

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

CASE NO: 10607/24

In the application for intervention:

THE DEMOCRATIC ALLIANCE

Intervening Applicant

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

ANSWERING AFFIDAVIT – INTERVENTION APPLICATION

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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 attorneys of record for My Vote Counts NPC, the applicant in the main application ("**the applicant**").
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. I am the deponent to the founding affidavit and the replying affidavit to the third respondent's answering affidavit, in the urgent application instituted by the applicant in the Western Cape High Court under case number: 10607/24 ("**the main application**"). I remain duly authorised to depose to this affidavit on behalf of the applicant.
4. The purpose of this affidavit is to respond to the supporting affidavit filed by the Democratic Alliance ("**the DA**") in its intervention application, dated 26 July 2024 ("**the second intervention application**"). Defined terms used herein bear the meaning ascribed to them in the main application.

INTRODUCTION AND BACKGROUND

5. On 10 May 2024, the applicant launched the main application.
6. In the main application, on account of the lacuna in Political Party Funding Act 6 of 2018 ("**the PPFA**"), read with the Electoral Matters Amendment Act 14 of 2024

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("the EMAA") the applicant sought a *rule nisi* that: (i) the upper limit be deemed to be determined at R15 million per annum; and (ii) disclosure threshold be deemed to be determined at R100,000 per annum. The applicant also sought for the *rule nisi* to operate as interim relief, until the earlier of determination of the upper limit and the disclosure threshold or the finalisation of proceedings to be launched to declare section 29(g) and (h) of the EMAA and amended regulations 7(1) and 9 of schedule 2 to the PPFA inconsistent with the Constitution and invalid.

7. On 10 May 2024, the Honourable Mr Justice Dolamo ordered that the urgent application be postponed for hearing until 17 May 2024, to allow the respondents time to file answering papers.
8. On 14 May 2024, the DA instituted the first intervention application to *inter alia* be admitted as a fifth respondent in the urgent application on the alleged basis that the DA had a direct and substantial interest in the main application and should have been joined therein ("**the first intervention application**"). In the first intervention application, the DA filed both a founding affidavit, and an answering affidavit in the urgent application.
9. On 14 May 2024, Webber Wentzel delivered a letter to the attorneys representing the DA, Minde Schapiro and Smith Inc ("**Minde Schapiro**"). In this letter, the applicant:
 - 9.1 in respect of the first intervention application: denied that the DA has a direct and substantial interest in the main application. However, to avoid delays and unnecessary collateral processes, the applicant indicated that it did not intend to oppose the first intervention application on (the wholly

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reasonable) condition that the DA withdraws its request for costs against the applicant in respect of the first intervention application.

9.2 in respect of the DA's answering affidavit in the first intervention application: denied legal contentions raised in the answering affidavit and indicated that these issues would be addressed in the applicant's replying affidavit and in written/oral argument. The applicant further asserted that the DA cannot recover costs from the applicant and stated that "*Biowatch does not redound to your client's benefit. Our client is not the State and is itself protected by Biowatch*".

10. A copy of the letter from Webber Wentzel is attached to the applicant's answering affidavit in the first intervention application as "**QG1**".

11. In response, on 15 May 2024, Minde Schapiro reiterated their client's contention that the DA should have been joined in the main application and indicated that they would continue to seek costs against the applicant for both the first intervention application and the main application. A copy of the response letter from Minde Schapiro is attached to the applicant's answering affidavit in the first intervention application as "**QG2**".

12. On 15 May 2024, the applicant filed a notice of intention to oppose the first intervention application, and on 16 May 2024, the applicant filed its answering affidavit in the first intervention application, and its replying affidavit to the DA's answering affidavit in the main application.

13. On 27 May 2024, following the main application hearing on 17 May 2024 ("**the hearing**"), the Honourable Judge Thulare ("**Judge Thulare**") delivered his

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judgment ("**the judgment**") in which he *inter alia* found that the EMAA is *prima facie* unconstitutional on account of the lacuna it created. Judge Thulare, however, only ordered the *rule nisi*, without making an interim order, and held that the Court hearing the matter on the return date should make a final determination on whether the interim relief should be granted. Moreover, Judge Thulare dismissed the first intervention application with costs.

14. Pursuant to the judgment, on 29 July 2024, the DA filed the second intervention application, arguing on the same grounds as the first intervention application, that it has a direct and substantial interest in the main application. The second intervention application has been belatedly brought by the DA despite knowing as early as 27 May 2024 that the matter was set down on 12 August 2024. The second intervention application essentially seeks to introduce a counter-application at a late stage in the proceedings, in circumstances where, should it be granted leave to "oppose", this Court would likely have to allow all parties to file papers to address the relief sought by the DA.
15. The second intervention application is styled as an "application to oppose" the relief sought in the *rule nisi*. I am advised and submit that no such application exists in our law, and the legal basis for the second intervention application is the same as the first intervention application: the DA must demonstrate that it has a direct and substantial interest in the main application, that its rights or legal interests will be adversely affected by the relief sought in the *rule nisi* (if granted), and that it is otherwise in the interest of justice to grant the DA leave to intervene in the main application.

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16. The DA alleges that it has a direct and substantial interest in the main application because it is a registered political party and is therefore required to comply with the financial thresholds in the EMAA. Furthermore, the DA seems to suggest that it automatically has the right to join the main application, based on Judge Thulare's indication that the first intervention application failed because the DA would have another opportunity on the return date. As will be discussed in more detail below, this interpretation is incorrect, and the DA does not have a direct and substantial interest in the main application.
17. The DA, as in the first intervention application, is again seeking costs against the applicant should it succeed in objecting to the relief sought in the *rule nisi*. It is surprising that the DA has persisted with this approach, which raises questions about the *bona fides* of the second intervention application. As previously mentioned, the applicant had no objection to the DA being joined in the first intervention application (out of convenience not necessity) and on condition that no costs would be sought against the applicant. In another indication of their lack of good faith, the DA chose to launch the first intervention application on the basis that it would be opposed. As in the first intervention application, and as will be dealt with in the applicant's legal submissions, the argument for costs against the applicant lacks any merit or legal basis. The applicant is a civil society organisation and is insulated from costs on account of the *Biowatch* principle.
18. In opposing the relief sought in the *rule nisi*, the DA's primary position in the second intervention application is strikingly similar to the first intervention application. In this regard, the DA claims that there is no lacuna in the EMAA because regulations 7 and 9 of the PPFA (ie the previous regulations) remain in

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effect on account of section 11 of the Interpretation Act which provides that the repealed law remains in force until the substituted provisions come into force.

19. To this end, the DA requests that:

19.1 as the primary relief, the relief sought in the *rule nisi* be dismissed;

19.2 in the first *alternative*, the court issue declaratory relief stating that the upper limit for donations, disclosure threshold remain in effect until amended in terms of section 29(g) and 29(h) of the EMAA.

20. In the second *alternative*, the DA seeks that the *rule nisi* be postponed, to be determined together with the 2023 application.

21. The DA's position in opposing the relief sought is perplexing. The alternative relief that the DA seeks is for the court to pronounce on the issue and declare that there is no lacuna in the law, and therefore, the financial thresholds under the PPFA continue to apply. In essence, despite presenting it differently, the DA is ultimately seeking the same outcome as the applicant in these proceedings. The DA states that it is, regardless of the outcome of the main application, bound by the financial thresholds in the PPFA (and will continue to adhere to them), and is open to the court pronouncing on these issues through declaratory relief. At the same time, however, it vehemently opposes the interim relief sought by the applicants, which would effectively result in the same outcome. Given its position, it is not apparent on what basis and what reasons it does seek to intervene, other than for a spoiler effect, or simply to feature in these proceedings without an actual substantive dispute.

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22. Moreover, the DA rehashes the arguments raised in the hearing of the main application, which had been raised by the third respondents. While the judgment indicated that the parties may supplement their papers before the return date, it was on the basis that the respondents, or any other interested party (including the DA) provide further submissions to counter the *prima facie* views of Judge Thulare. The DA has not done so: it rehashes arguments raised in the hearing of the main application (ie the reliance on section 11 of the Interpretation Act), which has been summarily dismissed by Judge Thulare.
23. Against that background, the purpose of this affidavit is not to engage with each and every paragraph or allegation in the second intervention application. As such, a thematic approach is adopted. For the avoidance of doubt, any allegation in the second intervention application that is inconsistent with any allegation made by the applicant in the main application or the first intervention application must be taken to be denied, and any legal contention in the second intervention application not responded to herein must be taken to be contested.

THE DA'S INTEREST IN THE MAIN APPLICATION

24. The DA claims that Judge Thulare dismissed the intervention application on the basis that the "*DA (as well as other interested parties) would be heard on the return date*". To this end, the DA seems to interpret the judgment to mean that they have been granted an automatic right to intervene in the main application.
25. The correct effect of the judgment is that the first intervention application was dismissed, and the DA was given another opportunity to establish the basis for a direct and substantial interest in the main application before the return date. In

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the second intervention application, however, the DA has failed to satisfy the test for intervention.

26. In this regard, the DA's only basis for claiming an interest in the main application is that, as a registered political party, it is required to comply with the financial thresholds prescribed in the EMAA. The DA argues that because the urgent application concerns these thresholds, it has a direct and substantial interest in the matter. This is a non sequitur.
27. The mere fact that a person or entity is required to comply with legislation does not automatically confer upon them a direct and substantial interest in litigation concerning the validity of that legislation. Compliance with a statutory provision does not inherently grant an interest in legal proceedings challenging that law's validity. The relief the applicant seeks is what applies as a matter of statute.
28. Furthermore, even in circumstances where the relief sought aims to temporarily address a gap in the legislation, it does not grant the DA a direct and substantial interest, as such relief does not affect any of their legal rights. In particular, the DA cannot claim any prejudice to its rights, to the extent that it has any, because, by its own interpretation, it accepts that it is subject to the financial thresholds. If the relief is granted, the DA will continue to act in accordance with the financial thresholds.
29. In fact, the DA has also not sought to meet the higher threshold that is required of a party to establish any interest in a matter where the validity of the law is in issue. The applicant submits that, even if it is shown that the DA has a direct and substantial interest in this matter (which is denied), it would not be in the interests of justice to allow their intervention.

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30. It is not in the interest of justice to grant the DA leave to oppose the relief sought in the *rule nisi*, for the following reasons:

30.1 First, the DA's application to oppose is essentially rehashing arguments and issues which have already been dealt with in the judgment. As will be set out in the sections below, the premise of the DA's case in this application is based on the incorrect reading of section 11 of the Interpretation Act. This submission has been made by the third respondent in the urgent application and has already been dismissed by the judgment as having no merit. This interpretation is manifestly wrong, misleading and unhelpful submission to the court.

30.2 Second, this is an application set down to be heard on an expedited basis and the DA has only belated sought to intervene in late July 2024 despite knowing as early as 27 May 2024 that the matter was set down in 12 August 2024, and the main application should not be derailed or be made additionally cumbersome through the second intervention application.

30.3 Third, as set out above, the second intervention application essentially seeks to introduce a counter-application at a late stage in the proceedings, in circumstances where, should it be granted leave to "oppose", this Court would likely have to allow all parties to file papers to address the relief sought by the DA.

30.4 Fourth, and importantly, the DA will not suffer any prejudice if the relief is granted. The DA believes it is currently as a matter of law already subject

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to the threshold limits and caps, which the applicant seeks by way of interim relief in these proceedings.

30.5 Fifth, the second intervention application is not *bona fide*, and a misguided attempt to safeguard its interest in the 2023 application, which (as set forth below) deals with a different subject and yet to be heard. In fact, the *non-bona fide's* of the DA is clear when regard is had to the fact that the DA's Member of Parliament who has had oversight of this law has accepted that (i) the Amendment Act has created a lacuna and (ii) the lacuna is a problem (see subsection below).

THE DA'S CHANGE OF POSITION

31. As set out above, the DA claims that there is no lacuna in the EMAA.
32. Indeed, as will be shown below, the DA is on record in the National Assembly stating that: (i) there is a lacuna in the law; and (ii) it is a major problem that should be avoided. It is inexplicable that the DA tries to depart from its previous position in this litigation.
33. On 1 March 2024, when the Portfolio Committee on Home Affairs deliberated on the EMAB, it was a DA representative on that Committee and DA Shadow Deputy Minister of Home Affairs, Mr Adriaan Roos, who was the most vocal on this exact issue. During the committee meeting, Mr Roos argued that with the removal of the R15 million limit, political parties could receive unlimited donations with no regulatory oversight.
34. In this regard Mr Roos stated as follows:

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"The DA objects to Clause 29 in specific to item B, G, and H on the formula and the regulations for allocating funds to parties and independent representatives on the disclosure limits and the upper limits being removed. These are, the formula in particular is a substantive amendment and we should have an impact assessment of the Political Party Funding Act that would advise changes in a future general Electoral Amendment Bill".

35. Mr Roos went further on 12 March 2024 as follows:

"This is being done by changing how party funding is allocated to suit themselves and by possibly removing limits for maximum donations and reporting thresholds for a while to create an opportunity to stuff their couches. These amendments have nothing to do with the inclusion of independent candidates." "As the bill is now referred to the National Council the DA will continue to challenge this allocation and press for limits for maximum donations and reporting thresholds to be retained in the interests of fairness to enhance multi-party democracy."

36. A copy of the full issued statement by Mr Roos, as published on the DA website, is attached to the applicant's answering affidavit in the first intervention application as "QG3".

37. In his address in Parliament on 12 March 2024, Mr Roos also stated as follows:

"House Chair, it was John Steinbeck who said, and I quote: 'Power does not corrupt. Fear corrupts... perhaps the fear of a loss of power.'

The Electoral Matters Amendment Bill is supposed to contain consequential amendments arising from the Electoral Amendment Act 1 of 2023, that

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makes provision for independent candidates to participate in national and provincial elections. However, the Bill before us today is a crude attempt at directing more public and donor funds into the coffers of the ANC to help them to try and cling on to power. The Bill in its current form will change how party funding is allocated and create the possibility of a period of time where there will be no upper limit on party donations nor threshold for when a party must disclose a donation. These clauses have nothing to do with the inclusion of independent candidates."

38. The content of the EMAA has remained unchanged since February 2024.
39. It seems that it is only the DA's legal representatives that now stridently assert in this litigation that no lacuna in fact exists. This is an about-turn for the DA itself. I may only presume that the DA now believes that the concerns of its own Members of Parliament were, to use the regrettable phrase from the DA's previous affidavit aimed at the applicant, an "exercise in hysterics". I also note that the DA did not disclose Mr Roos' statements in its previous affidavit, which is materially inconsistent with its new position as set out in both the first and second intervention application, which they should have done, especially in circumstances where the DA seeks a declaratory order which would be final in effect.

SECTION 11 OF THE INTERPRETATION ACT

40. The DA, in its first intervention application, and the third respondent, in its answering papers in the main application, argued that there is no lacuna in the EMAA because, pursuant to section 11 of the Interpretation Act, regulations 7 and 9 of the PPFA (ie the previous regulations) remain. This means that until

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the President publishes new regulations to determine the thresholds in terms of sections 29(g) and 29(h) of the EMMA (which replace regulations 7 and 9 of the PPFA), the previous regulations continue to apply. The DA, in the second intervention application makes the same argument.

41. In its replying papers, its written submissions and oral submissions at the hearing, the applicant argued that this interpretation is wrong. To avoid prolixity, and in summary, the applicant argued that section 11 of the Interpretation Act only applies to provisions that have not yet come into operation, and since sections 29(g) and 29(h) of the EMAA are already in force, the previous regulations 7 and 9 of the PPFA no longer apply. Thus, reliance on section 11 is misplaced, as it cannot maintain the effect of repealed provisions after new ones have come into operation.
42. In paragraph 13 of the judgment, Judge Thulare agreed with the applicant that section 11 of the Interpretation Act only applies to provisions that have not yet come into operation. In this regard, Judge Thulare states as follows:

"[13] Reliance on section 27(5) of EMAA is basically on the same footing as reliance on section 12 of the Interpretation Act, 1957 (Act no. 33 of 1957) (the IA.) Section 27(5) of EMAA amends section 24 of the PPFA and reads:

"(5) Each regulation in schedule 2 is a transitional regulation and shall become inoperative on the date that such a regulation replacing the said regulation made by the President in terms of subsection (1) becomes effective."

11. Repeal and substitution

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When a law repeals wholly or partially any formally law and substitute provisions for the law so repealed law shall remain in force until the substituted provisions come into operation."

The new Regulation 7 and 9 came into operation on 8 May 2024. In other words, the substituted provisions came into operation. I am persuaded by the applicant's case that the old regulations have been repealed and substituted. The upper limits and threshold have been repealed. The legislation, the PPFA, since the amendment through the EMAA, no longer has the upper limit and the disclosure threshold. It seems to me that by the time section 27(5) came into operation, the R15 million in regulation 7 and the R100 000-00 in regulation 9 had already left the stable, and the NA had to pass a resolution and the first respondent had to determine the amounts in the respective regulations. Section 27(5) upon which the third respondent relied may save the day in each regulation in schedule 2 from 8 May 2024, but not before then in my view. The applicant has established a prima facie case."

(own emphasis)

43. The DA further submits that the Court must adopt an interpretation of section 9 (1) in a manner, through the lens of section 11 of the Interpretation Act, that saves it from unconstitutionality, or the outcome the applicant contends it creates. This argument, however, does not support the DA's position either.
44. This Court cannot reimagine what section 11 means just for the purposes of this case when its meaning and import is clear, and does not align with the purpose

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of the provision or the language used. The language cannot reasonably bear the interpretation contended for by the DA.

ALTERNATIVE DECLARATORY RELIEF

45. The DA's prayer for alternative relief is to request that court to grant declaratory relief "*in the event that the relief sought in the rule nisi is not dismissed*".
46. In the event the urgent application is not dismissed, it would mean that the court has granted the relief sought in the urgent application that the lacuna had to be temporarily remedied. If the condition that the DA prescribes for its relief is met, the DA's application of section 11 of the Interpretation Act to this matter is wrong, and thus it would not be entitled to the declaratory relief.
47. The applicant of course has no difficulty with the declaratory relief sought in the alternative by the DA, as it mirrors for all substantive purposes the substantive relief sought by the applicant. It bears emphasis, however, that this relief is based on a fundamentally flawed interpretation (which the applicant does not support).

THE 2023 APPLICATION

48. As a third alternative, the DA is requesting that this Court postpone the determination of the *rule nisi* so that it can be heard and decided together with the pending 2023 application.
49. The DA alleges that the facts and issues to be determined in the 2023 application and the urgent application are similar and should be addressed in the 2023 application, where all the facts have been thoroughly examined. Furthermore,

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the amended relief sought in the 2023 application overlaps with the relief sought in the *rule nisi*. To this end, the DA allege that this court is tasked with considering the same issues, including the extent to which the Constitution requires a disclosure threshold of R100,000 and whether the Constitution requires a donation limit of R15 million at all.

50. The 2023 application addresses fundamentally different issues. It challenges the broader constitutional issues of the PPFA (as amended by the EMAA) arguing that the regulations are inadequate for ensuring transparency and preventing corruption. The applicant seeks the setting aside of the minimum thresholds for disclosure, such that all donations are disclosed and the lowering of the upper limit.

51. In the sections below, I summarise the applicant's contentions and relief sought in both the main application, and the 2023 application, highlighting the differences between the two applications.

The relief sought in the urgent application: financial thresholds

52. In the urgent application, the applicant seeks interim relief that, pending the earlier of: (i) the finalisation of proceedings to be launched to declare section 29(g) and (h) inconsistent with the Constitution and invalid; (ii) the determination of the upper limit and the disclosure threshold, the upper limit shall be deemed to have been determined R15 million per annum, and the disclosure threshold shall be deemed to have been determined at R100,000 per annum.

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53. This is a temporary mechanism to ensure that, at the very least, political parties will comply with the financial thresholds in the PPFA, instead of having no financial thresholds in place at all.

The disclosure threshold: 2023 application

54. The applicant submits that the disclosure threshold, as determined in section 9 (1) of the PPFA, read together with the previous regulation 9 of the PPFA (prior to its amendment, in the amount of R100,000) is arbitrary, unlawful and unjustifiably high. The applicant contends that it imposes a threshold on the disclosure of private party funding where the constitutional imperatives (including the right to an informed vote) dictates that all donations must be disclosed.

55. In addition, the applicant submits that the disclosure threshold in terms of section 9 (1) of the PPFA, read together with section 29(h) of the EMAA, (ie the new regulation 9), will still impose a prescribed threshold once determined. This will continue to limit the disclosure of all private donations, which remains unconstitutionally untenable.

56. Given these issues, in the amended relief, the applicant seeks a declaration that section 29(h) of the EMAA, (ie, the new regulation 9 which has deleted the threshold of R100,000) be declared invalid from 8 May 2024, and that such declaration of invalidity be applied retrospectively. As consequential relief, the applicant seeks that political parties and independent candidates disclose all donations received from private parties from 8 May 2024 till the date of the order.

57. If the relief is granted as outlined above, section 29(h) of the EMAA (ie the new regulation 9, which removed the disclosure threshold of R100,000) will be

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declared invalid from 8 May 2024. As a result, all political parties and independent candidates will be required to disclose all donations. Similarly, the previous disclosure threshold (under the former regulation 9 of the PPFA) will also be declared invalid. The applicant requests that the court establish a new framework requiring political parties and independent candidates to disclose all donations received.

The annual limit: 2023 application

58. In the 2023 application, the applicants argue that there is no constitutional justification for an upper limit of R15 million in private donations (as set out in section 9(1)(a), read together with regulation 7 of the PPFA - prior to its amendment), and such an excessive limit falls short of the constitutional imperatives concerning the obligation on elected representatives to fulfil their constitutional mandate unencumbered by the dictates of private interests.
59. Moreover, pursuant to the enactment of section 29(g) of the EMAA, the applicants emphasise that the lack of an annual limit is far more detrimental which means that political parties can receive unlimited funds from private parties. This opens the door to vast sums of money influencing political parties, leading to even greater risks of corruption and undue influence.
60. Given these issues, in the amended relief, the applicant seeks a declaration that section 29(g) of the EMAA, regulation 7 (ie the new regulation which has deleted the annual limit of R15 million) be declared invalid from 8 May 2024, with this declaration of invalidity to be applied retrospectively. Moreover, as consequential relief, the applicant seeks that political parties and independent candidates must return all donations received from private parties from 8 May

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2024 (ie the date of the enactment of the EMAA) until the date of the order (*alternatively* above the annual limit of R15 million).

61. In addition, the applicant seeks to have the pre-amendment limit of R15 million be declared invalid, but this be suspended for 12 months to allow Parliament to address the constitutional issues and establish a constitutional compliant annual limit.
62. If the relief is granted as outlined above, section 29(g) of the EMAA and regulation 7 of the EMAA (the new regulation which deleted the annual limit of R15 million) will be declared invalid. Consequently, all amounts donated in excess of the pre-amendment upper limit of R15 million from 8 May 2024 must be returned. Moreover, the previous regulation 9 will be reinstated until Parliament remedies the constitutional defects by, *inter alia* lowering the annual limit.

Difference between the 2023 application and the main application

63. In the main application, the applicant seeks to maintain the pre-amendment disclosure threshold of R100,000 as a temporary measure to ensure continued transparency and prevent further harm. This approach is forward-looking and focuses on preserving the status quo, without delving into the broader constitutional implications of the financial thresholds and dealing only with the patently untenable situation that no thresholds and limits are currently in place, contrary to the legislature's own intention, contrary to settled Constitutional Court precedent on rationality and contrary to the most basic findings of *My Vote Counts II*. The applicant asks the court to reinstate the previous financial thresholds. By requesting the reinstatement of the old disclosure thresholds, the

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applicant's aim is to fill the current legislative lacuna and ensure that political parties and independent candidates continue, as a matter of practical reality, to disclose donations as per the previous regulations. This interim relief is not about addressing past actions but rather about preventing further harm by ensuring ongoing compliance with the established transparency requirements.

64. The 2023 application on the other hand seeks a comprehensive constitutionally based overhaul of the political funding disclosure framework. For instance, it challenges the very notion of having a disclosure threshold, contending for full transparency without any financial limits, and seeking a reduction in the annual donation limit. The retrospective relief sought in the 2023 application is a separate and fundamentally different in nature from the interim measures requested in the urgent application. The retrospective relief aims to address and remedy the past harm caused by the absence of no financial thresholds. Even if such relief is granted, it may well be difficult or impossible to 'unscramble the egg' and therefore, the relief sought in the main application is necessary to prevent ongoing and manifest public harm. No doubt, the respondents in the 2023 application will raise issues concerning retrospectivity of any relief.

65. It is also important to note that the relief sought in the main application is interim. It addresses the pendente lite period, before the 2023 application will be heard. It will lapse upon the 2023 application's determination.

URGENCY AND THE 2023 APPLICATION

66. The DA asserts that the relief sought in the urgent application is no longer urgent because the urgency, at the time, was based on the impending 2024 elections, which have now passed. As a result, the urgency has dissipated. Moreover, the

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DA contends that, in any event, the hearing date for the 2023 application is set down for the fourth term in 2024.

67. The passing of elections does not diminish the urgency of the relief sought in the main application. On the contrary, the urgency of the amended relief is heightened due to the growing need to address the unregulated flow of private donations and the lack of transparency.
68. The reality is that political parties and independent candidates continue to receive funds from private parties beyond election periods, and without established financial thresholds, there is an ongoing risk of unregulated and undisclosed funding. This situation necessitates prompt intervention to maintain transparency and accountability in political financing.
69. From now until: (i) the fourth term of 2024 when the main application is to be heard; or (ii) Parliament passes a new resolution (if it does at all), interim measures need to be in place to prevent potential abuses. Every day that passes without these measures increases the risk of undisclosed and unlimited donations influencing political activities, and compromising the integrity of the democratic process.

RESPONSES TO SPECIFIC ALLEGATIONS SERIATIM

70. In the context of the above, I now turn to address those allegations contained in the supporting affidavit that require specific responses, to the extent that they have not been dealt with above. Any averment, statement or prayer in the supporting affidavit that is not expressly admitted in the paragraphs below is denied as if specifically traversed.

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Ad paragraph 1 to 3

71. The content of these paragraphs are noted.

Ad paragraph 4

72. The content of this paragraph is denied.

73. Without derogating from the generality of the aforesaid denial, as set out in paragraph 15 above, an "application for leave to oppose" does not exist in our law, and what the DA has launched is a second intervention application.

Ad paragraph 5 to 8

74. The content of these paragraphs are noted.

Ad paragraph 9

75. The content of this paragraph is denied.

76. Without derogating from the generality of the aforesaid denial, the applicant denied that it is seeking an interim interdict in the main application. In the main application, the applicant applies for relief in terms of section 172(1) of the Constitution.

Ad paragraph 10

77. I have dealt with the DA's alleged interest in the main application in paragraphs 24 to 30.5 above. In addition, Judge Thulare, in the judgment dismissed the non-joinder submissions raised by the respondents in the main application.

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Ad paragraph 11

78. The content of this paragraph is admitted.

Ad paragraph 12 (Including sub paragraph 12.1 and 12.2)

79. I have dealt with the nature and effect of the judgement, in paragraphs 22, 24 and 25 above.

Ad paragraph 13

80. The content of this paragraph is denied for the reasons as set forth in paragraphs 15, 72 and 73 above.

Ad paragraph 14 to 15

81. The content of these paragraphs is denied for the reasons as set forth in paragraphs 24 to 30.5 above.

Ad paragraph 16 to 20

82. The content of these paragraphs is denied for the reasons set forth in paragraphs 40 to 44 above.

Ad paragraphs 21 and 22 (including subparagraphs)

83. The content of these paragraphs is denied for the reasons set forth in paragraphs 45 to 47 above. In addition, it is further denied that the requirements for declaratory relief have been met. The declaratory relief is, as set forth above, premised on the incorrect interpretation of section 11 of the Interpretation Act, and the DA has no interest in the main application.

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Ad paragraphs 23 to 35

84. The content of these paragraphs is denied for the reasons set forth in paragraphs 48 to 69 above.

Ad paragraph 39 and 40

85. The content of these paragraphs is denied for the reasons set forth in paragraphs 48 to 69 above.

86. The application does not ask the court to decide whether the President should make a determination on the financial thresholds. Instead, the applicant has requested that the court temporarily fill the lacuna in the EMAA by reinstating the financial thresholds under the previous PPFA regime (pre-amendment).

Ad paragraph 41

87. The content of these paragraphs is denied for the reasons set forth in paragraphs 40 to 44 above.

Ad paragraph 42

88. The content of these paragraphs is denied for the reasons set forth in paragraphs 48 to 69 above. The application does not allege that this court must determine whether there should be a donation limit at all, nor does it challenge the constitutionality of such a limit (aside from the unconstitutionality of the lacuna itself). Instead, the applicant has requested that the court temporarily fill the lacuna in the EMAA by reinstating the financial thresholds under the previous PPFA regime (pre-amendment).

TM
DL.

Ad paragraphs 43

89. The content of these paragraphs is denied for the reasons set forth in paragraphs 40 to 44 above.

Ad paragraph 44 – 46

90. The content of these paragraphs is denied for the reasons set forth in paragraphs 40 to 44 above. Moreover, it is specifically denied that the applicant's statement in the founding affidavit—asserting that, due to the lacuna, there is "undue influence by certain companies and actors in South Africa's political and governance system"—is hyperbolic. As a matter of fact, without any financial thresholds resulting from the lacuna, donations from private parties can be made in any amount without the need for disclosure, which could lead to undue influence by private parties on the political system. I also point out that the National Assembly itself, in its order paper dated 8 May 2024, described a "gap in the law" (see annexure "FA3" to the founding affidavit).

91. The DA misconstrues the allegation in paragraph 24. The applicant does not make any allegations relating to "*the extent to which money affects politics in South Africa*".

Ad paragraph 50

92. The content of these paragraphs is denied for the reasons set forth in paragraphs 40 to 44 above.

TM

OC

Ad paragraph 51 (including sub paragraphs)

93. The allegations in this paragraph are denied for the reasons set forth in paragraphs 66 to 69 above.

Ad paragraph 52

94. The allegations in this paragraph are denied.


95. Without derogating from the generality of the aforesaid denial, the applicant submits as follows.

96. In the second intervention application (as it likewise applied to the first intervention application):

96.1 If the applicant successfully opposes the second intervention application, it is entitled to its costs.

96.2 If the court grants the second intervention application, the costs should be same as the main application. In the main application, the *Biowatch* principle applies and the applicant is insulated from a costs order sought against it.

TM
04




DEPONENT

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at Sandton on this the 8 day of **August 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.



COMMISSIONER OF OATHS

Full Names:  **Thulisile Mokoena**
Capacity: **Commissioner of Oaths in terms of Section 5(1),
Justice of Peace and Commissioner of Oaths Act, 1963
(Act 16 of 1963) RO-39/03/2021 Randburg 14/4/2021**
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