

Submission on the Electoral Finance Bill

To the Justice and Electoral Committee

Introduction

This submission is from Libertarianz, PO Box 6173, Wellesley St, Auckland 1141. Libertarianz is a registered political party committed to reducing the size and influence of government. We are committed to a free country with institutions based on free markets and free speech.

We wish to appear before the committee to speak to our submission.

Please contact Bernard Darnton, party leader, on 021 324 466.

Also appearing will be Colin Cross (027 447 3745) and Phil Howison (021 159 0362).

Summary

We oppose this Bill in the strongest possible terms. It is an unprecedented assault on free speech and violates the trust between citizens and the government that undergirds a peaceful and prosperous country.

Vendors in third-world markets often start by making an outrageous offer and then haggling their way down to the price they actually want – a price that would have seemed outrageous if it had been offered initially. Those selling third-world political ideas should not be allowed to get away with the same trick.

This Bill is beyond repair. It cannot be fixed. We urge committee members not to make the mistake of meeting its authors half-way and declaring a successful compromise. This Bill cannot be watered down; it must be drowned.

Analysis

Clause 3 – Purpose

The stated intentions of this Bill include the maintenance of public confidence in the administration of elections and the promotion of public participation in parliamentary democracy. In 1946 George Orwell wrote, “Political language is designed to make lies sound truthful and murder respectable, and to give an appearance of solidity to pure wind.”

We propose that, in the interests of honesty, the wording of this clause be changed to

3 (a) deflect attention from the public's lack of confidence in the administration of elections in the wake of the misappropriation of public funds to pay for electoral advertising and the subsequent validation of such misappropriation.

(b) deter public participation in parliamentary democracy and limit political expression to approved parties.

Clauses 4 and 5 – Interpretation

The definitions of **candidate-, election-, and party advertisements** are ridiculously broad. Compare with the Broadcasting Act 1989, which requires that for a programme to qualify as advertising money or other payment is required. This Bill's definition of advertising captures huge

amounts of comment and, coupled with the Bill's restrictions on advertising, comprise an egregious attack on free speech.

The definition of **election advertisement** is classic bad law; it captures everything and then makes a few exceptions. Good law would define what an advertisement is, not what an advertisement isn't.

No doubt many submitters will complain about the iniquity of s5 (2) (f), which provides a loophole for future Labour Party leaders* to have a nice quiet chat with their unions' members via the pages of the *New Zealand Herald* and the *Dominion Post*. Suffice it to say that Libertarianz has no desire to restrict the EPMU's ability to advertise** during an election; we would just like the same freedom to apply to everyone.

The **restricted period** as defined is far too long. We won't suggest alternative wording because the idea that the right to express one's opinion is *ever* restricted is offensive.

*Not a comfortable phrase for obedient backbenchers but, no matter how many elections you try and rig, this question will still have to be addressed one day.

**Dictionary definition, not the one used above.

Clauses 6 to 13 – Appointment of financial agents

This is entirely unnecessary red tape. This will simply create a lot of unnecessary extra work that will have the effect of keeping smaller players out of the electoral process, contrary to the stated purpose of encouraging public participation in parliamentary democracy.

Party secretaries and candidates themselves are entirely capable of fulfilling the functions that these “financial agents” are supposedly required for. And let's not hear any rubbish about *Peters v Clarkson*. When it comes to who can be trusted with whose money there's one thumping great elephant in the room that the Bill's background notes mysteriously refuse to discuss.

Clauses 14 to 21 – Third parties

The whole idea of third parties who want to take part in an election campaign having to register with the state before being allowed to express an opinion should be anathema in a civilised country.

It is understandable that, after the 2002 election result, Labour Party cheerleaders joked about New Zealand being a one-party state. It is disturbing that some took it a bit too seriously.

Given the almost total prohibition of political expression by people not registered as third parties, the requirement that an unincorporated body only be allowed to register if all its members are registered electors is draconian. Having *one member* who is under 18 or not a citizen or permanent resident is enough to bar an organisation from expressing an opinion.

The restriction on registration after writ day (s17) is also unduly restrictive. Any topic can become part of an election campaign. It is insane to expect anyone with any interest in any topic whatsoever to register beforehand with the Chief Electoral Officer on the off-chance that some wayward candidate might bag them during the campaign and they might want the right of reply.

Clauses 22 to 41 – Disclosure of donations

To the degree that these requirements are more onerous than the existing rules we oppose these clauses. Libertarianz does not believe that any of the rules around disclosure of donations need to be tightened and we believe that no further red tape needs to be added to the documentation and accounting of election expenses.

Libertarianz further believes that these regulations are entirely misplaced. By far the biggest abuse

around election funding at the last election was Labour's misappropriation of nearly a million dollars of public funds – money that never appeared in the party's declarations anyway. To the extent that trivia is discussed instead of the real abuses, the stated goal of this Bill – the maintenance of public trust in the administration of elections – is not achieved.

Clauses 42 to 52 – Disclosure of third party donations

In addition to our opposition to the entire concept of registered third parties, we oppose the suggestion that someone who donates *ten dollars a week* to a third party must reveal his or her identity. That any donations that don't meet this Bill's restrictive criteria should be forfeited to the State adds further injury.

The finances of a private organisation should remain private. People have many reasons for wanting their finances to remain private. If Wellington were occupied by a government that held grudges, people may well want to keep their associations private for personal or business reasons.

There is nothing wrong with third parties taking part in the election process. Indeed it is essential to a vibrant parliamentary democracy. Third parties have simply been caught in the crossfire of the last election's funding rows; they have been picked on as a target of opportunity to deflect attention from the government's own failings. As such, this attack on third party campaigning is bad law.

This government's enthusiastic fanning of the smell of corruption from third party involvement in politics (to hide the fishiness of its election funding behaviour) does the electorate no favours. They fail to distinguish between genuine corruption – the explicit exchange of money for votes – and legitimate funding activities. There is a vast gulf between buying the votes of corrupt politicians and paying to promote a party in the expectation or hope that it will support policies that are beneficial to the donor. Having people willing to advocate for what they believe in is essential in an open society.

Despite the beat up by the current government about third party spending, the names of people who donate to a cause are irrelevant. It is a logical fallacy to conflate the names of people who support a particular political position with the validity of that position. Ideas should stand or fall on their merits, regardless of those ideas' promoters. If the government does not trust voters to be able to decide between various ideas on their merits, why bother with democracy at all?

Clauses 53 to 56 – General rules governing election advertisements

We reiterate our objection to the requirement that third parties register with the state before being allowed to express an opinion on any election issue.

These clauses are the core of what's wrong with this Bill. Election advertising is a vital part of political debate, a vital part of the sharing of ideas. The clampdown on election advertising proposed here is unconscionable in a free society.

Open debate is noisy and untidy. The views expressed can be profane as well as profound. But nothing is more essential.

Thought is a uniquely human phenomenon and speech is the physical expression of thought. To think is to be human. To prevent someone from speaking is inhuman.

Free speech, especially free *political* speech, is the most important way citizens can participate in their government. Allowing all views to be expressed, in any manner, helps ensure that public policy reflects the public's views. Allowing all views to be expressed aids the search for truth; the truth will usually defeat falsehood in a fair fight.

Free speech puts the brakes on both tyranny and ineptitude. History shows that digging out bad

ideas and bad government early can make it far less costly to remove them later.

Free speech, even when raucous, can make society more stable. Protest gives people a safety valve that can prevent them from turning to violence.

The freedom to express political opinion is the cornerstone of civilisation. Advertising is central to the expression of political opinion in today's culture.

Free speech is so important that, wherever there is doubt, we must always err in its favour. A government that does not tolerate dissent is a danger to everyone around it.

Clause 57 – Display of advertisement of a specified kind

We do not oppose this clause but would prefer to see this Bill burned and the identical provision in s221B of the Electoral Act remain in force.

Clauses 58 to 98 – Election expenses

To the degree that these requirements are more onerous than the existing rules we oppose these clauses.

Libertarianz would prefer that all spending limits were removed.

Incumbents already enjoy an advantage with more media attention than their challengers. The media (quite rightly) pay more attention to those who already hold office; they are clearly more newsworthy than others. The incumbent government also has the advantage of supposedly neutral public service advertising of enacted policies that voters naturally associate with those responsible for them.

What this means is that far more resources – time, energy, and money – are required for a challenger to unseat an incumbent than the incumbent requires to remain in place. The fact that significant resources are arrayed against a sitting government is not a sign of some dark conspiracy but is an indication that the system is working efficiently, leveling the field by assigning resources where they're needed the most.

Clauses 99 to 118 – Third party election expenses

We reiterate our objection to the requirement that third parties register with the state before being allowed to express an opinion on any election issue.

Clauses 119 to 126 – General provisions and penalties

Those who stand up to a government that does not tolerate dissent should not be penalised; they should be given medals.

Clauses 142, 145, and 158 – Membership of Electoral Commission

We support these clauses. The removal of the Government and Opposition appointments to the Electoral Commission is a positive step towards independent administration of elections. We suggest that clauses 142, 145 and 158 are renumbered 4, 5, and 6 respectively.