Australian High Court hears challenge to anti-democratic electoral laws

By Mike Head
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Hearings were held in the High Court, Australia's supreme court, last month in a test case for anti-democratic legislation that could be used to severely restrict political campaigning. A decision by the judges is likely to take some weeks, and may not be delivered until the new year.

Unions NSW, the peak trade union federation in the country's most populous state, is challenging New South Wales electoral laws introduced last year that prohibit political parties, candidates and other organisations from accepting political donations from anyone except individuals on the state's electoral roll.

Ostensibly directed against donations by companies, this law bars donations by unions and other groups, as well as non-citizens, recent migrants and young people ineligible to vote. It also affects donations to "third-party campaigners"—that is, organisations conducting any kind of political campaign.

The definition of a political donation extends to dues paid by individual members, as well as affiliation fees paid by groups, so that it may now be illegal to be a dues-paying member of a party in NSW unless you are on the state electoral roll.

The Labor Party can no longer accept trade union affiliation fees and third-party campaigners are only allowed to accept donations from individuals, and not other groups, in order to conduct campaigns.

Caps apply to individual donations as well, but wealthy people are free to spend up to $1.05 million per year on political donations, and powerful corporations can spend whatever they like on their own advertising, thinktank sponsorship and other forms of political intervention.

The ban on donations is wide-ranging. It covers any expenditure that promotes or opposes, directly or indirectly, a party or candidate, or made "for the purpose of influencing, directly or indirectly, the voting at an election." This definition is broad enough to cover, for example, campaigns against job losses, mass unemployment, budget cuts, social inequality, war, draconian police-state powers or environmental degradation. All such campaigns could "directly or indirectly" influence voting at a state election.

Premier Barry O'Farrell's state Liberal-National Party government, supported by the Greens, imposed these laws, set out in the NSW Election Funding, Expenditure and Disclosures Act, on the pretext of curbing political influence peddling. O'Farrell claimed that the legislation would end the "decisions for donations" culture of NSW politics. In doing so, he was able to politically exploit the notorious corruption of the Labor Party and the unions, particularly with regard to property developers and gambling interests.

The Greens swung their parliamentary upper house votes behind O'Farrell, delivering him a majority, despite what Greens MP John Kaye described as "unnecessary and damaging restrictions on third parties." Kaye claimed that the Greens did not want to give O'Farrell any excuse to "run away from the reform agenda."

In reality, there is nothing progressive about this legislation. Members of the corporate elite can underwrite parties, candidates and campaigns—and dictate their policies in many other ways via their control over the economy. Working people, however, are barred from collectively raising funds, via organisations, to fund political campaigns by other groups or parties that could influence a state election.

The NSW legislation is the latest in a series of moves by federal and state governments to restrict electoral and other political rights, amid growing popular discontent with the program of austerity, job destruction and militarism being pursued by the entire political establishment. In recent years, federal laws have been passed to restrict candidate access and party registration, making it more difficult for working people to stand for parliament or form new political parties.

Having joined the political establishment themselves, and participated in both Labor- and Liberal-led governments as they imposed the agenda of the corporate elite, the Greens have backed these efforts. (See https://www.wsws.org/en/articles/2013/03/14/elct-m14.html

The Abbott federal government and several state governments intervened in the High Court hearings to back

the latest laws, indicating their readiness to introduce similar measures if the High Court sanctions the NSW legislation.

Unions NSW argued that the legislation, by preventing unions donating to the Labor Party via affiliation fees violates an implied freedom of political communication in the Australian Constitution.

Unlike the US Constitution, the 1901 constitution contains no free speech clause, or any bill of rights. During the 1990s, the High Court found there was an implied freedom of communication in the 1901 Constitution, but one that is "limited to what is necessary for the effective operation of that system of representative and responsible government provided for by the Constitution."

Subsequent High Court rulings demonstrated that this implied freedom does little to guarantee political free speech, and is confined to protecting statements or conduct deemed supportive of the current legal and political order.

The union leadership's submissions confirmed that its concern is not for the democratic rights of their members or any other working people, but for the capacity of the unions to use their members' funds to further the pro-corporate political interests of the union apparatuses themselves, including via their factional powerbrokers inside the Labor Party.

Unions NSW's arguments revolved around reactionary rulings by the US Supreme Court upholding the so-called free speech rights of big business to pour billions of dollars into political campaigns. In particular, the 2010 *Citizens United* decision asserted that corporate money equals free speech, turning upside down the US Constitution's First Amendment guarantee of freedom of speech, which was directed at protecting the democratic rights of ordinary people. (See http://www.wsws.org/en/articles/2010/01/cour-j22.html)

"Corporations have political interests," the unions' barrister Bret Walker SC told the High Court judges. Later, citing the US Supreme Court rulings, Walker emphasised: "There may simply be would-be investors in Australia who may want electors in Australia to be aware that certain policies, be they of taxation or environmental regulation, could have employment consequences."

Thus, the unions' case is based on supporting the right of major corporations to spend limitless funds to ensure that their policy demands are implemented. The unions regard themselves as business-like organisations, with the same rights to buy political influence.

In response, the arguments of the NSW, federal and other state governments contained a number of sweeping anti-democratic propositions. NSW Solicitor-General Michael Sexton SC insisted that the NSW state constitution contained no implied freedom of political communication. Asked by Justice Patrick Keane if that meant political parties could be abolished in NSW, Sexton answered: "Some but not others."

Sexton did not elaborate, but this assertion of the power to abolish political parties indicates the readiness of the ruling establishment to override core democratic rights. Likewise, appearing for the federal government, Neil Williams SC said it would be perfectly constitutional to deregister a political party "that contained fifth columnist elements representing the interests of a hostile foreign power." Such a claim could be used to ban parties with international affiliations, or which fight for the unity of the global working class, across national lines.

Williams also told the High Court that all political communication could be outlawed, in the name of "national security," if that was deemed necessary to protect "the system of representative government"—that is, the current parliamentary order. This could justify declaring a security "emergency" that would shut down all dissent.

These utterances reveal the increasingly authoritarian sentiments being voiced in ruling circles, reflecting their fears that the slashing of jobs and services by the Abbott government—building on the attacks already carried out by the Labor government during the past six years—will provoke deepening popular opposition.

The author also recommends:

Australian High Court further erodes free speech [8 March 2013]
http://www.wsws.org/en/articles/2013/03/08/free-m08.html

Australia's High Court rules that voting rights can be abolished [9 October 2007]
http://www.wsws.org/en/articles/2007/10/vote-o09.html