IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case number: 89/17

In the matter between:

UNITED DEMOCRATIC MOVEMENT	Applicant
and	
SPEAKER OF THE NATIONAL ASSEMBLY	First Respondent
PRESIDENT JACOB ZUMA	Second Respondent
AFRICAN NATIONAL CONGRESS	Third Respondent
DEMOCRATIC ALLIANCE	Fourth Respondent
ECONOMIC FREEDOM FIGHTERS	Fifth Respondent
INKATHA FREEDOM PARTY	Sixth Respondent
NATIONAL FREEDOM PARTY	Seventh Respondent
CONGRESS OF THE PEOPLE	Eighth Respondent
FREEDOM FRONT	Ninth Respondent
AFRICAN CHRISTIAN DEMOCRATIC PARTY	Tenth Respondent
AFRICAN INDEPENDENT PARTY	Eleventh Respondent
AGANG SOUTH AFRICA	Twelfth Respondent
PAN AFRICANIST CONGRESS OF AZANIA	Thirteenth Respondent
AFRICAN PEOPLE'S CONVENTION	Fourteenth Respondent
COUNCIL FOR THE ADVANCEMENT OF THE SOUTH AFRICAN CONSTITUTION	*Amicus curiae*

HEADS OF ARGUMENT OF THE COUNCIL FOR THE ADVANCEMENT OF THE SOUTH AFRICAN CONSTITUTION

TABLE OF CONTENTS

INTRODUCTION AND OVERVIEW OF SUBMISSIONS

1 This matter concerns a question at the core of the parliamentary function of executive oversight: a resolution by the National Assembly that the President has lost its confidence.

2 The Council for the Advancement of the South African Constitution ("CASAC") has applied to be admitted as an *amicus curiae*. It was not possible, because of the urgency of the matter, to await the responses of all the parties to CASAC's letter seeking consent before filing the application. All of the responses received have now been filed.

3 CASAC is an initiative based on the core values of the Constitution, including the rule of law, public accountability and open governance. Its primary interest in this matter is to defend and promote progressive constitutionalism and democracy in South Africa.

4 These submissions are confined to four principal issues:

4.1 First, we describe the precarious and invidious position of Members of the National Assembly ("Members"), caught between their oath of office to uphold the Constitution, and the discipline of their parties.

4.2 Second, we argue that the constitutional obligations borne by the National Assembly and its Members track the dual functions – law-making and oversight – that they perform. We submit that in respect of a

motion of no confidence, which is within the heartland of executive oversight, and where Members bear a heightened obligation not to toe the party line, a secret ballot provides the protective conditions necessary for Members to comply with their obligations.

4.3 Third, we argue that the Speaker's distinctive obligation to act impartially requires that, in this case, she be directed to conduct the vote by secret ballot.

4.4 Fourth, we review the approaches in various foreign jurisdictions to demonstrate that the relief sought requires no major innovation.

THE PRECARIOUS AND INVIDIOUS POSITION OF MEMBERS OF THE NATIONAL ASSEMBLY

5 Political parties play a central role in the South African democratic system.[1] In general elections, members of the electorate vote not for individuals, but for the political party of their choice. Seats in the National Assembly are then allocated to political parties in direct proportion to the votes they receive.[2] And those seats are filled from lists prepared by the political parties.

6 More importantly, sec 47(3)(c) of the Constitution provides that Members *lose* their membership if they cease to be a member of the party that nominated them to the legislature.

---

[1] *My Vote Counts NPC v Speaker of the National Assembly and Others* 2016 (1) SA 132 (CC) at paras 33-5; *Ramakatsa and Others v Magashule and Others* 2013 (2) BCLR 202 (CC) at para 66.
[2] See *Kham and Others v Electoral Commission* 2016 (2) SA 338 (CC) at para 61, fn54.

7 The centrality of political parties and, more particularly, the direct link between party and National Assembly membership, places individual Members of the National Assembly in a potentially precarious position. Ultimately, it is the party that decides whether they continue in their role as a Member. This enables parties, through their Whips, to exact discipline over the voting behaviour of their members. A failure to toe the party line exposes one to the risk of removal as a Member.

8 The President blows hot and cold on the question whether Members of the majority party will, as a matter of fact, be required to vote against a no-confidence motion at risk of party discipline. He describes such a claim as "highly speculative";[3] but then describes it as "settled law that members…are subject to party discipline and liable to be expelled."[4]

9 In fact, one need not speculate. The African National Congress ("ANC") Constitution provides at clause 5.4. that ANC members in elective office must be members of the relevant caucus, must function within its rules, and must abide by its decisions.[5] Clause 25.17.20 makes it an act of misconduct, subject to disciplinary proceedings, to be a member of an ANC Caucus and fail, refuse or neglect to carry out its instruction or mandate.[6] It stands to reason that where an open vote occurs, and where parliamentary membership depends on party membership, Members are inhibited from voting their conscience where it does

[3] President's Answering Affidavit at para 84.
[4] President's Answering Affidavit at para 91.
[5] http://www.anc.org.za/content/constitution-anc
[6] http://www.anc.org.za/content/constitution-anc

not meet the approval of their party.

10 As we demonstrate below, sometimes, and particularly when they are voting on legislation, it is appropriate that Members feel inhibited. However, where Members exercise their executive oversight function, this is not an inhibition that the Constitution or this Court's jurisprudence envisages. And a secret ballot is the only means by which to avoid it.

11 Members find themselves in a position that is not only precarious; it is also invidious. That is because they owe their allegiance, in the first instance, not to their party but to the Constitution. As sec 48 of the Constitution provides:

> "*Before members of the National Assembly begin to perform their functions in the Assembly, they must swear or affirm faithfulness to the Republic and obedience to the Constitution*." (Emphasis added).

12 Indeed, notwithstanding the list system of representative government, Members perform a "*dual function*", serving both their party and the people.[7] They also retain the right "*to follow the dictates of their conscience*."[8] But performing that dual function and exercising that right is perilous when the threatened consequences are so serious.

---

[7] *Max v Independent Democrats and others* 2006 (3) SA 112 (C) at 121C.
[8] *Van Zyl v New National Party* [2003] 3 All SA 737 (C) at para 45; *In Re: Certification of the Constitution of the RSA* 1996(4) SA 744 (CC) at 831 E

THE SECRET BALLOT AS A MEANS TO ENABLE MEMBERS TO PERFORM THEIR CONSTITUTIONAL OBLIGATIONS

The dual functions of the National Assembly

13 Section 1(d) of the Constitution provides that South Africa is a democratic state founded on the values of "*universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness*." (Emphasis added).

14 In giving effect to these values, sec 42(3) articulates the functions of the National Assembly as follows:

> "*The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action*."

15 The National Assembly thus performs two core functions, as recognised by this Court in *Democratic Alliance v Speaker of the National Assembly*:[9]

15.1 First, to put it crisply, "Parliament makes laws".[10] This, as the Court has explained, entails an open and deliberative process and makes parliament a national forum for the public consideration of policy questions.

---

[9] *Democratic Alliance v Speaker of the National Assembly and Others* 2016 (3) SA 487 (CC).
[10] *Democratic Alliance* at para 14.

15.2 Second, Parliament has "the onerous task of overseeing the Executive". It is, the Court held, Parliament that provides the critical safeguard against executive abuse.[11]

16 Section 92 underpins Parliament's oversight role, making Cabinet members individually and collectively accountable to Parliament, and requiring Cabinet to report to Parliament regularly. Section 55(2)(a) requires the National Assembly to devise mechanisms that will enable it to hold the executive accountable.

17 These dual functions filter down to the level of portfolio committees, which are responsible both for the detailed consideration of draft Bills, and for monitoring the specific portfolios of members of the Executive.

18 Naturally, the National Assembly's oversight and law-making roles overlap. After all, an obvious legislative check on the executive is that the latter derives its powers from legislation and the Constitution (which may be amended, with sufficient majority, by the legislature). So even in its law-making function, Parliament arguably holds the executive accountable.

19 But that does not alter the fact that a spectrum of Parliamentary functions exists along a continuum, with law-making and oversight at its poles.

20 A motion of no confidence lies at one pole. It is within the heartland of the executive oversight function. Section 102 is situated in Chapter 5 of the

[11] *Democratic Alliance* at para 17.

Constitution, which describes and regulates executive authority. Together with the removal provision in sec 89 of the Constitution, sec 102 represents the means by which the National Assembly can signal its lack of confidence in the President, and can replace him. It is a critical component of the constitutional system of checks and balances that "*prevent the branches of government from usurping power from one another*."[12]

21 No-confidence motions are not merely incidental to the oversight function. Indeed, in *Mazibuko*, this Court held that it is perhaps the *most* important accountability mechanism afforded to Parliament:

> *"It implicates the values of democracy, transparency, accountability and openness. A motion of this kind is perhaps the most important mechanism that may be employed by Parliament to hold the executive to account, and to interrogate executive performance."*[13]

The obligations of Members of the National Assembly

22 The obligations of individual Members track the dual functions of Parliament. And the Members' obligations are, in turn, indicative of the appropriate level of party discipline to which they can be subjected. For one surely cannot be punished for doing what is constitutionally required.

---

[12] *Glenister v President of the Republic of South Africa and Others ("Glenister I")* 2009 (1) SA 287 (CC).
[13] *Mazibuko v Sisulu and Another* 2013 (6) SA 249 (CC) at para 44.

The open ballot is consistent with Members' law-making obligations

23 We submit that where Parliament performs its law-making function, the Constitution permits requiring some adherence to the party position notwithstanding a Member's contrary personal convictions or judgments. By corollary, a degree of discipline, through the Whip, is constitutionally permissible.

24 In principle, there is good reason for this. It allows parties to ensure consistency and coordination on difficult questions of policy. An inability to exact *any* discipline may make it difficult for parties to retain coherent policy positions. Insofar as the ruling party is concerned, unity on law-making issues ultimately serves the objective of good governance.

25 Therefore, in *UDM*, the Court rejected a challenge to the floor-crossing legislation which claimed it was designed to enable the New National Party and the African National Congress to take advantage of the break-up of the Democratic Alliance.[14] This, the Court held, conflated purpose with motive. Speaking specifically about the law-making function, the Court concluded that "*Courts are not, however, concerned with the motives of the members of the legislature who vote in favour of particular legislation*".[15]

[14] *United Democratic Movement v President of the Republic of South Africa and Others (African Christian Democratic Party and Others Intervening)(No2)* 2003 (1) SA 495 at paras 54 and 56.
[15] *UDM* at para 56

26 Similarly, in *Poverty Alleviation Network*,[16] the Court rejected an attempt to set aside the Thirteenth Amendment Act on the basis that voting on the Bill was predetermined, and that the ANC had instructed its Members on how to vote. It held that, in the law-making context, its concern is the purpose of the legislation, not the motives of the legislators.[17]

27 But even in the context of law-making, Members bear *some* obligation not to toe the party line, and to exercise their own judgment.[18] If it were otherwise, we would have no need for Members to vote in Parliament individually *at all*. The party leader could simply deliver the party list to the Speaker to constitute a party's vote.[19] That would undermine deliberative democracy and "*treat every member of the party as a voting cypher*."[20] The mere requirement that Members vote individually must imply some obligation to exercise their judgment and not to follow the party blindly.

28 The Court's jurisprudence on Parliament's public participation obligations in the legislative process provide an indication as to the nature of Members' law-making obligations.

29 For example, in *Merafong Demarcation Forum*, the argument was raised that public participation in respect of legislation was a sham, because the Gauteng

---

[16] *Poverty Alleviation Network and Others v President of the Republic of South Africa and Others* 2010 (6) BCLR 520 (CC).
[17] *Poverty Alleviation Network* at para 73.
[18] See *Van Zyl v New National Party* [2003] 3 All SA 737 (C) at para 45; *In Re: Certification of the Constitution of the RSA* 1996(4) SA 744 (CC) at 831 E.
[19] *Max v Independent Democrats and others* 2006 (3) SA 112 (C) at 121F
[20] *Max* at 121F.

Provincial Legislature acted based on a prior decision by the ANC NEC.[21] The majority recognised a duty on the part of the legislature to keep an open mind and to be open to persuasion.[22] But it took no issue with Members acting in accordance with the party position.

30 The mere requirement to retain an open mind must also imply some corresponding constitutional and legislative limits on party discipline, even in respect of the law-making function. Otherwise the exercise by Members of their constitutional obligations would be punishable.

31 Having regard to the nature of the law-making function, and the need for political parties to achieve a degree of consistency and internal cooperation on policy questions – an open ballot is, in the ordinary course of law-making, generally appropriate.

The closed ballot is consistent with Members' executive oversight obligations

32 Where Parliament performs its executive oversight function, the Constitution imposes a heightened obligation on Members to exercise their judgment, and to act in accordance with their considered assessment of what the Constitution requires. In doing so, the Constitution permits less, if any, party discipline when a Member acts in accordance with her considered assessment.

33 The need for parties to unite around a co-ordinated and consistent legislative

[21] *Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others* 2008 (5) SA 171 (CC).
[22] *Merafong Demarcation Forum* at para 51.

approach on questions of policy simply does not arise in most instances of executive oversight.

34 In *Glenister II*, in striking down the legislation establishing the Directorate of Priority Crime Investigation (DPCI), the majority held that the legislature had failed to fulfil its constitutional obligation to establish an independent anti-corruption body.[23]

34.1 The majority's "gravest disquiet" with the impugned legislation was that the DPCI's functions would be coordinated and overseen by a Ministerial Committee.[24]

34.2 Although the legislation included provisions requiring Parliamentary oversight, which the majority described as beneficial given Parliament's function as a "*counter-weight to the executive*",[25] these protections were diluted and benign relative to Cabinet's role, and were thus insufficient to rectify the deficiencies in independence caused by the Ministerial Committee.[26]

34.3 In other words, in distinguishing sharply between the partisan nature of the Ministerial committee and the independent nature of Parliament, the majority clearly envisaged that Members would act with relative impartiality. That is why it concluded that Parliament was "*unlikely to*

[23] *Glenister v President of the Republic of South Africa and Others (Glenister II*) 2011 (3) SA 347 (CC).
[24] *Glenister II* at para 228.
[25] *Glenister II* at para 239.
[26] *Glenister II* at para 241.

ignore its oversight role",[27] including, presumably, if political parties instructed their Members to do so.

34.4 It cannot plausibly be contended that the Court had in mind that in exercising this critical oversight role, Members would blindly follow party instructions. Yet that is precisely the impact of an open ballot.

35 For these reasons, we submit that the closer the exercise by parliament of a power to its executive oversight function, the greater is a Member's obligation to perform it based on her assessment of what the Constitution requires, notwithstanding her party's position. Where the exercise of such a power requires a motion to be passed, voting by secret ballot enables the Member to act according to her obligation.

Conclusion on Members' obligations and the secrecy of the ballot

36 Despite the heightened obligation on Members exercising their oversight function not to toe the party line, a Court would not inquire into the subjective motivation of individual Members. That would be inappropriate and simply impossible. But that is precisely the reason to create the necessary *conditions* for Members, when performing their oversight role, to act in accordance with a proper motive, free of encumbrance and intimidation, and to vote in accordance with their conscience. That is the purpose of a secret ballot.

37 Indeed, that is precisely what the Constitution does in sec 86. Recognising the

[27] *Glenister II* at para 242.

importance of the power, the provision protects Members from potential party discipline when electing the President from more than one nominated candidate, by providing for a secret ballot.[28]

38 A no-confidence motion is no different. It is within the heartland of executive oversight. And it thus requires the backbench members of the majority party to examine the issue unencumbered by 'blind fidelity' or by constraint arising from the fear that they will be disciplined.

39 If that does not occur, this Court's decision in *Mazibuko*, seemingly a significant advance for minority parties, will be denuded of its impact except in the most formal sense. Where the vote is not by secret ballot, it is inconceivable that it will ever carry the day, and the motion of no confidence will be retained "*within the gift of the majority party*".[29]

The special obligations of the Speaker

40 It does not appear to be contended by either the Speaker or the President that the Constitution precludes a vote of no confidence by secret ballot. Both seem to argue only that it is not required.

41 We submit that for the reasons we have given, the Constitution does require a secret ballot in these circumstances. At best for the President and the Speaker – that is, if this Court were to find that a no-confidence vote by secret ballot is

[28] Section 86 read with Part A of Schedule 3.
[29] *Mazibuko* at para 56.

permissible but not required – the only remaining question would be whether the Speaker should be directed to conduct the motion by secret ballot. The foregoing submissions on the nature of the function weigh heavily in favour of this proposition.

42 To those submissions must be added a consideration of the Speaker's constitutional role. Our courts have recognised that the Speaker bears a special obligation, distinct from other Members. It is, at root, an obligation to be impartial, fair and independent. As the Supreme Court of Appeal described it in *Kilian*, the Speaker is "*required by the duties of [her] office to exercise, and display, the impartiality of a judge*."[30]

43 Naturally, that duty does not preclude her from being a member of a political party. But even so affiliated, she is "*required to perform the functions of that office fairly and impartially in the interests of the National Assembly and Parliament*."[31]

44 But the current Speaker is no mere member of the ruling party. She is its National Chairperson. She is thus subject to an irreconcilable conflict of interests that makes her obligation in respect of a no-confidence motion impossible to perform. She cannot at once seek, as ANC Chairperson, to ensure that her party speaks with one voice,[32] and, as Speaker, to act impartially in ensuring that all Members, including ANC Members, are entitled to vote

[30] *Gauteng Provincial Legislature v Kilian* 2001 (2) SA 68 (SCA) at para 30.
[31] *Lekota and Another v Speaker, National Assembly and Another* 2015 (4) SA 133 (WCC) at para 11.
[32] UDM Founding Affidavit at para 106.6.1.

according to their constitutional obligations. The irreconcilable conflict of interests disables her from acting in the manner required by the Constitution.

45 We submit, therefore, that if the Court finds that the Constitution permits, but does not require, a secret ballot, it should direct the Speaker to make the necessary arrangements to ensure that the motion of no confidence is decided by secret ballot.

COMPARATIVE LAW[33]

46 There is no uniform practice internationally regarding secret ballots for motions of no confidence. However, a review of various jurisdictions demonstrates that secret ballots are applied to no-confidence and similar motions both with and without express constitutional authorisation. For purposes of these submissions, we limit our review to those jurisdictions where the Constitution is silent, but where Parliament has nevertheless opted to conduct votes by secret ballot.[34]

Germany

47 Germany, like South Africa, operates on the basis of a proportional representation electoral system. Half the members of the *Bundestag* (the German parliament) are directly elected by constituencies; the other half are elected on the basis of a party list.

---

[33] CASAC is grateful to Oxford Pro Bono Publico, which provided generous and valuable assistance with research on comparative law.

[34] Some jurisdictions contain express constitutional provisions requiring voting by secret ballot for no-confidence and/or impeachment motions. This is the case across a range of electoral systems, including Ghana, which is a constituency system, and Hungary, where Parliament is comprised of both party-list and constituency candidates.

48 Article 67 of the *Grundgesetz* (the German Constitution) expressly provides for votes of no confidence, allowing the Bundestag to express its lack of confidence in the Federal Chancellor by electing a successor, by majority vote, and requesting the Federal President to dismiss the Federal Chancellor.

49 The *Grundgesetz* is silent on how the vote must take place. It does not expressly permit, prohibit or require a secret ballot for the process of tabling a no-confidence motion, electing a successor, and calling on the President to dismiss the Chancellor.

50 Nevertheless, Rule 97 of the *Geschäftsordnung des Deutschen Bundestages* (the Rules of Procedure of the Bundestag) sets out the procedure by which the vote of no confidence is to be conducted. The motion must be signed by one quarter of the Members, must propose a successor by name for election, and the successor shall be elected in a single secret ballot (Rule 49), even where several candidates have been proposed. Rule 49 sets out the procedure for election by secret ballot, including the use of polling booths to ensure secrecy.

51 The "Erläuterungen zur Geschäftsordnung" (Explanation of the Rules of Procedure) explain that the rationale for this Rule is to prevent undue influence on Members from fellow MPs and the equivalent of Party whips.[35]

Namibia

52 Namibia has a bi-cameral parliamentary model comprised of the National

[35] http://www.bundestag.de/parlament/aufgaben/rechtsgrundlagen/go_erl/gescho05/244664.

Assembly (92 voting Members elected via a party list system, and 8 non-voting Members appointed by the President) and the National Council (42 members, three from each of the 14 Regions in Namibia).

53 Article 29(2) of the Namibian Constitution provides for the President's impeachment where two-thirds of the National Assembly passes a motion confirmed by two-thirds of the National Council. Article 39 requires the President to terminate the appointment of a Cabinet member where a majority of the National Assembly resolves that it has no confidence in that Member.

54 The Constitution is silent on whether either of these motions should be voted on by secret ballot. Nevertheless, Rule 81 of the National Assembly Standing Rules and Orders and Internal Arrangements, requires the Speaker to permit a "*personal vote to be held by deposit of individual, secret ballot*", where the majority of the National Assembly's members "*consider that the subject of a vote is to be treated as a conscience issue*".

55 Similarly, despite the absence of any express constitutional requirement, Rule 7(e) of the National Assembly Standing Rules and Orders and Internal Arrangements requires a vote by secret ballot where more than one Member is nominated for the office of the Speaker, and Rule 14(4) of the National Council Standing Rules and Orders requires a secret ballot for the election of the Chairperson, Deputy Chairperson, or Presiding Officer of the National Council, where more than one person is proposed and seconded.

The European Parliament

56 Article 234 of the Treaty on the Functioning of the European Union (TFEU) provides that where a motion of "censure" (i.e. no confidence) is adopted by a two-thirds majority of the European Parliament, the European Commission – like any democratically accountable executive – is dismissed.

57 The TFEU does not itself prescribe the manner for voting on motions of censure. Generally, Rule 119 of the Rules of Procedure of the European Parliament provides that they are voted on by public roll call.

58 However, Rule 180(a)(2) allows for a minority of members to require that a vote is taken by secret ballot. At the request of "*one-fifth of Parliament's component Members made up of one or more political groups or individual Members, or a combination of the two*" a vote must be by secret ballot.

59 This approach is mirrored in other European countries, including Spain (if requested by fifty Senators at a Plenary Sitting, or by one-third of the members of a committee).

Botswana

60 Botswana is the only jurisdiction of which we are aware, with an apex court judgment on the constitutional permissibility of secret ballots.

61 The Constitution of Botswana is silent on the process by which voting for the Speaker and Deputy Speaker is to occur. In *Umbrella for Democratic*

Change,[36] the ruling Botswana Democratic Party challenged the constitutionality of the Parliamentary rules providing for election by secret ballot.

62 In dismissing the BDP's appeal, and confirming the validity of the rules, the President of the Court of Appeal held on behalf of a full bench:

> *"I agree with the respondents that the requirement of voting by secret ballot does not amount to a substantive amendment of any provision of the Constitution, but it is rather an arrangement put in place by the National Assembly for the effective exercise of the Members' right to vote without outside influence or coercion which could render the right an empty one."* (Emphasis added).

63 In other words, not only did the Appeal Court uphold the constitutionality of the rules, but, by suggesting that an open vote might render the right to vote empty, it implied that the secret ballot is a preferable, not merely permissible system. And it did so without any express constitutional language.

South Korea

64 South Korea provides a topical example. Article 65 of its Constitution provides for the National Assembly to impeach the President, Prime Minister, heads of Executive Ministries, and other public officials. Although the Constitution

[36] *Botswana Democratic Party and Another v Umbrella for Democratic Change and Another* Case No: CACGB-114-14.

requires the election of the President[37] and the National Assembly[38] to be by secret ballot, it does not stipulate a process for voting on impeachment motions.

65 In December 2016, notwithstanding the textual silence of the Constitution, the National Assembly impeached President Park Geun-Hye in a vote by secret ballot. Sixty of her own party members must have backed the vote.[39] The Constitutional Court of South Korea unanimously upheld the impeachment on 10 March 2017.[40]

Conclusion

66 These comparative examples are not cited to suggest that there is a uniform practice with regard to this issue. Rather, they demonstrate that no major innovation is involved in holding that the procedure of Parliament ought to provide for no-confidence motions to be voted on by secret ballot.

GEOFF BUDLENDER SC
Counsel for CASAC
Chambers, Cape Town
21 April 2017

[37] Article 67.
[38] Article 41.
[39] http://www.reuters.com/article/us-southkorea-politics-idUSKBN13X2JS.
[40] http://www.bbc.com/news/world-asia-39202936. The Court does not yet appear to have made the judgment publicly available.

TABLE OF AUTHORITIES

Botswana Democratic Party and Another v Umbrella for Democratic Change and Another Case No: CACGB-114-14

Democratic Alliance v Speaker of the National Assembly and Others 2016 (3) SA 487 (CC)

Glenister v President of the Republic of South Africa and Others ("Glenister I") 2009 (1) SA 287 (CC)

Glenister v President of the Republic of South Africa and Others (Glenister II) 2011 (3) SA 347 (CC)

In Re: Certification of the Constitution of the RSA 1996(4) SA 744 (CC) at 831 E

Gauteng Provincial Legislature v Kilian 2001 (2) SA 68 (SCA)

Kham and Others v Electoral Commission 2016 (2) SA 338 (CC)

Lekota and Another v Speaker, National Assembly and Another 2015 (4) SA 133 (WCC)

Max v Independent Democrats and others 2006 (3) SA 112 (C)

Mazibuko v Sisulu and Another 2013 (6) SA 249 (CC)

Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others 2008 (5) SA 171 (CC)

My Vote Counts NPC v Speaker of the National Assembly and Others 2016 (1) SA 132 (CC)

Poverty Alleviation Network and Others v President of the Republic of South Africa and Others 2010 (6) BCLR 520 (CC)

Ramakatsa and Others v Magashule and Others 2013 (2) BCLR 202 (CC)

United Democratic Movement v President of the Republic of South Africa and Others (African Christian Democratic Party and Others Intervening)(No2) 2003 (1) SA 495

Van Zyl v New National Party [2003] 3 All SA 737 (C)