

**IN THE HIGH COURT OF SOUTH AFRICA  
WESTERN CAPE DIVISION, CAPE TOWN**

**CASE NO:**

In the matter between:

**MY VOTE COUNTS NPC**

Applicant

and

**PRESIDENT OF THE REPUBLIC OF SOUTH  
AFRICA**

First Respondent

**MINISTER OF JUSTICE AND CORRECTIONAL  
SERVICES**

Second Respondent

**MINISTER OF HOME AFFAIRS**

Third Respondent

**ACTING SPEAKER OF THE NATIONAL  
ASSEMBLY**

Fourth Respondent

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**FOUNDING AFFIDAVIT**

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I, the undersigned

**QAASIM AKBAR GANEY**

do hereby state under oath:

1. I am a trainee attorney at Webber Wentzel, the applicant's attorneys of record, and I am duly authorised to depose to this affidavit on its behalf.
2. The content of this affidavit falls within my personal knowledge, unless the contrary is stated or appears from the context, and it is, to the best of my knowledge and belief, true and correct.
3. As this application principally concerns issues and questions of law, this affidavit includes the necessary legal grounds to establish the case for the relief that is sought by the applicant. In setting out such grounds, I rely on the advice of the applicant's legal representatives, which I believe to be correct.

#### **THE PARTIES**

4. The applicant is **MY VOTE COUNTS NPC**, a non-profit company (reg. no. 2014/046956/08) with its registered address at Community House, 41 Salt River Road, Salt River, Cape Town, 7925.
5. The applicant's forerunner, My Vote Counts, was founded as a non-profit voluntary association on 28 July 2012 with the aim of campaigning for a more inclusive, transparent and accountable political and electoral system in South Africa. The applicant was incorporated on 5 March 2014.
6. According to its memorandum of incorporation, the applicant's purpose is to improve the accountability, transparency and inclusiveness of elections and politics in the Republic of South Africa generally, including by:
  - 6.1 campaigning for reform of the political party funding system in South Africa, through the introduction of legislation and other measures;

- 6.2 campaigning for reform of the electoral system in South Africa, so as to allow voters to elect individual Members of Parliament from their constituencies; and
  - 6.3 creating platforms to unite South African citizens and organisations in finding democratic solutions to the challenges of our time, with a particular focus on civic, legal and political education.
7. The applicant approaches this Honourable Court in terms of:
- 7.1 section 38(a) of the Constitution of the Republic of South Africa, 1996 ("**the Constitution**"), acting in its own interest, in accordance with its purpose and objects, as set out in the memorandum of incorporation; and
  - 7.2 section 38(d) of the Constitution, acting in the public interest, which I respectfully submit is manifest from the facts and grounds set forth in this affidavit.
8. I submit that this is a constitutional matter in respect of which this Court has the power and duty in terms of section 172 of the Constitution to issue the remedy which the applicant seeks.
9. The first respondent is **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** ("**the President**"), elected in terms of section 86 of the Constitution, cited in his capacity as the head of the National Executive and the head of State.
10. The second respondent is the **MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**, appointed by the President in terms of section 91 of the Constitution

as the member of the Cabinet responsible for law reform and constitutional development.

11. The third respondent is the **MINISTER OF HOME AFFAIRS**, appointed by the President in terms of section 91 of the Constitution as the member of the Cabinet responsible for electoral matters.
12. Pursuant to the Uniform Rules of Court, the first to third respondents will be served care of the **STATE ATTORNEY**, with its offices situated at 4th Floor, 22 Long Street, Cape Town City Centre Cape Town, South Africa. Given the time strictures in bringing this application, and its manifest urgency, service will be effected by way of email to the State Attorney acting for the respondents in a related matter, dealing with a challenge to similar provisions of the Political Party Funding Act, 2018 ("**PPFA**") (under WCC case no 7630/2023), Ms S Karjiker, as well as the head of the State Attorney's office in Cape Town (Mr F Mbeki), as advised by Ms Karjiker. The State Attorney has been precognised of this application, as is apparent from the email chain annexed marked "**FA1A**". Our attempts to contact Mr Mbeki telephonically have been unsuccessful. We have, however, written to him in the afternoon of 9 May 2024. The email correspondence is annexed marked "**FA1B**". The notice of opposition in the abovementioned related challenge, reflecting Ms Karjiker's details, is annexed marked "**FA2**".
13. The fourth respondent is the **ACTING SPEAKER OF THE NATIONAL ASSEMBLY**, currently Mr Solomon Lechesa Tsenoli, who is the presiding officer of the National Assembly in terms of the Constitution. His email address is

[speaker@parliament.gov.za](mailto:speaker@parliament.gov.za) and [pmasiza@parliament.gov.za](mailto:pmasiza@parliament.gov.za). He is cited in his official capacity, to the extent that he may have any interest in this matter.

## OVERVIEW

14. On 8 May 2024, the Electoral Matters Amendment Act, No.14 of 2024 ("**the EMAA**") came into effect by Proclamation Notice 165 of 2024, by Order of the President. This came to the applicant's attention in the late evening on that day.
15. In terms of the preamble, the EMAA amends the Political Party Funding Act, 2018 ("**PPFA**") to *inter alia* "amend the powers of the President to make regulations on certain matters, and to amend Schedule 2 in respect of the formula for the allocation of money in the Funds on a proportional and equitable basis, in respect of the upper limit of donations and the disclosure limit for donations".
16. Previously, section 8(2) of the PPFA provided that a "political party may not accept a donation from a person or entity in excess of the prescribed amount within a financial year". The "prescribed amount" was previously stipulated in regulation 7 of the Regulations, as follows:

*"7. Upper limits of donations*

*The amount contemplated in section 8(2) of the Act is fifteen million rand within a financial year."*
17. Moreover, section 9(1)(a) of the PPFA provided that a political party must disclose every donation received "above the prescribed threshold". Regulation 2 of the Regulations defines the "prescribed threshold" as:

*"9. Disclosure limit*

*The threshold referred to in section 9(1)(a) of the Act is R100 000,00 within a financial year"*

**("regulation 9 of the PPFA")**

18. Section 8(2) and Section 9(1)(a) of the PPFA have been largely preserved in the EMAA, which require that both political parties and now independent candidates disclose any donation received above a prescribed threshold and prohibit the acceptance of donations exceeding this limit. However, the EMAA introduces a significant change: it grants the President the sole discretion to set these upper limits and disclosure thresholds by virtue of amendments to regulation 7 and 9.

19. To this end:

19.1 in terms of section 29(g) of the EMAA, regulation 7 of the PPFA (in dealing with the upper limits of donations) has now been replaced by the following:

*"7(1) Upper limit of donations*

*The President may, from time to time after a National Assembly resolution and by notice in the Gazette, determine the amount contemplated in section 8(2) of the Act."*

19.2 in terms of section 29(h) of the EMAA, regulation 9 of the PPFA (in dealing with the disclosure limit) is substituted with the following:

*"9. Disclosure limit:*

*The President may, from time to time after a National Assembly resolution and by notice in the Gazette, determine the threshold referred to in section 9(1)(a) of the Act"*

20. In view of the above, the EMAA, and specifically the amendments to regulations 7 and 9 of schedule 2 of the PPFA, provide that the President has the sole discretion to determine: the upper limit in terms of section 8(2) of the PPFA; and the disclosure threshold in terms of section 9(1)(a) of the PPFA, and the amounts in respect thereof are determined by way of a Proclamation by the President.
21. Section 27 of the EMAA, which amends section 24 of the PPFA, provides that the enactment of regulations by the President (including setting the upper limit for donations and the disclosure threshold by way of a proclamation) can only proceed following a resolution by the National Assembly.
22. What this means is that upon the commencement of the EMAA on 8 May 2024, there is no upper limit to the donations in regulation 7(1) or disclosure threshold for donations in regulation 9, as the previous limit of R15 million and the threshold of R100,000 have been deleted. Moreover, there is presently no National Assembly resolution authorising the President to determine the upper limit and disclosure threshold. This means that any amounts may be given and need not be reported. This is an untenable and unconstitutional situation. It is directly in breach of the requirements of the Constitution, as pronounced by the Constitutional Court in *My Vote Counts NPC v Minister of Justice and Correctional Services and Another* (CCT249/17) [2018] ZACC 17; 2018 (8) BCLR 893 (CC); 2018 (5) SA 380 (CC) (21 June 2018) ("**My Vote Counts II**"),

and is invidious to the right to make an informed vote, the right to vote more generally and the very purpose of PPFA.

23. The lacuna was recognised expressly by the National Assembly in its order paper dated 8 May 2024, annexed marked "**FA3**" ("**the NA order paper**"). From our offices' telephonic discussions with the President's office on 8 May 2024, the President recognised that the bringing into force of the legislation will create a lacuna in the law and the President did not intend to fix a date for the commencement of the EMAA until such the lacuna has been addressed. This clearly did not happen as the commencement date was fixed later on 8 May 2024. Inexplicably and contrary to its own recognition that there is an unconstitutional lacuna, the National Assembly has now failed to act to pass the requisite resolution.
24. This places South Africa's constitutional democracy and party accountability in peril and would facilitate the undue influence by certain companies and actors in South Africa's political and governance system. It is plainly unconstitutional.

## **RELEVANT BACKGROUND**

25. As mentioned above, on 8 May 2024, the EMAA came into effect.
26. The EMAA followed from the Electoral Matters Amendment Bill (B24-2023) ("**the EMAB**"). The EMAB was approved by the National Assembly on or about 12 March 2024. As such, the EMAB was scheduled to be sent to the National Council of Provinces ("**the NCOP**") for their approval, on 19 March 2024.
27. Before the EMAB was voted on by the NCP, and on 19 March 2024, the applicant delivered written submissions to the Members of the Select Committee on



Security and Justice of the NCOP. In these submissions, the applicant urged the Members to reject the EMAB and send it back to Parliament for revision on the basis that the EMAB was unconstitutional, for *inter alia*, the following reasons (I quote an extract from the submissions below):

*"The EMAB, and specifically the amendments to regulation 7 and 9 of schedule 2 of the PPFA, provides that the President has the sole discretion to determine: (i) the upper limit of donations made by private parties in terms of section 8(2) of the PPFA; and (ii): the minimum amount required for political parties to disclose donations received from private parties, in terms of section 9(1)(a) of the PPFA. Entrusting the President with the discretion to establish these financial thresholds places a substantial amount of political influence within the grasp of one individual, who is a political actor and would typically be the head of a political party who would be disadvantaged or benefited by the changes. This is unconstitutional because the President, as the leader of a political party, inherently possesses a vested interest in the outcomes of such decisions. The ability to influence the financial dynamics of political competition, including the flow of private donations, can significantly impact the political landscape to favor the President's party. This arrangement essentially allows the President to set rules that could disproportionately benefit their political interests, creating an unequal playing field for other political entities. The apprehension of personal and institutional bias is palpable and plainly gives rise to a subversion of the rule of law. It is also irrational to vest these powers in the President.*

*Moreover, there are not even meaningful guidelines provided for the exercise of this critical power by the President. It is a rule of law requirement, as underscored by several Constitutional Court judgments, that the law be free of vagueness and speak with clarity. This is plainly not achieved by the EMAB.*

*Moreover, the EMAB is further unconstitutional given that it creates a lacuna in the law. In this regard, if the amendments to regulation 7 and 9 are adopted without the simultaneous proclamation of the upper limit and disclosure threshold by the President, there would be no upper limit (meaning that any amount may be donated) and there would be no disclosure requirement as a threshold had not been determined. During this period, the core aim of the PPFA will be significantly undermined. Without these critical boundaries in place, private entities are able to contribute unlimited amounts to political parties, and none of these transactions is required to be disclosed. This lacuna essentially nullifies the intent of the legislation to bring transparency and accountability to political financing and indeed facilitates a climate of financial opacity."*

28. A copy of the applicant's submissions to the NCOP, dated 19 March 2024 is annexed as **"FA4"**.
29. Among the constitutional defects raised by the applicant, it was specifically submitted that the EMAB would create a lacuna in the law. Despite these concerns, however, the NCOP passed the EMAB in its original form.
30. The next step in the process was the EMAB was to be sent to the President for his approval and assent in terms of section 79(1) of the Constitution.
31. Given that the next step in the process was that the EMAB was to be sent to the President for his approval and assent in terms of section 79(1) of the Constitution, on 27 March 2024, the applicant's attorneys, Webber Wentzel ("**Webber Wentzel**") delivered a letter to the President, indicating to the President that the EMAB was unconstitutional on the basis of *inter alia* that it would create a lacuna in the law. In this regard, the applicant emphasised that the EMAB must not be signed into law, and that it should instead be sent back to Parliament and the NCOP for reconsideration. Moreover, if the reconsidered

EMAB did not cure the constitutional defects (including the lacuna), then the President in terms of section 79(4) of the Constitution should refer the EMAB to the Constitutional Court, and the President should sign the EMAB into law only after it has been confirmed as constitutional by the Court. A copy of this letter, dated 27 March 2024, is annexed as "**FA5**".

32. On 2 April 2024, and in response, the office of the Presidency delivered a letter to the applicant, and indicated that the EMAB had not been received by the President. The President assured the applicant that he would thoroughly consider the EMAB before deciding whether to sign it into law and expressly requested the applicant not to approach the Courts. A copy of this correspondence is annexed as "**FA6**".
33. On 4 April 2024, Webber Wentzel responded to the Presidency, expressing the applicant's concern about the potential enactment of what they considered to be a patently unconstitutional piece of legislation, which could have irreversible and severe consequences. The applicant indicated that it would desist from launching proceedings at that time, but requested asked for at least two weeks' notice before any potential enactment of the EMAB, which would allow the applicant sufficient time to exercise their legal rights effectively. A copy of the letter is annexed marked "**FA7**". The presidency acknowledged receipt of this correspondence "with appreciation" on 17 April 2024. A copy of the email is annexed as "**FA8**".
34. Contrary to the request in the 4 April letter, and despite previous submissions to the President and the Committee, the EMAA was signed into law on 7 May 2024 by way of a media statement, a copy of which is annexed as "**FA9**".

35. On the same day, Webber Wentzel contacted the office of the President to enquire about the commencement date of the EMAA. The response from the President's office was that the commencement date of the EMMA had not been set not been set, and that the President would not enact the EMAA until Parliament had addressed the identified lacuna.
36. On 8 May 2024, however, a notice was published providing that the EMAA would commence from that same day. On the same day, an order paper was published for Parliament's session on 9 May 2024, proposing that draft resolutions be discussed in terms of the EMAB to establish disclosure thresholds and upper limits, which was to be consistent with previous regulation 7 and 9 under the PPFA.
37. On 9 May 2024, however, despite the pressing need and the obvious lacuna in the law, Parliament decided to delay the discussion of these resolutions to allow for further consultation, effectively postponing the resolution at least to the following week, but potentially indefinitely.
38. On 10 May 2024, the applicant was left with no choice but to launch this application. There would have been no point writing further to the respondents as they do not have the constitutional authority to interdict the implementation of legislation or agree to any interim arrangement concerning primary legislation. Only this Court can provide a remedy.

### **THE LACUNA IN THE EMAA**

39. The lacuna created by the amendments to regulations 7 and 9 of the PPFA pursuant to the EMAA presents significant legal challenges, with potential for

grave opportunistic abuses of the framework for private funding of political parties. This lacuna arises because, although the President is granted the discretion to set the upper limits of donations and the disclosure thresholds, these amendments have been enacted without establishing these specific limits or thresholds, and without Parliament having authorised the determination of the limits by the President. As a result, there currently exists no upper limit on the amount that may be donated to political parties, and there is no requirement for disclosure.

40. This is a serious infraction of constitutional requirements, and this is accentuated by the fact that there are impending national and provincial elections, given the greater likelihood of large donations by corporate entities and individuals alike, especially those seeking to find favour with one or other political party. They would prefer for their contribution to have a veil of secrecy and for may wish to contribute huge amounts, making use of the gap in legislation. This would effectively put a line through the accountability, transparency and voting rights requirements as pronounced by the Constitutional Court in *My Vote Counts II*.
41. Every day has the potential to bring about irreversibly harmful consequences for South Africa's constitutional democracy and its voting public. There is in any event no guarantee that Parliament will act swiftly to pass a resolution that empowers the President to set these new financial thresholds, and political parties may in any event not be motivated to do so. After such a resolution, the President must still promulgate the specific regulations, which could lead to further delays. Given the legislative steps required, this is unlikely to be completed before the upcoming elections.

42. If not addressed before the elections, it could lead to a situation where, in the immediate run-up to the elections, political funding remains unchecked and non-transparent.

## **REMEDY**

43. The harm would be of the highest order. On the other hand, there is a ready just and equitable remedy, as sought by the applicant in this application and contemplated in terms of section 172(1) of the Constitution, which is both narrowly tailored and effective. It is also completely in line with the legislative regime which obtained immediately before 8 May 2024, and in fact mirrors the content of the thresholds both in the preceding version of the PPFA and in the draft National Assembly resolution circulated in the NA order paper on 8 May 2024. It also does not interfere with the exercise of powers by the National Assembly and the President, as they retain the authority to determine the relevant thresholds in terms of the PPFA, which would bring the interim relief to an end.

44. The relief sought, I submit, properly balances the requirements of an expeditious hearing, the primacy of constitutional norms and the procedural rights of the respondents.

## **URGENCY**

45. This application is manifestly urgent and was brought immediately pursuant to developments regarding the EMAA:

- 45.1 On 7 May 2024, the President signed the EMAA into law;

- 45.2 On 8 May 2024, the EMAA came into operation and effect;
- 45.3 On 9 May 2024, during a parliamentary session it became apparent that the necessary resolutions to establish the financial thresholds would not be passed before next week at the earliest and probably not before the upcoming elections scheduled for 29 May 2024 – Parliament would only reconvene two weeks after such elections. The Chief Whip of the ANC is quoted as saying the motion should stand over "for further consultations" (see the News 24 article annexed marked "**FA10**");
- 45.4 On 9 May 2024, this application was drafted and instituted by the applicant, the day that it became clear that the lacuna would not be timeously addressed.
46. The urgency of this application is underscored by the immediate and ongoing risks posed by the lacuna. Each day without established financial thresholds permits political parties to receive potentially unlimited donations without any requirement to disclose these contributions. The longer the gap persists, the greater the opportunity for political entities to exploit the absence of financial limits and disclosure requirements. This potential for abuse could lead to unfair advantages for certain parties or candidates, fundamentally altering the competitive landscape in ways which would be potentially irreversible. The voters' right to an informed vote would be taken away.
47. The lacuna also means that political parties are presently under no obligation to disclose private funding in any amount. This, coupled with the fact that the upper limit is non-existent, effectively means that political parties would be able to accept private donations in staggering amounts, without the Independent

Electoral Commission and the public ever coming to know who made such donations and in what amounts.

48. Moreover, the urgency of this application is underpinned by the proximity of the national elections and the absence of regulatory mechanisms to oversee political donations and disclosures. This creates a critical window during which unchecked political contributions could significantly influence electoral dynamics, contrary to the principles of fair and transparent political financing.
49. To ensure that the respondents get a fulsome opportunity to remedy the lacuna or to file full opposing papers in due course, the relief is framed as a rule *nisi*.

## **CONCLUSION**

50. In the circumstances, the applicant submits that a proper case has been made out for the relief sought in the notice of motion.

**WHEREFORE** the applicant seeks the relief set forth in the notice of motion.



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**DEPONENT**

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at \_\_\_\_\_ on this the \_\_\_\_\_ day of **May 2024**, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

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**COMMISSIONER OF OATHS**

Full Names:

Capacity:

Designation:

Address:

**From:** [Karjiker Shireen](#)  
**To:** [Ahmed Rajan](#); [Felix F.M. Mbeki](#); [Biko Mongezi](#)  
**Cc:** [Vlad Movshovich](#); [Qaasim Ganey](#); [Diyajal Ramrajh](#); [Caroline Campbell](#); [Sipho Tlhaole](#)  
**Subject:** RE: Urgent application: My Vote Counts NPC  
**Date:** 09 May 2024 16:18:14

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Dear Mr Rajan

1. Your email below refers
2. Kindly note if you intend launching an urgent application same must be served on our office in the ordinary course or you have to seek the permission of Mr Mbeki , the Head of Office – the State Attorney Cape Town
3. Please note that I am but an attorney here , I do not have the mandate to unilaterally accept urgent applications
4. The power to accept applications rests with the Head of Office – the State Attorney Cape Town , Mr Mbeki and more so in urgent applications
5. There is a reason for same – it allows for good housekeeping and recording and managing of cases that come to the office , any costs that are incurred in the matter can then be accounted for and we are able to satisfy there is compliance with Treasury regulations
6. I thus do not have to the power to agree to electronic service of an urgent application , those powers are vested in Mr Mbeki . Mr Mbeki then assigns the matters to managers who filter the work down to attorneys
7. I would be flouting my office’s prescripts if I accepted electronic service of an urgent application and placing myself at risk of disciplinary action
8. Further the DOJ server is known to be unreliable if it is a voluminous documents , it rejects same and thus I cannot be held accountable for same
9. I can note to you that your timelines suggested for the filing of papers is a regrettably far too short and practically absurd and impossible when our clients are based in Pretoria and we are in Cape Town . Mr Mbeki will thus apply his mind accordingly
10. I trust I have clarified my position and suggest you seek the permission of the Head of office , Mr Mbeki for the sake of collegiality I have included him in this email

## 11. thanks

Kindly acknowledge receipt of this email.

Kind Regards

### **Miss Shireen B Karjiker**

Attorney

**State Attorney-Cape Town**

5<sup>th</sup> Floor

22 Long Street

Cape Town

Tel: 021 441 9270

Tel: 021 441 9208 (Miss C Visagie secretary)

Cell: 082 5458520

Fax: 021 421 9364

Fax to email 0866 423 147



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**From:** Ahmed Rajan <Ahmed.Rajan@webberwentzel.com>

**Sent:** Thursday, 09 May 2024 15:50

**To:** Karjiker Shireen <SKarjiker@justice.gov.za>

**Cc:** Vlad Movshovich <vlad.movshovich@webberwentzel.com>; Qaasim Ganey <Qaasim.Ganey@webberwentzel.com>; Diyajal Ramrajh <Diyajal.Ramrajh@webberwentzel.com>; Caroline Campbell <Caroline.Campbell@webberwentzel.com>; Siphon Tlhaole <Siphon.Tlhaole@webberwentzel.com>

**Subject:** Urgent application: My Vote Counts NPC

**Importance:** High

Dear Ms Karjiker

We represent My Vote Counts NPC ("**our client**"), the applicant in proceedings under WCC Case No. 7630/23.

As you may be aware, the Electoral Matters Amendment Act No. 14 of 2024 ("**the EMAA**") came into effect yesterday, 8 May 2024, by way of Presidential proclamation.

Our client contends that the EMAA as promulgated is unconstitutional and undermines constitutional duties in respect of transparency and accountability in political party funding legislation insofar as it *inter alia* effectively fails to set an upper limit and prescribed threshold of private donations made to political parties, as contemplated in sections 8(2) and 9(1)(a) of the Political Party Funding Act, 2018 ("**the PPFA**").

This unlawful lacuna in the law has been created because of the amendments made to regulations 7 and 9 of schedule 2 of the PPFA, as provided for in section 29 of the EMAA, which has the effect of deleting the previously set amounts for upper limit and threshold for disclosure of donations.

In the circumstances, we hereby inform you that our client is in the process of launching an urgent application in the Western Cape Division, Cape Town, for hearing in the morning of **Friday, 10 May**

**2024.** Our client will seek interim or rule nisi relief pending temporarily seeking to halt the implementation of the EMAA pending a constitutional challenge to the lawfulness of the relevant provisions of the EMAA or the filling of the lacuna as aforesaid, whichever is the earlier.

You may expect to receive our client's papers in the aforesaid urgent application later this evening. We shall, in our client's notice of motion, provide the President and the Minister of Justice until 9:00 on 10 May 2024 to deliver opposing papers, in the event that our client's application will be opposed.

Please acknowledge receipt.

Yours sincerely

**Ahmed Rajan | Senior Associate | Webber Wentzel**

T:+27115305640 | M:+27840228899 | [ahmed.rajan@webberwentzel.com](mailto:ahmed.rajan@webberwentzel.com) | [www.webberwentzel.com](http://www.webberwentzel.com)

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**B-BBEE**  
**LEVEL 1**  
CONTRIBUTOR

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South Africa Law Firm of the Year – IFLR Africa Awards 2024

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**From:** [Ahmed Rajan](#)  
**To:** [Felix F.M. Mbeki](#)  
**Cc:** [Vlad Movshovich](#); [Qaasim Ganey](#); [Diyajal Ramrajh](#); [Caroline Campbell](#); [Sipho Tlhaole](#); [Biko Mongezi](#); [Karjiker Shireen](#)  
**Subject:** RE: Urgent application: My Vote Counts NPC  
**Date:** 09 May 2024 16:40:22

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Dear Mr Mbeki

We refer to Ms Karjiker's email below, in our response to email sent at 15:50 today.

As mentioned in our email to Ms Karjiker, our client intends to launch an urgent application in the Western Cape Division, Cape Town, to halt the implementation of the Electoral Matters Amendment Act ("**the EMAA**"), pending a constitutional challenge to the lawfulness of the relevant provisions of the EMAA.

Our client intends to cite the President and the Minister of Justice and Correctional Services in the urgent proceedings.

We shall serve our client's urgent application papers later this evening.

Please confirm that this is in order.

Many thanks.

Yours sincerely

**Ahmed Rajan | Senior Associate | Webber Wentzel**

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---

**From:** Karjiker Shireen <SKarjiker@justice.gov.za>  
**Sent:** Thursday, May 9, 2024 4:14 PM  
**To:** Ahmed Rajan <Ahmed.Rajan@webberwentzel.com>; Felix F.M. Mbeki <FMbeki@justice.gov.za>; Biko Mongezi <MBiko@justice.gov.za>  
**Cc:** Vlad Movshovich <vlad.movshovich@webberwentzel.com>; Qaasim Ganey <Qaasim.Ganey@webberwentzel.com>; Diyajal Ramrajh <Diyajal.Ramrajh@webberwentzel.com>; Caroline Campbell <Caroline.Campbell@webberwentzel.com>; Sipho Tlhaole <Sipho.Tlhaole@webberwentzel.com>  
**Subject:** RE: Urgent application: My Vote Counts NPC

Dear Mr Rajan

1. Your email below refers
2. Kindly note if you intend launching an urgent application same must be served on our office in the ordinary course or you have to seek the permission of Mr Mbeki , the Head of Office – the State Attorney Cape Town
3. Please note that I am but an attorney here , I do not have the mandate to unilaterally accept urgent applications
4. The power to accept applications rests with the Head of Office – the

**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 7630/20

In the matter between

**MY VOTE COUNTS NPC**

Applicant

And

<b>PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA</b>	First Respondent
<b>MINISTER OF JUSTICE AND CORRECTIONAL SERVICES</b>	Second Respondent
<b>MINISTER OF HOME AFFAIRS</b>	Third Respondent
<b>INDEPENDENT ELECTORAL COMMISSION</b>	Fourth Respondent
<b>AFRICAN NATIONAL CONGRESS</b>	Fifth Respondent
<b>DEMOCRATIC ALLIANCE</b>	Sixth Respondent
<b>ECONOMIC FREEDOM FIGHTERS</b>	Seventh Respondent
<b>INKATHA FREEDOM PARTY</b>	Eight Respondent
<b>NATIONAL FREEDOM PARTY</b>	Ninth Respondent
<b>UNITED DEMOCRATIC MOVEMENT</b>	Tenth Respondent
<b>FREEDOM FRONT PLUS</b>	Eleventh Respondent
<b>CONGRESS OF THE PEOPLE</b>	Twelfth Respondent
<b>AFRICAN CHRISTIAN DEMOCRATIC PARTY</b>	Thirteen Respondent
<b>AFRICAN INDEPENDENT CONGRESS</b>	Fourteenth Respondent
<b>PAN AFRICANIST CONGRESS</b>	Fifteenth Respondent
<b>AFRICAN TRANSFORMATION MOVEMENT</b>	Sixteenth Respondent

**GOOD PARTY**

Seventeenth Respondent

**AL JAMA-AH**

Eighteenth Respondent

---

**NOTICE OF INTENTION TO OPPOSE**

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**KINDLY TAKE NOTICE** that the First, Second and Third Respondent intends to oppose the above application and has appointed the address of the State Attorney, 4th Floor, 22 Long Street, Cape the address at which they will accept service of all pleadings.

DATED at **CAPE TOWN** on **13<sup>th</sup> JUNE 2023**.

**STATE ATTORNEY**

Per: 

**S KARJIKER**

Attorney for Respondent

4<sup>th</sup> Floor

22 Long Street

**CAPE TOWN**

(Ref: 2722/23/P27)

Tel: 021 441 9200

E-mail: [skarjiker@justice.gov.za](mailto:skarjiker@justice.gov.za)

**TO: THE REGISTRAR**  
High Court  
**CAPE TOWN**

**AND TO: WEBBER WENTZEL ATTORNEYS**

Attorney for Applicant

90 Rivonia Road

Sandton

**JOHANNESBURG**

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[Daniel.rafferty@webberwentzel.com](mailto:Daniel.rafferty@webberwentzel.com)

[Ahmed.rajan@webberwentzel.com](mailto:Ahmed.rajan@webberwentzel.com)

[Qaasim.ganey@webberwentzel.com](mailto:Qaasim.ganey@webberwentzel.com)

(ref: V Movshovich / D Rafferty / A Rajan / Q Ganey 3005347)

**C/O WEBBER WENTZEL ATTORNEYS**

15<sup>TH</sup> Floor, Convention Tower

Heerengracht

Forechore

**CAPE TOWN**



PARLIAMENT OF THE  
REPUBLIC OF SOUTH AFRICA

NATIONAL ASSEMBLY

ORDER PAPER

THURSDAY, 9 MAY 2024

Meeting of House: 10:00

**MOTIONS:**

1. Draft resolution (Chief Whip of the Majority Party): That the House –
  - (1) notes that section 24(1) of the Political Party Funding Act, 2018 (Act No. 6 of 2018) (“Political Party Funding Act”), requires that the President, acting on a resolution of the National Assembly, may by proclamation in the *Gazette* make regulations in respect of, amongst others:
    - (a) the maximum amount of a donation that may be accepted from a person or entity, within a financial year as contemplated in section 8(2); and
    - (b) the threshold amount which all donations received must be disclosed as contemplated in section 9(1)(a);
  - (2) further notes that with the Electoral Matters Amendment Bill, 2023 [B42B-2023], being assented to and specifically with the operation of section 29(g) or (h), a gap in the law will exist unless the amounts contemplated in section 8(2) and 9(1)(a) respectively have been set by resolution of the Assembly to empower the President to make regulations as contemplated in section 24 of the Political Party Funding Act; and
  - (3) resolves in terms of section 24 of the Political Party Funding Act —
    - (a) to set the amount contemplated in section 8 (2) of the Act at fifteen million rand within a financial year, and the threshold amount referred to in section 9(1)(a) of the Act at one hundred thousand rand within a financial year; and
    - (b) that the amounts contemplated in paragraph (a), inform regulations to be made by the President under the Political Party Funding Act.

Members of the Select Committee on Security and Justice

**RE: THE UNCONSTITUTIONALITY OF THE ELECTORAL MATTERS AMENDMENT BILL [B42 – 2023]**

Today you will vote on the Electoral Matters Amendment Bill (EMAB) and its related report. As members of civil society, we appeal to you to reject the Bill in its current form and send it back to the National Assembly for remedy because several of its proposed amendments are plainly unconstitutional.

If passed in its current form, amendments the Bill makes to the Political Party Funding Act (PPFA) will weaken transparency and accountability in our party funding legislation. While there is a legitimate need to amend certain pieces of legislation to bring independent candidates into the political fold, the attempts to fundamentally alter aspects of the PPFA are opportunistic and make it easier for all political parties to solicit private funding with less public scrutiny.

In our [submissions](#) to the Portfolio Committee on Home Affairs on this matter, we have already highlighted several amendments that impermissibly expand the President's powers in determining key limits in the PPFA. Likewise, below, we detail the constitutional problems associated with the EMAB.

**Why the EMAB is unconstitutional.**

The EMAB is plainly unconstitutional for *inter alia*, the reasons set forth below.

1. The EMAB, and specifically the amendments to regulation 7 and 9 of schedule 2 of the PPFA, provides that the President has the sole discretion to determine: (i) the upper limit of donations made by private parties in terms of section 8(2) of the PPFA; and (ii): the minimum amount required for political parties to disclose donations received from private parties, in terms of section 9(1)(a) of the PPFA. Entrusting the President with the discretion to establish these financial thresholds places a substantial amount of political influence within the grasp of one individual, who is a political actor and would typically be the head of a political party who would be disadvantaged or benefited by the changes. This is unconstitutional because the President, as the leader of a political party, inherently possesses a vested interest in the outcomes of such decisions. The ability to influence the financial dynamics of political competition, including the flow of private donations, can significantly impact the political landscape to favor the President's party. This arrangement essentially allows the President to set rules that could disproportionately benefit their political interests, creating an unequal playing field for other political entities. The apprehension of personal and institutional bias is palpable and plainly gives rise to a subversion of the rule of law. It is also irrational to vest these powers in the President.

2. Moreover, there are not even meaningful guidelines provided for the exercise of this critical power by the President. It is a rule of law requirement, as underscored by several Constitutional Court judgments, that the law be free of vagueness and speak with clarity. This is plainly not achieved by the EMAB.
3. Moreover, the EMAB is further unconstitutional given that it creates a lacuna in the law. In this regard, if the amendments to regulation 7 and 9 are adopted without the simultaneous proclamation of the upper limit and disclosure threshold by the President, there would be no upper limit (meaning that any amount may be donated) and there would be no disclosure requirement as a threshold had not been determined. During this period, the core aim of the PPFA will be significantly undermined. Without these critical boundaries in place, private entities are able to contribute unlimited amounts to political parties, and none of these transactions is required to be disclosed. This lacuna essentially nullifies the intent of the legislation to bring transparency and accountability to political financing and indeed facilitates a climate of financial opacity.
4. The NCOP has stated that it does not intend to facilitate any further public participation in relation to what is one of the most important pieces of electoral legislation in South African history. We are aware of the position of Parliamentary Legal Services on this matter. We maintain that the question of whether the changes to the EMAB from the Portfolio Committee on Home Affairs process to the Select Committee on Security and Justice are material or not has not been fully tested.

The role of this Committee as a bulwark against political overreach cannot be overstated. The Portfolio Committee on Home Affairs made a grave error in adopting the EMAB and we appeal to you to reject the Bill or to make the necessary amendments and return it to the National Assembly.

We trust that this will support your deliberations.

*Submitted by:*

- *Ahmed Kathrada Foundation*
- *Alliance of NPO Networks*
- *AmaBhungane Centre for Investigative Journalism*
- *Ambassadors 4 Change*
- *Centre for Civic and Democracy Education*
- *Centre for Good Governance and Social Justice*
- *Council for the Advancement of the South African Constitution*
- *Defend Our Democracy Movement*
- *Direct Democracy South Africa*
- *Media Monitoring Africa*

- *My Vote Counts*
- *Organisation Undoing Tax Abuse*
- *Progressive Tamil Movement*
- *Rising Stars Youth Development Network*
- *Sekunjalo Health and Poverty Alleviation*
- *South African Conversations*
- *The Southern African Institute for Responsive and Accountable Governance*
- *Westside Park Community Crisis Committee*
- *Youth Empowering Initiative Democracy*

## WEBBER WENTZEL

in alliance with > **Linklaters**

**His Excellency MC Ramaphosa**  
President of the Republic of South Africa  
Union Buildings  
Government Avenue  
Pretoria

By email: [presidentrsa@presidency.gov.za](mailto:presidentrsa@presidency.gov.za)  
[malebo@presidency.gov.za](mailto:malebo@presidency.gov.za)

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Johannesburg, 2107, South Africa

Docex 26 Johannesburg

T +27 (0) 11 530 5000  
F +27 (0) 11 530 5111

[www.webberwentzel.com](http://www.webberwentzel.com)

Your reference

Our reference

Date

V Movshovich / D Rafferty / A Rajan  
Q Ganey / D Ramrajh / 3005347

27 March 2024

Dear Mr President

### My Vote Counts – Electoral Matters Amendment Bill

1. We act on behalf of My Vote Counts NPC ("**our client**"). Our client is a non-profit organisation with the aim of campaigning for a more inclusive, transparent and accountable political and electoral system in South Africa.
2. We refer to the Electoral Matters Amendment Bill (B42-2023) ("**the EMAB**"), which seeks to amend the Political Party Funding Act, 2018 ("**the PPFA**").
3. Our client understands that the EMAB, having been amended and approved by the National Assembly on 12 March 2024 was later passed in the same form by the National Council of Provinces ("**the NCOP**") on 26 March 2024. As such, the EMAB has been sent to the President for his assent and signature and fixing a date for implementation.
4. As indicated in our client's submissions to Parliament, our client is of the view that the EMAB, in its current form, is unconstitutional, and undermines the constitutional duties in respect of transparency and accountability in political party funding legislation, contrary to the requirements set forth in case law. Specifically, the EMAB is unconstitutional for, *inter alia* the reasons set forth below.

**Senior Partner:** JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa C Alexander AK Allie NG Alp RL Appelbaum TB Ball DC Bayman AE Bennett AP Blair K Blom AR Bowley M Bux V Campos RI Carrim T Cassim SJ Chong ME Claassens C Collett KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies KM Davis PM Daya HM de Villiers ST Dias L de Bruyn PU Dela M Denenga DW de Villiers BEC Dickinson DA Dingley G Driver W Drue GP Duncan HJ du Preez CP du Toit SK Edmundson LF Egypt KH Eiser AE Esterhuizen K Fazel G Fitzmaurice JB Forman L Franca M Garden OH Geldenhuys MM Gibson H Goolam C Gopal CI Gouws PD Grealay L Green JM Harvey JS Henning KR Hillis Z Hlophle CM Holfeld PM Holloway KT Inglis ME Jarvis JC Jones CM Jonker S Jooste LA Kahn M Kennedy KE Kilner A Keyser MD Kota JC Kraamwinkel AC Kruger J Lamb LC Lambrechts E Louw M Mahlangu S Manley V Mannar L Marais G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer A Mhlongo AJ Mills D Milo M Mkhabela P Mohanlall N Moodley L Moolman LE Mostert VM Movshovich A Muir C Murphy D Naidoo P Naidoo DC Nchabeleng DP Ndiweni A Ngubo C Nöthling M Nxumalo AN Nyatumba MB Nzimande A October L Odendaal N Paige AS Parry S Patel N Pather GR Penfold SE Phajane M Philippides BA Phillips MA Phillips CH Pienaar MP Pool DJ Rafferty D Ramjettan GI Rapson K Rew G Richards-Smith SA Ritchie J Roberts Y Robbertse S Rule G Sader H Samsodien KE Shepherd N Singh N Singh-Nogueira P Singh S Sithole J Smit MP Spalding MW Strauli LJ Swaine Z Swanepoel WV Tembedza A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Tihavani G Truter PZ Vanda SE van der Meulen JP van der Poel MS van der Walt CS Vanmali L van Tonder JE Veeran HM Venter B Versfeld MG Versfeld TA Versfeld C Vertue T Viljoen DM Visagie EME Warmington J Watson AWR Westwood RH Wilson KD Wolmarans

**Chief Operating Officer:** SA Boyd

*It has not been subject to a public participation process*

5. The NCOP has not facilitated any public participation in relation to what is one of the most important pieces of electoral legislation in South African history. There are important ramifications for all South African and all provincial and national elections as a result of the changes proposed by the EMAB.
6. Public participation was critical at the NCOP level in its own right, but it is also important to facilitate public participation in relation to the EMAB as amended by the National Assembly. The version of the EMAB, that has been passed, has not been subject to public participation at all at any level.
7. In all the circumstances, the failure by the NCOP to facilitate any public participation is plainly in breach of section 72 of the Constitution. This renders the process before the Parliamentary process and the legislation presented to the President stillborn and plainly invalid.
8. This means that not just the process before the NCOP, but the entire enactment of the EMAB, including the President's assent, could be deemed invalid due to this fundamental breach of constitutional procedure.

*It gives the President the sole discretion to establish important financial thresholds*

9. The EMAB, and specifically the amendments to regulation 7 and 9 of schedule 2 of the PPFA, provide that the President has the sole discretion to determine: (i) the upper limit of donations made by private parties in terms of section 8(2) of the PPFA ("**the upper limit**"); and (ii): the minimum amount required for political parties to disclose donations received from private parties, in terms of section 9(1)(a) of the PPFA ("**the disclosure threshold**").
10. Entrusting the President with the discretion to establish the upper limit and the disclosure threshold places a substantial amount of political influence within the grasp of one individual, who is a political actor and would typically be the head of a political party who would be disadvantaged or benefited by the changes. This is unconstitutional because the President, as the leader of a political party, inherently possesses a vested interest in the outcomes of such decisions. The ability to influence the financial dynamics of political competition, including the flow of private donations, can significantly impact the political landscape to favour the President's party. This arrangement essentially allows the

President to set rules that could disproportionately benefit their political interests, creating an unequal playing field for other political entities.

11. The apprehension of personal and institutional bias is palpable and plainly gives rise to a subversion of the rule of law. It is also irrational to vest these powers in the President.
12. Moreover, there are not even meaningful guidelines provided for the exercise of this critical power by the President. It is a requirement of the rule of law, as underscored by a number of Constitutional Court judgments, that the law be free of vagueness and speak with clarity. This is plainly not achieved by the EMAB and this is a further reason why the EMAB is unconstitutional.

*It creates a lacuna in the law*

13. As set out in paragraph 9 above, the amendment to regulations 7 and 9 gives the President the sole discretion to determine the upper limit and the disclosure threshold, and the amounts in respect thereof are passed by way of a proclamation by the President. Clause 26 of the EMAB, which is intended to replace Section 24 of the PPFA, provides that the enactment of regulations by the President (including setting the upper limit for donations and the disclosure threshold by way of a proclamation) can only proceed following a resolution by the National Assembly.
14. Upon the promulgation of regulations 7 and 9 as they appear under the EMAB, there will be no upper limit or disclosure threshold at all, as the current limit of R 15 million and threshold of R 100,000 will be deleted. This means that donations in any amount may be given and need not be reported. This is an untenable and unconstitutional situation.
15. Moreover, there is presently no National Assembly resolution authorising the President to determine the upper limit and disclosure threshold and any such resolution is unlikely to be passed before the elections scheduled for 29 May 2024. This places South Africa's constitutional democracy and party accountability in peril, and would facilitate the undue influence by certain companies and actors in South Africa's political and governance system.
16. The National Assembly will be in recess for the Easter constituency period starting on 2 April 2024, and will reconvene only on 21 May 2024.
17. In particular, if the President assents to and brings into force the EMAB, and the amendments to regulations 7 and 9 are adopted without the simultaneous proclamation of

the upper limit and disclosure threshold by the President (which he is currently not empowered to do), there would be no upper limit (meaning that any amount may be donated) and there would be no disclosure requirement as a threshold had not been determined.

18. During this period, the core aim of the PPFA will be significantly undermined. Without these critical boundaries in place, private entities are able to contribute unlimited amounts to political parties, and none of these transactions is required to be disclosed. This lacuna essentially nullifies the purpose of the legislation.
19. In light of the constitutional defects as aforementioned, the President should not sign the EMAB into law. Instead, the President should exercise his powers in terms of section 79(1) of the Constitution and refer the EMAB back to the National Assembly and the NCOP for reconsideration.
20. If the reconsidered EMAB does not cure the constitutional defects, then, in terms of section 79(4) of the Constitution, the President should refer the EMAB to the Constitutional Court. The President can only sign the EMAB into law after the Constitutional Court determines it to be constitutional.
21. Our client respectfully requests that the President provide confirmation in writing by no later than **Wednesday, 3 April 2024**, regarding his intentions in respect of the EMAB, and whether he will be referring it back to the National Assembly and the NCOP for reconsideration, or will be assenting and implementing the legislation.
22. Should the President decide to assent to and implement the EMAB, our client will have no choice but to launch an application to challenge the constitutional validity of the EMAB, and to obtain interdictory relief to prevent its implementation, and may do so on an urgent basis.
23. All our client's rights are reserved.

Yours faithfully

**WEBBER WENTZEL**

**V Movshovich**

Direct tel: +27 11 530 5867

Direct fax: +27 11 530 6867

Email: [vlad.movshovich@webberwentzel.com](mailto:vlad.movshovich@webberwentzel.com)

*Letter sent electronically without signature.*





"FA6"

**THE PRESIDENCY: REPUBLIC OF SOUTH AFRICA**  
Private Bag X1000, Pretoria, 0001

**Webber Wentzel**  
V Movshovich  
P.O Box 61771  
**MARSHALLTOWN**  
2107

[Vlad.movshovich@webberwentzel.com](mailto:Vlad.movshovich@webberwentzel.com)

Dear Ms/Mr Movshovich,

**RE: ELECTORAL MATTERS AMENDMENT BILL**

Reference is made to the attached newspaper article published in the Business Day of 01 April 2024 (**Annexure "A"**).

According to the article, My Vote Counts has given the President until Tuesday, which is today, to refer the Electoral Matters Amendment Bill ("the Bill") back to the National Assembly and the NCOP for reconsideration, failing which legal action challenging the constitutionality of the legislation will be launched.

Kindly be advised that the Presidency has not yet received the letter from your client. We have taken the initiative of checking My Vote Counts' Website. We found the attached letter (**Annexure "B"**) with similar content as indicated in the newspaper article.

We would like to put it on record that the Presidency has not yet received the Bill from Parliament. After the passing of legislation, it takes a few days for Parliament to translate bills into one additional official language before sending it to The President.

According to Section 79(1) of the Constitution of the Republic of South Africa, 1996, once a Bill has been passed by Parliament, the President must either assent to and sign the Bill or if the President has reservations about the constitutionality of the Bill, refer it back to the National Assembly for reconsideration.

The President does not assent to a Bill without taking the time to consider its substance and constitutionality fully and independently from Parliament. It can take a few weeks for any decision to be made on assent to a Bill.

Bearing the above in mind, it would be wholly unreasonable not to give the President the opportunity to apply his mind to the Bill. The Presidency therefore submits that any litigation would at this stage be premature and unnecessary.

The attached letter, once confirmed by yourselves to be correct, will be considered by the President together with the Bill as soon as it is received from Parliament.

We trust you will find the above in order.

Yours sincerely,



**Mr Geoffrey Mphaphuli**  
**Acting Head: Legal and Executive Services**  
**Date: 02 April 2024**

## WEBBER WENTZEL

in alliance with > **Linklaters**

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**President of the Republic of South Africa**  
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Your reference

Our reference

Date

V Movshovich / D Rafferty / A Rajan  
Q Ganey / D Ramrajh / C Cambell /  
3005347

4 April 2024

Dear Mr Mphaphuli

### My Vote Counts – Electoral Matters Amendment Bill

1. We refer to our letter, dated 27 March 2024 ("**our letter**"), and your letter, dated 2 April 2024 ("**your letter**").
2. At the outset, we confirm that the letter published in Business Day on 1 April 2024, which you have attached as annex "**A**" to your letter, is indeed the same letter that we had transmitted to the President on 27 March 2024. It is unclear why this was not received by the President's office as it was sent to the email addresses published for the Presidency.
3. Our client notes that the President has not yet received the Electoral Matters Amendment Bill (B42-2023) ("**the EMAB**") from Parliament, and that the President will require at least a few weeks properly to review the EMAB before making a decision on assent and whether to refer the EMAB back to Parliament.
4. Our client appreciates this communication, but, as you will appreciate, is also anxious to ensure that a patently unconstitutional piece of legislation is not promulgated and enacted (with potentially irreversible and devastating consequences) without the opportunity for our

**Senior Partner:** JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa C Alexander AK Allie NG Alp RL Appelbaum TB Ball DC Bayman AE Bennett AP Blair K Blom AR Bowley M Bux V Campos RI Carrim T Cassim SJ Chong ME Claassens C Collett KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies KM Davis PM Daya HM de Villiers ST Dias L de Bruyn PU Dela M Denenga DW de Villiers BEC Dickinson DA Dingley G Driver W Drue GP Duncan HJ du Preez CP du Toit SK Edmundson LF Egypt KH Eiser AE Esterhuizen K Fazel G Fitzmaurice JB Forman L França M Garden OH Geldenhuys MM Gibson H Goolam C Gopal CI Gouws PD Grealy L Green JM Harvey JS Henning KR Hillis Z Hlopho CM Holfeld PM Holloway KT Inglis ME Jarvis JC Jones CM Jonker S Jooste LA Kahn M Kennedy KE Kilner A Keyser MD Kota JC Kraamwinkel AC Kruger J Lamb LC Lambrechts E Louw M Mahlangu S Manley V Mannar L Marais G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer A Mhlongo AJ Mills D Milo M Mkhabela P Mohanlall N Moodley L Moolman LE Mostert VM Movshovich A Muir C Murphy D Naidoo P Naidoo DC Nchabeleng DP Ndiweni A Ngubo C Nöthling M Nxumalo AN Nyatumba MB Nzimande A October L Odendaal N Paige AS Parry S Patel N Pather GR Penfold SE Phajane M Philippides BA Phillips MA Phillips CH Pienaar MP Pool DJ Rafferty D Ramjettan GI Rapson K Rew G Richards-Smith SA Ritchie J Roberts Y Robbertse S Rule G Sader H Samsodien KE Shepherd N Singh N Singh-Nogueira P Singh S Sithole J Smit MP Spalding MW Strauli LJ Swaine Z Swanepoel WV Tembedza A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Tihavani G Truter PZ Vanda SE van der Meulen JP van der Poel MS van der Walt CS Vanmali L van Tonder JE Veeran HM Venter B Versfeld MG Versfeld TA Versfeld C Vertue T Viljoen DM Visagie EME Warmington J Watson AWR Westwood RH Wilson KD Wolmarans

**Chief Operating Officer:** SA Boyd

client to seek substantial relief on an urgent basis from the Courts. Our client thus respectfully requests that the Presidency keep it informed on the outcome of the consideration of the EMAB. In this regard, should the President decide to implement the EMAB, our client requests at least two weeks' notice prior to its implementation, so that our client can properly exercise its rights.

5. All our client's rights are reserved.

Yours faithfully

**WEBBER WENTZEL**

**V Movshovich**

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Email: [vlad.movshovich@webberwentzel.com](mailto:vlad.movshovich@webberwentzel.com)

*Letter sent electronically without signature*

---

**From:** Robert Hlongwane <Robert@presidency.gov.za>  
**Sent:** Wednesday, April 17, 2024 4:58 PM  
**To:** Vlad Movshovich <vlad.movshovich@webberwentzel.com>  
**Cc:** Nomusa Zondi <Nomusa@presidency.gov.za>; Makhosini Makhubele <Makhosini@presidency.gov.za>; Mike Louw <mike@presidency.gov.za>  
**Subject:** FW: Electoral Matters Amendment Bill

Dear Mr Movshovich

Receipt of the correspondence addressed to the President of the Republic of South Africa, HE President Cyril Ramaphosa, is acknowledged with appreciation.

Kind regards

Robert Hlongwane  
Private Office of the President  
West Wing, Room 65, Union Buildings  
The Presidency  
Tel: 012 300 5219  
Website: [www.thepresidency.gov.za](http://www.thepresidency.gov.za)  
E-Mail: [Robert@presidency.gov.za](mailto:Robert@presidency.gov.za)



Mintirho ya vulavula

---

**From:** Qaasim Ganey <[Qaasim.Ganey@webberwentzel.com](mailto:Qaasim.Ganey@webberwentzel.com)>  
**Sent:** Thursday, 04 April 2024 08:35  
**To:** Geoffrey Mphaphuli <[Geoffrey@presidency.gov.za](mailto:Geoffrey@presidency.gov.za)>; Livhuwani Daswa-Mphaphuli <[Livhuwani@presidency.gov.za](mailto:Livhuwani@presidency.gov.za)>; Angeline Coetzee <[Angeline@presidency.gov.za](mailto:Angeline@presidency.gov.za)>  
**Cc:** Vlad Movshovich <[vlad.movshovich@webberwentzel.com](mailto:vlad.movshovich@webberwentzel.com)>; Daniel Rafferty <[Daniel.Rafferty@webberwentzel.com](mailto:Daniel.Rafferty@webberwentzel.com)>; Ahmed Rajan <[Ahmed.Rajan@webberwentzel.com](mailto:Ahmed.Rajan@webberwentzel.com)>; Diyajal Ramrajh <[Diyajal.Ramrajh@webberwentzel.com](mailto:Diyajal.Ramrajh@webberwentzel.com)>; Caroline Campbell

<[Caroline.Campbell@webberwentzel.com](mailto:Caroline.Campbell@webberwentzel.com)>

**Subject:** RE: Electoral Matters Amendment Bill

Dear Mr Mphaphuli

We attach correspondence, for your attention.

Please acknowledge receipt.

Yours sincerely

**Qaasim Ganey | Trainee Attorney | Webber Wentzel**

**T:**+27115305837 | **M:**+27727359212 | [qaasim.ganey@webberwentzel.com](mailto:qaasim.ganey@webberwentzel.com) | [www.webberwentzel.com](http://www.webberwentzel.com)

---

**From:** Geoffrey Mphaphuli <[Geofrey@presidency.gov.za](mailto:Geofrey@presidency.gov.za)>

**Sent:** Tuesday, April 2, 2024 9:50:10 PM

**To:** Vlad Movshovich <[vlad.movshovich@webberwentzel.com](mailto:vlad.movshovich@webberwentzel.com)>

**Cc:** Livhuwani Daswa-Mphaphuli <[Livhuwani@presidency.gov.za](mailto:Livhuwani@presidency.gov.za)>; Angeline Coetzee <[Angeline@presidency.gov.za](mailto:Angeline@presidency.gov.za)>

**Subject:** Electoral Matters Amendment Bill

Evening

Please find the attached letter.

Regards

**Mr Geoffrey Mphaphuli**

Principal State Law Advisor

The Presidency

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E-mail: [Geofrey@presidency.gov.za](mailto:Geofrey@presidency.gov.za)

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<http://www.thepresidency.gov.za/content/legal-disclaimers>

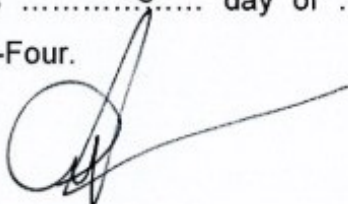
PROCLAMATION NOTICE 165 OF 2024

**BY THE PRESIDENT OF THE REPUBLIC OF  
SOUTH AFRICA**

**COMMENCEMENT OF THE ELECTORAL MATTERS AMENDMENT ACT,  
2024 (ACT No. 14 OF 2024)**

In terms of section 46 of the Electoral Matters Amendment Act, 2024 (Act No. 14 of 2024), I hereby determine 08 May 2024 as the date on which the said Act shall come into effect.

Given under my Hand and the Seal of the Republic of South Africa at  
Pretoria on this 08 day of May  
Two Thousand and Twenty-Four.



**PRESIDENT**

**By Order of the President-in-Cabinet**



**MINISTER OF THE CABINET**





Thursday, 09 May  
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## National Assembly postpones motion to plug gap in party funding law

news24

Jan Gerber

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The National Assembly postponed plugging a hole in party funding legislation by a week. (Jaco Marais/Netwerk24)

**The National Assembly postponed a motion that would plug a hole in party funding legislation with a week for "further consultation".**

**The resolution would empower the president to set regulations for the threshold political parties and independents have to declare donations received.**

**After the Electoral Matters Amendment Act came into effect on Wednesday, there are no limits or thresholds in place until the National Assembly adopts a resolution allowing the president to make the regulations.**

Political parties can now accept any amount in donations without declaring it for at least a week.

On Thursday morning, the National Assembly decided to let the consideration of a motion to address a gap in party funding legislation stand over until next week, pending further consultations between parties.

The Electoral Matters Amendment Act is supposed to make consequential changes to legislation, including the Political Party Funding Act, to align with the Electoral Amendment Act, which allows independent candidates to contest national and provincial elections. Yet, it also tinkered with party funding legislation beyond what was needed to bring independent candidates into the fold.

President Cyril Ramaphosa assented to the act on Saturday, which took effect on Wednesday. In effect, it scraps the regulations in terms of the Political Party Funding Act that set a threshold that all donations of R100 000 or more must be declared and the

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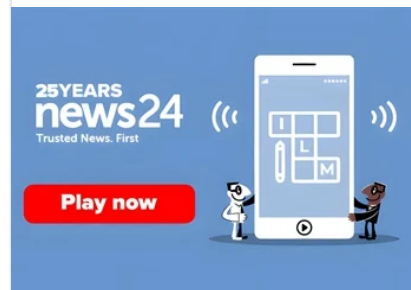


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Last week, at a special meeting of the National Assembly Programming Committee, parliamentary legal advisor Charmaine van der Merwe warned: "There will be a gap in the law once the Electoral Matters Bill has been assented to, because there will not be any upper limits for donations or a disclosure limit until the president makes those regulations. And the president can only make those regulations upon a resolution of the Assembly."

She added: "At this point in time, with elections ahead of us it is very critical that there not be a situation where the upper limits for donations, for declarations not be known."

### READ | Electoral Matters Amendment Act now in effect, but Parliament should plug funding hole on Thursday

In terms of the Political Party Funding Act, the president must make regulations for the threshold and limit upon a resolution of the National Assembly. Thus, the National Assembly must first pass a resolution before Ramaphosa can make the regulations.

Van der Merwe proposed that such a resolution, which keeps the current threshold and limit in place, be adopted on Thursday. However, opposition parties questioned why the resolution was required when the Electoral Matters Amendment Bill had, at the time, not yet become law, even though the resolution would be made in terms of the Political Party Funding Act. They also wanted clarity on the status of the legislation.

It was decided to postpone the resolution to the final sitting on 16 May.

But then Ramaphosa signed the bill on Saturday and proclaimed that it would be in force from Wednesday onwards.

The motion with the resolution that would empower Ramaphosa to make the regulations on the threshold and the limit appeared on the order paper for Thursday's sitting, which was sent out on Wednesday evening.

At the start of Thursday's sitting, an ANC MP, on behalf of her chief whip Pemmy Majodina, moved that the "motion stand over for further consultations" and that it be withdrawn until next week.

Acting Speaker Lechesa Tsenoli said he understood that there were consultations on this and agreed to it.

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What are your thoughts after President Cyril Ramaphosa signed the party funding bill into law?

- Let the opposition parties take it to court
- Of course CR wants party funding under wraps
- Parly needs to vote on donation thresholds ASAP
- What about the other unsigned bills on his desk?

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