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## **Doctors for Life vs Parliament**

**John Smyth QC tells the story and comments on its implications**

**“This case concerns an important question relating to the role of the public in the law-making process. This issue lies at the heart of our constitutional democracy”**  
**With these words the Constitutional Court began its judgement delivered by Ngcobo J . on August 17<sup>th</sup> 2006.**

**On any view it was a remarkable case. It was a direct access case filed in February 2005; with a preliminary hearing in August 2005, and a final hearing in February 2006, judgement was delivered just 18 months after filing.**

**In August 2004 Doctors for Life made submissions to the Parliamentary Health Committee on the Abortion Amendment Bill and The Traditional Health Practitioners’ Bill. These were section 76 Bills and we therefore looked forward to a second bite of the cherry when the Bills went to the Provinces. Such an opportunity never came. The NCOP promised hearings in the provinces; the Government whips said there wasn’t time! DFL went to the Parliamentary Monitoring website and picked up the relevant Minutes. MPs were complaining bitterly and warning of court challenges! We phoned all the Provincial legislatures. They were complaining too. We wrote to the Chairman of the NCOP. We were fobbed off. We decided to act.**

**I drafted a Notice of Motion and swore the Founding Affidavit which included an account of the phone calls. We attached the Minutes. We asked a Johannesburg attorney to provide the requisite address near the court (he later came on the record on a contingency fee basis); we couriered the documents to Parliament in Cape Town; I drove to Johannesburg and filed the papers. We waited. Then we heard we**

had been granted a preliminary hearing. Kemp J Kemp SC came in on a contingency fee basis. The rest is history.

Ngcobo J described the issues as ‘of great moment’, and ‘going to the heart of our constitutional democracy.’ Yacoob J. in a dissenting judgement described the majority judgement as ‘comprehensive and ground breaking.’ Only Jeremy Maggs on PM Live tried to laugh it off as a technical victory.

In the short term the Court declared the two Acts invalid and told Parliament to start the legislative process all over again and get it right this time. In the meantime the Acts remain in force for a maximum of 18 months.

In the long term the importance of the principle of the judgement cannot be overstated. It is simply this: Whenever Parliament is processing a *controversial* Bill, the public must be given a ‘meaningful opportunity’ to have their say - in Cape Town, in the Provinces and while the NCOP is sitting in plenary session. That is what the Constitution requires. Gone are the days of time restraints cutting out public hearings, of corner cutting and mere window dressing in facilitating public involvement.

I am so thankful to God for the perfect timing of this judgement in relation to the same sex ‘marriage’ Bill. Even as I write the Parliamentary committee is touring the country hearing from the citizens of South Africa how much they resent any tampering with the sanctity of marriage. I very much doubt whether we would have seen all these public hearings (in a Bill which is *not* a section 76 Bill!) had it not been for the judgement handed down on August 17<sup>th</sup>.

(570 words)