

March 11, 2014

An open letter to Prime Minister Stephen Harper and the Parliament of Canada:

We the undersigned — professors at Canadian universities who study the principles and institutions of constitutional democracy — believe that the Fair Elections Act (Bill C-23), if passed, would damage the institution at the heart of our country's democracy: voting in federal elections.

We urge the Government to heed calls for wider consultation in vetting this Bill. While we agree that our electoral system needs some reforms, this Bill contains proposals that would seriously damage the fairness and transparency of federal elections and diminish Canadians' political participation.

Beyond our specific concerns about the Bill's provisions (see below), we are alarmed at the lack of due process in drafting the Bill and in rushing it through Parliament. We see no justification for introducing legislation of such pivotal importance to our democracy without significant consultation with Elections Canada, opposition parties, and the public at large.

1. Voter identification

a. Voter Information Cards (VICs)

The Bill proposes to dispense with the use of VICs as a piece of identification that voters can use (in tandem with another piece of officially recognized ID) to prove their identity and address. The use of voter cards is especially important for Canadians who lack ID that proves their current address, such as students, senior citizens in long-term care facilities, First Nations citizens, and those who have recently moved. Although not perfect, VICs are more likely to provide an accurate address than most other forms of ID, including drivers' licenses. We believe that the elimination of VICs as a valid form of ID in federal elections would reduce the likelihood of voting by some citizens.

b. Vouching

Currently, Elections Canada protects the right to vote of citizens who lack standard forms of identification by allowing them to take an oath affirming their identity, citizenship, and residence in the polling division, and having a qualified voter from the same polling division vouch for their eligibility. In 2011, approximately 120,000 citizens relied on the vouching provision in order to vote. By eliminating vouching, the Fair Elections Act would disenfranchise many of these citizens.

The Government argues that vouching is an opportunity for voter fraud, citing the finding of the Neufeld Report on Compliance Review that a significant proportion of vouching cases were plagued by "irregularities." In fact, the Neufeld Report did not cite a single case of fraudulent or ineligible voting arising from the vouching system. To the contrary, the Report recommended keeping the vouching system in place as a protection for citizens'

right to vote, while working to reduce the need for vouching through enhanced use of the very VICs that Bill C-23 would disqualify.

2. Ensuring fair elections

We are concerned that Bill C-23 would diminish the ability of Elections Canada to protect the fairness of the electoral process. The Bill proposes to remove the enforcement arm of the agency, headed by the Commissioner of Elections, from Elections Canada and move it to the office of the Director of Public Prosecutions. Crucially, the activities of the Commissioner would no longer be reported to Parliament.

The Bill also fails to provide the Commissioner with the powers necessary to properly investigate electoral infractions. For example, the Commissioner would not have the power to compel witness testimony, a major stumbling block during the robocalls investigation. Nor would the Commissioner have the power to require political parties to provide receipts and other documentation about their spending, which makes it impossible to ensure compliance with spending limits. Sect. 18 would prohibit Elections Canada from communicating with citizens about matters like the robocalls crisis, thereby reducing democratic transparency and accountability.

Bizarrely, the Bill forbids Elections Canada from promoting democratic participation and voting through “get out the vote” campaigns. Elections Canada would even be prevented from publishing its research reports on the electoral process. This gag on Elections Canada would make Canada an outlier among liberal democracies, instead of the global leader it now is.

3. Campaign finance

Bill C-23 would make several changes to campaign finance and expense reporting after elections. Taken separately, these changes may seem minor, but together they increase the influence of money in Canadian politics.

The Bill would increase the amount that citizens can donate to a given campaign from \$1200 per calendar year to \$1500 per calendar year; more troubling is its proposed increase the amount of money an individual can contribute to his or her own campaign from \$1200 to \$5000, creating a bias in favour of those with more personal wealth.

Worse, the Bill distinguishes fundraising from campaigning, and then exempts fundraising costs from campaign spending limits as long as fundraising is targeted at previous donors of more than \$20. This introduces two biases into the campaign finance rules. First, it disadvantages parties whose donors can only contribute small amounts. Second, it favours parties that have built their donor lists over those that have not. Parties with longer lists of donors over the threshold could communicate, free of cost to their campaigns, with a larger number of electors than other parties.

Allowing money to influence electoral outcomes stands at stark odds with principles of political equality and democratic fairness. In contrast to our neighbour to the south, Canada has consistently recognized that allowing money into the political arena prevents those without financial backing from being heard and discourages participation when citizens perceive that the playing field of politics tilts toward wealth. This feature of Canadian democracy deserves strong protection, not erosion of the sort introduced by Bill C-23.

4. Partisans at polling stations

Section 44 of Bill C-23 requires Elections Canada to appoint central poll supervisors from lists of names provided by the candidate or party that came first in the last election, favouring incumbents and their parties.

Currently poll supervisors are appointed by Elections Canada. Their role is to oversee the election in each polling station. Electoral irregularities are often the result of partisan calculations by people working in polling stations. That is why the Neufeld Report suggests that “appointing election officers on any basis other than merit is inconsistent with the principle of administrative neutrality, and contrary to predominant Canadian values ... [and] established international electoral practices.”

Government officials have responded by pointing out that the Elections Act already allows for candidates and parties to appoint other polling station officers, but this does not provide a reason for expanding, rather than eliminating, a practice that undermines voter confidence in the electoral process.

Elections Canada reports to Parliament, not the government of the day. This is important because the rules governing elections have special significance in a democracy. The legitimacy of the entire political system depends on the fair and impartial administration of electoral procedures. It is vital that the rules of democracy be debated in an open and transparent way, shielded from partisan calculations.

Canadian citizens’ trust in the democratic process relies heavily on Elections Canada as the institution that ensures the fair and impartial administration and enforcement of our electoral laws. Full consideration of its advice and experience is vital to the legitimacy of any major changes to those laws. Especially in view of the sensitive political climate in which allegations of electoral fraud remain unresolved, both prudence and fair play demand that the Bill’s proposed changes to the laws of our democracy receive full parliamentary and public debate.

Yours truly,

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