

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

Case no: 7630/2023

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

AFRICA INDEPENDENT CONGRESS

Fourteenth Respondent

PAN AFRICAN 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

TWENTY AND TWENTY-FIRST RESPONDENTS' HEADS OF ARGUMENT

TABLE OF CONTENTS

A. INTRODUCTION	3
B. JURISDICTION	8
C. LEGISLATIVE PROCESS	10
LEGAL FRAMEWORK	10
THE ELECTORAL MATTERS AMENDMENT ACT	15
THE RESOLUTION	21
D. REMEDY	26
E. CONCLUSION.....	31

A. INTRODUCTION

1. In this application, the applicant (“**MVC**”) seeks relief in terms of section 172(1) of the Constitution declaring the Political Party Funding Act 6 of 2018 (“**the Funding Act**”), as amended by the Electoral Matters Amendment Act 14 of 2024 (“**the Electoral Matters Amendment Act**”), invalid and unconstitutional to the extent that the Funding Act fails to require the disclosure of all private donations made to political parties and sets the upper limit for such donations too high.
2. The application was launched prior to the enactment of the Electoral Matters Amendment Act. Parliament was not a party and no relief was sought against Parliament in the initial notice of motion. In June 2024, MVC amended its notice of motion to extend the relief to the Electoral Matters Amendment Act, which became operative on 8 May 2024. The amended relief introduced prayers seeking declaratory relief against Parliament.¹
3. The relevant prayers are:
 - 3.1. In paragraph 3.1, MVC seeks an order, inter alia, declaring the failure by the National Assembly (“**NA**”) forthwith after the enactment of the Electoral Matters Amendment Act to enable the President to determine the upper limit and the disclosure threshold immediately upon the enactment of the EMAA or within a reasonable time thereafter in terms

¹ Amended Notice of Motion (“NOM”) p 612.

of regulations 7 and 9, respectively, to be irrational, unlawful, and unconstitutional and invalid.²

3.2. In paragraph 7, MVC seeks an order suspending the declarations of invalidity, with some exceptions (paragraphs 7.1 and 7.2), for a period of 12 months and “*directing Parliament to remedy the defects in the PPFA (including schedule 2 thereto), in accordance with the Court’s judgment, within the suspension period.*”³

3.3. In the event that Parliament fails to do so, paragraph 8 of the notice of motion seeks that the orders in paragraphs 7.1 and 7.2 continue to apply after the suspension.⁴

4. In MVC’s supplementary affidavit, it alleged that the Electoral Matters Amendment Act had not been “*subject to an adequate public participation process as contemplated in the Constitution*”.⁵ The cause for this complaint is not set out in clear terms, but appears to be that the National Council of Provinces (“**NCOP**”) ought to have held a second round of public participation in respect of amendments to the Electoral Matters Amendment Bill. It is also alleged that Parliament acted irrationally, unlawfully and unconstitutionally in passing the Electoral Matters Amendment Act with a lacuna in respect of the upper limit and disclosure threshold amounts.

² NOM prayer 3.1 p 612-3.

³ NOM prayer 7 p 614.

⁴ NOM prayer 8 p 615.

⁵ Applicant’s Supplementary Affidavit (“SA”) para 7.3 p 411; para 77 p 434.

5. On 17 October 2024, by agreement between the parties, the Court ordered that the Speaker and the Chairperson of the NCOP be joined as the twentieth and twenty-first respondents (jointly referred to as "**Parliament**").⁶

6. Parliament opposes the relief sought on a limited basis, which is as follows:⁷
 - 6.1. First, it is not competent to challenge the public participation process leading up to the passing of the Electoral Matters Amendment Act in this Court as this issue falls squarely within the exclusive jurisdiction of the Constitutional Court.

 - 6.2. Second, and in the event that this Court takes a different view, Parliament disputes that the NA, in the legislative process concerning the Electoral Amendment Matters Act, acted in a manner that was irrational, unlawful or unconstitutional. According to Parliament, a comprehensive public participation process was undertaken and there was no requirement for a further process as the amendments to the Electoral Matters Amendment Bill were not material. It is submitted that Parliament has, in the circumstances, met its constitutional obligations in respect of the legislative process leading up to the passing of the Electoral Matters Amendment Act.

 - 6.3. Neither the replying affidavit, nor the applicant's heads of argument, deal with the allegation that there was not sufficient public participation in respect of the Electoral Matters Amendment Act, presumably because

⁶ Twentieth and twenty-first respondents' answering affidavit ("Parliament's AA") para 11 p 760.

⁷ Parliament's AA para 12 p 760-1.

this Court does not have the jurisdiction to make a finding in this regard. However, the allegation has not been withdrawn. Accordingly, the question of jurisdiction and adequacy of the process will be addressed in these heads of argument.

- 6.4. Furthermore, MVC, in its heads of argument, alters the relief sought in the amended Notice of Motion. The declaration of sections 27, 29(g) and 19(h) of the Electoral Matters Amendment Act are pursued (prayer 2). However, the related relief contained in prayer 3.1 against Parliament appears not to be pursued, but has not been withdrawn.⁸
- 6.5. In reply and in its heads of argument MVC instead focusses on the legislative process after the enactment of the Electoral Matters Amendment Act.⁹ This relates to the process adopted by Parliament to pass a resolution which resolves the upper limit and discretionary threshold in terms of section 24(1)(a) of the Funding Act (“**the Resolution**”) which will enable the President to determine the upper limits and disclosure threshold.
- 6.6. MVC argues that, contrary to the finding of this Court that it is Parliament’s responsibility to resolve the upper limit and disclosure thresholds and the President’s responsibility to make the determination,¹⁰ Parliament should “*simply pass a resolution which*

⁸ Applicant’s HOA p 107.

⁹ The submissions are situated under the heading “*The President’s discretion to determine the upper limit threshold*”. Applicant’s Heads of Argument (“HOA”) para 223 – 229 pp 104-105; Replying Affidavit (“RA”) para 111 – 117 pp 863 – 865.

¹⁰ *My Vote Counts NPC v President of the Republic of South Africa and Others* (10607/24) [2024] ZAWCHC 205 (16 August 2024) (“the WCHC judgment”) at [8].

authorises the President to enact regulations setting the financial thresholds".¹¹ MVC thus objects to the delays caused by public participation process.¹²

6.7. This argument is entirely without merit. In the absence of a court finding otherwise, Parliament is duty bound to comply with the unequivocal finding of this Court regarding the roles of Parliament and the President in respect of the required resolution. Once this is accepted, it follows that a process of public participation is required in respect of the setting of the upper limit and disclosure threshold. To argue otherwise would be incorrect considering the emphasis on the importance of the upper limit and disclosure threshold in MVC's application and the allegation that the Electoral Matters Funding Amendment Act was "rushed" through without proper public participation.

6.7 Third, the relief sought impermissibly intrudes on the separation of powers. What MVC is seeking in this matter is to prescribe to Parliament that it ought to legislate in a particular manner in circumstances where there is an ongoing parliamentary process in respect of the upper limit and disclosure threshold amounts which form the substance of MVC's complaint of unconstitutionality of the legislation in question.

6.8 Fourth, in the event that the Court grants any or all of the declarations of invalidity, the suspension period of 12 months is inadequate. While this

¹¹ RA para 112 p 864. Applicant's HOA para 224 p 103.

¹² RA para 117 p 865.

issue will ultimately be adjudicated by the Constitutional Court, Parliament has placed on record the reasons for its submission that one year is simply not sufficient. MVC has not addressed Parliament's motivation for a longer period of suspension in its replying affidavit and pursues a period of 12 months.¹³ It is Parliament's contention that the 12 month period is unrealistic and inadequate.

7. These heads are structured as follows:

7.1. Jurisdiction.

7.2. Legislative process:

7.2.1. Electoral Matters Amendment Bill.

7.2.2. The Resolution.

7.3. Remedy.

B. JURISDICTION

8. Section 167(4)(e) of the Constitution provides that only the Constitutional Court may "*decide that Parliament or the President has failed to fulfil a constitutional obligation*".

¹³ Applicant's HOA para 239 p 108.

9. The obligation to facilitate public involvement in legislative processes arises from section 58 of the Constitution in respect of the NA and section 72 of the Constitution in respect of the NCOP.
10. The case-law in respect of the issue of jurisdiction in matters concerning the role of Parliament in respect of public participation is clear.
11. The Constitutional Court, in **Doctors for Life International v Speaker of the National Assembly and Others** 2006 (6) SA 416 (CC) ("**Doctors for Life**") held:

"[27] A construction of s 167(4)(e) which gives this Court exclusive jurisdiction to decide whether Parliament has complied with its constitutional obligation to facilitate public involvement in its legislative processes is therefore consistent with the principles underlying the exclusive jurisdiction of this Court. An order declaring that Parliament has failed to fulfil its constitutional obligation to facilitate public involvement in its legislative process and directing Parliament to comply with that obligation constitutes judicial intrusion into the domain of the principal legislative organ of the State. Such an order will inevitably have important political consequences. Only this Court has this power.

[28] The question whether Parliament has fulfilled its obligation under s 72(1)(a) therefore requires this Court to decide a crucial separation-of-powers question and is manifestly within the exclusive jurisdiction of this Court under s 167(4)(e) of the Constitution."

12. This principle has been applied in a long line of reported cases, more recently in **Mogale and Others v Speaker, National Assembly and Others** 2023 (6) SA 58 (CC) ("**Mogale**") where the Constitutional Court stated that:

"[14] Under s 167(4)(e) of the Constitution, this court has exclusive jurisdiction to decide whether Parliament or the President has failed to fulfil a constitutional obligation. Parliament's alleged failure to reasonably facilitate public involvement implicates its constitutional obligations in terms of ss 59(1)(a), 72(1)(a) and 118(1)(a) of the Constitution. This court has the exclusive jurisdiction to decide that question."

13. As such, this Court does not have the jurisdiction to determine whether Parliament failed in its constitutional obligation to facilitate public participation, nor to grant relief based on such an alleged failure. This issue falls squarely within the exclusive jurisdiction of the Constitutional Court.

C. LEGISLATIVE PROCESS

14. In the event that this Court takes the view that it does have jurisdiction to decide the issue of public participation, notwithstanding the clear legal position, the challenge must, in any event, fail on its merits for reasons addressed hereunder.

Legal framework

15. Before considering the legislative and consequent process, it is necessary to unpack the nature of the obligation in question. It is submitted that while section 72(1)(a) of the Constitution imposes a primary obligation on Parliament to facilitate public involvement in its legislative and other processes, including those of its committees, it does not prescribe to Parliament how to facilitate public involvement. The question of how to meet the imperatives of section 72(1)(a) of the Constitution is a matter that the Constitution has seen fit to leave to Parliament to determine.
16. In **Doctors for Life** the Constitutional Court considered the duty to facilitate public participation in some detail. In so doing, it held:

"[122] Our constitutional framework requires the achievement of a balanced relationship between representative and participatory elements in our

democracy. Section 72(1)(a), like s 59(1)(a) and s 118(1)(a), addresses the vital relationship between representative and participatory elements, which lies at the heart of the legislative function. It imposes a special duty on the legislature and presupposes that the legislature will have considerable discretion in determining how best to achieve this balanced relationship. The ultimate question is whether there has been the degree of public involvement that is required by the Constitution.

[123] It is apparent that the Constitution contemplates that Parliament and the provincial legislatures would have considerable discretion to determine how best to fulfil their duty to facilitate public involvement. Save in relation to the specific duty to allow the public and the media to attend the sittings of the committees, the Constitution has deliberately refrained from prescribing to Parliament and the provincial legislatures what method of public participation should be followed in a given case. In addition, it empowers Parliament and the provincial legislatures to 'determine and control [their] internal arrangements, proceedings and procedures' and to make their own rules and orders concerning their businesses.

[124] It follows that Parliament and the provincial legislatures must be given a significant measure of discretion in determining how best to fulfil their duty to facilitate public involvement. This discretion will apply both in relation to the standard rules promulgated for public participation and the particular modalities appropriate for specific legislative programmes. Yet, however great the leeway given to the legislature, the Courts can, and in appropriate cases will, determine whether there has been the degree of public involvement that is required by the Constitution.

[125] What is required by s 72(1)(a) will no doubt vary from case to case. In all events, however, the NCOP must act reasonably in carrying out its duty to facilitate public involvement in its processes.

..

[129] What is ultimately important is that the Legislature has taken steps to afford the public a reasonable opportunity to participate effectively in the law-making process. Thus construed, there are at least two aspects of the duty to facilitate public involvement. The first is the duty to provide meaningful opportunities for public participation in the law-making process. The second is the duty to take measures to ensure that people have the ability to take advantage of the opportunities provided.

...

[145] To sum up, the duty to facilitate public involvement must be construed in the context of our constitutional democracy, which embraces the principle of participation and consultation. Parliament and the provincial legislatures have broad discretion to determine how best to fulfil their constitutional

obligation to facilitate public involvement in a given case, so long as they act reasonably." [Emphasis added]

17. The reasonableness standard in relation to public participation was considered in **Mogale**:

"[35] This court has repeatedly emphasised that, regardless of the process Parliament chooses to adopt, it must ensure that 'a reasonable opportunity is offered to members of the public and all interested parties to know about the issues and to have an adequate say'. A reasonable opportunity to participate in legislative affairs 'must be an opportunity capable of influencing the decision to be taken'. It is unreasonable if the content of a public hearing could not possibly affect Parliament's deliberations on the legislation. If the hearing is not effectively or timeously advertised, if people are unable to attend the hearing, or if the submissions made at the hearing are not transmitted or accurately transmitted to the legislature, then the hearing is not capable of influencing Parliament's deliberations. This does not mean that the legislature must accommodate all demands arising in the public participation process, even if they are compelling. The public involvement process must give the public a meaningful opportunity to influence Parliament, and Parliament must take account of the public's views. Even if the lawmaker ultimately does not change its mind, it must approach the public-involvement process with a willingness to do so.

...

[37] In determining whether conduct has been reasonable in the context of public participation the following factors are of particular importance: (a) what Parliament itself has determined is reasonable, and how it has decided it will facilitate public involvement; (b) the importance of the legislation and its impact on the public; and (c) time constraints on the passage of a particular Bill, and the potential expense." [Emphasis added]

18. The Court in **Mogale** set the standard to be applied in assessing the public participation process as follows:

"[60] It would be an impossible standard for Parliament to comply with if a single flaw in a single hearing rendered the entire public participation process unreasonable. It is more apt to frame the assessment as one that considers the cumulative consequence of the entire process." [Emphasis added]

19. The Constitutional Court in **SA Veterinary Association v Speaker of the National Assembly and Others** 2019 (3) SA 62 (CC) (“**SA Veterinary**”) dealt squarely with the NA’s duty under section 59(1)(a) of the Constitution to involve the public when drafting and enacting legislation.
20. In that matter, the category of “*veterinarians*” was inserted into the Medicines and Related Substances Bill after the NA’s public hearings. There was no further public participation held in respect of the inclusion of veterinarians. The Court observed:

“[26] Section 59(1)(a) requires that public involvement be facilitated at all stages of the NA’s processes, including at a Committee level. The insertion of a word, by the Health Committee, that materially affects a specific group would be exactly the situation for which this obligation was created.

...

[31] This rule gives expression to the constitutional obligation that is placed upon the NA. Having regard to the material nature of the amendment, the Health Committee is required, as far as possible, to invite further public comment. It is evident that there was no attempt to do this, and no argument was put forward that facilitating public participation was impossible.

*[32] The amendment made at the Committee stage constituted a material amendment to the Bill and will have lasting effects on the professional operations of veterinarians. It is clear that there was no public participation facilitated by the NA with respect to this aspect of the Bill. In *New Clicks Sachs J* wrote:*

‘The forms of facilitating an appropriate degree of participation in the law-making process are indeed capable of infinite variation. What matters is that at the end of the day a reasonable opportunity is offered to members of the public and all interested parties to know about the issues and to have an adequate say.’ [Emphasis added.]

From the above it is obvious that the standard by which public participation must be measured is reasonableness. The content of this standard will vary from case to case. However, a complete failure to take any steps to involve the public in a material amendment to a Bill cannot be reasonable by any

measure. Therefore, we find that the NA failed in its s 59(1)(a) duty and the validity of the insertion of the word 'veterinarian' is consequently tainted."

21. The Constitutional Court in **South Africa Iron and Steel Institute and other v Speaker of the National Assembly and other** 2023 JDR 2331 (CC) ("**SA Iron and Steel**") considered a constitutional challenge directed at specific provisions of the National Environmental Management Laws Amendment Act which amended the definition of "waste" in the National Environmental Waste Management: Waste Act.

22. The Court stated the test to be as follows:

"first, whether the amendments are material, and second, whether these amendments triggered the need for further public involvement."

23. The Court in **SA Iron and Steel** summarised the finding in **SA Veterinary Association** as follows:

"[41] There are striking similarities between SA Veterinary and this matter. This Court stated that the insertion of a word that materially affects a specific group is exactly the situation for which the constitutional obligation of public participation has been created.

[42] It was further alleged that the amendment materially changed the way that veterinarians would be able to compound and dispense medicines. Further, the amendment had the effect of bringing an entire profession under the control of legislation that had previously never applied to it. This was not considered a technical or semantic amendment. There, this Court held that the amendment constituted a material amendment to the Bill and would have lasting effects on the professional operations of veterinarians.

[43] materiality triggers the need for further participation and the respondents did not call for further submissions from the public. A public participation process would have ensured that all interested and affected parties had the opportunity to raise their concerns". [Emphasis added]

24. As can be seen from the cases cited above, it is necessary to establish, as a matter of fact, the process adopted by Parliament to facilitate public

participation and, as a matter of law, to ask, whether that process was reasonable. In the case of subsequent amendments, it is the materiality of those amendments that triggers the need for further public participation.

The Electoral Matters Amendment Act

25. MVC complains generally that the Electoral Matters Amendment Bill was rushed through Parliament without proper consideration or a meaningful process of public participation.¹⁴
26. The legislative process adopted by Parliament is set out in some detail in paragraphs 24 to 44 of the twentieth and twenty-first respondent's answering affidavit,¹⁵ the detail of which we do not repeat. Further, for ease of reference we attach a chronology which includes the steps taken by Parliament and the relevant stages of the litigation.
27. It is clear from Parliament's evidence that there was indeed a meaningful public participation process and that all inputs were fully considered and debated. This process was appropriate, reasonable and constitutionally compliant.
- 27.1. It provided the opportunity for full public participation, which was in fact taken up by MVC and several other organisations and individuals.
- 27.2. Parliament was cognizant of the importance of the Electoral Matters Amendment Bill in having invited both written submissions and oral hearings, its requests for responses from the relevant role players to the

¹⁴ SA para 7.3 p 411 and para 77 p 433-4.

¹⁵ Parliament's AA para 24 to 44 pp 765- 774.

submissions made by the public and receiving the necessary legal advice.

27.3. The submissions resulted in amendments where they were considered to be appropriate. The public thus had the opportunity to influence Parliament and did so.

27.4. Parliament took into account the time constraints as a result of the upcoming elections and provided for a joint process of the NA and the NCOP committees by conferral, resulting in a joint comprehensive public participation process.

28. MVC cites only two concrete examples to justify its claim that there was a lack of public participation in the legislative process:

28.1. The allegation that the Select Committee on Security and Justice ("**the Select Committee**") did not hold a second round of public hearings in respect of the Electoral Matters Amendment Bill.¹⁶

28.2. The contention that Parliament has left a lacuna in the Funding Act by repealing regulations 7 and 9 with the result that there is no disclosure threshold until the President makes regulations.¹⁷

29. We deal with these in turn.

¹⁶ SA para 25-32 pp 415 - 418.

¹⁷ Applicant's HOA para 197 – 200 pp 88-89.

30. First, the allegation that the Select Committee should have had a further round of public participation is without basis in fact or law.
31. The Electoral Matters Amendment Bill was tagged as a “*section 75 Bill*”, an ordinary Bill not affecting provinces.¹⁸
32. Section 75 of the Constitution provides:

“(1) When the National Assembly passes a Bill other than a Bill to which the procedure set out in section 74 or 76 applies, the Bill must be referred to the National Council of Provinces and dealt with in accordance with the following procedure:

(a) The Council must-

(i) pass the Bill;

(ii) pass the Bill subject to amendments proposed by it; or

(iii) reject the Bill.

(b) If the Council passes the Bill without proposing amendments, the Bill must be submitted to the President for assent.

(c) If the Council rejects the Bill or passes it subject to amendments, the Assembly must reconsider the Bill, taking into account any amendment proposed by the Council, and may-

(i) pass the Bill again, either with or without amendments; or

(ii) decide not to proceed with the Bill.

(d) A Bill passed by the Assembly in terms of paragraph (c) must be submitted to the President for assent.”

¹⁸ Parliament’s AA para 26 p 766.

33. In order to expedite the legislative process as it was essential that the Electoral Matters Bill be finalised before the upcoming elections, Parliament decided to process the Bill by way of conferral as was provided for in Joint Rule 147(1) (Joint Rules of Parliament, Sixth Edition) in terms of which a committee of a House may confer with the corresponding committee of the other House, in order to expedite the legislative process. Such a process is envisaged in section 45 of the Constitution.¹⁹
34. The Portfolio Committee on Home Affairs ("**PC HA**") and the Select Committee conferred on the Bill in order to avoid any duplication of processes between the two Houses due to the urgent nature of Bill. This conferral process was carefully monitored by these Committees to ensure that the avoidance of any duplication did not inadvertently result in non-compliance with the required constitutional legislative processes.²⁰
35. The NCOP had already undertaken an extensive and comprehensive public participation process jointly with the PC HA. The PC HA and Select Committee received written submissions from the public and facilitated public hearings. Both committees considered all the inputs from the public as well as the responses thereto, both sitting jointly and as individual committees.

¹⁹ "**45 Joint rules and orders and joint committees**

(1) *The National Assembly and the National Council of Provinces must establish a joint rules committee to make rules and orders concerning the joint business of the Assembly and Council, including rules and orders-*

(a) ...;

(b) *to establish joint committees composed of representatives from both the Assembly and the Council to consider and report on Bills envisaged in sections 74 and 75 that are referred to such a committee*".

²⁰ Parliament's AA para 26 p 766.

36. The changes that had been made to the Electoral Matters Amendment Bill, which emanated from the joint public participation process, were not material in nature nor did they extend the subject matter of the Electoral Matters Amendment Bill. They spoke to the proposals made and issues raised by the public during the joint call for comments²¹ or were technical and semantic in nature. As such, a further round of public participation was neither necessary nor required.²² As set out above, it is the materiality of the amendments that triggers the need for a second round of public participation, which was not the case here.
37. Moreover, the Select Committee did in fact consider the further input in the form of a letter from 19 civil society organisations, including MVC.²³ The thrust of the letter was that the Electoral Matters Amendment Bill was unconstitutional because it gave the President the "sole discretion" to determine the upper limit and disclosure thresholds without giving meaningful guidelines; and because the adoption of the amendment without simultaneous proclamation of an upper limit and disclosure threshold would leave a lacuna in the law.
38. Significantly, the letter does not point to any material difference in the versions of the Electoral Matters Amendment Bill and only states that "*[w]e maintain that the question of whether the changes to the EMAB from the Portfolio Committee on Home Affairs process to the Select Committee on Security and Justice are material has not been fully tested*".²⁴

²¹ Parliament's AA para 38 p 773.

²² Parliament's AA para 64 p 781-2.

²³ "SA 10" p 552.

²⁴ "SA 10" p 552.

39. In the absence of evidence of any material amendments, MVC must fail in its claim that a further round of public participation was required.
40. Second, the complaint regarding the lacuna being evidence of an unlawful and irrational process is also without merit. As referred to above, the Select Committee considered the letter from 19 civil society organisations in which the lacuna was raised. The NA at that stage was of the view that in calling for the Speaker to ensure that a resolution be passed “*regarding the lacuna*” it had done what is required of it in terms of section 24.²⁵
41. It is our submission that the true complaint here is not the legislative procedure but an error of interpretation by Parliament of what the Resolution mandated by section 24 required, which then informed the process it followed. This has subsequently been clarified in the WCHC judgment handed down on 27 May 2024 per Thulare J (“**the rule nisi judgment**”).²⁶ This is dealt with in more detail below.
42. The judgment handed down by the WCHC, per Thulare J on 12 August 2024 (“**the WCHC judgment**”)²⁷ has now filled the lacuna as it preserves the previous amounts for the upper limits and the disclosure threshold pending the outcome of this application or the regulations envisaged in section 24(1) of the Funding Act.

²⁵ Parliament’s AA para 42 p 774; para 45 p 775 – para 52 p 778.

²⁶ *My Vote Count NPC v President of the Republic of South Africa and Others* (10607/24) [2024] ZAWCHC 137 (27 May 2024) (“the rule nisi judgment”).

²⁷ *My Vote Counts NPC v President of the Republic of South Africa and Others* (10607/24) [2024] ZAWCHC 205 (16 August 2024) (“the WCHC judgment”).

The Resolution

43. The process in respect of the Resolution was informed by the rule nisi judgment.

44. Section 24(1) of the Funding Act, which provides for “*Regulations*”, requires that the President, “*acting on a resolution of the National Assembly*”, may by proclamation in the *Gazette* make regulations in respect of, amongst others:

44.1. The maximum amount of a donation that may be accepted from a person or entity, within a financial year as contemplated in section 8(2); and

44.2. The threshold amount above which all donations received must be disclosed as contemplated in section 9(1)(a).

45. Items 7 and 9 to Schedule 2 of the Funding Act further provide as follows:

‘7. Upper limit of donations –

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

In determining the amount referred to in subregulation (1), the President may consider the following:

(a) The actual fiscal contribution to public funding for political purposes;

(b) inflation; and

(c) the actual costs of running a party and running elections, as submitted by parties.’

9. Disclosure limit. – *The President must, from time to time after National Assembly resolution and by notice in the Gazette, determine the threshold referred to in section 9(1)(a) of the Act.*”

[Emphasis added.]

46. As addressed above, Parliament was initially of the view that what was required in terms of section 24 (1) of the Funding Act was a resolution that the President be authorised to make regulations in respect of the disclosure threshold and the upper limit amounts. As such, the Chairpersons of both Committees had taken steps to mitigate the risk by informing the Speaker, who would action a NA resolution to give effect to the Regulations.²⁸ The proposed 16 May 2024 resolution envisaged requiring the President to undertake this task within 6 months.²⁹

47. However, the rule nisi judgment held that:

“A reading of the Regulation 7 and 9 since 8 May 2024 does not provide one with the amounts, which would enable the President to determine the amounts on the advice of or after a resolution of the NA. The resolution of the NA, to make sense, must be a resolution on an amount for purposes of regulations 7 and 9 of schedule 2 of the PPFA.”³⁰ [Emphasis added]

48. This interpretation is confirmed in the WCHC judgment:

“It is Parliament’s responsibility to resolve the upper limits and disclosure thresholds, and the President’s responsibility to make the determination.”³¹

²⁸ Parliament AA para 40 and 42 p 774; para 45 – 46 p 775.

²⁹ Parliament AA para 46 p 775.

³⁰ Rule nisi judgment, para 11.

³¹ WCHC judgment, para 8.

49. Consequently, the process adopted by Parliament is indeed a reasonable and rational one.

50. In this regard, we refer to the following:

50.1. Subsequent to the rule nisi judgment, Parliament was advised to reconsider its resolution and to pass a resolution that contained the parameters and the threshold. This was on 25 July 2024, the last day of the sitting of the NA. It was agreed that members would be furnished with a briefing note and the May resolution in preparation for a new resolution to be passed when Parliament reconvened.³² This briefing note was completed on 29 July 2024.³³

50.2. The NA, on reconvening, on 22 August 2024 agreed that the Speaker would write to the Chairperson for the PC HA to deliberate on the matter as soon as possible. This letter was sent by 24 August 2024.³⁴

50.3. On 3 September 2024 the PC HA resolved that a draft resolution was to be distributed to members of the committee by 5 September 2024 and deliberated upon at the next meeting on 10 September 2024.³⁵

50.4. On 10 September 2024 PLS presented a draft resolution for the NA to the PC HA. All committee members supported the draft resolution and resolved that it should be made public for written and oral submissions.

³² Parliament AA para 55 p 778.

³³ "ATD 13" p 790.145.

³⁴ Parliament AA para 57 p 779.

³⁵ Parliament AA para 58 p 780.

This was on advice from PLS that as Parliament was to determine the donation limit and disclosure thresholds (according to the WCHC judgment), the resolution should be advertised.³⁶

50.5. The PC HA approved the advertisement on 20 September 2024.³⁷

50.6. The advertisement was published on 22 October 2024 with a closing date for submissions on 22 November 2024.

51. This process will culminate in a resolution which, having been the subject of extensive public participation and debate in NA, resolves the upper limit and disclosure threshold and enables the President to determine same.

52. To the extent that MVC has shifted emphasis from the original claim of lack of public participation in respect of the Electoral Matters Act to seemingly object to the public participation process adopted and followed in respect of the Resolution, this is now considered.

53. MVC argues that:

“Parliament fundamentally misunderstands and misconstrued the role of Parliament in the contents of the provisions in the Funding Act (as amended by the Electoral Matters Amendment Act) set forth above. 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 this regard, the decision to determine the thresholds lies solely with the President, and Parliament has delegated its decision-making authority to the President (a fact conceded by the opposition parties and which was accepted before Thulare J by the Ministers and the DA)). Otherwise, there would be absolutely no point to EMAA and the language that the President is to determine the

³⁶ Parliament’s AA para 59 p 780.

³⁷ Parliament’s AA para 60 p 780.

disclosure threshold and the upper limit would be nothing more than surplusage. The submissions are particularly untenable in circumstances where the EMAA expressly sought to amend the PPFA (which previously vested the authority to prescribe the limits in the National Assembly).³⁸
[Emphasis added]

54. MVC has misunderstood and is mistaken. Parliament understands its role and powers well. Parliament does not assert any right “*to prescribe the financial thresholds*”.³⁹ But, it is not a case of Parliament’s role being limited to one of procedure that requires that it “*simply pass a resolution which authorises the President to enact regulations setting the financial thresholds.*”⁴⁰
55. As Parliament has explained in its answering affidavit, the President exercises his discretion to determine the upper limits of donations and the disclosure threshold after a NA resolution has been provided. The NA resolution is not, as MVC argues, simply to provide authorisation to the President. It provides a recommendation on the financial thresholds which the President may or may not adopt.
56. Parliament has embarked on a public participation process in order to inform its Resolution which will enable the President to make regulations in respect of the upper limit and the disclosure threshold amounts.
57. Parliament, in its answering affidavit, pointed out that any complaint in respect of lack of public participation after the rule nisi judgment would be premature as there is currently a public participation process underway in respect of the

³⁸ Applicant’s HOA para 224 pp 103-104.

³⁹ Applicant’s HOA para 224 pp 103-104.

⁴⁰ Applicant’s HOA para 224 pp 103-104.

Resolution which will enable the President to make regulations in respect of the upper limit and the disclosure threshold amounts.

58. Two key points fall to be emphasised: (a) a public participation process ultimately serves to enhance the upper limit and the disclosure threshold amounts that Parliament recommends to the President; and (b) Parliament has explained, in some detail, its process and timeline in this regard. There can be no serious suggestion of undue delay in this regard.
59. Consequently, MVC has not made out a case in respect of any of its complaints against Parliament and any declaratory relief to that effect still pursued by MVC against Parliament should be dismissed.

D. REMEDY

60. MVC set out the relief now pursued at paragraphs 234 – 243 of its heads of argument.⁴¹ This includes an order, the effect of which is to set aside the upper limit pending a process in which Parliament remedies the defect. In the interim, all donations received from the enactment of the Electoral Matters Amendment Act to the date of an order of this Court, which are above the pre-amendment limit, must be paid back to the donors.
61. Similarly, all donations beyond the pre-amendment threshold limit between the enactment of the Electoral Matters Amendment Act and an order of this Court must be disclosed.

⁴¹ Applicant's HOA pp 107-110.

62. MVC further asks that any declaration that the legal framework for the disclosure threshold be set aside not be suspended and the Court should put in place a regime in which all donations must be disclosed. Should the Court decline and decide to suspend the declaration of invalidity, that regime should be in place during the period of suspension and thereafter, should Parliament fail to remedy the defect in 12 months.
63. There is currently an ongoing parliamentary process in respect of the upper limit and disclosure threshold.
64. It is submitted that the question of how best to fulfil the constitutional obligation to record, preserve and disclose information in respect of funding in a reasonably accessible manner falls in the realm of legislative choice. MVC seeks, impermissibly, to have this Court intrude on that legislative choice. This infringes on the principle of the separation of powers.
65. The Court, in **Doctors for Life** said the following:

"[37] The constitutional principle of separation of powers requires that other branches of government refrain from interfering in parliamentary proceedings. This principle is not simply an abstract notion; it is reflected in the very structure of our government. The structure of the provisions entrusting and separating powers between the legislative, executive and judicial branches reflects the concept of separation of powers. The principle 'has important consequences for the way in which and the institutions by which power can be exercised'. Courts must be conscious of the vital limits on judicial authority and the Constitution's design to leave certain matters to other branches of government. They too must observe the constitutional limits of their authority. This means that the Judiciary should not interfere in the processes of other branches of government unless to do so is mandated by the Constitution."

66. The Constitutional Court in that matter noted:

“[69] The basic position appears to be that, as a general matter, where the flaw in the law-making process will result in the resulting law being invalid, Courts take the view that the appropriate time to intervene is after the completion of the legislative process. The appropriate remedy is to have the resulting law declared invalid. However, there are exceptions to this judicially developed rule or ‘settled practice’. Where immediate intervention is called for in order to prevent the violation of the Constitution and the rule of law, courts will intervene and grant immediate relief. But intervention will occur in exceptional cases, such as where an aggrieved person cannot be afforded substantial relief once the process is completed because the underlying conduct would have achieved its object”.

67. While *in casu* the Electoral Matters Amendment Act has already been enacted, the principle is equally applicable because the process in respect of the upper limit and disclosure threshold amounts, which form the substance of MVC’s complaint in respect of the legislation it challenges, is still underway.

68. In **My Vote Counts v Speaker** 2016 (1) SA 132 (CC) (“**MVC 1**”) the majority judgment expressed the following sentiment in respect of the minority judgment:

“Our disagreement with the minority judgment lies in its conclusion that Parliament has failed to fulfil its constitutional obligation to enact the legislation envisaged in s 32(2) of the Constitution. Summarising it, our difficulty with the minority judgment is twofold. First, insofar as it seeks to have Parliament legislate in a manner preferred by the applicant, the minority judgment violates the separation of powers.”⁴²

69. The Court elaborated:

“[155] The applicant wants information on the private funding of political parties to be made available in a manner preferred by it. It prefers that the legislation should require the disclosure of the information as a matter of ‘continuous course, rather than once-off upon request’. According to the minority judgment, what South Africa must have is systematic disclosure. It may well be that this is ideal; who knows? But that is not the issue. It is for Parliament to make legislative choices as long as they are rational and

⁴² Para 122.

otherwise constitutionally compliant. Crucially, lack of rationality is not an issue in these proceedings.

[156] Despite its protestation to the contrary, what the applicant wants is but a thinly veiled attempt at prescribing to Parliament to legislate in a particular manner. By what dint of right can the applicant do so? None, in the present circumstances. That attempt impermissibly trenches on Parliament's terrain; and that is proscribed by the doctrine of separation of powers."

70. The Constitutional Court in **My Vote Counts NPC v Minister of Justice and Correctional Services** 2018 (5) SA 380 (CC) ("**MVC 2**") with regard to the regulation of funding, held that:

"[17] Parliament enjoys functional independence in the discharge of its lawmaking obligations, even in relation to the regulation of private funding. Whether it does so through one, two or more pieces of legislation falls squarely within its discretionary powers. It may, for example, meet that obligation through an appropriately recalibrated PAIA alone, PAIA and other legislation or a different mechanism altogether."

71. For this reason, the Court in **MVC 2** held that:

"[76] It does not fall within the remit of this court to prescribe to Parliament whether the recordal, preservation and disclosure of all information relating to private funding should be regulated in terms of PAIA, or PAIA and another legislation or PAIA and other measures. Again, that is a decision to be taken by Parliament itself. Our duty is to articulate the unfulfilled obligation in broad terms, but with sufficient clarity to give Parliament a fair sense of what is required of it. We are required to provide broad guidelines on what could be considered by parliamentarians in developing a fitting regulatory framework in this connection. The fundamental principle that must be underscored here is that information on the private funding of political parties and independent candidates must be 'held' or 'recorded', preserved and be reasonably accessible."

72. The Constitutional Court in **MVC 2** expressly indicated that whether parties should be required to record and disclose "*any and every help*" is a matter best left to Parliament to decide upon.⁴³ Moreover, the Court in **MVC 2** did not require

⁴³ Para 75.

that there be an upper limit to private donations, this was a decision made by the legislature. These are self-evidently policy issues that fall within the mandate of the legislature to decide.

73. The WCHC recognised this discretion when it found that the responsibility to resolve the upper limit and disclosure threshold lies with Parliament.⁴⁴ In the WCHC judgment Thulare J stated:

“Where the courts identify a mistake, our democratic structure is that the courts should so pronounce, and allow the legislature and the Executive an opportunity to attend to such identified mistake. It is Parliament’s responsibility to resolve the upper limits and disclosure thresholds, and the President’s responsibility to make the determination.”

74. It is submitted that MVC is mistaken when it argues that *“the discretion afforded to Parliament pertains to technical and practical modalities of implementing full disclosure and how such disclosure is effected”*.⁴⁵

75. This approach is at odds with the jurisprudence referred to above and has no basis in law.

76. Consequently, it is submitted that it would be inappropriate for the Court to prescribe the manner in which the state fulfils its obligations while there is an ongoing process in the legislature.

⁴⁴ Rule nisi judgment para 16.

⁴⁵ Applicant’s HOA para 43.5 p 25.

77. In respect of the prayers in the notice of motion regarding the suspension of the relief, we share the view expressed in the Minister's affidavit that this is an order that only the Constitutional Court can make.⁴⁶
78. In the event that this Court makes any declarations of unconstitutionality, and takes the view that an order of suspension should be made, the period of 12 months is inadequate, with due regard to the excessive workload and demands on Parliament and the complexity of the amendment process.⁴⁷ Parliament faces grave difficulty in complying with court orders to remedy legislative defects within a period of 24 months, which often results in further litigation to seek an extension of time.

E. CONCLUSION

79. This Court lacks jurisdiction to make a determination in respect of the alleged lack of public participation and accordingly, cannot make an order of invalidity on that basis. It is submitted that Parliament has met its constitutional obligations in this regard in any event.
80. The relief that this Court may order is circumscribed by the doctrine of separation of powers. Further, it is premature in that there is currently a parliamentary process underway in respect of the upper limit and disclosure threshold amounts.

⁴⁶ Second and third respondent's answering affidavit para 145 p 750 and the cases quoted in footnote 32.

⁴⁷ Parliament's AA para 77 p 784; para 12.5 p 762.

81. For these reasons, the application should be dismissed. If it is partially successful, and the Court is inclined to order the suspension of its order, it is submitted that 36 months is a realistic period for suspension.

Karrisha Pillay SC

JL Williams

3 February 2025

LIST OF AUTHORITIES

Cases

1. **Doctors for Life International v Speaker of the National Assembly and Others** 2006 (6) SA 416 (CC)
2. **Mogale and Others v Speaker, National Assembly and Others** 2023 (6) SA 58 (CC)
3. **SA Veterinary Association v Speaker of the National Assembly and Others** 2019 (3) SA 62 (CC)
4. **South Africa Iron and Steel Institute and other v Speaker of the National Assembly and other** 2023 JDR 2331 (CC)
5. **My Vote Count NPC v President of the Republic of South Africa and Others (10607/24) [2024] ZAWCHC 137 (27 May 2024)**
6. **My Vote Counts NPC v President of the Republic of South Africa and Others (10607/24) [2024] ZAWCHC 205 (16 August 2024)**
7. **My Vote Counts v Speaker** 2016 (1) SA 132 (CC)
8. **My Vote Counts NPC v Minister of Justice and Correctional Services** 2018 (5) SA 380 (CC)

Legislation

9. Political Party Funding Act 6 of 2018
10. Electoral Matters Amendment Act 14 of 2024
11. Regulations regarding the Funding of Political Parties Issued in terms of Section 24(2) of the Political Party Funding Act, 2018

Other

12. Joint Rules of Parliament, Sixth Edition

Annexure to Parliament's Heads of Argument : Chronology

21 January 2019	Funding Act assented to in Bill form	Parliament AA para 24 p 765
1 April 2021	Funding Act became operative	Parliament AA para 24 p 765
May 2023	MVC application in 7630/23 launched in WCHC that Funding Act and regulations are unconstitutional because (i) fails to require a political party to disclose all private donations ; and (ii) fails adequately to impose controls on the private funding of parties	NOM p 1 SA p 412 para 11.
12 December 2023	The Electoral Matters Amendment Bill was first presented to the joint meeting of the Parliamentary Committee on Home Affairs (PC HA) and the Select Committee on Social Security and Justice (Select Committee) by the Minister.	Parliament AA para 27 p 766
14 December 2023	The PC HA and the Select Committee jointly advertised the Electoral Matters Amendment Bill for public comment	Parliament AA para 27 p 766
11 January 2025	Further advertisements in print media and on radio	Parliament AA para 27 p 767
26 January 2024	Closing date for comments (13 submissions received of which 10 were substantive)	Parliament AA para 27 p 767
	MVC submitted written submissions	SA p 413 para 16
2 February 2024	MVC submitted a copy of Power Point (PP) presentation	SA p 413 para 17
5 February 2024	Mathonsi (PC HA) sent MVC an email summarising public submissions which included concerns raised by [MVC] in the SFA	SA para 18 p 413
6 February 2024	Joint meeting - the Content Advisor presented the summaries of the submissions Virtual public meeting	Parliament AA para 29 p 767 And para 31 p 770
	MVC made oral submissions	SA para 19 p 414
9 February 2024	Joint meeting – Parliamentary Legal Services (“PLS”), the Department of Home Affairs (“the Department”), the IEC and the Department of Communications and Digital Technologies responded to the submissions	Parliament AA para 34 p 772

	Mathonsi sent MVC email attaching a PP presentation containing a legal opinion (that sufficient time was allowed for inputs in process)	SA para 20 p 414
14 February 2024	Department provided a comprehensive response to submissions National Assembly Rule 286(4)(i) requires that the Committee, after due deliberation, must consider a "Motion of Desirability" on the subject matter of the Bill and, if rejected, must immediately table the Bill and its report. On 14 February 2024, the PC HA agreed that the Electoral Matters Amendment Bill [B 42 - 2023] was desirable. This was followed by the deliberations on the Bill.	Parliament AA para 35 p 772 Parliament AA Para 30 p 767-8
19-20 February 2024	On 19 and 20 February 2024, the PC HA deliberated on the Bill and requested the State Law Advisers to start with the drafting of the A-version of the Bill	Parliament AA Para 30 p 767-8
20 February 2024	IEC presented to PC HA	Parliament AA para 36 p 772
27 February 2024	State Law Advisor to PC HA	Parliament AA para 36 p 772
1 March 2024	Clause by clause deliberations to ensure that all changes had been incorporated	Parliament AA Para 30 p 767-8
12 March 2024	The PC HA recommended the adoption of the Electoral Matters Amendment Bill and it appeared on the NA order paper. The Electoral Matters Amendment Bill was referred to the Select Committee for its consideration.	Parliament AA para 37 p 773
13 March 2024	Select Committee received a briefing from the Content Advisor and PLS	Parliament AA para 38 p 773
	MVC delivered letter to chair of SC to ascertain if there would be further round of public hearings	SFA para 25 p 415
14 March 2024	Secretariat responded that would respond in due course once met with chair	SFA para 26 p 415
15 March 2024	The Select Committee met and deliberated on the Bill	Parliament AA para 39 p 773
	After considering the public inputs and written comments received during the conferral meeting as well as the amendments made by the	Parliament AA para 38 p 773

	PC HA, the Select Committee resolved that the amendments were not of such a nature that would warrant further public participation. It was agreed that the amendments effected by the PC HA spoke to the proposals made and issues raised by the public during the joint call for comments.	
19 March 2024	Meeting of the Select Committee - the Parliamentary Legal Advisor noted that there would be a gap in the law once the Electoral Matters Amendment Act was assented to by the President and that the Chairpersons of both Committees had taken steps to mitigate the risk by informing the Speaker, who would action a NA resolution to give effect to the Regulations	Parliament AA para 40 p 774
	A group of twenty civil society organisations (including MVC) sent a letter to all members of the Select Committee, urging them to reject the EMAB. In these submissions, the applicant urged the NCOP to reject the EMAB and send it back to Parliament for revision on the basis that the EMAB was unconstitutional	SFA para 29 p 416
20 March 2024	Select Committee proceeded to consider and adopt the Electoral Matters Amendment Bill as referred without proposed amendments	Parliament AA para 42 p 774
	Minute proposes PLS advise speaker on urgent need for consideration of a resolution re lacuna	Parliament AA para 42 p 774
27 March 2024	MVC wrote to President that the Electoral Matters Amendment Bill was unconstitutional on the basis of inter alia that it would create a lacuna in the law. MVC said that EMAB must not be signed into law, and that it should instead be sent back to the National Assembly and the NCOP for reconsideration.	SFA para 33 p 418

2 April 2024	Response from President that had not received the Bill but assured MVC he would properly consider it before deciding whether to sign it into law.	SFA para 34 p 419
4 May 2024	The Electoral Matters Amendment Bill was assented to	Parliament AA para 43 p 774
7 May 2024	Electoral Matters Amendment Bill becomes Act No. 14 of 2024 when it was published in <i>Gazette</i> 50624	Parliament AA para 43 p 774
8 May 2024	President proclaimed the Electoral Matters Amendment Act operational	Parliament AA para 44 p 775
9 May 2024	The need for a resolution under section 24(1)(a) was raised in the NA Order Paper. A resolution (pursuant to section 24 of the Funding Act) was accordingly proposed in that Order Paper (paragraph 3 thereof). This resolution was ultimately not carried.	Parliament AA para 45 p 775
10 May 2024	MVC launched urgent interdict in WCCHC – sought an interdict that pending the earlier of the finalisation of proceedings to declare sections 29(g) and (h) of the EMAA and /or determination of upper limit and threshold in terms of the regs, the upper limit shall be deemed to be R15 million and threshold for disclosure R100 000. Dolamo J postponed the hearing to 17 May for respondents to file papers	“SA18” p 585
16 May 2024	Resolution adopted: “(1) notes that section 24(1)(a) of the Political Party Funding Act (Act No 6 of 2018) (“the Act”), requires that the President, acting on a resolution of the National Assembly, may by proclamation in the <i>Gazette</i> make regulations contemplated in sections 6(2), 7(2)(e), 8(2), 8(5) and 9(1)(a) of the Act; (2) further notes that the Electoral Matters Amendment Act (Act No 14 of 2024) came into operation on 8 May 2024, and provides that regulations contemplated in section 24(1)(a) of the Act in respect of sections 8(2) and 9(1)(a) have to be made by the President, acting on a resolution of the National Assembly; (3)	Parliament AA para 46 p 775

	<p>(4) recognises that the task of making regulations requires time, and therefore resolves that:</p> <ul style="list-style-type: none"> a. the President make regulations regarding the amounts contemplated in sections 8(2) and 9(1)(a) on an urgent basis as set out in regulations 7 and 9 of Schedule 2 of the Act; and b. the President must within six months from the date of this resolution, table comprehensive draft regulations for consideration by the National Assembly, and for a resolution to be made in terms of section 24(1)(a) of the Act. " 	
<p>17 May 2024 24 May 2024</p>	<p>Urgent was argued before Thulare J</p> <p>Judgment per Thulare J: "It seems to me that by the time section 27(5) came into operation, the R 15 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.</p>	<p>SFA para 45 p 421 "SA 18" p 598</p>
	<p>Order: "The issue of a rule nisi is authorized calling upon any interested person to show cause on 12 August 2024 (the return date), why an order in the following terms should not be granted. 1.1. pending the earlier of: (i) the finalization of proceedings to declare sections 29(g) and (h) of the Electoral Matters Amendment Act, 2024 (Act No. 14 of 2024) (the EMMA) and amended regulations 7(1) and 9 of schedule 2 to the Political Parties Funding Act, 2018 (the PPFA) inconsistent with the Constitution and invalid, and other relief, which must be instituted within 20 days of the order, and (ii) the determination of the upper limit in the amended regulation 7(1) of schedule 2 of PPFA (the upper limit) and the disclosure threshold in the</p>	

	<p>amended regulation 9 of schedule 2 of the PFFA (the disclosure threshold):</p> <p>1.1.1. The upper limit shall be deemed to have been determined at R15 million per annum;</p> <p>1.1.2. The disclosure threshold shall be deemed to have been determined at R 100 000 per annum.”</p>	
June 2024	MVC amended its notice of motion in order to seek relief declaring sections 27, 29(g) and 29(h) of the Electoral Matters Amendment Act to be inconsistent with the Constitution and invalid.	Parliament AA para 9 p 760
25 July 2024	Subsequent to the WCHC judgment, Parliament was advised to reconsider its resolution and to pass a resolution that contained the parameters and the threshold. It was agreed that members would be furnished with a briefing note and the May resolution in preparation for a new resolution to be passed when Parliament reconvened.	Parliament AA para 555 p 778
16 August 2024	Thulare J on return day:	“RA7” p 1009
	<p>Upon the Electoral Matters Amendment Act, 2024 (Act No. 14 of 2024) (the EMMA) taking effect on 8 May 2024 there was no upper limit to donations in Regulation 7(1), and there was no disclosure threshold for donations in Regulation 9. The old regulations were repealed and had been substituted by the new regulations. The President required a resolution of the NA to determine the new upper limits and the disclosure thresholds. There was no resolution of the NA that authorized the President to determine the upper limit and the disclosure threshold. When the EMMA took effect on 8 May 2024, it created an unfilled space, or a gap, or lacuna in the law as regards the amounts in the upper limit and disclosure threshold for donations.</p>	

	<i>Koopman is no authority for the courts to usurp the function of Parliament and the Executive through some fictitious reasoning and create non-existing laws. Where the courts identify a mistake, our democratic structure is that the courts should so pronounce, and allow the legislature and the Executive an opportunity to attend to such identified mistake. It is Parliament's responsibility to resolve the upper limits and disclosure thresholds, and the President's responsibility to make the determination. This court can only go as far as making an order that is just and equitable to provide temporary relief.</i>	1009
22 August 2024	The NA Programme Committee agreed that the Speaker would write to the Chairperson of the PC HA for the Committee to deliberate on the matter as soon as possible in order for such deliberations to inform the resolution that the NA would consider	Parliament AA para 57 p 779
29 August 2024	It was reported to the National Assembly Programme Committee that the Speaker had written to the Chairperson of the PC HA to prioritise consideration of the matter and report back to the NA to enable the passing of an appropriate resolution	Parliament AA para 57 p 780
3 September 2024	The PC HA considered the aforementioned letter and resolved that a draft resolution was to be distributed to members of the committee by 5 September 2024 and deliberated upon at the next meeting on 10 September 2024.	Parliament AA para 58 p 780
10 September 2024	PLS presented a draft resolution for the NA to the PC HA. All committee members supported the draft resolution and resolved that it should be made public for written and oral submissions	Parliament AA para 59 p 780
20 September 2024	The PC HA approved the advertisement: <i>"the Portfolio Committee on Home Affairs invites members of the public and organizations to comment on the resolution required by section 24(1) of the Political Funding Act, 2018 (Act No.6 of 2018) ("PFA")</i>	Parliament AA para 60 p 780

	<p>related to the upper limit for donations received by a political party and the disclosure threshold for political parties, independent candidates and independent representatives as provided for in sections 8(2) and 9(1) a of the PFA respectively.</p> <p>...</p> <p><i>The Portfolio Committee on Home Affairs is therefore in the process of deliberating on the formulation of the resolution required in terms of 24(1)(a), whereafter it will report to the National Assembly. That report of the Committee will then enable the House to make the required resolution. Public comment will assist the portfolio committee on home affairs in the formulation of the resolution that will be debated and ultimately made by the National Assembly."</i></p>	
22 October 2024	<p>It was reported to the PC HA that in terms of Parliament's internal procurement process, the Purchase Order had been received for publication of the aforementioned advertisement. The closing date for submission is 22 November 2024.</p>	Parliament AA para 61 p 781
17 October 2024	<p>By agreement between the parties, the Court ordered that the Speaker and the Chairperson of the National Council of Provinces ("NCOP") be joined as the twentieth and twenty-first respondents.</p>	Parliament AA para 11 p 760