



CAST

Civic Action Skills Teachers

The democratic and lawful means of securing change, if change be necessary, is an expression of the will of an informed electorate. - Murray Gleeson
Chief Justice of the Australian High Court, November 2000 Boyer lecture

3 May 2005

Joint Standing Committee on Electoral Matters	
Submission No.	151
Date Received	3-5-05
Secretary	<i>[Signature]</i>

The Secretary of the Joint Standing Committee on Electoral Matters

Dear Sir/Madam

Admitting 'errors' by judges sitting alone as courts of disputed returns

I am writing this submission on the advice of Senator Brandis and as Publicity Officer of CAST after the disturbing circumstances of the 'trial' of my petition in the Court of Disputed Returns. I hope I can speak to it at a Brisbane hearing.

As you can see from our logo and letterhead, our mission at CAST is to inform electors so they can and do express their true will in free and fair ballots and polls. I expect each of you would like to respond that Australians achieved that last century with the admission of women and Aborigines to all Commonwealth & State electorates. So can any of you admit the possibility that you are wrong?

You are right in that we are free to express our true will; but you are wrong if you believe we all do express our true will when we mark our ballot-papers. You are also wrong if you believe that the polls conducted by the AEC achieve a most basic standard of fairness; to give effect to each voter's intention.

That standard is written in to Sec 268(3) of the Commonwealth Electoral Act [the Act]. Yet it is a matter of fact that voters who number all candidates consecutively conceal our true intentions. Also, as I have witnessed at many polls over years as a scrutineer, the votes of voters whose ballot-papers do reveal clear intentions that can be given effect, are given no effect. They are disenfranchised - illegally. This is evidence of not only [in Justice Isaac Isaacs words] ballots used to "defeat the franchise", but of illegal practices in the terms of the Act and of the Crimes Act.

The handling to date of my petition is testimony to more than the forebodings of Sir Samuel Griffith in 1886. The text of my '*Outline of Argument & Further Submissions*' filed for the trial in the Court of Disputed Returns ordered by Justice Gummow follows. I wish to expand at a hearing on how both Justices Gummow and Kiefel have, even after repeated notices, erred by ignoring and disobeying the essential terms of Sec 364 of the Act. Real justice was and remains perverted.

Yours truly

Darryl Wheeley
Publicity Officer

OUTLINE OF ARGUMENT

Circumstances necessary to void an election

1. Under the Commonwealth Electoral Act [the Act] an election must be voided [once proven in the terms of Sec 364 of the Act] by the Court of Disputed Returns in either of the following circumstances.
 - Uncertainty as to whether the declared winner or another candidate received enough valid votes. *Kean v Kerby* is a well-known [only?] case.
 - **Bribery or corruption or illegal practice or undue influence**, by a person who aids, abets, counsels or procures, or by act or omission is in any way knowingly concerned in, or party to, the contravention of a provision of the Act, the Crimes Act or the regulations under the Act, is deemed to have contravened that provision. These circumstances are defined comprehensively [and almost incomprehensibly] in Sec 352.

Disputed legal questions concerning elections

2. Where despite Sec 364, the Court of Disputed Returns is uncertain of the meaning of a term in dispute, or the legality of any consequent practice, questions of law must be stated for hearing by the High Court sitting in its original jurisdiction. *Sykes v Cleary* and *Sue v Hill* are such cases and their merits are now codified in HCR 32.01, particularly in 32.01.2(a) & (b).

This petition raises matters of fact and questions of law

3. This petition raises **matters of fact** involving **both** the circumstances mentioned in point 1, plus **questions of law**, mentioned in point 2, to be stated for hearing by the High Court sitting in its original jurisdiction.

The facts of the case are not in dispute

4. The facts stated on the petition have not been denied or disputed and have been proven by the testimony of Mr Stewart. They include facts involving uncertainty as to whether Mr Hardgrave received enough valid votes.

Mr Hardgrave influenced voters to conceal true voting intentions

5. Mr Stewart has testified as to Mr Hardgrave's acts and omissions that directly or indirectly and knowingly [since October 2001] contravened at least one provision of the Act, and/or the Crimes Act 1914. One such provision is the "undue influence" of electors to mark ballot papers so as to conceal their true voting intentions by numbering all "boxes" on ballot-papers consecutively.

Mr Hardgrave chose to default

6. Mr Hardgrave's acts and omissions include his apparent refusal to accept personal service of any of the documents served on him in this case and in B99 of 2001. He chose to default rather than to appear as summonsed.

Mr Hardgrave can be a witness and face cross-examination

7. For real justice to be observed in this case, any application for leave to appear at the trial should be granted to Mr Hardgrave only upon his agreement to take the witness stand and be cross-examined on his evidence purporting to rebut that which has already been or is used against him.

Confusion in this case and legal questions concerning elections

8. The actions and omissions of the other respondents [& their counsel] do not challenge facts within this court's jurisdiction. As stated in point 7 of the petition, they maintain [and add to] confusion that conceals illegal procedures and practices of AEC officers and voters who number all "boxes", to mark, count and transfer "votes for". If such confusion in the court is genuine, the duty under HCR 32.01 of a judge sitting as a court of disputed returns is clear.

FURTHER SUBMISSIONS to those filed with summons for directions

1. Further to the affidavits filed with these submissions, I submit the attached media release and copy of my letter faxed to the editor of the Courier Mail for the court's information. Mr Fagan's response to date is evidence of his complicity in concealing the still undenied illegal actions revealed in this case.
2. The undisputed facts already before this court do more than justify the 1886 opinion of Sir Samuel Griffith opposing legal courts and particularly "*one judge alone*", acting as Courts of Disputed Returns.
3. The AGS appearance on behalf of the AEC is illegal and a wilful abuse of [High Court] court procedures. Mr Cosgrove and the High Court Principal Registrar have not denied or disputed these allegations.

Darryl Wheeley