



Mr Mosa Steve Chabane

Chairperson: Portfolio Committee on Home Affairs

Ms Shahidabibi Shaikh

Chairperson: Select Committee on Security and Justice

Mr Eddy Mathonsi

electoralmattersbill@parliament.gov.za

26 January 2024

Dear Mr Chabane and Ms Shaikh

Re: Electoral Matters Amendment Bill - Written submissions by Zackie Achmat and Zackie2024 NPC (2022/857171/08)

1. I am running as an independent candidate in the 2024 election to the National Assembly. My campaign (Zackie2024 NPC) and I have gained direct experience over the past ten months of the difficulties facing independent candidates in the run-up to this election.
2. To the best of my knowledge, I am the only independent candidate to have publicly declared their intention to run. This places me in a unique position to assist the committee in understanding the practical issues faced by an independent campaign.
3. I have considered the submissions prepared by the People's Legal Centre and #UniteBehind (the PLC submissions). I endorse those submissions and discuss below how the proposed amendments diverge from the reality of conducting a campaign as an independent.

Choice of legal vehicle

4. I understand the intended section 12A(4) of the Act to mean that an independent candidate will only be allowed to receive donations into a bank account registered in their own name. The implication seems to be that my campaign can only be conducted as a type of sole proprietorship.
5. This would be completely impossible. An election campaign is a large and complex affair, which regrettably requires large amounts in money. Such sums, in turn, require proper financial controls and dedicated staff to manage.
6. In order to ensure the appropriate levels of financial control and operational capacity, my campaign is currently conducted through a non-profit company specifically set up for this purpose, with a dedicated business bank account.
7. This NPC is overseen by a board of directors and employs community organisers and operational staff. In addition, we rely on large groups of supporters and volunteers, some of whom receive stipends and financial assistance from time to time (with transport and airtime, for example).
8. Most of my own time is spent visiting communities, listening to their concerns and formulating policies and interventions. I require systems and processes capable of dealing with the day-to-day management of the campaign and fundraising while I engage with supporters and communities.
9. I submit that, if the intention behind section 12A(4) is to compel an independent campaign to be run as a sole proprietorship, this section would unduly limit my right to campaign, which would have a concomitant impact on my supporters' rights to vote and to campaign. The legislature should be slow to overregulate the exercise of foundational constitutional rights, especially where it does so in an ad hoc and rushed fashion.
10. I agree with the PLC submissions that the choice of legal vehicle used to campaign should be left up to an independent candidate as far as possible, so long as the purpose of the Act is still achieved.

Nomination

11. The bill fails properly to define an independent candidate. There is no guidance on how the intention referred to in the bill should be expressed. Being formally recognised as an independent candidate cannot wait until nomination and it cannot depend on an inscrutable notion like intention.
12. Assuming that the Income Tax Act will be amended in due course to allow independents the same exemptions as political parties, SARS will certainly not accept my 'intention' as grounds to be granted such an exemption.
13. Regarding disclosure, our position is that every cent received as a donation must be made public (although privacy concerns do not currently allow donors to be identified in respect of donations below the Act's thresholds). We expect the same from political parties. My campaign has attempted to submit disclosures of donations above the threshold to the IEC, but could not do so since the Act does not yet apply to independents.
14. Until we are able to file disclosures with the IEC, my campaign voluntarily discloses donations of R 100 000 and above on our website. We are also working towards updating the total donations received on the website on a monthly basis.
15. Nevertheless, if the IEC hopes to effectively monitor independent candidates, the Act requires a clear and unambiguous definition of 'independent candidate.' Anything less would amount to a voluntary disclosure regime.

Campaigning

16. Other unforeseen challenges have arisen from the unclear legal definition of 'independent candidate'.
17. My campaign recently had to threaten the City of Cape Town with urgent litigation to ensure that we would be allowed to put up posters in the same terms as political parties. The City's position - thankfully abandoned eventually - was that, since I am not yet nominated as an independent, I cannot use the more beneficial poster rules that political parties do.
18. I do not know whether other municipalities have similar rules but, since electoral politics permeate large parts of South African society and many diverse legal instruments, I am certain

that more challenges such as these will emerge. A definition that relies only on my 'intention' is unlikely to resolve these challenges with the certainty that the law requires.

Conclusion

19. I wish to make oral submissions to the committee.
20. The limited time allowed for comments has not allowed me to set out my concerns in greater detail than I do in this letter, and to refer to the PLC submissions. I hope that the committee will invite me to make oral submissions, which would also allow these comments to be expanded upon where necessary.
21. I look forward to hearing from the committee.



Zackie Achmat