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Court Challenge Against Voting Law That Disenfranchises Britons Abroad

LONDON – Yesterday, lawyers acting on behalf of James Preston applied for judicial review of the British law that strips British citizens living overseas for more than 15 years of the right to vote in Parliamentary elections. Mr. Preston’s lawyers argue that the law penalizes British citizens as a result of their exercise of free movement and establishment rights guaranteed by the European Union, in violation of European Law.

The Government says that restricting the right of British citizens to vote in Parliamentary elections is justified, but Mr. Preston disagrees. *“I’m a British citizen and only a British citizen, married to a British wife and both of us work for British firms. I read British papers, my children attend a British school and my estate taxes are owed to the British government when I die. This law penalizes me for taking advantage of the opportunities that the British government promised to all citizens when Britain joined the EU. The spirit of this law is entirely inconsistent with British democratic traditions as well as our foreign policy, where we work to bring democracy to far off corners of the world.”* Mr. Preston, born in Leicester, now lives and works in Madrid, Spain after posting by his British employer 15 years ago.

Unlike the United States or other major countries in the European Union, such as France, Germany, Italy, and Spain, the United Kingdom strips citizens of the right to vote in Parliamentary elections for the mere fact of having resided abroad for more than 15 years. Though exceptions exist for the military, civil servants and British Council employees, all other citizens, including Church of England missionaries and English teachers at British schools around the corner from the British Council, lose the right to vote after 15 years abroad. In addition to British citizens like Mr. Preston, the only other citizens who do not enjoy the right to vote are children, individuals who suffer from mental illness, and criminals.

Mr. Preston’s counsel, Romano Subiotto QC, noted that, *“The British voting law penalizes British citizens who exercise their fundamental rights to move freely between European Union countries. It prevents British citizens from enjoying the same free movement rights guaranteed to the citizens of other EU countries. This law is an anachronism in this day and age of easy, quick, and reliable communications.”*

Mr Preston is represented by Romano Subiotto QC of Cleary Gottlieb Steen & Hamilton LLP and Daniel Jowell of Brick Court Chambers, both of whom are acting on a pro bono basis in view of the important constitutional issue raised by this case.

Questions and Answers

Q. Does the law prevent all citizens resident abroad from voting?

A. No. Only those citizens, who have been absent from the Registrar of Electors for 15 years or longer are prevented from voting. Citizens who have been resident abroad for less than 15 years are still able to vote, either in person in their constituency in Britain, or by proxy or mail-in ballot. In addition, members of the British military, civil servants, and employees of the British Council, a registered charity, as well as their spouses and civil partners, retain their right to vote, regardless of the length of their absence from Britain.

Q. Is European law relevant to British voting laws?

A. Yes. When Britain entered the European Union, it obtained free movement rights for its citizens across the Union. At the same time, Britain opened its borders to workers from other European countries. Workers from other major European countries have come to Britain to prosper, all the while enjoying the full rights of citizenship in their home countries, including the right to vote. But British citizens wishing to pursue similar ventures in Europe lose the right to vote, a penalty that goes to the heart of British culture and traditions. By penalizing its own citizens for the exercise of free movement rights, Britain infringes the guarantees of the European treaties.

Mr. Preston takes the position that the 15-year rule is a penalty that results directly from his exercise of his fundamental rights to move and establish himself freely throughout the European Union. The Treaty on the Functioning of the European Union protects these fundamental rights, and the Court of Justice of the European Union has consistently held that any penalty, however minor, arising from the exercise of these fundamental rights violates the relevant provisions of the Treaty on the Functioning of the European Union.

Q. How is the law discriminatory?

A. Members of the armed forces, Crown servants, and employees of the British Council are exempted from disenfranchisement after 15 years abroad, leading to the curious result that, for example, a Briton employed by the European Commission will lose the right to vote after living in Brussels for more than 15 years, whereas a Briton working on the other side of the road for the UK embassy to the European Union will not, however long he/she has resided in Brussels, now a mere 2 hour train ride from London, *i.e.*, closer to London than many towns in the UK. Mr. Preston's view is that the law is therefore discriminatory.

What is more, because of its arbitrariness, the 15-year rule is inherently incapable of providing an objective and justified basis to determine who should have the right to vote. Why should Britons, who have lived in, say, Brussels, for 16 years lose the right to vote while those, who have lived there for 14 years still enjoy that right? Indeed, why should Britons, who live in another state of the European Union because they have been requested to do so by UK companies, or because they represent the UK in international organizations, such as the European institutions in Brussels, or work for NGOs representing UK interests, be penalized by losing the right to vote?

Q. Are citizens abroad less affected by the actions of Parliament and less interested in British matters? If so, would this justify excluding them from voting?

A. The Government is likely to argue that the law is justified because, among other things, it achieves what they consider to be the indispensable public interest objective of preventing residents abroad who are not proximate to Britain from voting.

But this justification is not legally sufficient and factually incorrect. It is clear that citizens abroad demonstrate a range of engagement with Britain and the British Government, and that modern day communications have given Britons abroad more ability than ever before to remain close to their homeland. Mr. Preston is a case in point – his identity remains British, preserved in part through strong ties to British life through family, business and cultural connections, as well as by an enduring commitment to the shared ideals and beliefs that characterize the United Kingdom. Like many other Britons abroad, Mr. Preston also continues to be affected by many decisions of Parliament much in the same way as citizens resident within Britain – he remains liable for estate taxes in Britain and his children are likely to attend British schools and universities, as well as being affected (like all other British citizens) by the British Government’s international actions, such as the decisions to send troops into Iraq or Afghanistan. The British Electoral Commission recently recognized the continuing connection that citizens overseas maintain with Britain. When launching a campaign to encourage overseas voting, the Chair of the Electoral Commission, Jenny Watson, confirmed that: “British citizens living abroad come from a wide variety of backgrounds, but we know that most maintain strong links with the UK. It is easier than ever before for British citizens abroad to keep in touch with friends, family and colleagues back home and many will also want to have their say in elections.”

The 15-year rule has no bearing on the degree to which a British citizen will be affected by the election of the next Government. If disenfranchising citizens without a connection to Britain is indeed the law’s purpose, it goes much too far. At the same time, the law makes no effort to determine the level of connection to Britain and the British government of citizens at home or resident abroad less than 15 years. Disproportionate laws are not consistent with British constitutional traditions.

Q. Would it be too complex for the Electoral Commission to organize voting for people in Mr. Preston’s circumstances?

A. No. The Electoral Commission already maintains an active service intended to register and facilitate voting by British citizens resident abroad who remain eligible to vote (*i.e.*, whose absence has yet to exceed 15 years). Mr. Preston requests only the same services that are already available, namely the opportunity to return home to Britain to vote, to vote by proxy, or by mail-in ballot.

Q. Would it be too complex for candidates for Parliament to campaign overseas?

A. Candidates for Parliament are entitled to promote their candidacy in any way they see fit. Most candidates today use a range of modern means to communicate their candidacy to voters, including websites and telephone solicitation. It is a truism that communication and

political debate no longer depend on physical proximity. There is no evidence that citizens abroad who retain the right to vote are not sufficiently well informed to cast their ballots, or that the information made available by candidates for Parliament is not reaching them. Moreover, candidates for Parliament have access to the Electoral Register, a list that directs them to their constituency's voters, whether at home or across the European Union or the world. Finally, recent campaign visits by French and other foreign politicians to London, where many of their potential voters live, have demonstrated the feasibility of communicating, even in person, with voters abroad.

These arguments aside, the convenience of campaigning for politicians is not a relevant factor upon which the government may disenfranchise British citizens, and more fundamentally, there is no suggestion that the free expression of opinion would be jeopardized, or indication how it would be jeopardized, if Parliamentary candidates decided to campaign among expatriates abroad or decided not to campaign among them, but communicate in some other way.

Q. Rather than bringing proceedings before the High Court, would it not be simpler for interested citizens like Mr. Preston to simply return to Britain for a short period of time, and then leave, re-starting the 15 year grace period in the process?

A. Yes. The effect of the law can be easily defeated if Mr. Preston simply returned to Britain for a very short period of time to re-establish residency, and then returned to Spain. In those circumstances he would be permitted to vote for a further 15 years. That the law is ineffective at accomplishing its purpose shows just how unjust the law really is. There is no reason why British citizens abroad with sufficient means to return home temporarily should continue to have the right to vote, while those citizens without such means lose the right to vote. Though Mr. Preston could defeat the law's operation, he challenges it because he recognizes that it represents a violation of fundamental principles of fairness and the rights of citizens to participate in the political process.

Q. Who is James Preston?

A. James Preston was born in Leicester in 1968 and grew up in Lancashire. He read history at the University of London and following graduation found work as a commercial surveyor with, among others, Jones Lang Wootton, the British commercial property consultancy firm. In 1995 Jones Lang Wootton assigned Mr. Preston to a posting in Madrid. He has lived in Madrid ever since, and is currently an employee and part owner of the Spanish subsidiary of a British property investment management firm. Mr. Preston is and remains exclusively a British citizen.

Mr. Preston and his British wife Nicola have two children, aged 4 and 6, both of whom are British citizens and both of whom attend a British school in Madrid.