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6 May 2022

The Secretary Joint Select Committee
On the Representation of the People (Amendment)(No.2) Bill, 2020
Office of the Parliament of Trinidad and Tobago
Parliamentary Complex, Cabildo Building,
St. Vincent Street Port-of-Spain

Dear Madam,

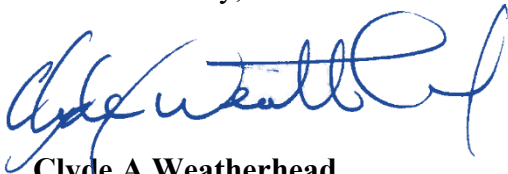
**Submission to the Joint Select Committee - the Representation of the People
(Amendment)(No.2) Bill, 2020**

Please find attached my revised submission to the Joint Select Committee at subject.

I hope that the views expressed in this submission may still be of use to the Committee
and its work.

Should any clarification be necessary, I would be prepared to elaborate in writing or in
testimony before the Committee.

Yours sincerely,



Clyde A Weatherhead
Citizen

**SUBMISSION TO THE JOINT SECELCT COMMITTEE ON
THE REPRESENTATION OF THE PEOPLE (AMENDMENT)(NO.2)
BILL, 2020**

A. INTRODUCTION

- a. As a citizen and elector, I have a deep interest in the modernization and improvement of our electoral process as an important element of our entire system of governance.
- b. I have also had the opportunity participate in discussions with the Elections and Boundaries Commission (EBC) on behalf of a political party with which I was then associated in 2013 and 2014 on the issues which form the subject matter of this Bill.
- c. I have also participated in General Elections as a candidate in 2007 and as an organiser, Attorney at Law and party liaison with the EBC on several occasions in General and Local Government Elections.
- d. I have had the opportunity to research the electoral systems utilised in several countries. In this regard, I have found **Patterns of Democracy – Government Forms and Performances in Thirty-Six Countries**¹ by Arend Lijphart and other publications by the same author particularly informative and insightful
- e. Additionally, I have had the opportunity of being a member and Secretary/Treasurer and President of the Public Services Association, a Trade Union registered under the Trade Unions Act, Ch 88:02 (TU Act), and having interacted with the Office of the Registrar of Trade Unions.

¹ Lijphart, Arend, 1999, *Patterns of Democracy – Government Forms and Performances in Thirty-Six Countries*, London and New Haven yale University Press.

- f. I share the above simply to demonstrate my interest and practical experience in the issues involved in this Bill and therefore, to reinforce the importance which I place on this legislation.

B. DEMOCRACY, POLITICAL PARTIES AND ACCOUNTABILITY

- a. Regardless of whatever our definition of democracy may be,
 - i. the questions of who will do the governing, and
 - ii. to whose interests should the government be responsive to when there is disagreement among the peopleraise issues about how representatives are to be selected and elected and the nature, role and responsibilities of political parties in representative systems.
- b. The experience of elections in many countries has raised issues of who finances political parties and election campaigns and what is the effect of such financing on the two issues at a. above. the relative roles of the elected and electors,
- c. The question arises – how free and fair are elections and how representative are governments and whose interests do they serve when political parties and candidates and election campaigns are financed largely by particular interests and those with deep pockets.
- d. The quality of democracy and governance, issues of whether the interests of the majority and the country are paramount; or whether the financiers of parties and campaigns stand first in line as they seek their ‘payback’ for their financial contributions; or corruption permeates and the Right to Equality of Treatment by the State is compromised – all these issues are related to the important questions of party and campaign financing.
- e. Within parties, the resolution of differences among members and between parties and other individuals or bodies, private or public are affected by the fact

that within the electoral and political process rules existing in Trinidad and Tobago, political parties have no corporate or legal personality.

- f. As such, political parties as parties escape legal and other accountability.
- g. Individual electors must be registered to vote. Individual candidates are required to account for their financing and expenditure up to certain limits specified in the Representation of the People Act, Ch 2:01 (ROPA). But political parties have no responsibility to account for how and by whom they are financed or how they obtain or spend the huge sums estimated in the order of millions of dollars in every major election campaign.
- h. Other representative organisations, like Trade Unions are required to register and to regularly account via submission of annual returns of membership numbers, financial records and be subject to financial audits. But political parties are currently not subject to any such regulation and accountability.
- i. All of these are reasons for the institution of a system of political party formal recognition in our electoral processes and law.

j. Therefore, as an important matter for the safeguarding the representativeness of our electoral and political processes, as a contribution to improving the quality of our democratic processes and to the prevention of the subjection of the National Purpose to self-serving sectoral or special interests the general purport and intention of this Bill is welcomed in general.

k. At the same time, some matters are of particular concern and will be addressed further in this submission.

C. AMENDING THE FUNCTIONS OF THE EBC – ISSUES

- a. The explanatory Notes to the Bill state:

“This Bill seeks to amend the Representation of the People Act, Chap. 2:01, in order **to provide for the registration of political parties** and to make provision for **related matters**”.

- b. Clause 4 of the Bill states:

“Section 3 of the Act is amended by inserting after subsection 3(1), the following new subsection:

“3 (1A) The Commission shall have, in addition to the functions assigned to it by the Constitution, such functions as are assigned to it by this Act and, in the execution of this Act, such authority of the Commission as is exercised in pursuance of the provisions of the Constitution shall be duly deferred to.”. (Emphasis – Mine)

- c. Clearly, the objective of the Bill is not merely “*to provide for the registration of political parties*” and “*related matters*”. The Bill by clause 4 and others makes it clear that the Bill seeks to alter the functions of the EBC, a Constitutional body established under section 71 of the Republican Constitution (the Constitution) with its functions established in section 72 and the Second Schedule thereof.

- a. By section 71 (11) the functions of the EBC are “The **registration of voters** and the **conduct of elections** in every constituency...” and by section 72 “**review the number and boundaries of the constituencies** into which Trinidad and Tobago is divided...”.

- b. The alteration of the functions of the EBC is by way of addition and not amendment to include the regulation of the formation by way of registration and functioning of political parties and the financing of election campaigns by other mechanisms.

- c. The Bill proposes a new “division of the Commission to be known as the Office of the Registrar of Political Parties.”.

d. Professor Hamid Ghany has by way of his column titled “**Altering the EBC**” (a copy of which is attached hereto) expressed serious concerns about these changes to the functions of the EBC by way of amendment of the ROPA rather than by way of Constitutional Amendment.

e. I wish to endorse and support his concerns and propose that:

(i) The functions of the EBC and the creation of the Regulator of Political Parties be addressed by way of Constitutional Amendment

(ii) The regulatory and operational aspects of the work of the Regulator be addressed in separate legislation, Act and Regulations (possibly like the Election Campaign Financing Regulations, 2017 in Jamaica) as needed.

f. The requirement for a list of 100 members to accompany an application for registration and annually thereafter with details of personal information is tantamount to a declaration of political affiliation by persons who are not officers or officials of a political party, that is, by ordinary citizens.

g. Such open declaration of political support is not required by our Constitution or other Law and impacts again the citizen’s Right to Freedom of Association to Political Opinion. This is an important ground for argument that this Bill should be passed with a Special Majority and as part of a Constitution Amendment.

h. While the present configuration of the Parliament may appear to be a hindrance particularly to (i) above, I am of the view that the importance of the EBC to our democracy, recognised in its Constitutional status is further emphasised in the new regulatory functions regarding political parties and party and election financing in further ensuring Free and Fair Elections and effective Representation and Accountability.

- i. Achieving consensus on this important matter will be a demonstration of the strength of our democratic institutions and maturity of our political practice.
- j. Further, by way of comparison the Office of Registrar of Trade Unions is created under the Trade Unions Act, Ch 81:02 (TU Act) which exercises similar functions in relation to another important democratic institution of our nation, the trade union, but which cannot be as important as political parties are to our governance arrangements.
- k. The Registrar of Trade Unions is established in the TU Act and by analogy, the Registrar of Political Parties should be established by the Constitution of which the EBC is already a creature.

D. REGISTRATION OF POLITICAL PARTIES – ISSUES

- a. Trade unions and political parties are democratic member organisations and both play important roles in our governance. Yet, trade unions have been required since the passage of the TU Act in 1932 and particularly following the historical Butler Riots of 1937, to be registered, file annual returns of membership and financial matters.
- b. Political parties, however, since the establishment of party politics in the 1950's have only been required to register symbols with the Elections and Boundaries Commission.
- c. The registration of political parties proposed in the Bill will bring political parties which arguably play an even bigger role than trade unions in the formation and functioning of Government into the sphere of legal corporate existence and accountability that trade unions have been subject to since the 1930's.
- d. While the Registration of political parties is welcomed certain aspects of the proposed registration process and subsequent obligations compared to trade

unions may by comparison reveal some troubling aspects of the proposed party registration.

e. The following table makes the comparison:

ISSUE	TRADE UNIONS	POLITICAL PARTIES	COMMENT
Application	7 or more persons 'subscribing their names to the rules of the union...' (s.10)	Leader of authorised representative (s. 30E (1))	Application for registration should involve more than one person who subscribe to the Rules of the new party similar to the Trade Union process.
Minimum Membership	7 (s.10) – for registration	100 (s.30U(1)); for registration; ongoing, annually October 1 (s.30U (2)).	No minimum continuing for trade unions. Why parties required to confirm minimum membership annually)?

Duration of Registered Status	No limit.	Re-registration required every 6 years. Certificate of registration valid for 6 years. (s. 30 (X)) .	In both cases, unless de-registered. With annual submission of names of 100 members why is registration valid for only 6 years?
Objection to Registration	No provision for objection to registration.	Procedure to deal with objections following publication of application. (s. 30 (H))	Procedure for objection is fair.
Name	Registration not permitted under a name ‘identical with’ or ‘so nearly resembling’ the name of a registered union. (s.18 (1)(c))	Registration may be refused if name is a. ‘so similar to’ the name of a registered party, b. ‘obscene or offensive’, c. ‘may incite hatred or violence’’. (s. 30J (1)(d))	Issues at b. and c. introduce questions which require quasi-judicial or judicial adjudication since ‘what is ‘offensive’ or ‘may incite hatred or violence’ must be fairly

			determined. Allegations of discrimination by applicants may arise.
Appeal against Refusal to Register	‘any person aggrieved by any refusal... to register ...a trade union’...’may appeal to the High Court’. (s.18 (1)(e))	No provision for appeal against refusal to register.	While appeals against de-registration of parties if provided in s.30AN, there should also be a provision for appeals against refusal to register.
Amalgamation/Merger	‘consent of not less than two-thirds of the members of each...’	‘a resolution from each of the merging parties’	Since merger of parties effectively means the de-registration of each of the merging parties, a similar provision for a special majority for the resolutions

			to merge is necessary.
Coalition	Not applicable to trade unions	Formation of coalitions does not de-register member parties.	The deposit of coalition agreements with the Commission or the Registrar of Political Parties should be done within twenty-one days of signing by the participating parties, whether made before or after an Election.
Dissolution	The rules of every trade union ‘shall provide for the manner of dissolution...’ (s.27)	No provision for rules of parties to include dissolution provisions.	There should be requirement for dissolution provisions in the Rules of political parties given the importance of such a decision and because of the financial

			issues involved as parties now have legal personality.
Regulations	Minister may make Regulations ‘subject to affirmative resolution of Parliament...’ (s.18(2)).	Minister may, ‘on the recommendation of the Commission ...’ (s. 161A (1) and (2))	Given the importance of political parties in the governance system and to democracy, Regulations for registration of parties or other matters provided in the Bill should be ‘subject to affirmative resolution of Parliament’

- f. The formation of both trade unions and political parties is based on the foundation of the Constitutional Right of Freedom of Association of every citizen.
- g. In a statement to Parliament on May 8, 2020, introducing the Bill, the Honourable Prime Minister said, “*Proudly, history shows that we are a people unified in an objective that elections should be conducted freely and fairly*”.

- h. He added, “*Our elections present an opportunity for all citizens to actively and confidently participate in creating a representative bureaucracy by campaigning for office and by essential act of voting*”.

i. To ensure such free and fair elections and to encourage the broadest and active participation of citizens in the electoral and political processes, the ability to form political parties of their choice is critical.

- j. For this reason, the following are reiterated:

- i. **Application for registration should involve more than one person who subscribe to the Rules of the new party similar to the Trade Union process. The number be small enough to encourage the formation of new parties.**
- ii. **The minimum membership for the purposes of registering a political party should not be 100. This will discourage the formation of new parties.**
- iii. **Parties should not be required to confirm a minimum membership of 100 annually. This will discourage the continued existence of small parties.**
- iv. **Issues of whether proposed names of parties can be refused because they may be ‘obscene or offensive’ or ‘may incite hatred or violence’ must be fairly determined. This will require quasi-judicial or judicial adjudication by the Commission. since ‘what is offensive’ or may ‘incite hatred or violence’ must be decided on objective bases. Allegations of discrimination by applicants may arise.**
- v. **Registration of political parties must be valid without time limitation, unless de-registered. Registration must not be valid for only 6 years.**

- vi. **While appeals against de-registration of parties is provided in s.30AN, there should also be a provision for appeals against refusal to register.**
- vii. **Since merger of parties effectively means the de-registration of each of the merging parties, a similar provision for a special majority of the members of each merging party for the resolutions to merge is necessary.**
- viii. **Coalition agreements should be deposited with the Commission within 21 days of signing by the parties whether made before or after an Election.**
- ix. **There should be requirement for dissolution provisions in the Rules of political parties given the importance of such a decision and because of the financial issues involved as parties now have legal personality.**
- x. **Given the importance of political parties in the governance system and to democracy, Regulations made by the Minister on recommendation of the Commission or the Registrar of Political Parties for registration of parties or other matters provided in the Bill should be ‘subject to affirmative resolution of Parliament’**

E. PARTY AND CAMPAIGN FINANCING – ISSUES

- a. In his presentation on the Bill on 8 May 2020, the Honourable Prime Minister made the following remarks regarding financial issues:
 - i. *“Election campaign strategies are revolutionized. The modus operandi is **money-driven**, consultant-driven, advertisement-driven, media-driven, party-directed and candidate-driven.”*

- ii. *“...all political parties and candidates face an economic reality that **modern campaigning requires enormous funding.**”*
 - iii. *“...across the world, **campaign expenditure is staggering and noticeably mounting with each election cycle. The Caribbean has seen its fair share of this trend of “who have more corn feed more fowl,” a threat to the very substance of the concept of democracy.**”*
 - iv. *“These are matters which impact upon the public’s expectation of **transparency and accountability, and moreover, the practice of democracy. Poor regulation creates ample opportunity for abuse of the democratic process and wrongful financial gain. We must ensure that campaign financing is sufficiently regulated and the proposed legislation satisfies this requirement.**”*
- b. **Examining the provisions of the Bill in its current form must therefore necessarily determine whether party and campaign financing is sufficiently regulated to ensure transparency and accountability and financiers do not become special interests who control our governance.**
- c. **It is also important to ensure that regulation does not become intrusion into the internal governance of political parties which must remain the province of their members who are the ultimate authority within those organizations.**

d. The following are comments on specific aspects of the Bill:

i. Party accounting and Accountability

1. The requirement for political parties to keep and maintain proper accounts and financial records, file annual financial reports are to be welcomed and supported.
2. The nomination of an “accountable officer” as a point of accountability is also supported.
3. The notification of all financial institutions at which a party maintains accounts is also welcomed. **However, indicating the “nature and purpose” of each account may amount to excessive intrusion and regulation of the ability of a party to utilise its resources as required**, particularly in urgent or emergency situations if the Regulations intrude on internal operational needs of a party.
4. The regular annual audit of party financial statements and records is also supported.
5. However, the use of the Auditor General does not accord with the notion of an “independent auditor appointed by the Commission” as stated in the Explanatory Notes to the Bill at pg. v.

6. It is proposed that:

- a. Like trade unions. the annual audits be conducted by any member of a panel of qualified auditors appointed by the Commission.
- b. A fair and affordable fee be paid for the audit by the registered political party if that becomes necessary.
- a. Clause 30AY (3) providing for “a management or comprehensive audit of the operations and activities of a registered political party”, MUST BE DELETED from the Bill.
- b. Auditing of the “operations and activities” of a political party are the internal business of the party and must be regulated by the internal accountability mechanisms by its organs included in the constitution and rules.
- c. Political parties are democratic organisations of their members and member control of the internal affairs must not be usurped by a regulatory body.

ii. State Funding of Parties

1. The introduction of Public or State funding for political parties is a welcome development.
2. Such funding must assist the development of political parties as important organisations in the process of democracy and for the involvement of citizens in the political affairs of society in a collective arrangement.
3. State funding must be equally available and fairly distributed and as with all publicly funded entities, there must be accountability for the use of public funds.
4. Concerns with State funding of parties:
 - a. Clauses 30AZ (2) and (4) appear to be contradictory where (2) says that the allocation for State funding “shall be divided equally among” the parties that qualify while (4) limits the funding to 40% of a parties income for the previous financial year.
 - b. For newer or smaller parties 40% limit of State funding based on spending will be much less than the same limit for older or larger parties and may not facilitate the objective of “development of the political party” stated in clause 30AAA (a).

c. The fairness of the formula for funding may need to be reconsidered given the objectives in clause 30AAA.

d. In clause 30AAA (b) (iii) operating expenses should include ‘utility bills including internet access’ together with electricity, water and telephone bills.

iii. Use of State Media

1. While the provisions of clause 6 of the Bill speaks to the ‘right of access to and use of the State media’, in development of ‘guidelines’ or ‘Regulations’ for the allocation of time, the objective must be to enure equality of access and time for each candidate and to promote debates among competing candidates contesting the same seat in a particular constituency or district.

iv. Campaign Financing

1. Again, State funding of campaigns is welcome.

2. It would be ideal if campaigns are fully funded by the State to allow all competing candidates in a particular election in an Electoral Area or District compete based on equality of presenting information about

themselves and their proposals and programmes to all the electors of the particular election process.

- 3. In proposed section 59L (1) and (2), the disclosable donations, whether from an individual or an organization or corporate body should be the same and be disclosed once more than Ten Thousand Dollars.**

Given the extent of details in the Bill, further submission may be made hoping that they may be of use in ensuring that the best possible political party and campaign financing regulatory framework may be developed in the interest of our democratic development as a society.

Submitted by:

A handwritten signature in blue ink, appearing to read 'Clyde A Weatherhead', written in a cursive style.

Clyde A Weatherhead
Citizen

6 May 2022

Attachment:

Altering the EBC

The Government has tabled in Parliament the Representation of the People (Amendment)(No 2) Bill 2020 which seeks to regulate the formation, functioning and operation of political parties. In seeking to do so, it proposes to enhance and alter the functions of the Elections and Boundaries Commission (EBC).

The political and legal strategy being used by the Government is to seek to amend an existing law (The Representation of the People Act 1967-Chap. 2:01) which would permit it to evade any requirement for a three-fifths majority having regard to the numerous infringements of fundamental rights and freedoms contained in the bill or to amend the Constitution which would require a three fourths majority in the House of Representatives and a two-thirds majority in the Senate.

Existing laws can be amended if the amendment does not derogate from human rights and freedoms to an extent greater than had already been derogated.

However, this bill has a number of constitutional challenges associated with it on three fronts.

Firstly, the bill derogates from human rights provisions (sections 4 and 5) to an extent greater than had previously been derogated.

Secondly, the bill seeks to alter the role and function of the EBC as set out in the Constitution by using the amendment to the Representation of the People Act 1967 to ascribe new functions for the EBC that are not currently set out in the Constitution itself.

Thirdly, the bill seeks to expand the role and function of the EBC to control the management of political parties and to control their expression of views through the media by ascribing media regulatory functions to the EBC.

Section 4 of the bill proposes as follows: “4. Section 3 of the act is amended by inserting after subsection 3(1), the following new subsection: ‘3 (1A) The Commission shall have, in addition to the functions assigned to it by the Constitution, such functions as are assigned to it by this act and, in the execution of this act, such authority of the Commission as is exercised in pursuance of the provisions of the Constitution shall be duly deferred to’.”

This is perhaps the most dangerous section of this bill as it seeks to give the EBC new functions without any amendment of the Constitution.

The role and functions of the EBC are set out in the Constitution at sections 71 and 72

and the Second Schedule. These new functions that are being prescribed by amendment to the Representation of the People Act 1967 are an attempt at prescribing surplusage by reference as opposed to direct constitutional amendment.

This strategy of avoiding an amendment to the Constitution or even using the three-fifths majority technique which would confess that the bill seeks to infringe fundamental human rights and freedoms is fraught with risk and legal jeopardy seeing that the existing law (the Representation of the People Act 1967 which was a law in force at the commencement of the Constitution in 1976) is being amended.

The caution is based on the provisions of section 6 of the Constitution, part of which reads as follows: “6.(1) Nothing in sections 4 and 5 shall invalidate—(a) an existing law;(b) an enactment that repeals and re-enacts an existing law without alteration; or (c) an enactment that alters an existing law but does not derogate from any fundamental right guaranteed by this Chapter in a manner in which or to an extent to which the existing law did not previously derogate from that right.

(2) Where an enactment repeals and re-enacts with modifications an existing law and is held to derogate from any fundamental right guaranteed by this Chapter in a manner in which or to an extent to which the existing law did not previously derogate from that right then, subject to sections 13 and 54, the provisions of the existing law shall be substituted for such of the provisions of the enactment as are held to derogate from the fundamental right in a manner in which or to an extent to which the existing law did not previously derogate from that right.”

Turning the EBC into a media regulator or a body that can regulate the political aspirations of those who wish to form political parties or who wish to form coalitions is an uncomfortable prospect because the permission of the State will now be required.

This is troubling.

Turning the EBC into a media regulator or a body that can regulate the political aspirations of those who wish to form political parties or who wish to form coalitions is an uncomfortable prospect because the permission of the State will now be required. This is troubling.

Prof Hamid Ghany

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Jamaica

[2016-Ropa-The-Representation-of-the-People-Amendment-Act-2016-No_-10.pdf](#)
([ecj.com.jm](#))

[Election-Campaign-Financing-Legislation-Regulations-Revised-July-2017.pdf](#)
([ecj.com.jm](#))

Canada

[E-2.01.pdf \(justice.gc.ca\)](#)