

Statement to the Ontario Standing Committee
on the Legislative Assembly about

*Bill 214: An Act to amend the Election Act,
the Election Finances Act and the Legislative Assembly Act,
to repeal the Representation Act, 1996 and
to enact the Representation Act, 2005*

by Liz White, Leader
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and

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I'm Stephen Best and this is Liz White.

I'd like to thank the Chair and the Members of the Committee for providing us with this opportunity to express some concerns that we have with Bill 214, particularly the proposed amendments to the Election Finances Act that would – if passed – require that reports be filed with the Chief Election Officer five days after the deposit of a political contribution.

Liz White is one of the founding directors of Environment Voters, a director of Animal Alliance of Canada, and the Leader of a new Ontario political party that is trying to become registered. The party name, which has been accepted by the Chief Election Officer, is the Animal Alliance Environment Voters Party of Ontario.

I am also a founding director of Environment Voters, and am serving as the President of the Animal Alliance Environment Voters Party of Ontario.

As a consequence of recent decisions by the Supreme Court of Canada, Liz White has commenced an action in the Ontario Superior Court to have portions of the Ontario Elections Finance Act declared unconstitutional. If the challenge is successful, which seems likely, Bill 214 will have a direct impact on how we conduct our affairs in the future.

Animal Alliance of Canada is a federally incorporated non-profit organization. Environment Voters is the political arm of Animal Alliance. The goal of both organizations is increased protection for animals, wildlife, and the environment.

Animal Alliance and Environment Voters are unique in the environmental and animal protection movement in Ontario and Canada, in that much of our work involves campaigning in elections. For the most part, elected representatives decide the degree of protection, if any, that will be afforded animals, wildlife, and the environment. Consequently, Animal Alliance and Environment Voters campaign in elections as a “third party.” We support candidates and parties with good environmental and animal protection records or policies and oppose those with poor ones. Our first campaigns were in the 1999 Ontario provincial election. We campaigned in six electoral districts. One of the rookie MPPs we helped elect in that election is now the Minister whose name appears on Bill 214, the Hon. Michael Bryant. Since 1999, we've campaigned in over fifty constituencies across Canada at the municipal, provincial, and federal levels. We are now preparing to participate in the next federal election, not as a “third party,” but as the Animal Alliance Environment Voters Party of Canada.

Before I get to our specific concerns about Bill 214, I would like to invite Ms. White to give you a brief overview of her legal action in the Ontario Superior Court

because it will not only explain why we are here and concerned about Bill 214, but also, perhaps, inform the future deliberations of this Committee.

The quality of our environment, the species of wildlife that will be exploited and how, and the treatment of domestic animals are decided by politicians who every few years have to go home and convince people to vote for them. Consequently, perceptions of how voters will respond to any particular legislative initiative are always a prime – and often the major – determinant of public policy. If doing the right thing – rather than the political thing – primarily decided public policy there would be no environmental degradation caused by automobiles, no animal cruelty in the livestock industry, and no need to consider new nuclear power plants.

I am not criticizing politicians when I say this. I am merely stating the obvious. Politicians in democracies operate in an environment that has been described as a “vote economy.” Policies that earn votes are good; those that lose votes are bad.

What this means for Animal Alliance and Environment Voters is that if we are to help protect the environment, wildlife, and animals, we must make doing so good politics. Because of our present “winner take all” voting system, we can do that most effectively – in our view – by campaigning as a “third party” and supporting or opposing individual candidates.

Unfortunately, in May 2004 the Supreme Court of Canada ended our effectiveness as a “third party.” In *Harper v. Canada*, a case in which we intervened, the Court upheld provisions of the Canada Elections Act that set spending limits for “third parties” so low as to deny them the capacity to meaningfully participate in elections. It’s difficult to communicate with many voters in an electoral district when all you can spend is \$3,378.

However, at about the same time the Court was taking away our rights to campaign effectively in elections as a “third party,” it was making it easier for us to register as a political party and do more than we ever could as a “third party.” In *Figueroa v. Canada*, a constitutional challenge that began in Ontario, the Court ruled that the federal government’s requirements for registering a political party were unconstitutional. Today, because of *Figueroa*, federally registering a political party requires the support of only 250 electors and a declaration by the Leader of the party that “one of the party’s fundamental purposes is to participate in public affairs by endorsing one or more of its members as candidates and supporting their election.” We have registered the Animal Alliance Environment Voters Party of Canada, and will enjoy all the benefits and obligations of a registered political party once the writs are dropped for the next federal election.

The Supreme Court of Canada has now, in effect, decided some aspects of electoral law in Canada and their decisions will constrain provincial governments. In

particular, provincial governments can now restrict spending by “third parties,” but they must also reduce the barriers to registering political parties. Ontario has the highest barriers in Canada to forming a political party: the support of 10,000 electors or nominating candidates in 50% of the electoral districts. Moreover, while a party is working to become registered in Ontario it is not permitted to raise any funds.

If we are to insure that Animal Alliance and Environment Voters can campaign in Ontario elections and not be limited by any “third party” restrictions which the Ontario government might promulgate in the democratic renewal process, our only course is to become a registered Ontario political party.

Today, my attorney is filing the necessary documents asking the Ontario Superior Court to rule that the sections of the Ontario Elections Finance Act that pertain to the registration of political parties be declared contrary to the Canadian Charter of Rights and Freedoms. Our argument is, of course, based on the Supreme Court of Canada decision in *Figuroa*, which means – not to prejudge the Superior Court’s decision – that it is likely we will prevail, and that Ontario’s Chief Election Officer will be required to register not only the Animal Alliance Environment Voters Party of Ontario, but also the over 130 other parties in Ontario that have been denied registration.

As a registered party, we and our supporters will enjoy all the benefits, and be subject to the obligations and restrictions on registered political parties that this committee is now considering. With those obligations and restrictions in mind, I’d like to invite Mr. Best to explain our concerns about Bill 214.

Our concerns with Bill 214 are more mundane than making protection of the environment “good politics,” planning election campaigns, or challenging the constitutionality of Ontario’s election legislation. Our concerns have to do with the reporting of political contributions.

The changes to the Election Finances Act proposed in Bill 214 would require registered political parties to “Within five days after a contribution is deposited ... file with the Chief Election Officer a report about the contribution.”

I believe that there is general agreement that the financing of political parties should be transparent, that the public has a right to know who is paying for the campaigns of their elected representatives. There is no question that elected representatives and political parties are sensitive to and appreciative of individuals, corporations, and organizations that contribute to their campaigns and operations. There is also a valid concern – and ample evidence, most recently from Toronto and Ottawa, to justify the concern – that this financial support can result in undue influence possibly on legislation, and certainly in the awarding of government contracts.

Transparency in political contributions is one way perhaps to diminish, if not eliminate, this problem. However, excessive transparency that will have no effect on the problem of undue influence merely increases the reporting burdens on political parties.

Last year, F. J. Barrera gave \$170 to the Ontario Liberal Party. Mr., Mrs., or Ms P. F. Baston gave \$160.00. And, R. N. Black gave \$120. This information, despite it being public and posted on the Election Ontario website, does nothing to improve or “clean up” politics and democracy in Ontario. The amounts are too small to raise concerns; the identifying information too limited to be usable. Filing reports of contributions like these within five days of deposit will not change those facts.

If the Ontario Superior Court finds Ontario’s political party registration regulations unconstitutional, and the Animal Alliance Environment Voters Party of Ontario is registered, we can expect that most of our supporters – as many as 90% – will be small contributors, giving less than \$500 per year. But most, because of the tax benefits, will contribute over \$100. Given that it is barely a possibility that we will ever elect an MPP, and an impossibility that we will ever form a government, it is difficult to imagine how the Animal Alliance Environment Voters Party of Ontario sending weekly reports to the Chief Election Officer improves democracy in Ontario.

As a political strategist, I understand the propaganda value of the five day filing period for political contributions over \$100, but perhaps that marginal value might be set aside in the interests of regulations that truly enhance transparency and are not an undue and unnecessary burden on political parties.

In anticipation of the Chief Election Officer having to register perhaps dozens of smaller parties, our request of this Committee is that the 5 day filing requirement be reconsidered and a more reasonable and practical filing regime be considered. Perhaps contributions of less than \$2,500 or \$5,000 a year can be reported annually, with higher amounts reported more frequently. At the very least, the regulations should be commensurate with the issues and the concerns that they are intended to address, and they should not place undue and unnecessary burdens on political parties, particularly smaller parties that are unlikely to elect anyone or form the government and therefore will never be in a position to return any favours – other than by saying “thank you” – for a political contribution.

Thank you for hearing our concerns. We would be happy to respond to any questions.