**NO PLACE FOR POLITICS IN ANOINTING JUDGES TO THE HIGH COURT**

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There has been a plethora of media commentary this week about the decision of the majority of the High Court in *Love v Commonwealth of Australia*, referred to as “the aliens case”, ~~much of it hysterical.~~ [these words deleted by *The Australian*]

Debate [this week] [these words added by *The Australian*] about the reasoning in the case and its implications is to be welcomed. Such debate is the sign of a healthy functioning democracy.

However, it is unfortunate that some of the commentary has been cast in terms of which political party was in government when particular judges were appointed to the Court, as though that ought to be a predictor of the judge’s decisions in constitutional matters.

In Australia to date, with very few exceptions, the political party in power when a judge was appointed to the High Court has been irrelevant.

In an article in *The Australian*, shortly after his retirement, former Chief Justice Robert French spoke of “the diligence, and conscientiousness and seriousness” that Attorneys General from both sides of politics have brought to the task of judicial appointments. He expressed the view that “generally speaking, the selection system in this country is working”.

This sound and sensible approach should not be put in jeopardy.

Particularly unfortunate is the call from several sources for the government to appoint “capital C” conservatives to replace the next two High Court judges due to retire – in December this year and March next year.

There is talk of “building a legally conservative High Court” to curb “judicial activism”. This is actually an invitation to the government to abandon the longstanding convention in Australia for such appointments to be made solely on merit without reference to political considerations.

In other words, it is a call for blatantly political appointments to be made. The idea that a government should make appointments to the highest court in Australia on the basis that an appointee is likely to uphold the policy preferences of the government of the day is an anathema.

The disastrous consequences of such an approach can be seen in the unfortunate politicisation of the US Supreme Court.

A further concern is that some of the more intemperate criticism of the decision has descended into personal comments about the integrity of the majority judges and the legitimacy of their decision-making process. This is to be deplored. Such comments are not only grossly unfair; they are irresponsible in that they have a tendency to undermine the public’s confidence in our system of justice.

Justice Judith Kelly

President

Judicial Conference of Australia

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*The Judicial Conference of Australia is the professional association of judges and magistrates in Australia.*