

IN THE MATTER OF AN APPLICATION FOR WRITS  
OF PROHIBITION AND CERTIORARI AGAINST THE  
HONOURABLE PETER ROSS AWDRY GRAY A JUDGE  
OF THE FEDERAL COURT OF AUSTRALIA & ORS.;

EX PARTE RALPH BENSON MARSH & ANOR.

JUDGMENT

(Oral)

MASON J.

IN THE MATTER OF AN APPLICATION FOR WRITS  
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This application for continuance of a stay of proceedings in the Federal Court is primarily based on the proposition that the application for prohibition and certiorari to be heard by the Full Court of this Court challenges the jurisdiction of the Federal Court to conduct the inquiry into the disputed election and to make orders in relation thereto on the important constitutional ground that the relevant statutory provisions confer non-judicial power on the Federal Court contrary to the doctrine of the Boilermaker's Case (1956) 94 C.L.R. 254; (1957) 95 C.L.R. 529; [1957] A.C. 288.

In some circumstances, this might be thought to warrant the grant of a stay on the footing that the applicants should not be subjected to the burden and inconvenience of resisting proceedings in the Federal Court until the question of that Court's jurisdiction has been authoritatively determined by this Court. However, having regard to the state of the Full Court's list and to the

nature of the question to be determined by the Full Court, I am unable to indicate that the question is likely to be determined promptly. In this situation, it seems that the effect of the continuation of the stay would result in a further and avoidable delay in the Federal Court proceedings, which have already been protracted - perhaps unduly so.

In my view the case is one in which the proceedings in the Federal Court should be allowed to continue because the disputed election needs to be resolved as expeditiously as possible. Consequently, the proceedings in that Court should continue pending the eventual determination of the jurisdictional issue in this Court.

I therefore refuse the application.

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**REASONS FOR JUDGMENT**

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Judgment delivered at ..... CANBERRA  
on ..... 17th April 1985  
..... Mason J (Oral)

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