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

CASE NO:7630/23

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
INDEPENDENT ELECTORAL COMMISSION	Fourth Respondent
AFRICAN NATIONAL CONGRESS	Fifth Respondent
DEMOCRATIC ALLIANCE	Sixth Respondent
ECONOMIC FREEDOM FIGHTERS	Seventh Respondent
INKATHA FREEDOM PARTY	Eighth Respondent
NATIONAL FREEDOM PARTY	Ninth Respondent
UNITED DEMOCRATIC MOVEMENT	Tenth Respondent
FREEDOM FRONT PLUS	Eleventh Respondent
CONGRESS OF THE PEOPLE	Twelfth Respondent
AFRICAN CHRISTIAN DEMOCRATIC PARTY	Thirteenth Respondent

AFRICAN INDEPENDENT CONGRESS	Fourteenth Respondent
PAN AFRICANIST CONGRESS	Fifteenth Respondent
AFRICAN TRANSFORMATION MOVEMENT	Sixteenth Respondent
GOOD PARTY	Seventeenth Respondent
AL JAMA-AH	Eighteenth Respondent
ACTION SA	Nineteenth Respondent
SPEAKER OF THE NATIONAL ASSEMBLY	Twentieth Respondent
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	Twenty-First Respondent

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NOTICE OF APPLICATION FOR LEAVE TO APPEAL

TAKE NOTICE THAT, in terms of section 17(1)(a)(ii) of the Superior Courts Act, 2013, the applicant applies for leave to appeal to the Supreme Court of Appeal, against the whole of the judgment and order of the Western Cape High Court handed down on 21 August 2025 by the Full Court.

TAKE FURTHER NOTICE THAT that this application is brought on a conditional basis pending the determination of the applicant's contemporaneous application to the Constitutional Court for direct leave to appeal in terms of Rule 19 (2) of that Court's Rules.

TAKE FURTHER NOTICE THAT the application for leave to appeal is made on the basis that the Learned Judges erred in the respects set forth below.

1. The Learned Judges erred in finding that based on the President's Proclamation of 18 August 2025 ("**the Proclamation**"), in which the President established new thresholds, the applicant's challenge to the "*old*" upper limit and disclosure threshold under the PPFA was rendered moot, and that the new thresholds were "*unchallenged*",[1] for the following reasons:

1.1 First, the High Court did not afford the parties an opportunity to address the issue of mootness. This departure from *audi alteram partem* deprived the applicant of the chance to demonstrate why the matter was not moot and why the Court in any event should have determined the constitutional issues raised.

1.2 Second, the amendment to the financial thresholds by way of the Proclamation did not in fact render the applicant's challenges and relief moot. The applicant's challenge was not confined to the numerical values of the thresholds; it was directed at the constitutional defects in the statutory scheme itself. These include: the absence of a rational process in determining the thresholds; the failure to regulate related entities; the lack of any justification for a disclosure threshold; the failure to distinguish between the types of political parties and independent candidate, the failure to distinguish the different types of elections and spheres of government, the unlawful delegation of legislative power to the President; the unlawful omission of the critical considerations and factors in determining any limits, and the unconstitutional vagueness of the delegation, including a lack of guidelines circumscribing any delegation. Each of these defects applies

[1] High Court judgment, paras [23], [47], [48].

with equal force to the statutory scheme pursuant to the EMAA. The applicant's challenge thus remained live either wholly or in substantial part.

1.3 Third, the applicant's challenge to the disclosure threshold was principally directed at the lawfulness of the empowering scheme and its key features. In this regard, the applicant argued: (a) that there should be no threshold given that the Constitutional Court's decision in *My Vote Counts NPC v Minister of Justice and Correctional Services and Another* 2018 (5) SA 380 (CC) ("***My Vote Counts II***") demands full disclosure; and (ii) if a threshold is indeed permissible, it must be justified in terms of section 36 of the Constitution, which the State has failed to do. It is in this context that the applicant argued that the R100,000 was unlawful because it did not give effect to the principles in *My Vote Counts II* and undermined the purpose and object of the PPFA (as amended by the EMAA).

1.4 Fourth, the disclosure threshold is entirely undermined by lack of control for donations by related parties. Any disclosure threshold is also one-size-fits-all, which is both plainly irrational and unconstitutional. The fact that the disclosure threshold doubled in quantum through the Proclamation reinforces the need for the relief sought, and does not render the issue moot.

1.5 Fifth, the same principles apply to the upper limit challenge. The applicant challenged both the unconstitutionality of legislation which sets a limit which is applicable equally to all donors and all political parties and independent candidates without stratification, and does not control for related donors. The applicant also challenged the absence of a rational process

for determining the cap and the excessive quantum of the limit relative to the stated objectives of the PPFA (as amended by the EMAA), which include reducing corruption and preventing undue influence in political party funding. The President's decision to double the cap from R15 million to R30 million while judgment was pending did not render these constitutional challenges moot. On the contrary, this action reinforced the need for the relief sought, as a cap of R30 million is even more constitutionally problematic, it permits substantially greater potential for undue influence in the funding of political parties, and exacerbates the very constitutional defects the applicant seeks to remedy.

2. The Court erred in law by failing to invite submissions on mootness before reaching this conclusion. As traversed above, this violated the *audi alteram partem* principle and deprived the parties of the opportunity to be heard on an issue dispositive of their case. This approach offends the basic procedural fairness expected of a constitutional court of first instance, particularly where the Court itself had earlier emphasised the constitutional importance of transparency in political funding.

3. The Court also failed to consider that the applicant's challenges were directed at systemic constitutional flaws in the scheme. These defect, (namely the absence of evidence-based determinations, unguided discretion, and disclosure loopholes) persist regardless of the numerical adjustments made by the President.

4. The High Court further (i) found it could not "interfere" with the upper limit and disclosure thresholds because these were based on "legislative facts";[2] (ii) dismissed the applicant's challenge to the failure to regulate related persons or entities as "speculative or vague" for want of "established facts";[3] (iii) dismissed the challenge that there was no requirement for political parties, and for the IEC, to disclose and report on the expenditure of political parties on the basis that the applicant failed to produce sufficient facts or evidence that the lack of such regulation infringed particular rights;[4] and (iv) found that the possibility of the President abusing his powers in determining the financial thresholds is insufficient to sustain a challenge against section 24(1), which confers such powers on him, and that the President's decisions are in any event subject to judicial review if exercised improperly.[5] The Learned Judges erred in making the above findings as no regard was had to the following considerations:

4.1 The applicant situated each of its challenges within the Constitutional Court's *My Vote Counts II* judgment and the constitutional framework, contending that the impugned provisions, whether in form or effect, undermine the constitutional imperatives of transparency, accountability, and access to information necessary for the exercise of informed political choice and the right to vote.

4.2 In view of the relevant constitutional imperatives, the State bears a positive constitutional obligation to enact legislation that (i) gives meaningful effect

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2 High Court judgment, para [46].

3 High Court judgment, paras [55] and [56].

4 High Court judgment pars [53] and [54].

5 High Court judgment, para [36].

to the right to vote and of access to information and transparency in respect of private political funding, and that all donations must be disclosed; and (ii) properly regulates excessive donations to political parties in the form of a regime to cap donations received from private parties, in order to vindicate constitutional rights and imperatives. The applicant's case proceeds from the premise that the PPFA (as amended by the EMAA) falls short of the constitutional imperatives set out above, and thus the impugned provisions were unconstitutional and ought to be declared invalid in terms of section 172(1) of the Constitution.

4.3 This method adopted mirrors the approach taken by this Court in *Glenister II*[6] and *Helen Suzman Foundation*,[7] where the Constitutional Court examined, provision by provision, whether Parliament's chosen measures satisfied the applicable constitutional standard set forth in *Glenister II*, and set aside those that did not. This is the same approach that the applicant adopted in the High Court.

4.4 By its nature, that assessment is objective: the impugned provisions must be measured against the constitutional benchmarks, to the extent relevant as interpreted in *My Vote Counts II* and determine whether, on their text, purpose and effect, they meet those standards. The applicant illustrated breach of various provisions in the Bill of Rights and the burden fell on the State to illustrate that its limitation of right was justified, which it failed to do.

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6 *Glenister v President of the Republic of South Africa and Others* 2011 (3) SA 347 (CC) ("***Glenister II***")

7 *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* 2015 (2) SA (1) CC ("***Helen Suzman Foundation***").

4.5 The applicant's case was also premised on the contention that the impugned provisions were irrational and arbitrary - either **procedurally**, on the basis that no discernible process was followed to determine, for example, the upper limit or disclosure threshold; or **substantively**, *inter alia*, on the basis that the impugned provisions lacked a rational connection to the purpose of the PPFA (as amended by the EMAA) as legislation enacted in order to give effect to the substantive constitutional imperatives set out in by this Court in *My Vote Counts II*.

4.6 The applicant's constitutional challenge that the impugned provisions are irrational is grounded in well-established Constitutional Court authorities. In this regard, it is trite that while Parliament is vested with the authority to enact legislation, this power is not immune from judicial review. Parliament remains subject to constitutional constraints, one of which is the requirement that the law must be rational. The test for determining whether legislation is rational is similarly an objective test grounded in the rule of law.[8]

4.7 The objective assessment is described by the Constitutional Court in *Ferreira v Levin*[9] in the following terms: the enquiry as to constitutional invalidity "*is an objective one. A statute is either valid or 'of no force and effect to the extent of the inconsistency'. The subjective positions in which parties to a dispute may find themselves cannot have a bearing on the*

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8 Section 44(1) and (4) of the Constitution; *New National Party of South Africa v Government of the Republic of South Africa and Others* 1999 (3) SA 191 (CC), paras [19] and [24] – [90]; *Glenister II*, para [5]; *Pharmaceutical Manufacturers Association of SA and Another: In Re Ex Parte President of the Republic of South Africa and Others* 2000 (2) SA 674 (CC), paras [86] and [89].

9 *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others* 1996 (1) SA 984 (CC), para [26].

status of the provisions of a statute under attack. The Constitutional Court, or any other competent Court for that matter, ought not to restrict its enquiry to the position of one of the parties to a dispute in order to determine the validity of a law. The consequence of such a (subjective) approach would be to recognise the validity of a statute in respect of one litigant, only to deny it to another. Besides resulting in a denial of equal protection of the law, considerations of legal certainty, being a central consideration in a constitutional state, militate against the adoption of the subjective approach." The Court also held that "*The issue of whether a law is invalid or not does not in theory therefore depend on whether, at the moment when the issue is being considered, a particular person's rights are threatened or infringed by the offending law or not.*".[10] It is thus not the details of any specific individual case which are critical, but whether the statutory provision in question, objectively speaking, infringes any constitutional rights or requirements, or is otherwise unconstitutional.

4.8 The judgment therefore did not engage with the applicant's submissions demonstrating that the impugned provisions were unconstitutional. The judgment makes no substantive reference to *My Vote Counts II* or even attempt to test whether the impugned provisions give effect to the constitutional imperatives established in that decision.

4.9 Moreover, it is clear that the High Court immunised all choices made by Parliament without proper or any interrogation, even where it was plain that those choices contravened the constitutional imperatives and were

[10] *Ibid*, para [27].

irrational. This is irreconcilable with constitutional supremacy and with the Constitutional Court's jurisprudence, which obliges courts to ensure that all public power, including legislative power, remains within constitutional bounds.

5. The Learned Judges dismissed the applicant's challenge to the R15 million upper limit cap on donations, on the basis that the upper limited lacked the ability to meaningfully influence large parties and cited the example of the Democratic Alliance ("**the DA**"), which spends hundreds of millions of rands on their election campaigns.[11] The Court's finding in this regard was, respectfully, erroneous because the Court unduly relied exclusively on the example of the DA. In doing so, the Court ignored the reality that most political parties and all independent candidates operate on much smaller budgets, for whom a single donation of R15 million is transformative. The one-size-fits-all approach to limits is plainly irrational, as it fails to take account of material differences between large and small political actors. The Court failed to appreciate that by applying the same limit to all parties, it entrenches inequality in the political arena and distorts the fairness of elections, undermining the rights guaranteed in section 19 of the Constitution. This also undermines the founding values in section 1(d) of accountability, responsiveness and openness.

6. The Learned Judges found that the applicant's challenge to the PPFA (as amended) on the basis that it fails to provide regulation in respect of related parties was "speculative" and "vague", on the basis that the applicant failed to define what constitutes "related parties" or explain how such connected

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[11] High Court judgment, para [49].

relationships could be established, and thus dismissed the applicant's challenge.[12] In doing so, the High Court erred, respectfully, for the following reasons:

6.1 First, the applicant was not required to prescribe a specific legislative solution or define the legal mechanics by which Parliament ought to regulate related entities. The applicant was thus not required to adduce case specific evidence of abuse or to make recommendations to the Court on how connected parties should be regulated in the PPFA (as amended by the EMAA). In fact, this is the antithesis of the approach to judicial reviews. It is for the legislature to work out the details of the legislative solutions to constitutional problems or imperatives.

6.2 Second, the proper question for the High Court was whether the absence of any provisions addressing regulated persons or entities renders the PPFA (as amended by the EMAA) irrational and fails to give effect to the constitutional imperatives set forth in the Constitution and *My Vote Counts II*.

6.3 The Court, however, did not engage with the applicant's submissions that the absence of regulation of related entities (particularly given that juristic and natural persons are treated identically under the PPFA) is fundamentally at odds with the Constitution and constitutional imperatives of transparency, openness and accountability.

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[12] High Court judgment, paras [55] and [56].

6.4 The lack of regulation permits related entities to evade the statutory upper limit - by allowing the same economic actor to channel multiple donations through connected entities, thereby contributing well beyond the cap of R15 million per annum - and simultaneously to avoid disclosure by structuring repeated sub-threshold donations through different vehicles.

6.5 In effect, the scheme enables donors to conceal both the true source and the true quantum of political funding, undermining the constitutional rights in sections 19(1)–(3) and 32, the guarantee of free and fair elections in section 19(2), and the principles confirmed in *My Vote Counts II* that access to full and accurate information on private funding is essential to the meaningful exercise of the right to vote and to preventing corruption and undue influence in the democratic process.

6.6 <u>Third</u>, in any event, without being required to, the applicant identified various specific examples and facts of how the absence of regulation of connected persons and entities had been abused. These were not considered by the High Court.

6.7 <u>Fourth,</u> the High Court erred in finding that the applicant did not provide a basis on which connected entities could have been regulated. Again, while not required to propose a legislative framework to deal with connected entities, the applicant pointed to existing and well-developed concepts in South African law, including the Companies Act 2008, which provides clear guidance in section 2 regarding who would be construed as related and interrelated persons, juristic persons and the concept of control.

6.8 Fifth, it is also important to emphasise that even if there is a difficulty in determining whether entities are related to or subject the same level of control, this is not a proper basis on which to dispense with the constitutional requirements or abandon necessary constitutional safeguards. It was never the applicant's case that Parliament should adopt a particular model for regulating connected entities, or that the Court should do so. Instead, based on the relief sought, it sought that Parliament cure the constitutional defect and determine the precise manner on how this should be done.

6.9 Thus, the High Court's conclusion that the challenge was speculative and vague rested on a misapplication of the applicable standard, a misunderstanding of the facts placed before it, and a fundamental misappreciation of the constitutional implications of the legislative omission. The High Court did not meaningfully engage with the applicant's legal submissions or the factual examples provided and failed to address the broader constitutional context in which the challenge was situated.

7. The Learned Judges held that the delegation to the President of powers to set the thresholds and limits under the PPFA (as amended) was not unconstitutional, on the basis that the power conferred on the President was regulatory in nature rather than legislative.[13] The High Court's finding that the delegation to the President was constitutionally permissible was, with respect, based on an incorrect legal standard, a misapprehension of the relevant jurisprudence, and a

[13] High Court judgment, para [33].

failure to consider material facts and constitutional values central to the enquiry, for the following reasons:

7.1 The High Court misunderstood and misapplied the proper import of *Executive Council*.[14] Contrary to the High Court's findings, that judgment does not provide for a formalistic distinction between "regulatory" and "legislative" powers but instead adopts a substantive test which turns on the nature and content of the power conferred.

7.2 In this regard, *Executive Council* draws a substantive distinction between: (i) conferring authority on the executive to give effect to the principles and policies that Parliament has laid down in the statute (which is permissible); and (ii) empowering the executive to determine and/or alter those principles and policies (which is impermissible). This is supported and buttressed in other Constitutional Court judgments.[15]

7.3 In line with these authorities, which provide for the proper test within which to determine whether the Parliament's conferral of power is constitutional, it is clear that the President's power is unconstitutional.

7.4 Given the nature, source and purpose of the power in this case, Parliament is simply not at liberty to subdelegate its authority to set any disclosure thresholds and upper limits. The power delegated is in any event legislative in nature and cannot be delegated. Moreover, the President is, or is

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[14] *Executive Council of the Western Cape Legislature and Others v President of the Republic of South Africa and Others* 1995 (4) SA 877 (CC), para 54.

[15] *Nu Africa Duty Free Shops (Pty) Ltd v Minister of Finance and Others* 2024 (1) SA 567 (CC), paras 93 and 95; *Smit v Minister of Justice and Correctional Services* 2021 (1) SACR 482 (CC), para 37; *Justice Alliance of South Africa v President of Republic of South Africa and Others, Freedom Under Law v President of Republic of South Africa and Others, Centre for Applied Legal Studies and Another v President of Republic of South Africa and Others* 2011 (5) SA 388, para 54.

reasonably apprehended to be, institutionally biased and thus cannot be vested with the types of far-reaching powers set forth in the PPFA (as amended).

7.5 Moreover, and in any event, the sub-delegation is impermissibly vague contrary to the requirements of the rule of law and does not require the President to take account of the most important considerations which should emanate the determination of any disclosure threshold or upper limit.

7.6 Entrusting the President with the discretion to establish the financial thresholds places a substantial amount of political influence within the grasp of one individual, who is a political actor and typically the head of a political party who would either be greatly disadvantaged or benefited by the changes. The President, as the leader of a political party, inherently possesses a vested and one-sided 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 his political interests, creating an unequal playing field for other political parties. Such a concentration of power contravenes the separation of powers and does not provide an adequate safeguard against a breach of the constitutional right to an informed vote and the right of access to information, and the State's duty to protect, promote, and fulfil all the rights in the Bill of Rights.

7.7 Moreover, the power is also vested in an actor who is institutionally biased, which is impermissible. Given the nature of the political rights sought to be protected, investing a single political actor with this kind of authority is constitutionally impermissible. It does not comply with the constitutional safeguards necessary to give effect to sections 7, 19 and 32 of the Constitution.

7.8 Further, the Constitutional Court through the aforementioned decisions has cautioned against precisely this form of undue sub-delegation, where the Executive is granted a free hand to shape, and thereby rewrite, the underlying policy determination which should properly be determined in the legislation. Such latitude effectively renders the Executive a co-legislator, cutting across the delineations intended to maintain constitutional checks and balances.

7.9 Granting the President the discretion to determine, revise, or otherwise alter the upper limit and disclosure threshold is tantamount to granting the President the authority to amend a core feature of the PPFA (as amended by the EMAA) and rewrite the provisions of the PPFA (as amended by the EMAA), whenever the President chooses to do so. The quantum of the thresholds is not a mere administrative or regulatory detail (the President is not merely filling in figures). It is central to the constitutional purpose, scope and effectiveness of the PPFA (as amended by the EMAA). The manner in and the level at which these thresholds are set directly determines the extent to which the PPFA (as amended by the EMAA) can promote transparency and guard against corruption or undue influence in the

political sphere. The essential policy choices embodied by the threshold—namely, how permissive or restrictive the legislative scheme will be—are properly matters for Parliament itself, not one political actor like the President. Parliament has handed over plenary authority over to the President, in respect of matters which are pre-eminently in its domain.

7.10 Parliament, by design, deliberates through multiple readings, committee hearings, and public participation, thereby fostering a degree of accountability and democratic input. When the power to set or adjust thresholds is placed exclusively in the hands of the President, however, the guiding process is comparatively opaque. This is especially problematic in the sensitive sphere of political party funding, where even small shifts in disclosure or donation limits can significantly alter the political playing field. The President could, for instance, raise the threshold to a level that renders donation caps and disclosure obligations virtually meaningless, or reduce the limit in a manner unduly restricting parties' funding streams - both outcomes undermining the PPFA's stated aims.

7.11 The High Court failed to consider and engage with the applicant's submissions as aforesaid. The High Court instead treated the issue as a formalistic question of classification and concluded, on that limited and erroneous basis, that the delegation was constitutionally permissible simply because the President was empowered to promulgate regulations under the PPFA (as amended by the EMAA), and was not, at least at the superficial level an express power to legislate. On a substantive analysis, these findings are untenable. It is also not without significance that in the

original version of the PPFA, the first threshold and upper limit was set by Parliament, not the Executive, underscoring the legislative nature of the function.

7.12 The High Court did not undertake any analysis of the *substance* of the power delegated to the President, the President's institutional position and potential bias, or the fact that the President is empowered to determine thresholds at any level, including those that could defeat the very object and purpose of the PPFA (as amended by the EMAA).

8. The High Court found that there was no merit in the applicant's challenge that in the event that Parliament was entitled to delegate the power to the President to determine the financial threshold,[16] the delegation is unconstitutional because it is not accompanied by meaningful and clear guidelines governing the exercise of that power in that the listed factors are overbroad, lack specificity, and fail to establish concrete of quantifiable standards or guidelines. The High Court made the following findings to support its conclusion, each of which fail to take into account various important considerations:

8.1 First, the High Court found that the mere possibility of the President abusing his powers in determining the financial thresholds is insufficient to sustain a challenge against section 24(1), which confers such powers on him, and that the President's decisions are in any event subject to judicial review if exercised improperly.[17]

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[16] High Court judgment, paras 36 – 41.

[17] High Court judgment, para [36].

8.1.1 The issue is not, however, whether the President's exercise of the power can be tested after the fact but rather whether granting such sole discretion to the President in the first place, is irrational and unconstitutional. The Constitution demands protective safeguards to prevent the potential abuse of power, not a reactive approach that relies on after-the-fact judicial review. The reliance of *ex post facto* enforcement goes against the constitutional imperative to pre-empt undue influence before it distorts democratic processes, so as to give effect to the State's obligations not only in relation to the right to vote, but also section 7(2) of the Constitution. This is the approach adopted by this Court in *Glenister II*,[1] and followed ever since. It is also what is required in proper implementation of *My Vote Counts II*.

8.1.2 Moreover, it is settled law that the guidelines must be contained in the primary legislation itself the more onerous and invasive, and more open to abuse, the power is, the more important it is for the guidelines to be given and for them to be detailed, and not be left to the open-ended discretion of a delegate or general administrative law principles. In any event, administrative law and the principle of legality review are hardly a remedy given that they set a very low bar for public officials exercising power and defer to public officials' discretion. Relying on this type of light touch review does not adequately meet the constitutional imperatives undergirding this challenge, as aforesaid.

8.2 Second, the High Court observed that the exercise of the President's discretion is guided by the rule of law principle that all relevant factors must be considered, and the President's power is "*circumscribed by the policies and objectives of the PPFA*".[18] The High Court's finding is erroneous for the following reasons:

8.2.1 The President is granted seemingly untrammelled power to determine the financial thresholds without any binding parameters in the primary legislation. Nothing in section 24(1)(b) of the PPFA (as amended by the EMAA) expressly compels the President to align the thresholds with any specific objectives or objects. Indeed, the imperative for full disclosure and the need to prevent undue influence and corruption are not even listed as factors which he is required to consider. In any event, the Act does not delineate these as its objects. No factors at all were listed in the original version of the PPFA. In the amendments pursuant to the EMAA, certain factors are listed in sections 7(2) and 24 of the amended PPFA which must be considered. These factors heighten the problem because they seem to highlight factors which are not critical to the constitutional imperatives which underpin disclosure and an upper limit, such as the imperative for as full a disclosure as possible, what information is necessary for an informed vote, and what disclosure threshold or upper limit may have the effect of impeding constitutional rights or making the political process vulnerable to undue influence or corruption. Instead, the sections list

[18] High Court judgment, para [39].

as factors which must be considered second-tier considerations (if relevant at all) such as inflation, the amounts already appropriated by way of the public funds, and a vague reference to the costs of running political parties and elections. Given at a single limit and threshold are set, even these factors can only be considered in an aggregated fashion in one-size-fits-all fashion. The listed factors are thus unconstitutional and provide no guidance at all.

8.2.2 The findings of the High Court do not cure the constitutional defect arising from Parliament's failure to set out clear and specific guidelines in the legislation itself. With the gravity of this power, the discretion given to any delegate must be narrow and meticulously guided and circumscribed. The PPFA in its original and amended forms does not do this.

8.3 The High Court found that the President's powers is subject to Parliament's "*direct supervisory role*".[19]

8.3.1 The High Court, respectfully, misunderstood the role of Parliament in the context of the provisions in the PPFA (as amended by the EMAA) set forth above.

8.3.2 It is clear that the role of Parliament is one of procedure, it must simply pass a resolution which authorises the President to enact regulations setting the financial thresholds; the legislative scheme does not confer the authority on Parliament to prescribe the financial thresholds. In

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[19] High Court judgment, para [40].

this regard, the decision to determine the thresholds lies solely with the President, and Parliament has delegated its decision-making authority to the President.

8.3.3 Otherwise, there would be no point to the EMAA and the language that the President is to determine the disclosure threshold and the upper limit would be nothing more than surplusage.

8.3.4 In any event, even if Parliament were to recommend specific financial thresholds, the President is not bound by such recommendations. The President retains the sole discretion to determine the thresholds.

8.4 Finally, the High Court found that the applicant has failed to set out reasons demonstrating that the factors guiding the President's powers in section 24(1) (b) of the PPFA (as amended by the EMAA) are inadequate for the proper exercise of his discretion.[20]

8.4.1 The applicant's case was not a bald assertion of vagueness, it advanced a detailed and principled critique of the statutory framework, grounded in constitutional jurisprudence, including what is set forth below.

8.4.2 In relation to "the actual expenses of running a political party", the applicant argued that it is not an appropriate basis for setting the parameters for private contributions. This is because the RPRF already allocates funds to political parties to cover their operational

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[20] High Court judgment, para [41].

costs and expenses, which eliminates the need for private funding for such purposes. The relationship between the RPRF and operating costs and expenses is not spelled out. Nor is the legislation clear what operating costs and expenses should be, or not be, relevant.

8.4.3 It is unclear how information about one or other party's expenses can logically have a relevance to determining an upper limit, given that the legislation allows one upper limit to be determined for all political parties, big and small, and without any regard to the specific circumstances of a political party, and without testing the purposes for which the funds are used and the efficiencies of the operations of the party in question.

8.4.4 Other factors, such as inflation, do not address the key principled issues and may, at best, serve as part of the broader context, rather than providing substantive criteria.

8.4.5 There are no guidelines that speak to the core constitutional values and purposes underpinning the PPFA, including the right to vote and the right of access to information. There is no guidance on how the President is to calibrate thresholds in a manner that prevents the undue concentration of political influence or mitigates the risk of corruption. There is no framework to identify what levels of private contribution may be considered safe, proportionate, or constitutionally sound nor any indication of what would amount to an insidious or impermissible influence on the behaviour of political parties.

8.4.6 Despite these detailed submissions, the High Court did not substantively engage with any of the issues raised. Instead, it summarily concluded - incorrectly and without any analysis - that the applicant had failed to set out any basis upon which the listed factors were said to be vague or inadequate.

8.4.7 The applicant not only set out concrete objections to the listed factors (and the absence of other, more critical factors), but also grounded its submissions in established constitutional doctrine regarding the conferral and exercise of discretionary power. The applicant referred the High Court to several authoritative and well-established Constitutional Court judgments which the High Court failed to engage with. [21]

9. The High Court dismissed the applicant's challenge that the PFFA / the PPFA (as amended) is constitutionally deficient because it does not require political parties to account for the expenditure of private funding they receive; and that section 22 is similarly deficient because it does not require the IEC to report on such expenditure to Parliament and the public. In this regard, the High Court found that there was no requirement for political parties, and for the IEC, to report on the expenditure of political parties on the basis that the applicant failed to

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[21] *Affordable Medicines Trust v Minister of Health* 2006 (3) SA 247, para [33]; *Janse van Rensburg and Another v Minister of Trade and Industry and Another* (CCT13/99) 2001 (1) SA 29, para 25. The Constitutional Court applied the test which was established in *Dawood and Another v Minister of Home Affairs and Others; Shalabi and Another v Minister of Home Affairs and Others; Thomas and Another v Minister of Home Affairs and Others* 2000 (3) SA 936, para 42-48; Section 1 of the Constitution; *South African Liquor Traders Association and Others v Chairperson, Gauteng Liquor Board and Others* 2006 (8) BCLR 901 (CC) at paras 27-28; *Affordable Medicines Trust and Others v Minister of Health and Others* 2006 (3) SA 247 (CC) at para 108; *Dawood and Another v Minister of Home Affairs and Others; Shalabi and Another v Minister of Home Affairs and Others; Thomas and Another v Minister of Home Affairs and Others* 2000 (3) SA 936 (CC); 2000 (8) BCLR 837 (CC) at para 47.

produce sufficient facts or evidence that the lack of such regulation infringed particular rights.[22] The applicant respectfully submits that the High Court erred in its findings for the following reasons:

9.1 The High Court's finding reflects the same fundamental misunderstanding of constitutional review that pervades the High Court's judgment, as traversed above. The High Court's approach of requiring case-specific factual evidence of constitutional limitation fundamentally misapplies the applicable objective standard for constitutional challenges.

9.2 In any event, the applicant made detailed and comprehensive submissions demonstrating that the constitutional imperatives require disclosure of expenditure of private funding, which the High Court failed to engage with or consider. These submissions included the fact that:

9.2.1 The constitutional imperatives demand meaningful disclosure that enables voters to make an informed choice. Such disclosure includes how private funds are deployed. This may reveal for what purposes a political party solicits private donations and some of the reasons why private donors may be willing to contribute to a political party. It is part of the explanation about whether, how and why the private funding in question influences the political party to which the funding is made available. The manner in which the funds are expended is an inseparable part of the private donation fund flow and information in this regard is critical. A voter's right to an informed vote, protected

[22] High Court judgment pars [53] and [54].

under section 19 of the Constitution, encompasses not only knowing where parties secure their resources from, but also how those resources are directed and for what ends. Disclosure limited only to the origins of funds is incomplete because it obscures the real effect that funding might have on a party's priorities, its internal decision-making processes, and its responsiveness to the electorate's interests.

9.2.2 The Constitutional Court in *My Vote Counts II* made it clear that "information on the private funding of political parties and independent candidates" must be "recorded, preserved and reasonably disclosed" through appropriate legislation. This imperative to ensure transparency and accountability in political funding is not limited merely to identifying the sources of private funding. Rather, it requires that voters be placed in a position to understand the broader context and implications of these financial flows.

9.3 Despite these detailed submissions demonstrating the constitutional necessity for expenditure disclosure, the High Court failed to engage with or consider any of these arguments. The Court did not address how the constitutional imperatives established in *My Vote Counts II* extend beyond the disclosure of the source of funding but encompass the full transparency of political funding flows, including expenditure.

10. Moreover, the applicant also challenged the constitutionality of section 9(2) of the PPFA, which excludes natural persons from disclosure obligations. The applicant challenged this distinction as arbitrary and irrational. The Learned

Judges failed to deal with of the applicant's challenge in its entirety. This was, respectfully, a material error on the part of the High Court for the following reasons:

10.1 The exclusion of natural persons from the reporting obligations under the PPFA (as amended by the EMAA) fundamentally undermines the constitutional imperatives of transparency, accountability, and the right to an informed vote. This exclusion, entrenched in section 9(2), directly contradicts the principles outlined in My Vote Counts II, which emphasised the necessity of comprehensive access to funding information to enable voters to make informed political choices.

10.2 By limiting the obligation to disclose donations above the prescribed threshold solely to juristic persons, the PPFA creates a significant loophole. Natural persons, who are equally capable of making substantial donations and influencing political outcomes, are effectively exempted from this vital transparency mechanism. This allows individuals covertly to channel significant sums to political parties or candidates, without any obligation to disclose these contributions, leaving the electorate unaware of potential sources of undue influence.

10.3 The constitutional imperatives underpinning the right to vote and access to information demand that all sources of private funding, regardless of whether they originate from juristic or natural persons, are subject to scrutiny. This is because the influence of large donations is not confined to legal entities; natural persons can exert significant influence over political

agendas and elected representatives, shaping policy in ways that serve private interests rather than the public good.

10.4 The absence of any legitimate basis for this exclusion exacerbates the issue. There is no evidence to suggest that natural persons should be treated differently from juristic persons regarding disclosure obligations. On the contrary, the exclusion undermines the very purpose of the PPFA: to promote transparency and prevent corruption. By allowing donations from natural persons to go unreported, the PPFA fails to address a key source of potential undue influence in the political process.

10.5 This exclusion also creates an unequal and irrational regulatory framework. While juristic persons are subject to disclosure requirements, natural persons, who may have similar or even greater capacity to influence political outcomes, are given a free pass. This inconsistency is irrational.

10.6 Despite the applicant's detailed submissions grounded in the principles of transparency and accountability, the High Court failed to issue any finding in respect of this challenge, which directly implicates the constitutional imperatives established in My Vote Counts II and the right to an informed vote under sections 7, 19 and 32 of the Constitution.

10.7 The applicant submits that the High Court's failure to engage with the substantive constitutional questions raised constitutes a material misdirection in the *judgment a quo*.

11. The Learned Judges held that the EMAA did not render the scheme unconstitutional beyond a temporary lacuna, and that the subsequent August

2025 Proclamation by the President effectively cured any defect.[23] The Learned Judges' finding was, respectfully, erroneous for the following reasons:

11.1 The fact that the President belatedly established thresholds some eighteen months after the EMAA came into force does not erase or cure the irrationality of his earlier failure to act. The legality of executive conduct must be assessed at the time the power is, or is not, exercised. A later proclamation cannot retrospectively render a prior omission rational. This is consistent with this Court's jurisprudence, which has made clear that bringing a statutory scheme into operation without the essential regulations or subordinate measures needed to make it functional is irrational and unlawful.[24] The High Court was therefore required to determine whether the President's failure to issue the thresholds at the time of the EMAA's commencement was unconstitutional, rather than simply finding that it was moot because he had eventually acted. In any event, the question was not moot: it went directly to the consequential relief sought by the applicant, including an order directing the repayment of donations accepted in excess of the legal limit and the disclosure of donations above the threshold during the lacuna period. Those remedies sought were dependent upon a judicial determination of whether the President's omission was unlawful and irrational when it occurred.

11.2 Moreover, the lacuna was plainly unconstitutional for the following reasons.

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[23] High Court judgment, paras [21]-[23].

[24] *President of the Republic of South Africa v South African Dental Association* 2015 (4) BCLR 388 (CC); *Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex Parte President of the Republic of South Africa and Others* 2000 (2) SA 674 (CC).

11.3 Upon the commencement of the EMAA there was no upper limit to donations in regulation 7(1), nor any disclosure threshold for donations in regulation 9, as the previous R15 million limit and the R 100,000 disclosure threshold had been deleted. The existence of this lacuna was confirmed in the EMAA judgment. It was precisely for this reason that Judge Thulare granted the relief sought and filled the gap. The lacuna lasted for more than three months between 8 May 2024 to 16 August 2024.

11.4 First, it is undoubtedly an irrational and unlawful decision to bring a law into force when doing so creates a lacuna. As set forth above, this has been confirmed in this Court's jurisprudence.

11.5 Second, the lacuna produced an untenable and unconstitutional situation. It was directly in breach of the requirements of the Constitution, as pronounced by the Constitutional Court in My Vote Counts II, and invidious to the right to make an informed vote, the right to vote more generally, and the very purpose of the PPFA (as amended by the EMAA). In addition, it breached several provisions of the Bill of Rights, including sections 7(2), 19 and 32(1) of the Constitution.

11.6 There was no requirement to disclose amounts received (even those above the disclosure threshold) and donations exceeding the upper limit (regardless the size of the donation) could still be accepted. This created a constitutional crisis and defeated and undermined the purpose of the PPFA (as amended by the EMAA), and the constitutional imperatives set forth in My Vote Counts II.

11.7 To this end:

11.7.1 The absence of an upper limit on donations exacerbated the risk of corruption, undue influence and distortion of democratic values. The constitutional imperatives (as set forth above), including transparency, openness and accountability were even more critically undermined, making the framework of created through EMAA fundamentally flawed.

11.7.2 The lack of a disclosure threshold under the EMAA further undermined those constitutional imperatives. Without a threshold, political parties could receive unlimited donations without any obligation to disclose them, creating an even greater risk of corruption and undue influence. . It completely removed the limited transparency that existed under the PPFA. The constitutional imperatives of transparency, openness, and accountability were severely compromised by the lack of a prescribed threshold. Without a prescribed threshold, the electorate was left in the dark about the financial influences shaping political parties, undermining the democratic process and the right to an informed vote.

12. The Full Court further erroneously found the financial thresholds were rational because Judge Thulare, in the EMAA judgment, reinstated those thresholds to fill the lacuna, and therefore must have found them rational.[25] The Full Court, respectfully, misdirected itself for the reasons set forth below:

[25] High Court judgment, para [45].

12.1 First, the reliance on the EMAA judgment is incorrect and misplaced. The EMAA proceedings were brought by the applicant on an urgent basis and had the limited objective to address the lacuna created by the EMAA. The applicant did not request Judge Thulare to rule on the constitutionality or the appropriateness of the financial thresholds, nor did His Lordship decide on this issue which was reserved for the Full Court in the main application.

12.2 Instead, the applicant requested the temporary reinstatement of those thresholds as an *interim* measure pending the resolution of the main application where the issues of substance would be decided. This purpose was made clear in the applicant's papers in the EMAA proceedings and in the resulting judgment.

12.3 In this regard, the essence of the applicant's submissions in the EMAA proceedings was that, leaving aside the constitutionality of the thresholds (which was to be decided in the main application), Judge Thulare should reinstate them as an interim measure to fill the lacuna, on the basis that, at that stage, it was preferable for some, however imperfect, financial thresholds to remain in place as an interim measure, rather than for there to be no thresholds at all.

12.4 Second, the High Court also failed to engage with or consider the relevant constitutional authorities which establish that, without due process, the limits are irrational and unconstitutional. [26]

[26] *Democratic Alliance v President of South Africa and Others* 2013 (1) SA 248 (CC), para [34] to [37]; *Law Society of South Africa and Others v President of the Republic of South Africa and Others* 2019 (3) SA 30 (CC), para [64]; *Minister of Water and Sanitation v Sembcorp Siza Water (Pty) Ltd and Another* 2023 (1) SA

12.5 It is apparent from the above discussion of My *Vote Counts II, Glenister II* and other cases that thresholds and upper limits which are determined without ensuring that they fulfil, promote and protect an informed right to vote and curb corruption and undue influence are plainly unconstitutional, and unjustifiably infringe sections 7, 19 and 32 of the Constitution.

12.6 But the thresholds also breach the rule of law requirement of rationality. The Full Court did not, however, consider or apply the applicable test pertaining to rationality, as espoused in a line of cases alluded to above.

13. Finally, the High Court erred by finding that other competing constitutional rights and interests might be adversely affected by the relief sought by the applicant and thus held the application must fail.[27] The High Court's finding was, respectfully, erroneous for the following reasons:

13.1 It is not clear to which aspects of the relief the High Court's finding was directed; the applicant understands it to have been levelled generally at the challenge to the impugned provisions. Properly analysed, however, the relief sought does not prohibit donations, suppress expression or penalise association. It imposes transparency obligations and rational caps aimed at protecting the integrity of the electoral system and enabling the effective exercise of political rights - purposes this Court has already recognised as

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(1) (CC), para [45] and [47]. *Zuma v Democratic Alliance and Others* 2018 (1) SA 200 (SCA), para 82 ("*Rationality review also covers the process by which the decision is taken... If a failure to take into account relevant material is inconsistent with the purpose for which the power was conferred there can be no rational relationship between the means employed and the purpose*"). See also *Freedom Under Law v National Director of Public Prosecutions and Others* 2014 (1) SA 254 (GNP) paras 127 and 165 ("*A refusal to include relevant and interested stakeholders in a process, or a decision to receive representations only from some to the exclusion of others, may render a decision irrational*"). See also *Democratic Alliance v President of the Republic of South Africa* 2013 (1) SA 248 (CC) at para 39 ("*a decision can be irrational if the decision-maker ignored relevant facts*"). *Democratic Alliance v President of South Africa and Others* 2013 (1) SA 248 (CC), paras 38 to 40.

[27] High Court judgment, paras [50]-[51].

constitutionally required in *My Vote Counts II*. In any event, the Constitutional Court in *My Vote Counts II* ruled on the issue. This Court has found that, notwithstanding any countervailing considerations of association, privacy or the like, the Constitution requires full recordal and disclosure of donations.

13.2 In any event, the relief sought by the applicant does not contemplate that any person will be precluded from making financial contributions to a political party. Political parties will remain free to receive private donations, and donors will remain free to make them. The relief operates by requiring disclosure of donations (and related expenditure information) and an upper limit to reduce the risk of undue influence. These are necessary conditions in light of the constitutional imperatives as laid out in My *Vote Counts II* and the Constitutional Court's jurisprudence more generally, and are not prohibitions: they structure how donations are made and accounted for, without extinguishing or otherwise limiting any underlying rights.

13.3 To the extent donors or parties say the relief affects their choices (for example, by requiring disclosure above a threshold, or by capping the quantum of any single donor's contribution), those effects do not negate the freedom to donate or to associate. The freedom of association and expression are not such as to dislodge the imperatives of the right to an informed vote and the curbing of corruption and undue influence, which adversely affect the exercise of all constitutional rights.

13.4 A donor is not compelled to fund a political party. Any donation is a voluntary, informed choice by the donor. The donor does not have a

constitutional right to contribute limitless resources to a political party or to do so in secret, let alone to do so when it infringes fundamental constitutional rights and imperatives. The Constitution, on the other hand, guarantees to all (including the donor who is a natural person) a right to an informed and secret vote.

13.5 In any event, the disclosure of a donation does not necessarily reveal a donor's political beliefs or voting preference. Donors may fund multiple parties or particular issue-based initiatives for a range of reasons unrelated to partisan allegiance.

13.6 In fact, it is the insidious secrecy of private funding that *My Vote Counts II* viewed with constitutional opprobrium in light of the risk posed to democracy. Sections 19 and 32 — read with section 7(2) — and the Constitutional Court's reasoning in *My Vote Counts II* emphasise that access to accurate information about private funding is essential to the meaningful exercise of the franchise. In that context, any conceivable interest in donor anonymity gives way to the superior constitutional interest in openness, accountability and an informed electorate.

13.7 The Constitution does not confer a general right to secret association - least of all where the association consists in financing actors who seek to influence political parties through such funding. Where private conduct has systemic public consequences — as political donations do — transparency-enhancing regulation is not only permissible; it is constitutionally required to vindicate the rights of voters and the integrity of elections. Importantly, *My Vote Counts II*, as traversed above, has already undertaken the very

same balancing exercise, and in doing so, has laid the foundations on the constitutional imperative for an informed right to vote. In this regard, *My Vote Counts II* has already found that the right to access of information and the right to cast an informed vote must prevail over the competing interests of donors and political parties.

FOR THE AFOREMENTIONED REASONS, there are reasonable prospects that an appeal court would come to a different conclusion to that reached by the court *a quo*.

IN ADDITION TO THE ABOVE, the applicant submits that leave to appeal should be granted in terms of section 17(1)(a)(ii) of the Superior Courts Act, 2013, as there are compelling reasons for an appeal court to entertain the appeal, including the following:

1. The matter raises constitutional questions of profound importance concerning the regulation of private political party funding, the prevention of corruption, and the safeguarding of the right to vote. These are issues that go to the heart of South Africa's constitutional democracy and warrant the attention of an appellate court.

2. The judgment of the High Court has wide-ranging implications, not only for the applicant and respondents, but for general public, including political parties, independent candidates, and the electorate. It is in the public interest that an appeal court pronounce authoritatively on these questions.

3. The judgment entrenches a statutory scheme that is structurally irrational and constitutionally deficient. Leaving the judgment undisturbed risks undermining the transparency, openness and accountability demanded by sections 1(d), 19,

32 and 7(2) of the Constitution, and weakens the safeguards against corruption and undue influence.

4. The matter engages South Africa's international obligations under the United Nations Convention Against Corruption and the African Union Convention on Preventing and Combating Corruption, both of which require States Parties to adopt measures that ensure transparency and accountability in political party funding. The failure to align domestic law with these obligations heightens the need for appellate scrutiny.

5. There are reasonable prospects that an appeal court will come to a different conclusion, given the High Court's errors identified above. Even if this Court were not persuaded of those prospects, the compelling constitutional and public importance of the matter independently justifies the granting of leave to appeal.

TAKE NOTICE FURTHER that the application will be made on a date and at a time to be determined by the Registrar of this Honourable Court.

TAKE NOTICE FURTHER that the applicant appoints its attorneys' address, detailed below, as the address at which it will receive notice and service of all process in these proceedings

WHEREFORE, the applicant prays that leave to appeal be granted to the Supreme Court of Appeal against the High Court judgment and order.

Dated at Johannesburg on 11 September 2025

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Lize-Mari Doubell

From:	Molebogeng Rampa
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Cc:	Qaasim Ganey
Subject:	FW: MY VOTE COUNTS NPC AND PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA & 18 OTHERS, CASE 7630/2023 [WW-WS_JHB.FID2713605]
Attachments:	Notice of leave to appeal 11092025 - signed.pdf

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Subject: RE: MY VOTE COUNTS NPC AND PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA & 18 OTHERS, CASE 7630/2023 [WW-WS_JHB.FID2713605]

Dear Sirs

Please ignore the email below.

We attach the applicant's notice of application for leave to appeal, for service.

Yours faithfully

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Dear Sirs

Please see attached the applicant's notice of application for leave to appeal, for service.

Yours faithfully

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