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## **Liberals' candidate gag may breach Australian constitutional law**

The edict by Liberal Party WA State director Ben Morton that party candidates “must not make Statewide or citywide media comment” without his approval in the lead-up to the State election next March is at odds with a finding of the High Court, says Civil Liberties Australia.

The majority decision of the High Court in *Australian Capital Television Pty Ltd v Commonwealth* (the Political Broadcasts case (1992) 108 ALR 577) was quite plain in finding that, where freedom of speech is necessary for “representative government”, it is unconstitutional to abridge or restrict it in any way. Or, as the Australian Government Solicitor puts it:

*“The scope of the freedom is determined by what is necessary for 'representative government'. The decisions establish that the right extends to 'political matters', 'public affairs' or 'political and economic matters'. The test seems to be whether matters are relevant to the government of the Commonwealth. The freedom applies at all times, not only during election campaigns. It is also established that the right is not confined to matters of political debate at the Federal level. The democratic character of the States is also important to the constitutional structure; and the interaction of the various levels of government makes the identification of purely Federal matters impossible.”*

– AGS legal comment: <http://www.ag.gov.au/publications/legal-briefing/br01.htm>

“Mr Morton is trying to gag people who want to represent their electorate as a State Member of Parliament. His dictate appears to be unconstitutional and therefore clearly invalid,” Mr Widerstrom said. “And individual freedom was one of the founding principles of the Liberal Party. Here is a clear case where the Liberal candidates should tell Mr Morton to butt out.

“Extraordinary as it sounds for Civil Liberties Australia to have to defend the rights of would-be Liberal MPs, but that seems to be how democracy is going in Western Australia. If elected, these candidates answer to their electorate, not to Mr Morton’s office. Voters have the right to make an informed choice about who to vote for. They need to hear the thoughts and opinions of candidates, and the media is the primary source of that information.

“Anyone trying to gag candidates does democracy a disservice. Clearly, candidates for State Parliament should be able to answer questions on policy and politics and the future of WA and Australia. The news media have the right to expect honest answers to their questions.

“Mr Morton’s approach is more like that of Kim Jong-un in North Korea than of Australia, where we expect candidates to be able to speak freely,” he said.

Ends

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