

**Attorney-General (SA) v Corporation of the City of Adelaide** 1

**Classification:** 2

- Constitutional law > Operation and effect of the Commonwealth Constitution > Restrictions on Commonwealth and State legislation > Rights and freedoms implied in Commonwealth Constitution > Freedom of political communication > General principles
- Local government > Regulation and administration > Ordinances, regulations, by-laws and local laws > Validity > Generally
- Local government > Regulation and administration > Ordinances, regulations, by-laws and local laws > Validity > Power to make > Generally

**DIGEST** 3

Local council by-laws — construction — prohibition of certain activities without permission — preaching and distributing printed material on any road — legitimate end — proportionality — reasonably and appropriately adapted — compatible with representative and responsible government

Was the by-law unconstitutional?

The first respondent council had made a by-law (By-law No 4) which sought to regulate the use of roads within its council area by prohibiting preaching, canvassing and haranguing (para 2.3) and the distribution of printed material (para 2.8) without written permission, on pain of a fine. The second and third respondents had been convicted and fined for preaching without permission in Adelaide's Rundle Mall. They were members of a religious organisation called Street Church, and argued that their exposition of the gospel was as much political as religious. In an application to the District Court of South Australia for a declaration that the challenged clauses were invalid, the second and third respondents argued that they infringed the implied constitutional freedom of political communication. The judge at first instance did not consider the constitutional issue. However, upon appeal, the Full Court of the Supreme Court of South Australia found that the challenged clauses infringed the implied constitutional freedom of political communication as having to obtain permission before disseminating a political message was antithetical to the democratic message underpinning the implied freedom. By grant of special leave the appellant sought to challenge that finding before the High Court of Australia.

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- ☐ Time, weights and measures
- ☐ Torts
- ☐ Trade and commerce

LITIGATION HISTORY

Earlier Litigation History of *Attorney-General (SA) v Corporation of the City of Adelaide* (2013) 87 ALJR 289 [H]

Reversed - *City of Adelaide v Corneloup* [2011] SASCFC 84; (2011) 110 SASR 334; 182 LGERA 181; 252 FLR 418; [2011] ALMD 5145 [R]

[Back to Top](#)

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CASES CITING Sort by Title | Court | Year

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**Applied by**

- *Muldoon v Melbourne City Council* [2013] FCA 994; (2013) 137 ALD 257 4

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**Considered by**

- *Ruckschloss v Simmons (No 2)* [2013] ACTSC 133; (2013) 278 FLR 36; [2014] ALMD 1161 [H]
- *Bickle v Corporation of the City of Adelaide* [2013] SASC 115
- *Ho v Greater Dandenong City Council* [2013] VSCA 168; (2013) 194 LGERA 191 [H]
- *Van Lieshout v City of Fremantle (No 2)* [2013] WASC 176; (2013) 276 FLR 199; [2013] ALMD 5107 [H]

[Back to Top](#)

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LEGISLATION CONSIDERED

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- *Electronic Transactions Act 2000* (SA) s 9(1)
- *Local Government Act 1934* (SA) s 667(1) 9 XVI
- *Local Government Act 1999* (SA) s 246(1)(a)
- *Local Government Act 1999* (SA) ss 4(1), 248(1), 249(4)
- *Municipal Corporations Act 1835* (UK) s 90

**Other Legislation Considered**

- *Judiciary Act 1903* (Cth)
- *City of Brisbane Act 1924* (Qld)
- *City of Brisbane Acts 1924-1958* (Qld)
- *Acts Interpretation Act 1915* (SA)
- *District Court Act 1991* (SA) s 8(3)

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**Explained**

- *Lynch v Brisbane City Council* (1961) 104 CLR 353; [1961] Qd R 463; 35 ALJR 25; 56 QJPR 37; 6 LGRA 332; [1962] ALR 15 (HC) [H]
- *Melbourne, Mayor, etc. of City of v Barry* (1922) 31 CLR 174; [1923] VLR 141; 29 ALR 86 (HC) [H]

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**Applied**

- *Wotton v Queensland* [2012] HCA 2; (2012) 246 CLR 1; 218 A Crim R 322; 86 ALJR 246; 285 ALR 1; [2013] ALMD 1518; [2013] ALMD 1563 [C]
- *Coleman v Power* [2004] HCA 39; (2004) 220 CLR 1; 78 ALJR 1166; 209 ALR 182; [2005] ALMD 3280; [2005] ALMD 3281; [2005] ALMD 3342; [2005] ALMD 3351; [2005] ALMD 3770 [H]
- *Lange v Australian Broadcasting Corporation* [1997] HCA 25; (1997) 189 CLR 520; 71 ALJR 818; 145 ALR 96; [1997] Aust Torts Reports 81-434; 2 BHRC 513 [H]
- *Williams v Melbourne Corp* (1933) 49 CLR 142; 11 LGR (NSW) 166; 7 ALJ 325 (HC) [H]

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4

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