on 12 December 2024. The plaintiffs argued that s 135(3), by denying the UAP the ability to be registered as a political party for the 2025 general election due to the voluntary deregistration of the party within the same election cycle, was invalid on at least one of three bases: infringing the requirement in ss 7 and 24 of the Constitution that Senators and members of the House of Representatives be "directly chosen by the people", infringing the implied freedom of political communication or amounting to constitutionally impermissible discrimination.

The High Court unanimously held that s 135(3) was not invalid on any basis argued by the plaintiffs. The Court held by majority that s 135(3), a longstanding machinery provision applicable to all political parties and which is triggered only by the choice available to any registered political party to voluntarily deregister under s 135(1), is reasonably appropriate and adapted to serving a transparency purpose in relation to the annual disclosure obligations applicable to all registered political parties. Section 135(3) is not only compatible with the constitutionally prescribed system of representative government but affirmatively promotes it. The Court unanimously rejected a constitutional limitation based on the notion of impermissible discrimination against candidates for election.

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.