Unions win NSW political donations case

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The High Court has provided Labor with a boost for the NSW state election in March after it found laws that slashed union spending on the campaign were “unjustified”.

In a 7-0 judgment handed down on Tuesday, the court said the legislation placed an “impermissible burden” on the implied right to free speech on political matters found in the constitution.

In July 2018, the Berejiklian government reduced the amount that unions and other third parties could spend in the six months before an election from $1.05 million to $500,000.

The reforms also sought to ban third parties from acting “in concert” by pooling money into multimillion-dollar campaigns, such as the “Stop the Sell-off” campaign against energy privatisation for the 2015 poll. Those who breached the act would have faced up to 10 years’ jail.

The High Court said NSW proved that aiming to “prevent the drowning out of voices in the political process by the distorting influence of money” was a legitimate purpose.

However, it said “the reduction in the cap applicable to third-party campaigners was not demonstrated to be reasonably necessary to achieve that purpose”.

Unions NSW secretary Mark Morey said it was “a win for democracy”. “Political campaigners get jailed in countries like Zimbabwe, Cambodia or North Korea, not NSW. This was a serious overreach from the NSW Liberals, and we welcome the High Court’s decision.”

Professor Anne Twomey of Sydney University said the court had reinforced that third-party campaigners “must have a reasonable opportunity to present their case and have their voices heard”.

The court did not accept NSW’s argument that $500,000 was still a substantial sum that would allow third parties to “reasonably present their case”.

It noted that in the 2015 election, the Electrical Trades Union ($997,555), Nurses Association ($907,831) and Unions NSW ($843,283) all spent over the proposed cap. The next biggest third party donors were the NSW Business Chamber ($490,375) and the NSW Minerals Council ($481,479).

The lead judgment of Chief Justice Susan Kiefel and Justices Virginia Bell and Patrick Keane said “no inquiry as to what in fact is necessary to enable third-party campaigners reasonably to communicate their messages appears to have been undertaken”.

“The Parliament may have choices but they have to be justifiable choices where the implied freedom is concerned.” Justice Michelle Gordon noted the NSW Parliament’s joint standing committee on electoral matters had even expressed reservations about a $500,000 cap in 2016.

In March, the High Court will consider a challenge to new Queensland laws that ban political donations from developers for state and federal elections.