

We must strengthen,  
not subvert, the  
SIPO law on funding  
political activity



**Atheist Ireland**

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## **We must strengthen, not subvert, the SIPO law on funding of political activity**

Amnesty International Ireland is refusing to obey the law on funding of political purposes. They are refusing to return an illegal donation from America to help to repeal the eighth amendment. Amnesty is mistaken in taking this position, both ethically and practically.

Atheist Ireland is also a civil society body. We also promote human rights, including repeal of the eighth amendment. Our fundraising is also restricted by this law. Despite this, we support the law. We believe that it should be strengthened not subverted.

The SIPO law exists to ensure that good arguments can be heard because of their merits, and not get drowned out by those who happen to have the wealthiest supporters. Civil society bodies should welcome measures to prevent Ireland from becoming a plutocracy.

We should strengthen this law, to ensure that our democracy is more a battle of ideas than a battle of bank accounts. We should resist attempts to weaken it, by subverting its ability to regulate the influence of money on political decisions between elections.

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### **1. Why Atheist Ireland supports the SIPO law**

As a civil society organisation, Atheist Ireland campaigns actively and robustly for the political purposes of separation of church and state, and removing religious privilege within our democracy, including by repealing the eighth amendment. We have registered with SIPO.

As a voluntary organisation, Atheist Ireland has limited resources, and part of our work has a political purpose. We always ask the SIPO office about the status of any potential donations, in order to ensure that we remain within the law.

We have turned down large offers of political donations because they breach this law. Another person wanted to make a large donation to our crowdfunding for Freedom of Information Act requests about the impact of religion in ETB schools. We had to tell them that we could only accept such a donation for non-political purposes.

We correctly complain when groups like Youth Defence use large donations or foreign money to fund political anti-choice campaigns, undermining less-well-funded pro-choice arguments, or when such groups refuse to cooperate with the SIPO law.

We cannot make these complaints if we argue that it is okay for 'our side' to behave like this. We are confident that we can effectively make our arguments for secularism, including repealing the eighth, while remaining within the SIPO law.

It is simply untrue to claim that the SIPO law is draconian, or that it will close down civil society groups, or prevent us from operating effectively, or breach our freedom of association. On the contrary, it is a progressive law that makes our democracy fairer.

The SIPO law does not threaten in any way the core non-political work of civil society groups, such as administration, education, and provision of core services. We can still raise any amount of money that we want for such purposes.

The only thing that the SIPO law restricts is the amount of money that we can accept and use for the political purpose of trying to influence political outcomes. It is perfectly reasonable that this part of our funding should be regulated, in order to protect our democracy from the undue influence of large donations.

## **2. The background to the SIPO law on Third Parties**

The SIPO law arose as part of the state's response to a series of political scandals and tribunals. It is part of a series of related laws passed around the turn of the century, covering Ethics in Public Office, Prevention of Corruption, Elections, Local Government, Public Service Management, Freedom of Information, and Committees of the Oireachtas.

The SIPO Commission regulates several related laws. One of its purposes is to minimise the undue influence of money on our democracy. That is a good thing, not a bad thing. It is the filter through which genuine democrats should view this debate.

## **3. The question of foreign donors is a distraction in this case**

The issue of foreign donations is a distraction from Amnesty's legal obligations with regard to this donation. Even if Amnesty had got this money from an Irish source, it would still have been way over the legal limit.

A Third Party can only accept €2,500 in a calendar year from a single registered corporate donor. Amnesty accepted €137,000 from Soros, more than fifty times the legal limit, even if it had come from Ireland.

It is of course legitimate to argue that the Government could increase the limits on allowable donations from any one individual source, while still enforcing that limit equally on all political activities by all bodies at all times. Atheist Ireland would be happy to discuss the pros and cons of this with anybody who feels it would benefit our democracy.

#### **4. The law should be strengthened to include religions**

This law is indeed flawed, but in the opposite way to what Amnesty is suggesting. It should be strengthened to capture political activities by religions.

The Catholic Church can spend any amount of money on political purposes, while simply claiming that it only seeks donations for religious and not political purposes. Some secular groups have made similarly implausible claims.

This is not just a theoretical concern. The Catholic Church and the Church of Ireland are both on the register of lobbyists. They regularly seek to influence political decisions, and are part of the dialogue process between the Government and religious and philosophical bodies. The Catholic Schools Partnership lobbies the Government on issues related to Catholic ethos in state-funded Irish schools.

The Catholic Church has already met Taoiseach Leo Varadkar and five Government Ministers. The Bishops urged the Government to reconsider plans to hold a referendum to repeal the eighth amendment. They outlined their 'vehement opposition' to its removal from the Constitution. They said they would campaign in line with Catholic teaching.  
<https://www.irishtimes.com/news/politics/church-urges-government-to-reconsider-eighth-amendment-referendum-1.3205246>

After that meeting, Leo Varadkar tweeted on 31 August 2017:

Good meeting with Catholic Church. Faith communities have important place in Irish life. Constructive engagement with them is valuable for Government.

Despite this, the Catholic Church can escape its SIPO obligations, in a way that Atheist Ireland can not do without being dishonest.

#### **5. The test should be political spending, not donations**

This loophole could be removed by setting a different trigger for when a body must declare their funders. This now happens when a body gets certain donations that are described as being for a political purpose.

Instead it should happen when a body spends a certain amount on political purposes. The SIPO Commission itself has recommended this change, and has suggested €5,000 as the amount of spending that would trigger accountability under the Act.

The Commission has noted in previous annual reports the difficulties with the current legislative provisions with respect to Third Party registration.... The test is to do with the intent of the giver rather than the use of funds by the recipient.

The Commission is of the view that the definition of what constitutes a 'Third Party' should not be determined on the basis of whether an individual/group has received a donation, but rather should focus on spending by the individual/group.

[http://www.sipo.ie/en/Reports/Annual-Reports/2016-Annual-Report/AnnualReport2016/media/sipoc\\_ar\\_2016\\_english.pdf](http://www.sipo.ie/en/Reports/Annual-Reports/2016-Annual-Report/AnnualReport2016/media/sipoc_ar_2016_english.pdf)



## 6. The law affects all political activities, all of the time

The definition in the Act of a Third Party is:

Any person, other than a political party registered in the Register of Political Parties under Part III of the Electoral Act, 1992 , or a candidate at an election, who accepts, in a particular year, a donation the value of which exceeds £100.

<http://www.irishstatutebook.ie/eli/2001/act/38/section/49/enacted/en/html>

The definition of political activity by a Third Party includes:

To promote or oppose, directly or indirectly, the interests of a third party in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to a policy or policies or functions of the Government or any public authority

<http://www.irishstatutebook.ie/eli/2001/act/38/section/49/enacted/en/html>

Here is what the SIPO Commission says about Third Parties in its 2003 Annual Report:

Third Parties must register with the Standards Commission. The definition of political purposes is extremely wide and, as well as referring to elections and referenda, it also covers any campaign which supports or opposes any policy of the Government or a public authority, including a local authority.

The provisions relating to Third Parties came into effect on 1 January 2002. While they have on-going effect, they are particularly relevant during political campaigns such as elections or referenda.

<http://m.sipo.gov.ie/en/Reports/Annual-Reports/Previous-Annual-Reports/2003-SIPOC-Annual-Report.pdf>

Here is what the SIPO Commission says about Third Parties in its 2004 Annual Report:

Outside of election and referendum campaigns, because the requirement to register as a Third Party applies at all times once a donation of more than €126.97 for political purposes has been received, the Standards Commission continues to be vigilant in relation to the activities of groups which might be covered by the legislation.

Such groups are contacted by the Standards Commission for clarification of their position if it appears that the activities they are engaged in may be captured by the definition of political purposes set out in the legislation.

<http://www.sipo.ie/en/Reports/Annual-Reports/Previous-Annual-Reports/2004-SIPOC-Annual-Report.pdf>

These are the SIPO Commission's explanatory notes for Third Parties.

<http://www.sipo.ie/en/Guidelines/Explanatory-Notes/Explanatory-Notes-for-Third-Parties/Explanatory-Notes-for-Third-Parties.html>

## **7. Why the law should affect all political activities, all of the time**

The idea that the SIPO law should not affect us as civil society groups is mistaken. Even Amnesty accepts that we should be bound by the law, while we are campaigning during elections or referendums.

Amnesty is arguing a narrower point: that the law should not apply to civil society organisations between elections, at least if we are campaigning on human rights issues.

But the idea that the SIPO law should not apply to us between elections is also mistaken, both ethically and practically. The influence that money has on our democracy is not limited to election campaigns. Indeed, most of it happens outside election campaigns.

It is as important to regulate the undue influence of money on attempts to change the law, or attempts to influence politicians or civil servants in their decision making, as it is to regulate the undue influence of money on elections and referendums.

At the heart of civil society activism, we always argue that democracy is about much more than voting every few years. Democracy is about the interaction between the people and our government, at all levels of decision making, and at all times of every year. We can't now suddenly say that only elections and referendums are political.

## **8. We must assume that our laws mean what they say**

Amnesty quotes from the 2003 Annual Report of the SIPO Commission. This says that the Commission has told the Minister, as part of a review of the Act, that it is concerned that the definition of political purposes is so wide that it may, unintentionally, cover a wide range of bodies, and it gives some examples.

<http://www.sipo.ie/en/Reports/Annual-Reports/Previous-Annual-Reports/2003-SIPOC-Annual-Report.pdf>

But there is no good reason to assume that the Oireachtas did not intend the SIPO law to be implemented between elections. The wording of the law makes clear that it encompasses all attempts to influence any political decisions.

The wording is comprehensive, and correctly so. It was drafted by lawyers, and passed through the office of the Attorney General. Why on earth would these lawyers have included the phrase 'in a particular year' instead of 'during an election or referendum campaign' if they meant the latter? It simply doesn't make sense.

In any case, nobody can arbitrarily change the meaning of a law simply because they think the Oireachtas might not have meant what it passed. Nobody can choose to implement a law in a way that somebody who benefits from the change sees as 'a common sense way' but which is in reality contrary to what the law says.

That notion is at the heart of the Irish nod-and-wink politics that this law, and related laws, were passed in order to move us away from.

## 9. The SIPO Commission Report on Third Parties and Lisbon

In 2009 the SIPO Commission published a report on Third Parties and the Referendum on the Treaty of Lisbon.

<http://www.sipo.ie/en/Reports/General-Reports/Reports-on-Third-Parties/-Referendum-on-the-Treaty-of-Lisbon/Third-Parties-Treaty-of-Lisbon.pdf>

With regard to the concerns about the definition of political purposes, the report quoted representatives of three NGOs: the Irish Council for Civil Liberties, Barnardos, and Amnesty Ireland. These concerns were broadly similar to those now being raised by Amnesty. The Report concluded that:

Having regard to these concerns, and also the concerns expressed regarding the lack of transparency of the funding of certain groups campaigning at the Treaty of Lisbon, it is clear that a balance needs to be found to ensure the funding of political campaigns is sufficiently transparent while at the same time ensuring that the capacity of NGOs legitimately to raise funds in support of their activities is not hampered.

This analysis conflates two different things. Of course the law should not hamper the activities of NGOs while they are engaging in non-political activities. But it should regulate their donations (or ideally their spending) while they are engaging in political activities, either during or outside of election campaigns. That is the whole point of the law.

The report also considered the nuanced question of a Third Party that, between elections, is opposing the policies of a political party, in circumstances where that political party may be using state funding to promote its policy. It is indeed tempting to consider that, in this case, the Third Party should not be subject to the law between elections.

But that assumes that all Third Parties are equal. Some Third Parties will be better-resourced than others, and they may be opposing the policies of the political party from different directions. Reverting to a financial free-for-all just abdicates the responsibility to protect democracy from the undue influence of money.

There are several ways of approaching this problem while remaining true to the aim of the law, including having different regulations for this circumstance, or regulating the use of state money by political parties between elections.

We agree with the Commission's recommendation that any changes in the law should follow a comprehensive consultation process. We will be happy to take part in such a consultation, where we will argue for the strengthening of the law.

We represent the type of voice that the Act was designed to protect: smaller, voluntary, less-well-funded political advocacy groups, that do not have the multi-million-euro budgets of the institutions whose concerns the Commission has quoted.

We will also argue that any consultation, about how best to protect less-well-funded voices in our democracy, must not itself come to a conclusion by giving disproportionate weight to the concerns of vastly better-funded voices.

## **10. Recent amendments have since restricted Third Parties further**

The SIPO Commission raised the above questions in 2003 and 2009. The Oireachtas has since amended the relevant Act twice, in 2012 and 2015. In both cases, the Oireachtas placed more restrictions, not less restrictions, on Third Parties.

This makes the argument even less plausible that the Oireachtas did not intend the SIPO law to mean what it said about Third Parties when it was first passed.

Firstly, the Electoral (Amendment) (Political Funding) Act 2012 introduced additional requirements and restrictions on the acceptance of political donations. Those amendments reduced the amount a Third Party can accept from one body from €5,000 to €2,500. They also reduced the amount of a donation that triggers accountability from €127 to €100. [http://www.sipo.ie/en/Reports/Annual-Reports/2012-Annual-Report/annualreport2012/media/sipoc\\_ar\\_2012\\_english.pdf](http://www.sipo.ie/en/Reports/Annual-Reports/2012-Annual-Report/annualreport2012/media/sipoc_ar_2012_english.pdf)

Secondly, Section 5 of the Electoral (Amendment) Act 2015 made it an offence to fail to co-operate with enquiries made by the Commission. The Commission welcomed this, as it had previously requested that sanctions for non-cooperation with the Standards Commission should be reviewed (2009 Report on Third Parties at the Referendum on the Treaty of Lisbon 2008) [http://www.sipo.ie/en/Reports/Annual-Reports/2015-Annual-Report/AnnualReport2015/media/sipoc\\_ar\\_2015\\_english.pdf](http://www.sipo.ie/en/Reports/Annual-Reports/2015-Annual-Report/AnnualReport2015/media/sipoc_ar_2015_english.pdf)

This new offence, of failing to co-operate with enquiries made by the Commission, might also help to explain why the SIPO Commission has been more robust in its work in the past two years.

For example, during 2015 the Commission referred two files to An Garda Síochána concerning Right2Water for its failure to comply with the statutory requirements. One related to prohibited donations accepted by Right2Water in 2014. The other related to the failure of Right2Water to comply with its statutory requirements to furnish documents in respect of 2015.

## **11. The SIPO Commission must act impartially**

Atheist Ireland has frequently consulted with the SIPO Commission about this law in recent years, and the Commission has always told Atheist Ireland that our activities aimed at influencing any political decisions, at any time, fall within the SIPO regulations. They have never told us that the law only applies during election and referendum campaigns.

When one of the people who wanted to make a substantial political donation to Atheist Ireland contacted SIPO to confirm the regulations, they told him (among other things) that 'The Commission is required to apply the Electoral Act 1997 as amended without bias and in a completely neutral manner without favour to any organisation.'

Amnesty's statement seems to imply that the Commission has, in the past, treated Amnesty in a more favourably way than it has treated Atheist Ireland. We do not know why or how the Commission would have done that. We assume that this has not happened.

What seems more likely to be the case, in the early days of the Commission at least, is something that the Commission wrote in its 2005 Report:

The Standards Commission takes what it considers to be a practical approach to supervising these provisions of the legislation. Each year it writes to relevant Third Parties asking them to confirm whether or not they intend to continue in existence as a Third Party. If the Third Party confirms that it does not intend to continue in existence or engage in activities which are captured by the definition of political purposes, no further contact is made with that individual or group.  
<http://www.sipo.ie/en/Reports/Annual-Reports/Previous-Annual-Reports/2005-SIPOC-Annual-Report.pdf>

Indeed, the Irish Council for Civil Liberties, in a submission to the SIPO Commission before it published its Report on Third Parties in 2009, said:

One practical result of the relative lack of legislative clarity in this area is that a number of Irish non-governmental organisations have managed to reach an uneasy modus vivendi with the Standards Commission, under which they have asserted that they do not receive donations for 'political purposes', and the Standards Commission has accepted this at face value.  
<http://www.sipo.ie/en/Reports/General-Reports/Reports-on-Third-Parties/-Referendum-on-the-Treaty-of-Lisbon/Third-Parties-Treaty-of-Lisbon.pdf>

This seems to suggest that the Commission, at least in its early days, was putting the onus on Third Parties to self declare, possibly because of the Commission having insufficient resources to proactively police the matter, and that some groups responded more openly than others. That does not excuse Third Parties who fail to disclose material facts to the Commission.

But whatever has happened in the past, it seems that the law is now being implemented more accurately and impartially, as it should always have been. The Commission's hand has also been strengthened by the 2015 amendment to the law that makes it an offence to fail to co-operate with enquiries made by the Commission.

This is a good development, not a bad one. The law now needs to be strengthened to ensure that religions also have to comply with it.

## **12. Previous articles by Atheist Ireland on the SIPO Act**

Atheist Ireland has published several articles in recent years on the SIPO Act.

January 2015 - Atheist Ireland to register with Standards in Public Office Commission (SIPO)  
<https://atheist.ie/2015/01/sipo-atheist-ireland-donations/>

April 2015 - The Catholic Church, the HAI and Iona have all failed to register their political activity with SIPO  
<https://atheist.ie/2015/04/catholic-church-hai-iona-sipo/>

April 2015 - Iona Institute makes significant U-turn by registering with Standards in Public Office Commission  
<https://atheist.ie/2015/04/iona-institute-sipo-u-turn/>

April 2016 - The tangled web of financial rules for political campaign groups  
<https://atheist.ie/2016/04/political-campaign-groups/>

April 2017 - Catholic Church has privileged position on political funding with SIPO  
<https://atheist.ie/2017/04/catholic-church-political-funding/>

### **13. Conclusion**

Atheist Ireland complies with the various laws that regulate the funding and payment for political campaigning in Ireland, including the SIPO Act.

We ask all relevant groups to comply fully with this law in the public interest, and not to take nod-and-wink approaches to avoid either the letter or the spirit of the law.

We ask the Government to strengthen the law, to make religious groups accountable, including by changing the test from political donations to political spending.

We will continue to campaign actively and robustly to separate church and state, to remove religious privilege within our democracy, and to repeal the eighth amendment, while complying with the SIPO law.

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