

Uproar over proposed powers to manage donation disclosure

● *Organisations object to 'unfettered' presidential powers contained in the Electoral Matters Amendment Bill*

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The “unfettered” powers given to the president to determine the disclosure limit for donations to political parties and independent representatives was a frequent objection raised in parliament on Tuesday, during public hearings on the Electoral Matters Amendment Bill.

Another objection was to the proposal in the bill to change the method of allocation of funds to represented political parties and independent representatives, in terms of the Political Party Funding Act.

The bill was made necessary by the decision of the Constitutional Court that the exclusion of independent candidates contesting national and provincial elections was unconstitutional. This required independent representatives to share in political funding.

The public hearings on the bill were held jointly by the committee on home affairs and the select committee on security and justice.

Council for the Advancement of the SA Constitution (Casac) executive secretary Lawson Naidoo objected to the “unfettered” discretion given in the bill to the president, to prescribe the



formula for the allocation of funds to represented political parties and independent candidates; the annual upper limit for donations to them; the limit on donations by foreign entities; and the minimum threshold amount for the disclosure of donations.

There was a risk that the president may set the minimum disclosure threshold for donations so high “as to effectively exempt most donations from disclosure”, while being empowered to determine the upper limit for donations carried

the risk that this would be made so high “as to render the purpose of imposing a limit superfluous”.

The risk of an unfettered presidential power to determine the limit on donations by foreign

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entities entailed the risk that this was made so low as to deprive opposition political parties of in-kind donations received from foreign entities, or so high as to enable foreign interference in the electoral process.

Naidoo said these proposed powers are a regressive step for executive accountability. “Parliament should retain its power to determine when the regulations should be amended and the different thresholds adjusted.”

People’s Legal Centre and #UniteBehind noted the current act required a National Assem-

Hearings:

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/Bafana Mahlangu
/Sowetan

bly resolution for the president to make regulations whereas the new bill would only require his consultation with the home affairs committee and minister. This constituted a widening of executive discretion. It believed the power to interfere with disclosure thresholds should be removed from the executive entirely.

NGO My Vote Counts argued that any limitation to disclosure of private funding sources is unconstitutional in that it prohibits transparency and proper access to information.

“The amendment represents a potential conflict of interest having a president who is also the head of the majority party empowered to determine the upper limit and the disclosure threshold,” My Vote Counts said in its submission.

The Inclusive Society Institute also pointed out “it is in the political parties’ interests to reduce the need for disclosure and to allow as big as possible donations from single donors. The matter should be decided by a competent independent body.”

Cosatu argued there should be no financial threshold and all donations should be disclosed to bolster the fight against corruption.

Another frequently voiced

objection was to the proposed amendment to amend the formula for the distribution of funds, by raising the proportional allocation (based on the seats obtained) of available funds to 90% and reducing the equitable allocation to 10%.

In the current act, the proportional allocation is 66.6% and the equitable allocation is 33.3%. Opponents argued that if the allocation formula were to change as proposed, independent representatives and smaller parties would see their public funding dramatically decrease.

However, the ANC said the proposed allocation method would unfairly and disproportionately advantage independents and parties with only one representative.

It proposed that every independent and party who wins a seat in parliament gets 0.25% per seat they occupy, of the available allocation of any funds.

But elections expert Michael Atkins gave a breakdown of what each represented political party would get under the proposed formula, noting that the ANC’s share would go from 43.38% to 53.92% and the DA from 18.32% to 20.09%, while those of smaller parties would decline.

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