



HIGH COURT OF AUSTRALIA

5 September 2016

MURPHY & ANOR v ELECTORAL COMMISSIONER & ANOR

[2016] HCA 36

At the conclusion of the hearing on 12 May 2016, in answer to questions posed in a special case, the High Court held that certain provisions of the *Commonwealth Electoral Act* 1918 (Cth) ("the Act") were not invalid for inconsistency with the requirement in ss 7 and 24 of the Constitution that the Parliament be "directly chosen by the people". Today the High Court published its reasons for giving those answers.

The impugned provisions of the Act prevented a person's claim for enrolment on the Electoral Roll for a Division, or a claim for transfer of enrolment from the Roll of one Division to another Division, from being processed until after the close of the poll for an election if it was received during the "suspension period" from 8pm on the day of the closing of the Rolls for the election, which was seven days after the issue of the writs for the election, to the close of the poll for the election. The impugned provisions also prevented amendments to the Roll from being undertaken by the Electoral Commissioner and the processing of objections to a person's enrolment during the suspension period.

The plaintiffs were an elector in the Division of Wills and an elector who intended to nominate herself as an independent candidate for election to the House of Representatives in the Division of Newcastle. They submitted that the High Court had established in its decisions in *Roach v Electoral Commissioner* (2007) 233 CLR 162; [2007] HCA 43 and *Rowe v Electoral Commissioner* (2010) 243 CLR 1; [2010] HCA 46 that the requirement that the Parliament be "directly chosen by the people" meant that any effective burden on this constitutional mandate of popular choice had to be justified by a "substantial reason". In the plaintiffs' submission, the impugned provisions effectively disenfranchised people who had sought to enrol or transfer their enrolment during the suspension periods before recent federal elections, a burden which was not justified by a substantial reason.

A majority of the High Court held that the plaintiffs could not establish that the impugned provisions amounted to a burden on the constitutional mandate of popular choice. A suspension period had been part of Australian electoral law since Federation and thus no diminishment of the extent of the realisation of the constitutional mandate of popular choice was at issue in the special case. The High Court unanimously held that even if there was a relevant burden, it was justified by a substantial reason. As part of a coherent electoral system, the impugned provisions advanced the orderly and efficient conduct of elections, ensured that there would be few delays in declaring electoral results, and achieved accuracy and certainty in the lists of electors to be produced for polling day. The plaintiffs' argument relied upon a premise that a law burdening the constitutional mandate could not be valid unless it maximised opportunities for electoral participation. That premise was not supported by the Constitution, nor by the High Court's decisions in *Roach* and *Rowe*. Further, the High Court held that analysing whether the impugned provisions were justified by reference to alternative regimes in State electoral systems was inappropriate, as it would involve the Court in a legislative judgment beyond its judicial role.

- *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.*