Disqualification threats hang over Australian MPs

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Extraordinary events over the past week point to a concerted campaign to use the reactionary provisions in the Australian Constitution to remove "third party" members of the Senate elected at last July's double dissolution election.

A witch hunt has been launched, led by the Murdoch media, to identify every member of parliament who was born overseas or might have acquired foreign citizenship from their parents, and demand they provide proof of having renounced their dual citizenship.

Two Greens senators—party co-leaders Scott Ludlam and Larissa Waters—abruptly quit their seats, without a fight, after being accused of breaching section 44 of the Constitution by failing to realise that they held dual citizenships.

Both were born overseas—Ludlam in New Zealand and Waters in Canada—but arrived in Australia as infants. It appears that they automatically became, and remained, citizens of those countries.

The two Greens became the third and fourth senators disqualified this year under various provisions in section 44—an unprecedented figure.

Now, question marks have been raised about Greens leader, Senator Richard Di Natale, who has an Italian family background, and two other Greens senators—Nick McKimm, who was born in Britain, and Peter Whish-Wilson, born in Singapore.

Also in the firing line is Malcolm Roberts, elected to the Senate for Pauline Hanson's anti-immigrant One Nation, because he was born in India.

Earlier in the year, the Labor Party applied to the High Court, the country's supreme court, to disqualify independent Senator Lucy Gichuhi because of her previous Kenyan citizenship, but the court rejected the application for lack of evidence.

Prominent overseas-born MPs, including former Prime Minister Tony Abbott, have scrambled to issue media statements asserting they had formally renounced their dual citizenships before standing for parliament. More than 20 other MPs, including some from Labor and the Coalition, have been reportedly investigating whether they remain dual citizens.

"True-blue Australian MPs only," was the headline of an *Australian* editorial on July 20, highlighting the nationalist character of this crusade. It insisted that patriotism, loyalty and national pride are essential pre-requisites for sitting in parliament. The editorial claimed that the requirement of sole Australian citizenship was both elementary and easy to fulfil.

In reality, this campaign is anti-democratic to the core. In effect, it is seeking to nullify the ballots of the tens of thousands of people who voted for these candidates. It also disqualifies millions of citizens from standing for parliament.

No reliable figures exist for the number of dual citizens in Australia but the 2016 Census reported that 6.9 million residents—28.5 percent of the population—were born overseas. Australia has always been an immigrant country but this is a growing trend, with the overseas-born numbers increasing from 5 million over the past decade.

Section 44 (i) of the Constitution, like the document as a whole, is a colonial-era provision, imposed when Australia was still part of the British Empire and all residents of the continent (except for the indigenous population) were classified as British subjects.

The clause is a sweeping one, disqualifying any person from standing for election who "is under any acknowledgment 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 a citizen of a foreign power."

These words could be used against anyone accused of "adherence to a foreign power." This could extend, particularly in wartime conditions, to someone with an overseas family heritage or to anyone who opposed a war.

In several tenuous and divided rulings over the past 25 years, Australia's supreme court, the High Court, has interpreted section 44 (i) as requiring all candidates to "take reasonable steps" to renounce their "foreign nationality." What is "reasonable" remains undefined.

The threat of disqualification has now spread to the Greens candidate who may be in line to replace Waters, former Australian Democrats leader Andrew Bartlett. He could fall foul of another part of section 44—clause (iv)—which declares ineligible anyone who "holds any office of profit under the Crown."

Bartlett had a part-time research job at the Australian National University while he was number 2 on the Greens' 2016 Senate ticket in Queensland, behind Waters. Constitutional experts have said that whether employment by a university constitutes an "office under the Crown" is a "grey area" not yet tested in the High Court.

There is an anti-democratic precedent however. In 1992, independent Phil Cleary won former Prime Minister Bob Hawke's seat but the High Court disqualified him because he was a Victorian state government schoolteacher—despite Cleary being on leave without pay.

Earlier this year, the High Court disqualified two other "crossbench" senators on the basis of far-reaching interpretations of further provisions in section 44. One Nation's Rod Culleton had been convicted of larceny, an offence punishable by more than 12 month's jail. The court ruled this meant he was in breach of Section 44 (ii), even though the conviction was later set aside.

In the case of Family First's Bob Day, the court radically widened its previous interpretation of Section 44 (v), which prohibits anyone with an "indirect pecuniary interest" in an agreement with the Commonwealth. Day's electorate office was leased from his family trust, even though the federal government actually paid no rent to the trust.

Increasingly, what appears to be unfolding is a purge aimed at ousting or undermining smaller parties that won seats at the 2016 "double dissolution" election, which backfired spectacularly for Prime Minister Malcolm Turnbull's Liberal-National government and produced a highly unstable parliament.

Turnbull called the election to try to break through a parliamentary impasse produced by the blocking of key budget-cutting measures in the Senate. Opposition members feared the popular backlash they would trigger if they voted for the most blatant moves to gut public health, education and welfare.

Such was the deep public hostility, however, that the election saw the Coalition reduced to a fragile one-seat majority in the House of Representatives, making its survival constantly precarious.

The result was even worse in the Senate, where a record 35 percent of the electorate voted for the Greens or "crossbench" candidates—mostly right-wing populists who claimed to oppose the political establishment. Following the subsequent defection of Liberal Senator Cory Bernardi, who formed the Australian Conservatives, the Coalition holds only 29 seats in the 76-member Senate.

Over the past year, this result and the continuing political crisis has produced numerous media and corporate commentaries bemoaning Australia's "ungovernability" and the "failure" of parliament.

One of the first to voice these sentiments was billionaire businessman Gerry Harvey. Straight after the election, he suggested the installation of a dictator "or something like that" in order to impose anti-working class austerity measures. Harvey declared that "our democracy at the moment is not working."

There are indications that this hostility within ruling circles toward the election outcome, and democratic forms of rule, is now taking the form of a drive to subvert the 2016 result by using anti-democratic constitutional provisions to remove a number of senators.