



IN THE HIGH COURT OF AUSTRALIA  
PERTH REGISTRY

No. P55 of 2013

BETWEEN:

**ZHENYA WANG**  
Petitioner

10 AND:

**DAVID JOHNSTON**  
First Respondent

**JOE BULLOCK**  
Second Respondent

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**MICHAELIA CASH**  
Third Respondent

**LINDA REYNOLDS**  
Fourth Respondent

**WAYNE DROPULICH**  
Fifth Respondent

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**SCOTT LUDLAM**  
Sixth Respondent

**LOUISE PRATT**  
Seventh Respondent

**AUSTRALIAN ELECTORAL COMMISSION**  
Eighth Respondent

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## ELECTION PETITION

PETITION  
Filed on behalf of the  
Petitioner by:

Date of this document: 2 December 2013

HopgoodGanim  
Level 8, Waterfront Place  
1 Eagle Street  
Brisbane Qld 4000

Phone: 3024 0000  
Facsimile: 3024 0300  
Ref: 1238086- Peter Burge/Julia O'Connor

This petition concerns the election of six senators for the State of Western Australia to serve in the Parliament of the Commonwealth of Australia, the poll for which election was held on 7 September 2013 (the **Election**).

### **RETURN OF WRIT**

The writ for the Election was returned on 6 November 2013.

### **ENTITLEMENT TO FILE THIS PETITION**

The petitioner is entitled to file this petition because he was a candidate at the Election.

### **STATEMENT OF FACTS**

#### **Parties and Preliminaries**

- 10 1. The petitioner was a candidate at the Election endorsed by the Palmer United Party, a political party registered in accordance with the provisions of Part XI of the *Commonwealth Electoral Act 1918* (Cth) (the **Act**) (**Registered Political Party**).
2. The first to seventh respondents were candidates at the Election, endorsed by the respective registered political parties set out below:
- |                    |                            |
|--------------------|----------------------------|
| First Respondent   | Liberal Party of Australia |
| Second Respondent  | Australian Labor Party     |
| Third Respondent   | Liberal Party of Australia |
| Fourth Respondent  | Liberal Party of Australia |
| Fifth Respondent   | Australian Sports Party    |
| Sixth Respondent   | Australian Greens Party    |
| Seventh Respondent | Australian Labor Party     |
3. The eighth respondent (the **AEC**) is the Commission established by s 6 of the Act.
4. On 4 November 2013, in accordance with s 283(1)(a) of the Act, the Australian Electoral Officer (the **AEO**) for Western Australia declared that the first to sixth

respondents had been duly elected in that order to serve as Senators for Western Australia.

5. On 6 November 2013, the AEO for Western Australia returned the writ for the Election to the Governor of Western Australia, together with a certificate under s 283(1)(b) of the Act certifying that the first to sixth respondents had been duly elected in that order to serve as Senators for Western Australia. The writ was the last of the writs returned for elections for which the polling day was 7 September 2013.

#### **The writ for the Election**

- 10 6. On or about 5 August 2013, the Governor of Western Australia caused to be issued a writ to the AEO for Western Australia commanding him to cause the Election to be made according to law, with the poll for the said election to be taken on 7 September 2013.

#### **The poll for the Election**

7. On 7 September 2013, the poll was taken for the Election at polling places throughout Western Australia appointed for the Election, with the close of the poll being 6.00 pm Western Standard Time.

#### **Original Count of the ballot papers**

##### *First scrutiny*

- 20 8. On 7 September 2013 after the close of the poll, Assistant Returning Officers at each of the appointed polling places conducted a scrutiny of the ballot papers cast at the Election, excepting declaration votes (as defined in s 4 of the Act), in accordance with s 273(2) of the Act.

##### *Fresh scrutiny*

9. From about 9 September 2013 until about 2 October 2013, the following steps occurred (**Original Count**):
  - (a) a fresh scrutiny of the ballot papers originally scrutinised by the Assistant Returning Officers was conducted by the Divisional Returning Officers for Western Australia in accordance with s 273A(3) of the Act in the following manner:

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- (1) the parcels of ballot papers transmitted by the Assistant Returning Officers to the Divisional Returning Officers in accordance with s 273(2)(f) of the Act were sorted into:
    - (A) informal “wholly above-the-line ballot papers” (**ATL ballot papers**) and other obviously informal ballot papers (s 273A(3)(a), (b));
    - (B) formal (that is, unrejected) ATL ballot papers (s273A(3)(a)); and
    - (C) unrejected “below-the-line” ballot papers (**BTL ballot papers**);
  - (2) the number of ballot papers rejected as informal, and the first preference votes given for the unrejected ATL ballot papers, were counted and the data entered into the AEC’s computer system, EasyCount Senate (**ECS**) (s 273A(3)(f)); and
  - (3) the unrejected BTL ballot papers were placed in parcels and transmitted to the Central Scrutiny Centre at Northbridge, Perth for scrutiny by the AEO for Western Australia in accordance with s 273A(4) of the Act (s 273A(3)(e));
- (b) the Divisional Returning Officers conducted a provisional scrutiny of declaration votes (s 273(4) of the Act) and the unrejected ATL ballot papers and unrejected BTL ballot papers from that provisional scrutiny were scrutinised in accordance with ss 273 and 273A of the Act; and
  - (c) the AEO for Western Australia, with the use of ECS, conducted a scrutiny of the unrejected BTL ballot papers transmitted by the Divisional Returning Officers in accordance with s 273A(4) of the Act.
10. ECS is a computer system used by the AEC for the purposes of s 273A of the Act to ascertain the result of Senate elections. Subject to the input of correct data, ECS applies the rules for the scrutiny of Senate ballot papers, and the distribution of preferences, contained in Part XVIII of the Act. ECS also applies the registered group voting tickets and their related preferences, received by the AEC under s 211 of the Act.
  11. ECS reports the distribution of preferences as a series of “counts” that result in either the election or exclusion of a candidate. An “exclusion point” occurs

when no surplus votes remain to be distributed and the number of vacancies remaining to be filled is less than the number of remaining candidates. The candidate with the lowest votes is excluded. In the event of a tie, a candidate will be excluded in accordance with s 273(31) of the Act.

*Results of the Original Count of ballot papers*

12. On or about 2 October 2013, in accordance with s 273A(5) of the Act, the AEO for Western Australia ascertained, by the use of ECS, that the successful candidates for the Election, in order of their election, were:

First Respondent

Second Respondent

Third Respondent

Fourth Respondent

Petitioner

Seventh Respondent

- 10 13. The number of above the line group votes and below the line votes recorded in the Original Count of the Election for each group, including the total number of votes cast for each of the 15 Divisions in Western Australia, is as set out in the table constituting annexure "A" which is annexed to, and forms part of, this Petition.

14. In the course of ascertaining the result of the Original Count, the following matters relevant to the distribution of preferences occurred:

- 20 (a) at "counts" 140 to 143, the 50th exclusion point, Mr Jamie van Burgel, a candidate for the Election endorsed by the Australian Christians (a Registered Political Party), and Mr Murray Bow, a candidate for the Election endorsed by the Shooters and Fishers Party (also a Registered Political Party), were the two remaining candidates with the lowest number of votes;

- (b) at the 49<sup>th</sup> exclusion point, Mr Bow had a total of 23,515 votes and Mr van Burgel had a total of 23,501 votes – a margin of 14 votes in favour of Mr Bow;

- (c) as a result, Mr van Burgel was excluded at the 50<sup>th</sup> exclusion point, and his votes were then distributed to the remaining candidates in accordance with the group voting tickets registered in accordance with s 211 of the Act (**Registered Group Voting Tickets**) in the case of ATL ballot papers, or in accordance with the preferences shown on the ballot papers in the case of BTL ballot papers;
- (d) following the exclusion of Mr van Burgel, and the resultant distribution of preferences, the final result was the election of the Petitioner and the Seventh Respondent to the fifth and sixth Senate vacancies respectively.
- 10 15. If Mr van Burgel had received a greater number of votes than Mr Bow at the 50<sup>th</sup> exclusion point, Mr Bow would have been excluded, resulting in the Fifth and Sixth Respondents being elected to fill the fifth and sixth Senate vacancies respectively.
16. By reason of the matters in paragraphs 14 and 15 above, the 14 vote margin between Mr van Burgel and Mr Bow at the 50<sup>th</sup> exclusion point was decisive in determining the result of the fifth and sixth Senate vacancies for the Election.

#### **Re-count of ballot papers**

17. On 2 October 2013, the Fifth and Sixth Respondents each made a formal request for a re-count under s 278(1) of the Act.
- 20 18. On 3 October 2013, the AEO for Western Australia refused the said requests.
19. On 3 and 4 October 2013 respectively, the Sixth and Fifth Respondents respectively appealed to the Electoral Commissioner under s 278(2) of the Act to direct a re-count of the ballot papers.
20. On 10 October 2013, the Electoral Commissioner directed the AEO for Western Australia to re-count all ATL ballot papers, and those ballot papers determined to be obviously informal by Divisional Returning Officers in accordance with s 273A(3) of the Act. BTL ballot papers considered by the AEO in accordance with s 273A(4) of the Act were excluded from the re-count.
21. The re-count commenced on 17 October 2013 and concluded on 2 November 30 2013.
22. At the conclusion of the re-count on 2 November 2013, the AEO for Western Australia, in accordance with s 273A(5) of the Act, ascertained by the use of the

ECS system, that on the basis of the results of the re-count the successful candidates for the Election, in order of their election, were the First to Sixth Respondents in that order.

23. The number of above the line group votes and below the line votes recorded in the re-count of the Election for each group, including the total number of votes cast for each of the 15 Divisions in Western Australia, is as set out in the table constituting annexure "B" which is annexed to, and forms part of, this Petition.
24. In the course of ascertaining the result of the re-count, the following matters relevant to the distribution of preferences occurred:
- 10 (a) at "counts" 142 to 145, the 50th exclusion point of the re-count, Mr van Burgel and Mr Bow were again the two remaining candidates with the lowest number of votes;
- (b) at the 49<sup>th</sup> exclusion point, Mr Bow had 23,514 votes and Mr van Burgel had 23,526 votes – a margin of 12 votes in favour of Mr van Burgel;
- (c) as a result, Mr Bow was excluded, and his votes were then distributed to the remaining candidates in accordance with the Registered Group Voting Tickets in the case of ATL ballot papers, or in accordance with the preferences shown on the ballot papers in the case of BTL ballot papers;
- 20 (d) following the exclusion of Mr Bow, the final result was the election of the Fifth and Sixth Respondents to the fifth and sixth Senate vacancies respectively.
25. If Mr Bow had received a greater number of votes than Mr van Burgel at the 50th exclusion point, Mr van Burgel would have been excluded resulting in the Petitioner and the Seventh Respondent being elected to fill the fifth and sixth Senate vacancies respectively.

**Illegal practices: loss of 1,370 ballot papers during re-count**

26. The results of the re-count do not include a total of 1,370 ballot papers for votes cast by electors within the Divisions of Forrest and Pearce (**Missing Ballot Papers**).
- 30 27. The Missing Ballot Papers were subject to fresh scrutiny by the Divisional Returning Officers for the Divisions of Forrest and Pearce and consisted of 1,250 unrejected ATL ballot papers and 120 ballot papers rejected as informal.

28. AEC records are available from the fresh scrutiny recording the first preference vote for the 1,250 unrejected ATL ballot papers. Relevantly, those records show that:
- (a) 3 ATL ballot papers indicated a first preference for the Australian Christians (Group C);
  - (b) 14 ATL ballot papers indicated a first preference for the Shooters and Fishers Party (Group G);
  - (c) 4 ATL ballot papers indicated a first preference for the Australian Independents (Group K);
  - 10 (d) 2 ATL ballot papers indicated a first preference for the No Carbon Tax Climate Sceptics (Group O);
  - (e) no ATL ballot papers indicated a first preference for the Australian Fishing and Lifestyle Party (Group V); and
  - (f) the remaining 1,227 ATL ballot papers indicated a first preference for another party or group.
29. The Missing Ballot Papers are lost and unlikely to be found.
30. By reason of the AEO's failure to re-count the Missing Ballot Papers, the AEO for Western Australia failed to conduct the re-count in accordance with the direction of the Electoral Commissioner, in contravention of ss 20, 278(2) and  
20 279B of the Act.
31. By reason of the loss of the Missing Ballot Papers, the Divisional Returning Officers for Forrest and Pearce have failed to maintain the safe custody of the Missing Ballot Papers until at least 6 months after the declaration of the poll for the Election, in contravention of s 393A of the Act.
32. The said contraventions of the Act constitute illegal practices within the meaning of s 352(1) of the Act, committed by an officer (as defined in s 4 of the Act) and without the knowledge and authority of any candidate.

**Illegal practices: errors of the AEO for Western Australia during re-count**

- 30 33. During the re-count, a number of ballot papers were reserved for the decision of the AEO for Western Australia in accordance with s 281(1) of the Act.



34. In deciding whether to admit or reject the reserved ballot papers in accordance with s 281(2) of the Act, the AEO for Western Australia wrongly rejected at least 56 ATL ballot papers cast in favour of either the Shooters and Fishers Party, the Australian Independents or the Australian Fishing and Lifestyle Party:
- 10 (a) the AEO rejected at least 4 ballot papers on which the voters had each indicated a clear first preference above the line for the Shooters and Fishers Party (Group G) by marking the relevant square above the line with a tick, cross or 1 and had also written extraneous material on the ballot paper indicating a preference for a person, or entity, not a candidate in the Election. In each case, the ballot paper was a formal ballot paper marked in accordance with s 239(2) or (3) of the Act. In each case, the ballot paper should not have been rejected;
- 20 (b) the AEO rejected 2 ballot papers which were partially damaged. In each case, the voter had indicated a clear first preference above the line by marking the ballot papers with a tick, cross or 1 in the square above the line for either the Shooters and Fishers Party (Group G) or for the Australian Fishing and Lifestyle Party (Group V). In each case, the ballot paper was a formal ballot paper marked in accordance with s 239(2) or (3) of the Act. In each case, the ballot paper should not have been rejected;
- (c) the AEO rejected at least 3 ballot papers where the voter had marked the ballot paper by completely colouring in the square above the line for the Shooters and Fishers Party (Group G) and made no other marks on the ballot papers. In each case, the voter's order of preference for all candidates was clear. In each case, the ballot paper was a formal ballot paper marked in accordance with s 239(2) or (3) of the Act. In each case, the ballot paper should not have been rejected;
- 30 (d) the AEO rejected 1 ballot paper on which the voters had each marked the ballot paper by making a "X" in the square above the line for the Australian Fishing and Lifestyle Party (Group V) which was then covered over by the voter completely colouring in the square. The ballot paper was a formal ballot paper marked in accordance with s 239(2) and (3) of the Act. The ballot paper should not have been rejected;
- (e) the AEO rejected at least 8 ballot papers on which the voters had each marked the ballot paper above the line for either the Shooters and

Fishers Party (Group G), the Australian Independents (Group K) or the Australian Fishing and Lifestyle Party (Group V) by making a clear dash or transverse mark in the relevant square above the line and made no other marks on the ballot paper. In each case, the voter's order of preference for all candidates was clear. In each case, the ballot paper was a formal ballot paper marked in accordance with s 239(2) and (3) of the Act. In each case, the ballot paper should not have been rejected;

10 (f) the AEO rejected at least 3 ballot papers on which the voters had each marked the ballot paper above the line for either the Shooters and Fishers Party (Group G) or the Australian Fishing and Lifestyle Party (Group V) by making a clear "1" in the relevant square above the line. In each case, the relevant square also contained a lighter mark resembling a "1". There were no other marks on the ballot paper. In each case, the ballot paper was a formal ballot paper marked in accordance with s 239(2) or (3) of the Act. In each case, the ballot paper should not have been rejected;

20 (g) the AEO rejected at least 3 ballot papers on which the voters had each marked the ballot paper above the line for either the Shooters and Fishers Party (Group G), the Australian Independents (Group K) or the Australian Fishing and Lifestyle Party (Group V) by making a mark in the relevant square above the line which the AEO decided was a "V" rather than a tick, cross or 1. In each case, the mark was a tick and the ballot paper was a formal ballot paper marked in accordance with s 239(2) and (3) of the Act. In each case, the ballot paper should not have been rejected;

30 (h) the AEO rejected at least 2 ballot papers on which the voters had each marked the ballot paper above the line for either the Shooters and Fishers Party (Group G), the Australian Independents (Group K) or the Australian Fishing and Lifestyle Party (Group V) by making a "continental 1" in the relevant box above the line. A "continental 1" has a small diagonal stroke at the top, followed by a straight vertical line, and a horizontal line at the base of it. In each case, the ballot paper was a formal ballot paper marked in accordance with s 239(2) or (3) of the Act. In each case, the ballot paper should not have been rejected;

(i) the AEO rejected at least 2 ballot papers on which the voters had each marked the ballot by placing a circle in the square above the line for the

Shooters and Fishers Party (Group G). In each case the voter's order of preference for all candidates was clear. In each case the ballot paper was a formal ballot paper marked in accordance with s 239(2) and (3) of the Act. In each case, the ballot paper should not have been rejected;

10 (j) the AEO rejected at least 22 ballot papers on which the only mark on each ballot paper was a clear mark above the line in the square for either the Shooters and Fishers Party (Group G), the Australian Independents (Group K) or the Australian Fishing and Lifestyle Party (Group V), but the AEO considered that the mark was not a clear tick, cross or 1. In each case, the voter had marked the ballot paper in accordance with s 239(2) or (3) of the Act. In each case, the ballot paper was a formal ballot paper. In each case, the ballot paper should not have been rejected;

20 (k) the AEO rejected at least 5 ballot papers on which the voters had each marked more than one of the squares above the line with a tick, cross or "1". In each case, it was clear, either on the face of the ballot paper or in the context of the other marks, that the voter's intention was to mark a preference above the line for the Shooters and Fishers Party (Group G). In each case, the voter's order of preference for all candidates was clear. In each the case, the voter had marked the ballot paper in accordance with s 239(2) or (3) of the Act. In each case, the ballot paper was a formal ballot paper. In each case, the ballot paper should not have been rejected;

30 (l) the AEO rejected at least 1 ballot paper marked above the line for the Shooters and Fishers Party where the AEO considered that, by reason of a signature on the ballot paper, the voter could be identified. However, it was not possible, even with reference to the electoral roll, for a person authorised by the Act to have access to the ballot paper to identify the voter. In each the case the voter had marked the ballot paper in accordance with s 239(2) or (3) of the Act. In each case, the ballot paper was a formal ballot paper. In each case, the ballot paper should not have been rejected.

35. In the alternative to paragraphs 34(e), 34(f), 34(g) and 34(j) above, in deciding whether to admit or reject the reserved ballot papers in accordance with s 281(2) of the Act, the AEO wrongfully accepted at least 14 ballot papers as above the line votes cast in favour the Australian Christians Party:

- (a) the AEO accepted at least 3 ballot papers as formal above the line votes where the relevant square above the line contained a dash or transverse mark and not a tick, cross or 1. Each such ballot paper should have been rejected as informal (cf paragraph 34(e) above);
  - (b) the AEO accepted at least 1 ballot paper as a formal above the line vote where the relevant square contained a dark "1" and an additional lighter "1" in the same box. Each such ballot paper should have been rejected as informal (cf paragraph 34(f) above);
  - 10 (c) the AEO accepted at least 5 ballot papers as formal above the line votes where the relevant square above the line contained a "V" and not a tick, cross or 1. Each such ballot paper should have been rejected as informal (cf paragraph 34(g) above).
  - (d) the AEO accepted at least 5 ballot papers as formal above the line votes where the relevant square above the line contained a mark other than a tick, cross or 1, but instead contained a "T" or upside down "V" or other mark. Each such ballot paper should have been rejected as informal (cf paragraph 34(j) above).
36. In deciding whether to admit or reject the reserved ballot papers in accordance with s 281(2) of the Act, the AEO for Western Australia wrongly accepted at least 18 ballot papers as above the line votes cast in favour of either the Australian Christians Party or the No Carbon Tax Climate Sceptics:
- 20 (a) the AEO accepted at least 9 ballot papers as formal above the line votes for either the Australian Christians Party or the No Carbon Tax Climate Sceptics where the voters had each marked the ballot paper above the line with more than one tick, cross or 1 so that it was not possible to ascertain with any certainty for which group the voter had given his or her preference. In each case, the ballot paper was informal and should have been rejected;
  - 30 (b) the AEO accepted at least 7 ballot papers as formal above the line votes for either the Australian Christians Party or the No Carbon Tax Climate Sceptics, where the voters had each attempted to number the squares above the line sequentially in a way that meant it was not possible to ascertain with any certainty which square had been marked with a "1"

and which had been marked with a "7". In each case, the ballot paper was informal and should have been rejected;

- (c) the AEO accepted at least 2 ballot papers as formal above the line votes for the Australian Christians where the voters had each marked the ballot paper above the line with more than one mark in such a way that it was not possible to say with any certainty which group was the voter's first preference. In each case, the ballot paper was informal and should have been rejected.

10 37. The decisions identified in paragraphs 34 to 36 above were made in contravention of s 268 of the Act, in that the AEO admitted ballot papers which should have been rejected as informal, and rejected ballot papers which should have been accepted as formal.

38. The said contraventions of the Act by the AEO for Western Australia constitute illegal practices within the meaning of s 352(1) of the Act, committed without the knowledge and authority of any candidate.

#### **Effect of the illegal practices**

39. By reason of the illegal practices identified in paragraphs 30 to 32 above, the results of the re-count, as declared by the AEO, do not accurately reflect the true intention of the electors.

20 40. If the illegal practices identified in paragraphs 30 to 32 above had not occurred, then:

- (a) the 1,370 Missing Ballot Papers would have been included in the results of the re-count; and

- (b) on the assumption that the records of the fresh scrutiny specified in paragraph 28 were correct then:

- (1) an additional 1,250 ATL ballot papers would have been added to the re-count;

- (2) at the 50th exclusion point, Mr van Burgel and Mr Bow would still have been the two remaining candidates with the lowest votes;

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- (3) Mr van Burgel would have had an additional 5 votes (consisting of the 3 ATL ballot papers with a first preference for the Australian

Christians, and the 2 ATL ballot papers with a first preference for the No Carbon Tax Climate Sceptics), bringing his total to 23,531;

- (4) Mr Bow would have had an additional 18 votes (consisting of the 14 ATL ballot papers with a first preference for the Shooters and Fishers Party, and the 4 ATL ballot papers with a first preference for the Australian Independents), bringing his total to 23,532;
- (5) Mr van Burgel would have had one less vote than Mr Bow and would have been excluded ahead of Mr Bow, with the result that, following the distribution of preferences, the Petitioner and the Seventh Respondent would have been elected to fill the fifth and sixth Senate vacancies respectively.

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41. If the illegal practices identified in paragraphs 34 to 38 above had not occurred then:

(a) on the basis of the result of the re-count alone (excluding the Missing Ballot Papers) and in the premises of paragraphs 34 and 36:

- (1) at the 50th exclusion point, Mr van Burgel and Mr Bow would still have been the two remaining candidates with the lowest votes;
- (2) Mr van Burgel would have had at least 18 fewer votes (consisting of wrongly accepted ATL votes cast for the Australian Christians Party and No Carbon Tax Climate Sceptics, the votes for the latter party being transferred to Mr van Burgel following the exclusion of the candidates for that party during the distribution of preferences), bringing his total to no more than 23,508 votes;
- (3) Mr Bow would have had at least 56 additional votes (consisting of wrongly rejected ATL votes cast for the Shooters and Fishers Party, the Australian Independents and the Australian Fishing and Lifestyle Party, the votes for the latter two parties being transferred to Mr Bow following the exclusion of the candidates for those parties during the distribution of preferences), bringing his total to no less than 23,570 votes;
- (4) Mr Bow's margin over Mr van Burgel would have been at least 62; and

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- (5) Mr van Burgel would have been excluded ahead of Mr Bow, with the result that, following the distribution of preferences, the Petitioner and the Seventh Respondent would have elected to fill the fifth and sixth Senate vacancies respectively;
- (b) on the basis of the result of the re-count and including the records of the Missing Ballot Papers and in the premises of paragraphs 34 and 36:
- 10 (1) at the 50th exclusion point, Mr van Burgel and Mr Bow would still have been the two remaining candidates with the lowest votes;
- (2) Mr van Burgel would have had at least 13 fewer votes, bringing his total to no more than 23,513;
- (3) Mr Bow would have had at least 74 additional votes, bringing his total to no less than 23,588;
- (4) Mr Bow's margin over Mr van Burgel would have been at least 75; and
- (5) Mr van Burgel would have been excluded ahead of Mr Bow, with the result that, following the distribution of preferences, the Petitioner and the Seventh Respondent would have elected to fill the fifth and sixth Senate vacancies respectively;
- 20 (c) on the basis of the result of the re-count alone (excluding the Missing Ballot Papers) and in the premises of paragraphs 35 and 36:
- (1) at the 50th exclusion point, Mr van Burgel and Mr Bow would still have been the two remaining candidates with the lowest votes;
- (2) Mr van Burgel would have had at least 32 fewer votes, bringing his total to no more than 23,494;
- (3) Mr Bow would have had at least 20 additional votes, bringing his total to no less than 23,534;
- (4) Mr Bow's margin over Mr van Burgel would have been at least 40; and
- 30 (5) Mr van Burgel would have been excluded ahead of Mr Bow, with the result that, following the distribution of preferences, the

Petitioner and the Seventh Respondent would have elected to fill the fifth and sixth Senate vacancies respectively;

(d) on the basis of the result of the re-count alone and including the records of the Missing Ballot Papers, and in the premises of paragraphs 35 and 36:

(1) at the 49th exclusion point, Mr van Burgel and Mr Bow would still have been the two remaining candidates with the lowest votes;

(2) Mr van Burgel would have had at least 27 fewer votes, bringing his total to no more than 23,500;

10 (3) Mr Bow would have had at least 38 additional votes, bringing his total to no less than 23,552;

(4) Mr Bow's margin over Mr van Burgel would have been at least 52; and

(5) Mr van Burgel would have been excluded ahead of Mr Bow, with the result that, following the distribution of preferences, the Petitioner and the Seventh Respondent would have elected to fill the fifth and sixth Senate vacancies respectively.

**Petitioner's contentions**

20 42. In the premises of paragraphs 39 to 41, the Court should be satisfied that the result of the Election was likely to be affected by the illegal practices identified in paragraphs 30 to 32 and 34 to 38 above, and that it is just that the Fifth and Sixth Respondents be declared not to have been duly elected.

43. Further to paragraph 42, in the premises of paragraphs 12, 29 and 39:

(a) the result of the re-count cannot be relied upon;

(b) the Court should determine the result of the Election based on the results of the Original Count, which is the only count available, and ever likely to be available, of all of the ballot papers cast at the Election;

30 (c) on the basis of the result of the Original Count, the Petitioner and the Seventh Respondent were elected to fill the fifth and sixth Senate vacancies respectively; and



- (d) accordingly, the Court should declare that the Petitioner and the Seventh Respondent were duly elected to fill the fifth and sixth Senate vacancies respectively.

44. In the alternative to paragraph 43, in the premises of paragraphs 40 and 41:

- (a) the Court should be satisfied that:

- (1) having regard to:

- (A) the illegal practices identified in paragraphs 34 to 38 above;
- (B) the known records of the Missing Ballot Papers as set out in paragraph 28 above; and
- (C) annexures A and B and the matters set out in paragraphs 13 and 23 above;

- (2) it is likely;

- (3) further or alternatively, on the balance of probabilities;

- (4) further or alternatively, there is no real prospect other than,

that a re-count of all the ballot papers as directed (including all of the Missing Ballot Papers) would have resulted in the same result as set out paragraph 12; and

- (b) accordingly, the Court should declare the Petitioner and the Seventh Respondent as duly elected.

45. In the alternative to paragraphs 42 to 44 above, if the Court cannot be satisfied on the material before it as to the candidates who were duly elected to fill the fifth and sixth Senate vacancies at the Election then the Court should be satisfied that the result of the Election was likely to be affected by the illegal practices identified in paragraphs 30 to 32 and 34 to 38 above, and that it is just that the Election should be declared absolutely void.

**RELIEF**

The petitioner asks the Court to make the following orders:

1. Pursuant to s 360(1)(v) of the Act, declare that the Fifth and Sixth Respondents were not duly elected at the Election.
2. Further to 1, pursuant to s 360(1)(vi) of the Act, declare that the Petitioner and the Seventh Respondent were duly elected at the Election.
3. In the alternative to 1 and 2, declare that the Election is absolutely void.
4. The Petitioner's costs be paid by the Commonwealth.
5. Such further or other order as the Court thinks fit.

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DATED: 2 December 2013

*ZHENYA WANG*

.....  
 Mr Zhenya Wang  
 Petitioner

20 IN THE PRESENCE OF:

*ALICE COMMANDER*

*KYLIE PANCKHURST*

.....  
 Signed by Witness

.....  
 Signed by Witness

Alice Margaret Commander

Kylie Maree Panckhurst

.....  
 Name of Witness

.....  
 Name of Witness

Solicitor

Solicitor

.....

.....

Occupation of Witness

Occupation of Witness

31 Wickham Street

6 Edith Street

East Perth WA 6000

Perth WA 6000

.....

.....

Address of Witness

Address of Witness

10 TO: THE FIRST RESPONDENT

Senator David Johnston

C/- Colquhoun Murphy Lawyers

31 Torrens Street

Braddon ACT

TO: THE SECOND RESPONDENT

Joe Bullock

C/- Slater and Gordon Lawyers

20 Level 4, 190 St Georges Terrace

Perth WA

TO: THE THIRD RESPONDENT

Senator Michaelia Cash

C/- Colquhoun Murphy Lawyers

31 Torrens Street

Braddon ACT

TO: THE FOURTH RESPONDENT

Linda Reynolds

C/- Colquhoun Murphy Lawyers  
31 Torrens Street  
Braddon ACT

TO: THE FIFTH RESPONDENT

Wayne Dropulich

10 40 Jardine Street  
Stirling WA

TO: THE SIXTH RESPONDENT

Senator Scott Ludlam

C/- MDC Legal  
44 Kings Park Road  
West Perth WA

TO: THE SEVENTH RESPONDENT

20 Senator Louise Pratt

C/- Slater and Gordon Lawyers  
Level 4, 190 St Georges Terrace  
Perth WA

TO: THE EIGHTH RESPONDENT

Australian Electoral Commission

30 C/- Australian Government Solicitor  
4 National Circuit  
Barton ACT

The Petitioner's address for service is:

c/- HopgoodGanim

Level 8, Waterfront Place

1 Eagle Street

Brisbane Qld 4000.

**[Attention: Peter Burge/Julia O'Connor]**