

SUBMISSION ON ELECTORAL FINANCE ISSUES PAPER

Rob Salmond, University of Michigan

This paper addresses some questions raised in the government's issues paper on electoral finance reform, and suggests a package of possible electoral finance reforms.

Summary

2 I propose that New Zealand's electoral finance arrangements be amended so that: (a) political donations are more strictly limited; (b) political parties receive moderately more public funding to make up for a likely small moderate drop in private donations; and (c) campaign spending is less tightly controlled, including unlimited spending for parallel campaigns. I submit these proposals as one balanced package, not as a series of unrelated ideas or as a menu to order from haphazardly.

Background / Disclosure

3 I am an Assistant Professor of political science at the University of Michigan, USA. Some of my graduate and undergraduate classes compare systems of campaign finance regulation across advanced democracies. I am also a member of the Labour party, and was employed in the Office of the Prime Minister during 2007. My duties in that office, however, did not include work developing the Electoral Finance Act 2007.

Guiding Principle

4 This submission is motivated by the need for *balance* in New Zealand's political finance arrangements. Full public funding for political activity unduly restricts freedom of expression, while 100% privately funded campaigns unfairly advantage certain groups. The need for balance requires sacrifices in both participatory equality and freedom of expression.

5 No two advanced democracies have identical electoral finance arrangements. In the US, donations to campaigns are very strictly controlled, while spending by campaigns is not. This is the opposite of current New Zealand practice. Regulated periods vary wildly. In the US there is no unregulated period; in Canada the regulated period is six weeks; in Japan the regulated period is only twelve days, but all campaign activity is *banned* outside of that period. In France, political parties are funded overwhelmingly with public money, parties in some other countries rely mainly on private funds, and in Germany the balance is about 50/50. All these countries, nonetheless, enjoy reputations as strong and vibrant democracies. This point is important because it shows that there is no singular "right" answer on this topic, and that there is room for legitimate cultural difference in democratic practice.

Individual Influence on Election Campaigns

6 I support the issues paper's phrasing of the first two guiding principles (p10), including the hierarchy between them created by the term "unduly" in principle two. I read

the Ministry’s proposed principles to prioritise, at the margin, participatory fairness over freedom of expression. I support this decision, both because I agree with it substantively and because, as discussed below, it appears to accurately reflect the majority view of New Zealanders.

7 In the fourth wave of the World Values Survey (WVS - conducted in 1998), 1,200 New Zealanders were asked to rank the two most important of these four goals for society:

- (1) Maintaining order in the nation
- (2) Giving people more say
- (3) Fighting rising prices
- (4) Protecting freedom of speech

“Protecting freedom of speech” is very closely related to principle two in the issues document, while “giving people more say” is a reasonable, albeit imperfect, approximation of the participatory fairness idea contained in principle one. This survey was repeated in the fifth wave of the WVS in 2005. Results for the two surveys are given in Table 1 below:

Table 1: New Zealanders’ electoral finance values

Preference Ordering	WVS survey year	
	1998	2005
“Giving people more say” more important than “protecting freedom of speech”	52%	48%
“Protecting freedom of speech” more important than “giving people more say”	22%	26%
Unable to determine preference from survey responses	26%	26%

8 New Zealanders prefer participatory fairness over freedom of speech by around a statistically significant 2:1 margin. The 1998 preference gap for participatory fairness in New Zealand (30 points) is similar to the gap in Canada (27 points), but substantially wider than in Australia (9 points), the UK (12 points), or the US (8 points). This suggests that New Zealanders have a more egalitarian outlook on election campaigns than most of our close cultural cousins, an attitude that should be reflected in our electoral finance laws.

9 It follows from these principles, and their rank order at the margin, that electoral finance law must prevent any individual or group from spending unlimited time, energy, or money promoting their political views. If a person can expend massive resources on election campaigning then that person’s disproportionate influence, or just as importantly that person’s *perceived* disproportionate influence, in the election campaign would transcend what most New Zealanders might consider “fair.” Fortunately, inequalities in terms of disposable time and energy are not massive in our society, as there are exactly 24 hours in every person’s day. Even the most energetic campaigner cannot hope to dominate an election campaign by those means. But inequalities in money are different.

10 Under current electoral law, anyone can spend as much money as they like to promote their political ideas. Spending limits on political parties do not prevent this, because a person could provide all a party’s funding then run as many additional parallel campaigns as their budget will allow. In this way, a very wealthy individual or small group of individuals

really can dominate election campaigning, going well beyond what New Zealanders would consider fair.¹ Changes to electoral law should rule out this possibility. There are two alternative ways to achieve this:

- a. Spending limits on parallel campaigns, as in Canada or the UK; and/or
- b. Overall per-person donation caps, as in the US.

Experience with the Electoral Finance Act 2007 shows how difficult it can be to set the appropriate spending limits for parallel campaigns. Although a number of democracies have such limits, it appears clear that there is not a strong mood for them in New Zealand at this time. Appropriately limiting the ability of wealthy contributors to dominate elections is, however, possible solely through per-person donation caps.

11 I recommend that the government cap the overall amount that an individual (or legal entity) can donate across all political organizations². (This is a version of current American practice). An appropriate level might be the median gross income across all voters in the previous year, around \$26,000 in 2008³. To prevent strategic individuals from massively lining the coffers of parties and parallel organizations in non-election years, thereby circumventing the spirit of the law, the limit should be applied every year. This system allows wealthy citizens the freedom to express their opinion at a level that very few of their compatriots can match (up to \$78,000 across a three year electoral cycle), without allowing them the freedom to simply drown out opposing voices on account of their superior wealth⁴. This limit is lower than the corresponding US limit (US\$108,200 per two year cycle), which I think is acceptable given that there are many, many more elections in each cycle in the US. Within this overall limit I prefer to allow citizens and legal entities to freely choose which organizations to support. The government may, if it is concerned about the impact of larger donations on corruption as well as participatory equity, also want to consider American practice of additionally limiting the size of donations to specific organizations.

12 This system will require a central database of donations to all political organizations above a low threshold. I propose disclosure of the name and address of any donor who gives more than \$200 across the annual cycle, reported at the time that the donor crosses the \$200 threshold and immediately on receiving all subsequent donations. Table 2 below provides details of current disclosure thresholds in several advanced democracies. My proposed New Zealand threshold is 0.42% of our GDP per capita, similar to Canada and France, higher than the US, and lower than Australia, the UK, or Germany. The threshold needs to be low enough so that the electoral authorities can see clearly whether any citizen or legal entity exceeds the cap. The US and Canadian authorities, among others, operate similar databases

¹ Note that this unfairness does not always benefit parties of the right. In the 2007 Australian elections, for example, the single highest campaign spender was not the ALP or the Liberals but the Australian Council of Trade Unions.

² Defining “political organizations” is not straightforward. I suggest that the definition include political parties, any organization that purchases election advertising during the regulated period (those organizations can identify themselves by registering a separate bank account for donations), and any organization that solicits donations for the purposes of passing them to other political organizations.

³ Source: http://www.parliament.nz/NR/rdonlyres/20979229-0C0F-4BB2-B4D7-CEEA4BD2D40C/222/Wellington_Central1.pdf

⁴ To prevent circumvention of this rule, there will need to be prohibitions on passing donations to a political organization through another individual. Banning donations from minors may be necessary, for the same reason.

and could serve as a helpful model. A database such as this also rules out substantial anonymous donations and serves to enhance the transparency of election campaigns, in line with principle four in the issues paper.

Table 2: Disclosure thresholds in seven democracies

Country	Local currency	Disclosure limits		
		Nominal NZD ⁵	PPP NZD ⁶	Pct of GDP/capita ⁷
Australia ⁸	\$10,900 annually	\$13,735	\$11,988	22.36%
Canada ⁹	\$200 annually	\$280	\$259	0.44%
France ¹⁰	€150	\$329	\$263	0.50%
Germany ¹¹	€10,000 annually	\$21,908	\$18,189	34.66%
Japan ¹²	¥50,000 annually	\$817	\$634	1.50%
UK ¹³	£5,000 annually (party)	\$12,950 (party)	\$10,138	18.41%
	£1,000 annually (candidate)	\$2,590 (candidate)	\$2,028	3.68%
US ¹⁴	Each \$50 donation	\$79	\$73	0.11%

13 Returning briefly to parallel campaigns, my view is that if those groups can raise a large budget, convincing donors to donate money to parallel campaigns at the expense of donating that money to political parties and overcoming the large structural disadvantages that they face in competing with political parties for funds, then they should be able to spend everything they raise. I therefore recommend against spending limits for parallel campaigns.

Public Funding for Political Parties

14 New Zealand political parties currently receive substantial public funding for both their parliamentary and electioneering activities. I recommend that this funding be restructured in order to achieve three goals:

- a. Providing more strategic choice to parties;
- b. Helping smaller and newer parties overcome structural disadvantages;
- c. Dampening but not eliminating the impact of donor wealth on party fortunes.

⁵ Source: <http://www.oanda.com/convert/classic>

⁶ Source: <http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/ICPEXT/0,,contentMDK:20134839~menuPK:303406~pagePK:60002244~piPK:62002388~theSitePK:270065,00.html>

⁷ Source: World Bank, World Development Indicators (2007).

⁸ Source: http://www.aec.gov.au/Parties_and_Representatives/public_funding/threshold.htm

⁹ Source: <http://www.elections.ca/content.asp?section=gen&document=ec90707&dir=bkg&lang=e&textonly=false>

¹⁰ Source: <http://www.ambafrance-uk.org/Politics-Political-party-funding.html>

¹¹ Source: http://www.bundestag.de/htdocs_e/parliament/function/legal/politicalparties.pdf (s25.3)

¹² Source: <http://www.ned.org/forum/asia/june01/documents/7Kohnno.doc>

¹³ Source: <http://www.guardian.co.uk/politics/2006/aug/23/partyfunding.constitution>

¹⁴ Source: <http://www.fec.gov/pdf/candgui.pdf>

15 To achieve these goals, and in answer to question 2.18 in the issues document, I recommend the government favorably consider a system of financing political parties similar to that used in Germany. In the German system, parties receive a per-vote subsidy based on previous electoral performance, on a sliding scale such that the first few percentage points of the vote that a party receives are more lucrative than subsequent votes. Parties also receive top up funding based on the small and medium level contributions they raise from individual citizens (the current top up subsidy is 38%, and applies to donations up to €3,300). I do not have a strong opinion on the exact rates and threshold amounts – that would almost certainly be negotiated at select committee. German subsidies are subject to two conditions:

- a. There is an overall cap on funding that will be provided to political parties;
- b. No political party can receive more funding from public subsidies than it raises through private contributions.

Where the total level of subsidies exceeds the overall funding cap, all parties' subsidies are reduced proportionately down to the level of the cap.

16 This system preserves the ability of wealthy citizens to advantage their favored party with large donations, but targets state subsidies at lower level donations to preserve some degree of balance. It also helps smaller (often newer) parties more than large parties, and ensures that no party becomes predominantly dependent on the state for its funds. Given the similarities in both electoral system and party system between Germany and New Zealand, serious consideration of their system of electoral finance is overdue.

17 In answer to questions 2.19 through 2.23, I also recommend that all restrictions and funding allocations relating to radio and television advertising be scrapped, and that parties be allowed to purchase as much or as little television and radio advertising as they like during the election campaign (within their overall spending limits, which should be increased – maybe by \$1million – as a result). Current law forces all parties to adopt a particular advertising strategy, including lengthy opening and closing addresses. The parties themselves should be making those strategic decisions. Public funding that parties currently receive for their television advertising would be replaced and supplemented by subsidies I outline above.

18 In line with my proposals about the definition of “election advertisement” in paragraphs 22-23 below, I recommend that parallel campaigns be allowed to broadcast issue ads but not be allowed to broadcast ads explicitly supporting or attacking political parties.

Other issues

Sources of Donations

19 As in many democracies, foreign donations should be banned, either from individuals ineligible to vote in a New Zealand election or from foreign-registered corporations. I am broadly agnostic on the question of whether legal entities other than anonymous trusts, as opposed to citizens, should be able to donate to political parties (in the UK these are allowed, in Canada they are banned). I do, however, attach two caveats to this non-position:

If legal entities are to be barred from donating, however, the government should draft the proposal such that *all* legal entities are banned – not simply unions or simply corporations. If legal entities are allowed to donate, their donations should not attract top up public subsidies (Germany has this rule as well), should be subject to the same financial limits as donations

from citizens, and should count proportionately against the shareholders / member's donation caps. For example, if a club with 20 members donates \$20,000, that should count against each of the members' caps to the tune of \$1,000 each. Similarly, if Mrs B owns 50% of a company that makes a \$20,000 donation, then the donation should count as \$10,000 against Mrs B's personal cap. (It may be that, to limit unnecessary bureaucracy, this last rule could be waived for groups with over 50 members and shareholders with less than a 2% shareholding.) This rule is necessary to prevent individuals from circumventing the overall cap by funneling further donations through legal entities with which they are associated.

It is certainly true that the regime I outline in (a) above, or the outright banning of corporate and union donations, would hurt both larger parties' funding bases, probably more so than smaller parties. It is partly for this reason that I propose a moderate increase in overall levels of public funding for political parties in paragraphs 14-16 above.

20 The government may also consider imposing internal democracy requirements on organizations wanting to donate to political causes (as is the case in the UK) – meaning that union members or company shareholders would have to approve donations by specific vote. As noted above, substantial anonymous donations should also be banned.

“Stand By Your Ad”

21 As part of the recent McCain/Feingold reforms to US campaign laws, candidates are now required to “stand by their ad,” meaning that the ad must contain a statement from the candidate specifically approving the advertisement. I think this is a healthy accountability mechanism, and that it should be adopted in New Zealand. For all ads either paid for by a party or otherwise requiring a party's approval, the following statement should appear:

- a. [For ads containing an audio track, recorded by the party leader]: “My name is [party leader name], and I approve this advertisement on behalf of the [party name] party.”
- b. [For print ads by parties, in a clearly legible font]: “Approved on behalf of the [party name] party by [party leader name], party leader.”

For ads run by parallel campaigns at any point in the electoral cycle:

- c. [For ads containing an audio track, recorded by the official registrant]: “My name is [registrant name], and I approve this advertisement on behalf of [group name].”
- d. [For print ads by parallel campaigns, in a clearly legible font]: “Approved on behalf of [group name] by [group leader name], official registrant.”

Definition of “Election Advertisement”

22 If the government accepts my recommendations about a per-person donation cap and lack of spending restrictions on parallel campaigns, then the definition of election advertisement would mainly be relevant to political parties. There remains some relevance to parallel campaigns, because only those groups that run election advertisements would need

to keep donor records at all times to feed the per-person donation database.¹⁵ But under my proposals those parallel campaigns could run as many election advertisements as they can afford, meaning that an expansive definition of “election advertisement” would not have any chilling effect on free speech. I propose a two-tier definition of “election advertisement,” which would cover television ads, radio ads, print and internet ads, and pamphlets, flyers, and letters (with the exception of purely personal communications and political parties or other groups writing to their own members). Blogs and news publications (but not ads on blogs or in news publications), along with emails and press releases, would also be excluded.

- a. Tier 1 advertisements *explicitly* encourage citizens to vote for or against a party or group of parties, using words such as “vote” “ballot” and “election.” If these advertisements are run during the regulated period by any entity other than a political party, they require the permission of all parties that are named or referred to in the ad, and (if the ad is *supporting* one or more parties) the production and delivery costs count against the spending caps of the appropriate party or parties. Essentially any advertisement taking a position on an issue and mentioning a party by name would fall into this category. (Note that this definition would likely result in a continuation of the long-standing New Zealand practice that only political parties can *explicitly* seek votes or *explicitly* attack other parties in paid advertising.)
- b. Tier 2 ads take a position on a significant issue of public policy that is relevant to national-level elections during the regulated period, without explicitly encouraging citizens to vote for or against a party or group of parties. Any person or group producing such advertisements needs to register so that their donations can be tracked, but there is no limit on how many can be produced and the cost of the ads does not count against any party’s limit. (Note that, given the proposed “stand by your ad” requirement, it is not possible for parties to produce tier 2 advertisements.)

23 This two-tier system is broad enough to avoid subterfuge by ingenious advertisers, yet does not *unduly* stifle freedom of expression. The rules I proposed earlier around parallel campaigns do not limit how many tier 2 ads a group can run (therefore not limiting the quantity of speech acts), but the proposed rules do ensure transparency in the process.

Regulated Period

24 As above, the lack of spending limits that I propose for parallel campaigns mean that the regulated period is most relevant to political parties. The length of the regulated period is mainly problematic because New Zealand holds endogenously timed elections. Around half the advanced democracies do this, while the other half have elections of a fixed timetable. Endogenous timing of elections provide the incumbent government with a number of strategic advantages over their opponents, and any regulated period that is expressed as “X days prior to election day” provides the incumbent government with an the additional possibility of a financial advantage, as the issues paper notes in paragraph 3.18. I assume that moving to a fixed election timetable is beyond the scope of this review, which is why I suggest a regulated period starting after Queen’s Birthday weekend of election year, or the

¹⁵ If an organization did not have appropriate donor records but decided to run election advertisements, it would need to set up a separate bank account for political activities, keep donor records on that account, and only fund election advertisements from that account.

day after the election date is announced in the case of elections announced in advance of Queen's Birthday weekend. Recall that the choice of the regulated period does not affect freedom of speech if my proposals around per-person donation caps and unlimited parallel campaign spending are adopted. This particular option has two selling points in my view:

- a. For full-term elections, the regulated period would be longer than the current 3 months, which many political parties think it too short, yet shorter than the 11 month period enacted in 2007, which many political parties thought was too long;
- b. In most circumstances it takes away the incumbent government's potential financial advantage based on their private information about the election date. An incumbent government could still game this system, by spending large sums of money prior to Queens' Birthday, dissolving parliament at that time, and then having a short regulated period. The price the government would pay for that advantage is, however, substantial – roughly a 10% reduction in their term in office.

Parliamentary Spending vs Electoral Spending

25 In answer to question 2.17, I think that party publications during the regulated period that have both a legitimate parliamentary purpose and also meet the definition of election advertisements (“dual purpose publications”) needs to be more explicitly regulated:

- a. If the government opts for a longer regulated period than I have recommended in paragraph 22 above, then I recommend that dual purpose publications can be funded from parliamentary funds but be subject to the “stand by your ad” requirement above and should always count against the party's election spending cap. (Note that mailings from parliament may incur little cost, depending on how parliament decides to treat MPs' free postage privileges.) A more restrictive rule than this risks shutting down much legitimate parliamentary activity for a significant proportion of the electoral term, while a more liberal rule risks large-scale rorts.
- b. If the government opts for the regulated period that I recommend, or a shorter one, then I recommend that dual-purpose publications should be funded purely from non-parliamentary funds and also count against a party's electoral spending cap.

Radio and television advertising

26 See paragraph 17 above

Conclusion

27 I thank the government for providing me, an opportunity to submit on this important issue at this early stage in the process. Public consultation is healthy for our democracy. I am willing to discuss this submission further with officials if they wish. The best way to contact me is by email at rsalmond@umich.edu