Chapter 15

McGinty v Western Australia: Electoral Equality and the Demise of the "Implied Rights Venture"

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Introduction

The immediate origins of the *McGinty*[1] litigation in the mid-1990s can be located in the attempts by the Labor Opposition in Western Australia to remedy the considerable disparity in the size of electoral districts for parliamentary elections in that State. A previous attempt in 1975 to secure equality of voting rights at Commonwealth elections, relying on the requirement in s 24 of the Commonwealth Constitution that members of the House of Representatives be "directly chosen by the people", was rejected by the High Court in *Attorney-General (Cth) (Ex rel McKinlay) v Commonwealth* ("*McKinlay*").[2] A similar attempt in relation to Western Australian State parliamentary elections, relying on virtually identical words in s 73(2)(c) of the *Constitution Act* 1889 (WA) – "chosen directly by the people" – had been unsuccessful in the Full Court of the Supreme Court of Western Australia in *Burke v Western Australia*.[3] Were it not for the significant directional shift in the High Court's constitutional jurisprudence in the landmark cases of *Australian Capital Television Pty Ltd v Commonwealth* ("*ACTV*")[4] and *Nationwide News Pty Ltd v Wills* ("*Nation-*

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1 *McGinty v Western Australia* (1996) 186 CLR 140.

2 (1975) 135 CLR 1.

3 [1982] WAR 248.

4 (1992) 177 CLR 106.