

# Atheist Ireland



## Submission to Senators on the Bill to amend the Electoral Act 1997

21 October 2020

Dear Senator,

We understand that you will be debating a Bill on Thursday titled the Electoral (Civil Society Freedom) (Amendment) Bill 2019. If you are supporting this Bill with good intentions, we ask you to reconsider. It does the opposite of what you may think.

As a small voluntary and very politically active civil society group, we urge you to vote against this Bill, and to instead support strengthening the SIPO laws to protect our democracy from the undue influence of big money between elections as well as during them.

This is important because most political influence is sought outside of elections, including by politically active religions such as the Catholic Church, their allies, and other civil society groups. Far right activists also seek to influence our democracy between elections, just as much as other groups with whose aims we agree. It is old-fashioned and authoritarian to see democracy as happening only during elections.

The title of this Bill is misleading. It is not about civil society freedom. The existing law does not hinder freedom of association or political lobbying. As a small voluntary civil society group, Atheist Ireland functions perfectly freely within this law. We are very politically active. We led the campaign to remove the blasphemy law. We remain very active on secular education. We regularly lobby Government Departments, Ministers, and the United Nations.

This law helps us, not hinders us, by trying to make democracy a battle of ideas not bank accounts. It does not prevent any civil society group from raising money. We just have to raise it in small donations from the many, not large donations from the few. This is good for democracy, not bad. The campaign to repeal the Eighth Amendment raised €500,000 in a week within this law.

If you want civil society groups to benefit more from legitimate donations, a more democratic way would be to amend the Charities Act under the 'religion' category to 'religions and beliefs/philosophical convictions,' and insert another category to 'promote human rights.'

If this Bill passes, politically active religions including the Catholic Church and its allies, some larger and wealthier civil society groups whose aims we agree with, and far right activists with whom we strongly disagree, will all have access to even more big money to spend on lobbying decision makers between elections. They and their wealthy donors will have even more undue influence on our democracy, which is bad whether or not we agree with their aims.

We would be happy to discuss any of this further with you.

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### **1. The right to take part in the conduct of public affairs**

Article 21 of the Universal Declaration of Human Rights <sup>1</sup> guarantees equal suffrage within democratic elections. Article 2 of the UDHR prohibits discrimination based on property. The human right to equal suffrage can be compromised if wealth disparities imply that some special interests have a disproportionate influence on democracy. This is a problem that has been well documented and this is the issue that the Electoral Act seeks to remedy.

Article 25 of the International Covenant on Civil and Political Rights <sup>2</sup> also guarantees the right “to take part in the conduct of public affairs,” to vote “at genuine periodic elections which shall be by universal and equal suffrage... guaranteeing the free expression of the will of the electors,” and to access public service “on general terms of equality,” and without any of the distinctions in Article 2, which includes property. The word ‘property’ is translated as ‘fortune’ in the French version and as ‘economic position’ in the Spanish version.

### **2. Limiting the impact of money on politics supports human rights**

If those with more wealth are able to acquire a disproportionate influence in the conduct of public affairs, then such discrimination represents an infringement on these human rights.

This position has been adopted by international human rights bodies. For example, the Overbrook Human Rights Foundation offers grants to NGOs that campaign on human rights, including those campaigning on the human rights breaches that arise from the excessive influence of money on politics.

In 2015 Overbrook gave grants in the area of Money and Politics to eight American public policy organisations including: <sup>3</sup>

- Demos, whose first overarching commitment is achieving true democracy by reducing the role of money in politics and guaranteeing the freedom to vote.
- Free Speech for People, whose mission is to renew democracy and the United States Constitution for ‘we the people,’ not big money and corporate interests.

These issues have also been discussed at length elsewhere, such as the Harvard Human Rights Journal. For example, in a paper titled ‘The Democracy to Which We Are Entitled: Human Rights and the Problem of Money in Politics’, Fulbright Senior Scholar Timothy Kuhner, discusses whether we have a human right to a democracy or a plutocracy.

Such considerations include the ongoing influence of money on the political process and the formation of new law in many circumstances, which include the periods both during or outside of an election process. In America, the Democrats support SIPO-like restrictions on such donations, while the Republicans oppose them.

### **3. The SIPO law was always intended to include campaign groups**

Lobby groups seeking changes to the Act claim that the definition of political purposes was never intended to apply, as it does, to campaign groups. But when the Electoral Act was amended in 2001, Bobby Molloy said: “The definition of political purposes is also important to bring some certainty and parameters to the scope of the law... The definition of third parties is also new and it relates to bringing campaign groups within the control on donation limits.”

The Oireachtas has since amended the Act twice. Each time, it has strengthened the law, not weakened it. In 2012, it strengthened the funding restrictions. In 2015, it gave the Sipo Commission more enforcement powers. Clearly the Oireachtas intended, and still intends, the law to apply to campaign groups between elections.

### **4. The law was strengthened after complaints about Youth Defence**

The SIPO Commission has been able to apply this law more robustly since 2015. The reason is that the law was then amended, making it an offence to fail to co-operate with enquiries made by the Commission.

SIPOC had previously sought these changes in its 2009 report about enforcement of the law with Third Parties after the Lisbon Treaty. <sup>4</sup> In particular, they had difficulties with Libertas, who repeatedly failed to provide required information regarding its donations.

SIPOC made four suggestions for improvements to the law regarding: Criteria for registration as a third party; Registration for a particular campaign; Transparency in funding and expenditure on campaigns; and Sanctions for non-cooperation with the Standards Commission.

SIPOC also sought this increase in its powers of enforcement in order to be able to take action against Youth Defence. <sup>5</sup> In 2012 Youth Defence had published billboard advertisements showed images of young, distraught women and fetuses and carrying slogans such as ‘Abortion tears her life apart,’ and ‘There’s always a better answer,’ with the word ‘always’ underlined.

The Advertising Standards Authority received more than 100 complaints about Youth Defence’s billboard ads, which were described as ‘offensive and inaccurate’. However, the Advertising Standards Authority said it was powerless to do anything about the concerns because banning the ads would amount to a breach of freedom of speech.

SIPOC then received complaints about Youth Defence refusing to register as a Third Party. SIPOC said that it was ‘firmly of the view’ that the activities of Youth Defence could be defined as ‘political purposes,’ but that it did not have the legal powers to force Youth Defence to furnish any information or documents that the Commission needed to do its work.

In 2013 SIPOC wrote to Phil Hogan, the then environment minister, seeking an increase in its powers of enforcement over organisations involved in political activity. SIPOC’s chairman, Justice Matthew Smith, told Minister Hogan that it was ‘impossible for the commission to operate effectively’ in the area of abortion campaigning. <sup>6</sup>

The Act was strengthened in 2015, to include sanctions for non-cooperation with the Standards Commission. It is this strengthening of the Act, after problems with Libertas and Youth Defence, that has enabled SIPOC to implement the law more robustly in recent years.

## 5. Irish NGOs can receive unlimited small donations from the many

There is no blanket ban on funding for Irish Non-Governmental Organisations under SIPO legislation, for either domestic or foreign donations, and for either non-political or political purposes. Indeed, we can still raise unlimited donations.

We just have to raise it in small donations from the many, not large donations from the few. As the most obvious example, the Together For Yes campaign lawfully raised €500,000 in a week in the run-up to the abortion referendum.

With regard to foreign donations:

### *(a) unlimited foreign donations for non-political purposes*

An Irish NGO can receive unlimited foreign donations, from any individual foreign donor, for non-political purposes, such as those listed in point 7 above.

### *(b) almost Unlimited foreign donations for political purposes*

There are legitimate and proportionate conditions for how an Irish NGO can receive foreign donations for political purposes.

- The donor has to have a relevant connection to Ireland, either through being an Irish citizen living abroad or being a corporate body with a relevant office based in Ireland.
- Such a donor can give the same amount as a donor in Ireland can give for political purposes.

Within these legitimate and proportionate conditions, an Irish NGO can receive almost unlimited foreign donations, specifically for political purposes. They just have to get those by way of a large number of small foreign donations, rather than a small number of large foreign donations.

There are an estimated 3 million Irish passport holders living abroad.<sup>7</sup> If just 500 (or 0.0001%) of them gave an Irish NGO €2,500 a year, that would be €1.25 million a year, specifically for political purposes.

## 6. United Nations Special Rapporteur on Human Rights Defenders

The SIPO law does not infringe on the human rights of NGOs or Human Rights Defenders in Ireland. The UN Special Rapporteur on Human Rights Defenders has made several statements on the funding restrictions that apply to NGOs in several countries. For example, with respect to the pertinent law in Azerbaijan, the UN Special Rapporteur has said the following: <sup>8</sup>

“Even if the legislation does not ban NGO activities without state registration, NGOs are effectively prevented from operating because they cannot open a bank account, obtain a legal status or receive foreign funding.”

We agree with the UN Special Rapporteur, with respect to the restrictions on NGOs imposed by the legislative framework in Azerbaijan. Similar comments have been made by the UN Special Rapporteur on Human Rights Defenders, where blanket funding bans apply to NGOs in other countries. However, no such restrictions are applied to NGOs by the Electoral Act in Ireland.

The UN Special Rapporteur also visited Ireland just six months after the Electoral (Amendment) Act 2012 became law, and subsequently published a detailed report. <sup>9</sup> If the Electoral Act had been viewed as representing an abuse of the human rights of NGOs and HRDs in Ireland, it would have formed a central part of this report. However, the UN Special Rapporteur on Human Rights Defenders did not mention the Electoral Act at all.

The report did include an analysis of the legal, institutional and policy framework in which Irish NGOs operate. For example, it referred to difficulties with the Charities Act, Defamation Act, Garda Síochána Act, whistle-blower protection Act and Prevention of Corruption Amendment Bill. Specific recommendations were made in these and other areas, and the concerns of NGOs were outlined in some detail. However, no concerns were expressed in relation to the Electoral Act.

In fact, the UN Special Rapporteur on Human Rights Defenders summarised the legal, institutional and policy framework for HRDs in Ireland as follows:

“The overall legal, institutional and administrative framework in which defenders operate generally meets international standards and is rather conducive to the defence and promotion of human rights.”

It is not credible to suggest that while the UN Special Rapporteur has highlighted concerns with the funding of NGOs in other countries, this same human rights abuse was also apparent in Ireland but was omitted from the Special Rapporteur’s statement following her visit to Ireland. The political funding controls in Ireland are not related to, or equivalent to, the blanket bans on NGO funding that have caused human rights concerns elsewhere.

## **7. How the SIPO law needs to be strengthened not weakened**

The SIPO law needs to be strengthened further, while maintaining limits on political donations.

**The first way** is that the SIPO law should continue to apply to all parties, including third parties, at all times, and not just during election or referendum campaigns. If the law did not apply at all times, it would be unable to serve its purpose. Most political influence is sought in between elections and referendums, not just during three weeks every four years.

The SIPO law tries to balance two rights. Those with access to big money have the right to freedom of expression; the rest of us have the right to take part, on the basis of equality, in the conduct of public affairs. Specifically, under human rights law as reflected in the IHREC Act, each person has a fair and equal opportunity to participate in the economic, political, social or cultural life of the State. We ask you to vindicate this right.

**The second way** is 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. This means that wealthy bodies can just use their own money. Also the Catholic Church and some campaign groups can claim that donations were not for political purposes. This puts them at an advantage over voluntary groups like Atheist Ireland who comply with the law.

Instead the trigger should happen when a body (whether an organisation or an individual person) spends a certain amount on political purposes. The SIPO Commission itself has recommended this change in its 2016 annual report, and has suggested €5,000 as the relevant amount of spending.

**The third way** is that both political spending and donations and their sources, above a certain threshold, should be published immediately so that the public knows who is funding what campaigns.

**The fourth way** is that the law should be modernised to cover international social media campaigns that can influence our democracy from abroad.

**Concurrently with this**, you should amend the Charities Act under the ‘religion’ category to ‘religions and beliefs/philosophical convictions,’ and insert another category to ‘promote human rights.’ This would mean that the law treats all civil society advocacy groups equally rather than giving undue influence to politically active religions and their allies.

**The first step** is protecting the law as it stands. This means voting against the current Bill which, while well-intentioned, will undermine our democracy.

## Notes

<sup>1</sup> [http://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf)

<sup>2</sup> <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>

<sup>3</sup> <https://static1.squarespace.com/static/54efb9cde4b0a5fce58cd35f/t/56f00c4de32140364ae5bc39/1458572367344/Annual+Report+2015.pdf>

<sup>4</sup> <http://m.sipo.gov.ie/en/Reports/General-Reports/Reports-on-Third-Parties/-Referendum-on-the-Treaty-of-Lisbon/Third-Parties-Treaty-of-Lisbon.pdf>

<sup>5</sup> <http://www.irishexaminer.com/ireland/sipo-seeks-powers-to-act-on-youth-defence-complaints-239895.html>

<sup>6</sup> <http://www.irishexaminer.com/ireland/law-could-force-youth-defence-to-reveal-funds-240128.html>

<sup>7</sup> <http://www.globalirish.ie/issues/how-many-irish-people-live-abroad-an-ean-factsheet/>

<sup>8</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20544&LangID=E>

<sup>9</sup> [https://www.ihrec.ie/download/pdf/statement\\_by\\_un\\_spec\\_rapp\\_of\\_human\\_rights\\_defenders\\_on\\_her\\_visit\\_to\\_ireland\\_nov\\_2012.pdf](https://www.ihrec.ie/download/pdf/statement_by_un_spec_rapp_of_human_rights_defenders_on_her_visit_to_ireland_nov_2012.pdf)