

High Court challenge to Treasurer Josh Frydenberg under section 44

Written by Michelle Grattan, Professorial Fellow, University of Canberra

The citizenship provision of the Constitution's section 44 has raised its head again, with the eligibility of Treasurer Josh Frydenberg being challenged by an elector in his Kooyong seat.

Michael Staindl has filed a petition with the High Court, which sits as the Court of Disputed Returns, alleging Frydenberg is ineligible "because he is a citizen of the Republic of Hungary".

The petition says

The respondent's mother arrived in Australia in 1950 in possession of a valid passport, inferred to be a valid Hungarian passport. This indicates that she continued to be a citizen of Hungary after 1948.

Pursuant to the law of Hungary, all children born to the respondent's mother are a citizen of Hungary from the time of their birth and in the premise, the respondent is a citizen of Hungary

Staindl told [Guardian Australia](#) he was pursuing the action against Frydenberg, whom he knew, because "he's consistently betrayed me, the electorate and the country on climate change".

The Guardian reported that Staindl "said if Frydenberg shows evidence he is not Hungarian he could drop the case"; otherwise, he said, he would "see it through".

Under Section 44, a person cannot sit in the federal parliament if he or she is "under any acknowledgement of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or citizen of a foreign power".

In his "statement of member's qualifications relating to section 44 and 45 of the constitution",

High Court challenge to Treasurer Josh Frydenberg under section 44

Written by Michelle Grattan, Professorial Fellow, University of Canberra

posted on Wednesday, Frydenberg records that his mother – who arrived in Australia as a refugee – was a Hungarian citizen between 1943 and 1948.

Frydenberg said “I have clear legal advice that I do not hold citizenship of another country.”

Section 44, which has several prohibitions, cut a swathe through the last parliament, overwhelmingly on citizenship grounds, hitting Coalition, Labor, and crossbench parliamentarians and triggering multiple byelections.

Although Frydenberg’s situation was canvassed during the previous term Labor backed off, given his mother had escaped the Holocaust.

Frydenberg, in comments in the last term, said his mother had arrived stateless. “It is absolutely absurd to think that I could involuntarily acquire Hungarian citizenship by rule of a country that rendered my mother stateless,” he said then.

Separately, Frydenberg’s eligibility is being challenged under the Electoral Act over Liberal party Chinese-language signs. This challenge is being brought by Oliver Yates, who ran as an independent against Frydenberg. It is claimed the signs were likely to have misled voters into thinking that to cast a valid vote they had to put the figure 1 beside the Liberal candidate.

A similar challenge over Chinese-language signs has been brought by a Chisholm voter against the new Liberal MP for Chisholm, Gladys Liu.

The ALP is not involved in the challenges.

The ALP’s acting national secretary Paul Erickson said in a statement that Labor was “disappointed by the tactics employed by the Liberal Party at the election, which went well beyond the accepted bounds of a vigorously contested campaign – especially in the divisions of Chisholm and Kooyong.

High Court challenge to Treasurer Josh Frydenberg under section 44

Written by Michelle Grattan, Professorial Fellow, University of Canberra

"The Chinese-language signs used by the Liberal Party in those contests were clearly designed to look like official Australian Electoral Commission voting instructions using the AEC colours, for the clear purpose of misleading Mandarin and Cantonese-speaking voters into voting for the Liberal Party," he said.

But while there was a strong case that the signs breached the Electoral Act Labor was not seeking to overturn the results in Chisholm and Kooyong, given the cost and time involved, Erickson said.

Michelle Grattan does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond their academic appointment.

Authors: Michelle Grattan, Professorial Fellow, University of Canberra

Read more <http://theconversation.com/high-court-challenge-to-treasurer-josh-frydenberg-under-section-44-121277>