

**Campaign Finance:
An Overview:
Australia, France,
Germany, Israel, and the
United Kingdom**

April 2009



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REGULATION OF CAMPAIGN FINANCE IN SELECTED COUNTRIES

COMPARATIVE SUMMARY

I. Introduction

This comparative summary covers the country reports prepared for Australia, France, Germany, Israel, and the United Kingdom. The Foreign Laws Specialists of the Law Library were asked to discuss the following issues related to the financing of political campaigns: the length of election campaign periods; funding sources; restrictions on contributions and expenditures, if any; and the implications of such restrictions on freedom of speech. All the reports focus on campaign finance relating to parliamentary elections, with the French report including some information on the President of the Republic who is elected by direct universal suffrage.

II. Duration of Official Campaigns

Official campaigns are usually brief in most of the countries surveyed. In Australia, federal election campaigns are traditionally approximately six weeks and voting is compulsory for all Australian citizens above the age of eighteen. In France, the President's campaign only lasts for the two weeks preceding the first ballot and, if necessary, the week between the two ballots, while in the case of elections to the National Assembly, the campaign opens twenty days before the date of the first ballot. In the United Kingdom, the campaign period is typically five to six weeks. In Israel, it lasts 101 days prior to the date when the Knesset election takes place as scheduled, four years from the day on which the previous Knesset was elected. Early elections may result in a different duration. However, in Germany, federal law does not contain provisions limiting the duration of election campaigns. According to the Federal Constitutional Court, the day on which the Federal President announces the date of the election is of significance, as from that day to election day, the executive branches of the federation and the states must be particularly careful to remain neutral. This announcement is usually made six months before the election.

III. Private Funding

A. Sources of Contributions

All countries surveyed permit contributions by physical persons. Australia permits unrestricted private contributions subject only to disclosure requirements. In Germany, campaign finance law and accountability requirements focus on the party, not the individual candidate. The law is silent on contributions to individual candidates, but they appear to be permissible. These candidates are expected to turn contributions over to their parties. France limits the period when the contributions may be made to the year preceding the first day of the election; Israel

restricts them to those made by their respective citizens or permanent residents and are not anonymous; and the United Kingdom restricts contributions above £200 (US\$300)¹ to political parties and contributions above £50 (US\$75) to candidates to those made by individuals registered on a UK electoral register.

Contributions from corporations are permitted in Australia and Germany while they are prohibited in France and Israel. In the United Kingdom only the following permissible donors can make a donation above £200 to a political party or above £50 to a candidate: a UK registered company, UK registered building society, UK registered limited liability partnership, UK registered friendly/building society, or UK-based unincorporated association.

Germany prohibits contributions from charitable organizations, trade unions, professional associations, industrial or commercial associations, and governmental bodies. Contributions from non-profit organizations are prohibited in France (except for political parties or groups). Such donations are permitted in Israel as long as they are reported and do not exceed the ceilings provided by law. Assistance to a candidate from his/her own party is similarly not prohibited in Israel. Contribution from registered political parties and registered trade unions are authorized in the United Kingdom.

Australia permits foreign contributions subject only to a reporting requirement. A bill that was recently defeated in the Australian Senate introduced a prohibition against foreign donations. Germany prohibits donations from aliens outside of the European Union if the donation exceeds €1,000 (US\$1,300). Contributions from foreign corporations are also prohibited in Germany. Foreign states or foreign legal entities cannot make direct or indirect donations to political candidates or parties in France. Foreign individual contributions are prohibited in Israel in the general election but permitted in primaries. The United Kingdom prohibits the receipt of contributions from abroad, other than from British citizens living overseas who are still eligible and registered to vote.

B. Contribution Limits

Australia, Germany (except for anonymous contributions in excess of €500 (US\$670)) and the United Kingdom permit unlimited contributions to candidates and registered political parties subject to various disclosure requirements. In Germany, for example, public disclosure of the donor must be made in the annual financial statement of the party if his contribution exceeds €10,000 (US\$13,000) per year, and private contributions above €50,000 (US\$67,000) must be immediately disclosed. France makes a distinction between contributions below or equal to €150 (US\$200) (referred to as “cash contributions”) and contributions of more than €150. Contributions of more than €150 must be paid by check or online, with the donor duly identified. A physical person duly identified is allowed to contribute up to €4,600 (US\$6,108). Cash contributions cannot exceed €150 per donor.

Israel limits the total amount that may be contributed to an individual’s campaign in the primaries. A candidate may receive one donation or several donations from an individual donor, the aggregate values of which may not exceed 10,000 NIS (US\$2,401) in primaries. As for election to the Knesset, candidates do not have the right to an independent campaign. Party groups and candidate lists nominate their candidate for the post and incur expenses in promoting

¹ Exchange rates are current as of May 2009.

that individual's candidacy. A party or a candidate list may not receive any donation from a household exceeding 2000 NIS (US\$480) in an election year and 1000 NIS (US\$240) for any other year.

Australia allows income tax deductions for both individual donors and corporate contributions, while France and Germany only allow deduction for individual donors.

IV. Ceilings on Campaigns Expenditures

France, Israel and the United Kingdom impose ceilings on expenditures permitted in elections. Australia and Germany have no such ceilings. The ceilings are either set amounts or based on a formula that takes into consideration the number of eligible voters or constituencies. The ceiling on expenditures for the 2007 French presidential campaign for each presidential candidate was €16,166,000 (US\$21,665,000) for the first ballot, and €21,594,000 (US\$28,938,000) for each of the two candidates present at the second ballot. In the United Kingdom the limits for candidates was “£7,150 [US\$10,000] plus £0.05 [US\$0.07] per elector in a borough (urban) constituency and £0.07 [US\$0.10] per elector in a county constituency” for the 2005 general election. In Israel, the total ceiling on election expenses is seventy financing units, subject to specific additional limitations (the latest available value of one financing unit in March 2003 was NIS 1,288,900 (US\$309,825.20)). A party group composed of five Knesset members, for example, is limited to ten financial units.

V. Public Funding

A. Direct Funding

The United Kingdom does not provide public funding specifically for election campaigns. Australia, Germany, France, and Israel provide such funding. In Australia, France, and Germany, the condition for the funding is a minimum share of votes, 4 percent in Australia, and 5 percent in France. In Germany, public funding is granted to the political parties that received 0.5 percent of the vote in the latest national or European election, or 1 percent in the latest state election in one of the German states. In Israel, it is based upon the number of seats won and whether the party claiming the funds is a new party or not.

In Australia, the amount received is calculated by multiplying the number of first preference votes received by the rate of payment (for January 1, 2009, to June 31, 2009, the rate of payment is AU224.851 cents (US\$1.67)). In France, the amount refunded is 50 percent of the allowable expenditure ceiling and cannot exceed the actual expenses as shown in the candidate's campaign accounts. In Germany, there is an annual overall limit of €33 million (US\$178 million) for all parties and a party may not receive more public annual funds than it has generated during the year. Each year, the parties are granted €0.85 (US\$1.13) for each of the first four million votes obtained in an election and €0.70 (US\$0.93) for each of the remaining votes obtained. In addition, the parties are entitled to matching funds of €0.38 (US\$0.50) for each Euro received from membership fees and individual contributions not exceeding €3,300 (US\$4,425).

Israel attributes a certain number of financial units to party groups that meet the eligibility conditions. A new party group is granted one financing unit per seat won plus an additional unit. To determine the number of financial units for established parties, the number of seats received by a party in the outgoing Parliament is added to the number of seats won in the incoming Parliament, and the total is then divided by two. As in the case of a new party, an additional financial unit is added.

B. Indirect Funding

Israel provides free transportation for voters having difficulty getting to the polls. France and the United Kingdom provide special benefits associated with publication of election materials.

The most substantial form of indirect public financing, however, is the allocation of free campaign broadcasts to parties and candidates participating in the elections in France, Israel, and the United Kingdom. France and the United Kingdom both prohibit paid political advertisement. The formulas for the allocation, length, and frequency of the broadcasts are determined by their respective administrative authority in charge of communication.

VI. Financial Disclosure

All the countries surveyed impose financial disclosure requirements with a special election office, committee, or appropriate legislative body, and guarantee public access to financial data relating to campaign financing. In Australia, candidates, political parties, and donors whose contributions are in excess of the disclosure threshold must file annual or election period financial disclosure returns with the Australian Electoral Commission, which makes them available to the public.

In Germany, each party must submit an annual financial statement to the President of the Federal Diet. These statements are consolidated in an overall report by each party. The statements and the reports are subject to extensive review by the Federal Audit Office. The reports are published as legislative documents. In France, an independent administrative authority audits the campaign accounts of the candidates, which must be filed after the election. Campaign accounts are handled by an independent individual or association appointed by the candidate a year before the election takes place. Campaign accounts are published in a simplified form in the official gazette. In both countries, stringent fiscal and criminal penalties are imposed for serious violations of accounting and disclosure requirements.

In Israel, extensive review of financial records concerning both expenditures and contributions to political campaigns is conducted by the State Comptroller's Office. The reports and recommendations of this office are made available to the public both in paper and online. Within three months after the election, political parties in the United Kingdom are required to submit a report to the Electoral Commission that details all their campaign expenditures. Candidates are also required to submit such a report within thirty-five days of the declaration of the election result.

VII. Restrictions on Contributions and/or Expenditures and Freedom of Speech.

Australia does not have restrictions on contribution amounts or expenditures ceilings. It has, through its Constitution, an implied freedom of political communication. It regulates the format and presentation of political advertising, but has little regulation of the content of political advertising. As for the ceiling on expenditures in France, the review of the constitutionality of laws is solely entrusted to the Constitutional Council, which expresses an opinion on the validity of a measure before it is promulgated. A provision declared unconstitutional cannot be promulgated and therefore cannot take effect.

Like Australia, Germany does not have restrictions on contribution amounts or on expenditures. It has no federal legislation on political advertisement. Free speech is guaranteed by the Constitution to the extent that it is not limited by statutory provisions. There are several criminal provisions that could conceivably apply to political speech, including provisions against various forms of hate speech, the glorification of violence in print, through the media, or by public statements or displays, and insults or disparagement.

In Israel, this issue has been raised primarily in the context of advocacy activities by non-profit organizations. It is recognized that financial restrictions potentially affect freedom of speech. This right, however, is not considered absolute and must to be balanced against other values, including the value of equality of the elections and the principle of commitment to the public interest, which dictate that elected officials should not depend on wealthy donors.

In the United Kingdom, the question as to whether the prohibition on paid political broadcasts infringes Article 10 of the European Convention on Human Rights, which proclaims the right to freedom of expression, has been raised. In a 1971 case against the United Kingdom, the European Commission of Human Rights held that it was compatible with the Convention while, in a 1994 case against Switzerland, it found that the prohibition was incompatible with Article 10 unless the ban met a “pressing social need.” Finally, in 1998, the European Court of Human Rights held in another case against the United Kingdom that imposing on independent third parties a £5 (US\$7.50) ceiling on publications for the purpose of supporting a candidate’s election campaign was a disproportionate interference with the applicant’s freedom of expression.

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May 2009

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AUSTRALIA

CAMPAIGN FINANCE: AN OVERVIEW

Executive Summary

Australia has compulsory voting. Federal election campaigns are traditionally six weeks. Australia has both public and private funding of political parties and political campaigns, and does not currently restrict the level or source of private political donations (other than via disclosure obligations). Legislation has been introduced into Parliament to reform election funding; however to date such legislation has not been passed. There is no limit on the amount of political advertising although commercial broadcasters are limited on the amount of advertising per se that may be shown.

I. Types of Elections

Australia is a parliamentary democracy. Federal elections may be for either the House of Parliament or for a referendum. Voting is compulsory for all Australian citizens above the age of eighteen.¹

The Australian Electoral Commission (AEC), an independent statutory authority, is responsible for conducting federal elections, maintaining the Commonwealth electoral roll and undertaking a range of electoral education programs and activities.²

II. Duration of Election Campaigns

Federal election campaigns are traditionally approximately six weeks.³ Polling day⁴ for federal elections must occur on a Saturday,⁵ at least 33 days and no more than 58 days after the issue of the writs.⁶

¹ Commonwealth Electoral Act 1918 (Cth) §§ 93, 245. *See also:* AEC, ELECTORAL BACKGROUND NO. 17 – COMPULSORY VOTING, Oct. 2007, available at: http://www.aec.gov.au/pdf/backgrounders/17/EB_17_Compulsory_Voting.pdf (last visited April 22, 2009).

² Commonwealth Electoral Act 1918 (Cth) § 7. The AEC is headed by a Chairperson (a current or ex judicial officer), the Electoral Commissioner, and a non-judicial member. Commonwealth Electoral Act 1918 (Cth) § 6.

³ *See* dates of election period at AEC website, available at: http://www.aec.gov.au/Elections/Australian_Electoral_History/hor_dates.htm (last visited April 22, 2009).

⁴ Alternate voting methods (e.g. postal) are permitted under certain circumstances, but the majority of Australians cast their vote on polling day. *See:* Commonwealth Electoral Act 1918 (Cth) §§ 181-262.

⁵ Commonwealth Electoral Act 1918 (Cth) § 158.

⁶ The issuance of an electoral writ commands the electoral officer to hold an election and thus commences the election process. Writs are issued within 10 days of dissolution of the House of Representatives (Commonwealth of Australia Constitution Act §§ 12, 32, Commonwealth Electoral Act 1918 (Cth) §§151-154)).

III. Funding of Election Campaigns and Disclosure of Donations

Candidates, registered political parties (including associated entities), and donors must file annual or election period financial disclosure returns with the Australian Electoral Commission.⁷ The Australian Electoral Commission makes such returns publicly available.⁸

Returns must detail:

- the total value of the donations received;
- the total number of donors;
- all individual donations received above the disclosure threshold (currently 10,900AUD);⁹
- the details of donations (such as date received, amount and name and address of donor); and,
- electoral expenditures (primarily advertising, printing and direct mail costs) incurred between the issue of the writ and polling day.¹⁰

Persons or organizations making donations to candidates in excess of the disclosure threshold must also lodge a donor return.¹¹

Where a candidate receives at least 4% of the formal first preference votes, they (or their registered political party) are entitled to claim an amount of election funding.¹² This amount is calculated by multiplying the number of first preference votes received by the rate of payment

However, in relation to Senate elections, this maximum period may not always be possible, as § 13 of the Australian Constitution requires the election to be completed by 30 June each third year. The Electoral Roll is “closed” on the third working day after the date the writs (although generally the roll is not amended after the date of the writs) are issued, and candidates must be nominated between 10 and 27 days from the date the writs are issued. The polling date must be more than 23 but less than 31 days from the date of the nomination of the candidates. Commonwealth Electoral Act 1918 (Cth) §§ 155 - 157.

⁷ *Id.* §§ 304 - 306A, 314AB – 314AEC.

⁸ Australian Electoral Commission website ‘FINANCIAL DISCLOSURE’, available at: http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/index.htm (last visited April 27, 2009).

⁹ See the Australian Electoral Commission website for current and historical disclosure thresholds at: http://www.aec.gov.au/Parties_and_Representatives/public_funding/threshold.htm (last visited April 22, 2009).

¹⁰ Commonwealth Electoral Act 1918 (Cth) §§ 303-309, 313-314, 314AA-314AEC.

¹¹ *Id.* §§ 305A, 305B.

¹² Senate candidates pay a \$1000AUD deposit upon their nomination, and House of Representatives candidates pay \$500AUD. These deposits are returned if a candidate gains more than 4% of the total first preference votes, or if the candidate is in a group of Senate candidates which polls at least 4% of the total first preference votes. Commonwealth Electoral Act 1918 (Cth) §§ 294-297. Commonwealth Electoral Act 1918 (Cth) § 294.

(for 1 January 2009 to 31 June 2009 the rate of payment is 224.851 cents).¹³ There is currently no requirement that candidates substantiate their claim by evidence of actual expenditure.

- **Proposed Reforms**

The current government has introduced two legislative initiatives to reform political donations. These are:

Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009

This bill amends the Commonwealth Electoral Act 1918 (Cth). The key amendments include:

- Reduction of the donations disclosure threshold from \$10,900 to \$1000 and removal of indexation;
- A prohibition against foreign donations;
- A prohibition against anonymous donations above \$50, but permitting anonymous donations below \$50 where they are received at a general public activity (e.g. street stall) or a private event;
- The introduction of a claims system for electoral funding and linking funding to actual electoral expenditures (this is, in part to prevent “celebrity candidates” from gaining a windfall by being entitled to funding in excess of their expenditures); and,
- The introduction of a definition of “electoral expenditure,” creating an exhaustive list of the expenditures that may be used to claim election funding.

A version of this bill was originally introduced into Parliament in 2008 but was defeated in the Senate on March 11, 2009. The opposition maintained its objections and voted against the revised version of the bill when it was introduced into the House of Representatives on March 16, 2009; as a result it is likely that the bill will require the support of a minority party to be passed. The previous version of the bill did not have the support of this party and therefore it is unlikely this bill will be passed unless a negotiated compromise is reached by the minority party and the government.¹⁴

¹³ See the Australian Electoral Commission website, available at: http://www.aec.gov.au/Parties_and_Representatives/public_funding/Current_Funding_Rate.htm (last visited April 22, 2009).

¹⁴ Horne, N. COMMONWEALTH ELECTORAL AMENDMENT (POLITICAL DONATIONS AND OTHER MEASURES) BILL 2009, Bills Digest No. 115 2008-09, Australian Parliamentary Library, 2009, p. 4.

Tax Laws Amendment (Political Contributions and Gifts) Bill 2008

This bill is currently pending before Parliament,¹⁵ and if passed will remove an existing tax deduction for individual taxpayers of political party membership fees paid on or after July 1, 2008, and will deny a tax deduction (to both individuals and corporations) for contributions or gifts made on or after July 1, 2008 to:

- political parties;
- Members of Parliament (both State, Territory and Federal);
- members of a local governing body (such as a local council); and,
- candidates (both party nominated and independent) for political office.

Currently a tax deduction (to a maximum of \$1500 per annum for both individuals and corporations) is permitted for contributions and gifts to political parties registered under either federal or state or territory law. Prior to June 2006, the maximum threshold was \$100 per annum, and only permitted in relation to political parties registered under federal law.¹⁶

IV. Regulation of Political Advertising

Australia does not have a right to free speech per se but does have, via the Constitution, an implied freedom of political communication.¹⁷ Thus Australia regulates the format and presentation of political advertising, but has little regulation of the content of political advertising.¹⁸

Printed matter – an “electoral advertisement, handbill, pamphlet, poster or notice”¹⁹ containing “electoral matter”²⁰ must carry the name and address of the authorizing person, and, (unless in a newspaper) must also include the name and address of the printer.²¹ An

¹⁵ This bill is currently pending in the House of Representatives. A similar bill was negated by the Senate in 2008.

¹⁶ For further information see Nielson L, TAX LAWS AMENDMENT (POLITICAL CONTRIBUTIONS AND GIFTS) BILL 2008, BILLS DIGEST NO. 11 2008-2009, Australian Parliamentary Library 2008. Available at: <http://www.aph.gov.au/library/pubs/bd/2008-09/09bd011.pdf> (last visited April 22, 2009).

¹⁷ This right has been judicially determined, and found to arise due to the nature and structure of the Australian Constitution. See: *Nationwide News Pty Ltd v. Wills* (1992) 177 CLR 1; *Australian Capital Television v. The Commonwealth* (1992) 177 CLR 106; *Theophanous v. Herald and Weekly Times Ltd* (1994) 182 CLR 104; *West Australian Newspapers Ltd* (1994) 182 CLR 211; *Lange v. Australian Broadcasting Corporation* (1997) 189 CLR 520; *Levy v. Victoria* (1997) 189 CLR 579. See also: Jordan R, FREE SPEECH AND THE CONSTITUTION, RESEARCH NOTE NO. 42 2001-02, Australian Parliamentary Library, June 2002, available at: <http://www.aph.gov.au/LIBRARY/Pubs/RN/2001-02/02rn42.htm> (last visited April 22, 2009).

¹⁸ Australian Parliamentary Library, RESEARCH BRIEF, POLITICAL ADVERTISING IN AUSTRALIA, NO. 5, 2004, Nov. 29, 2004.

¹⁹ That is, does not include an advertisement in a newspaper announcing the holding of a meeting. *Id.* § 328(5).

²⁰ That is, “means matter which is intended or likely to affect voting in an election.” *Id.* § 4.

²¹ Commonwealth Electoral Act 1918 (Cth) §§ 328(1)(b).

advertisement that contains electoral matter within a journal²² must have “advertisement” printed as a headline²³ and must include the name and address of the authorizing person.²⁴

Video recording –a video recording containing “electoral matter” must have the name and address of the authorizing person at the end of the recording.²⁵

Internet advertising – any electoral advertising²⁶ appearing on the internet (excluding general commentary on a website) must contain the name and address²⁷ of the authorizing person.²⁸

Exceptions - authors of “letters to the editor” and callers to talk-back radio shows do not have to be identified.²⁹ T-shirts, lapel buttons, lapel badges, pens, pencils, balloons or business or visiting cards that promote a candidate for election, or letters and cards (that bear the name and address of the sender and do not include a representation of a ballot sheet) are not required to contain details of the authorizing person or the printer.³⁰

Broadcasts (television and radio) - conditions (regarding access, timing and identification) in relation to broadcasts of political and election matter³¹ are imposed on broadcasting licensees.³²

²² Journal includes newspaper, magazine or other periodical, whether published for sale or free distribution. Commonwealth Electoral Act 1918 (Cth) § 331(3).

²³ *Id.* § 331.

²⁴ *Id.* § 328. It is an offence to write, draw or depict any electoral matter directly on any roadway, footpath, building, vehicle, vessel, hoarding or place. *See also* § 334.

²⁵ *Id.* § 328(1A).

²⁶ In contrast to the regulation of printed material, the use of advertisement in § 328A does not refer to electoral matter and therefore any “announcement designed to attract public attention, which was intended to affect voting in a federal election” would fall within § 328A. AEC, ELECTORAL BACKGROUND NO. 15 – ELECTORAL ADVERTISING, Aug. 2007 ¶ 30-31, *available at*: http://www.aec.gov.au/pdf/backgrounders/15/EB_15_Electoral_Advertising07.pdf (last visited April 22, 2009).

²⁷ Address must be a street address (but does not have to be a residential address) and must not be a post office box. Commonwealth Electoral Act 1918 (Cth) § 328A(4).

²⁸ *Id.* § 328A(1).

²⁹ *See* AEC, ELECTORAL BACKGROUND NO. 15 – ELECTORAL ADVERTISING, Aug. 2007, *available at*: http://www.aec.gov.au/pdf/backgrounders/15/EB_15_Electoral_Advertising07.pdf (last visited April 22, 2009).

³⁰ Commonwealth Electoral Act 1918 (Cth) § 328(3).

³¹ Election matter, political matter and election period are all defined in Broadcasting Services Act 1992 (Cth) Schedule 2 clause 1. Election means an election to a Parliament or a local government authority of a State or Territory; Election Advertisement, in relation to an election, means: (a) an advertisement; (i) that contains election matter that relates to that election; and (ii) with respect to the broadcasting of which the relevant licensee has received or is to receive, directly or indirectly, any money or other consideration; or (b) an announcement containing a statement to the effect that a program that is to be or has been broadcast is or was sponsored by a person or persons and indicating that the person is a candidate, or one or more of the persons is or are candidates, at the election; or (c) an announcement containing a statement to the effect that a program that is to be or has been broadcast is or was sponsored by a particular political party where a candidate at the election belongs to that party. Election Matter, in relation to an election, means matter of any of the following kinds: (a) matter commenting on, or soliciting votes for, a candidate at the election; (b) matter commenting on, or advocating support of, a political party to which a candidate at the election belongs; (c) matter commenting on, stating or indicating any of the matters being submitted to the electors at the election or any part of the policy of a candidate at the election or of the political party to which

These conditions are:

1. Equal access – where any election matter is broadcast during an election period by a broadcaster, that broadcaster must give all parties contesting the election a reasonable opportunity to have election matter broadcast during the election period.³³ It is not a requirement that the broadcaster broadcast the material for free;³⁴
2. Identification of authorizing party - when broadcasting political matter at the request of another person, a broadcaster must ensure the announcement³⁵ of identifying details of the person authorizing the political matter and the name of every speaker who form part of that matter;³⁶
3. Black Out Period - Broadcasters must comply with the “blackout” period (from midnight on the Wednesday before polling day to the close of polls on polling day);³⁷
4. Retain records of requesters of political advertising - a broadcaster must retain, for six weeks from the date of broadcast or until the end of the election,³⁸ records detailing the name, address and occupation of the person (or the name and address

a candidate at the election belongs; (d) matter referring to a meeting held or to be held in connection with the election.

³² This includes commercial television broadcasting licensees, commercial radio broadcasting licensees, community broadcasting licensees, subscription television broadcasting licensees and persons providing broadcasting services under class licenses (including subscription and open narrowcasting services). Broadcasting Services Act 1992 (Cth) Schedule 2. While there is no limit on the amount of political advertising, there is a limit on the amount of advertising that a broadcaster may broadcast (generally no more than 13-15 minutes per hour). Broadcasting Services Act 1992 (Cth) § 123; Commercial Television Industry Code of Practice, *available at*: <http://www.freetv.com.au/Content/Common/pg-Code-of-Practice.seo> (last visited April 22, 2009), and Australian Subscription Television and Radio Association Code of Practice *available at*: <http://www.astra.org.au/article.asp?section=4&option=3&content=16> (last visited April 22, 2009). During an election period, broadcasters may broadcast an additional minute per hour of non-program material provided that this minute is election material.

³³ Broadcasting Services Act 1992 (Cth) Schedule 2, clause 3(2).

³⁴ *Id.* Schedule 2 clause 3(3).

³⁵ On radio, the announcement must be spoken; on television it must be spoken and also appear as written text. *Id.* Schedule 2, clause 1 and Australian Government, Australian Communications and Media Authority (ACMA), BROADCASTING AND COMMUNICATION OF POLITICAL AND ELECTION MATTER, ACMA website, *available at*: http://www.acma.gov.au/WEB/STANDARD/pc=PC_310646 (last visited April 22, 2009).

³⁶ Broadcasting Services Act 1992 (Cth) Schedule 2, clauses 1, 4. Where the matter is authorized by a political party it must include the name of the party, the town, city or suburb of the principal office of the political party, the name of the natural person responsible for the authorization. If the political matter was authorized by a person other than a political party, the name of the person who authorized the broadcasting of the political matter; and the town, city or suburb in which they reside (or if a corporation or association where the principal office is situated) must be included.

³⁷ *Id.* Schedule 2, clause 3A. The blackout period is applicable to areas where the election is being held

³⁸ Where the matter relates to an election or referendum and was broadcast during the relevant election period.

of the principal office where a company) of requesters for broadcasts of political matter;³⁹

5. Retain records of news or current affairs on political affairs - broadcaster who broadcast a matter in the form of news, an address, statement, commentary or discussion that relates to a political subject or current affairs must retain a record of the matter for six weeks (or 60 days if a complaint has been made about the matter) and must make such records available to the Australian Communications and Media Authority;⁴⁰
6. Identification of sponsorship of current affairs programs – Broadcasters of commercial radio have an obligation to provide an on-air disclosure of any commercial agreements (including payment of production costs) with sponsors or advertisers that may have the potential to affect the content of a current affairs program;⁴¹ and,
7. Compensation for advertisements on free to air – Where a licensee at no charge broadcasts a political debate⁴² (at any time) or a policy speech (during an election period) then the displaced advertisements may be transferred to another time period.⁴³

Spam and telemarketing calls - Electronic messages authorized by registered political parties are exempt from the prohibition on sending unsolicited electronic messages (known as “spam”).⁴⁴ Calls by registered political parties,⁴⁵ a member of Parliament or a candidate for election, are designated “telemarketing calls;” they are exempted from the operation of the Do Not Call Register.⁴⁶

³⁹ Australian Communications and Media Authority (ACMA) may direct a broadcaster to retain records for a longer period. If requested, these records must be provided to ACMA. Broadcasting Services Act 1992 (Cth) Schedule 2 clause 4(3).

⁴⁰ The ACMA may direct a broadcaster to retain the records for a longer period of time. *Id.* Schedule 2 clauses 5(2), (3), (6) and (8).

⁴¹ Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2000. Broadcasting Services Act 1992 (Cth) Schedule 2 clauses 8(1)(b), 9(1)(b), 10(1)(b), 11(1)(b). Licensees must also keep a register of commercial agreements between sponsors and presenters of current affairs programs and make it available to ACMA and the public, and ensure that a condition of employment of presenters of current affairs programs is that they comply with relevant obligations imposed by the Act, the codes and the Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2000.

⁴² The debate must be between leaders of political parties.

⁴³ The time period must be within 14 days and to a maximum of one minute per hour. Commercial Television Code Industry Code of Practice 2004 clause 5.9.

⁴⁴ Spam Act 2003 (Cth) §§ 3, 16 and schedule 1, clause 3.

⁴⁵ Includes calls authorized by a registered political party.

⁴⁶ Do Not Call Register Act 2006 (Cth) § 11(1), Schedule 1, clause 3.

V. False Advertising or Statements

It is an offense to print, publish (including publishing by radio or television),⁴⁷ or distribute⁴⁸ any matter or thing that is likely to mislead or deceive a voter in relation to casting their vote.⁴⁹ This is applicable to the marking of a ballot paper not for whom the vote is cast,⁵⁰ and is only applicable during the election period (i.e. from the time of the writs to the closing of the polls).⁵¹

It is an offense to publish or announce a claim, without the authority of the candidate, that any candidate is associated with or supports an association, league or other body of persons.⁵²

VI. Political Advertising on the Day of Election

Broadcasters must cease political advertisements in the three days before polling day (from midnight on the Wednesday before polling day to the close of the poll on polling day).⁵³

Canvassing for or against a candidate or party is not permitted within six meters⁵⁴ of an entrance to a polling booth.⁵⁵ This prohibition extends to any use of loud speaker or public broadcasting devices that permit canvassing activities to be audible within a polling booth, at the entrance to a polling booth or within six meters of the entrance to a polling booth.⁵⁶ Officers⁵⁷ and scrutineers may not wear the badges or emblems of any political party or candidate within the polling booth on polling day.⁵⁸

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April 2009

⁴⁷ Commonwealth Electoral Act 1918 (Cth) § 329(6).

⁴⁸ Or to cause to be so printed or distributed.

⁴⁹ Commonwealth Electoral Act 1918 (Cth) § 329.

⁵⁰ *See* *Evans v Crichton-Browne* (1981) 147 CLR 169.

⁵¹ Commonwealth Electoral Act 1918 (Cth) § 329(1) refers to “relevant period in relation to an election” and is defined in § 322.

⁵² *Id.* § 351(1). There is no longer any specific provision addressing false claims regarding candidates, and candidates must now seek redress for defamation under statutory or common law.

⁵³ Broadcasting Services Act 1992 (Cth) Schedule 2, clause 3A(2).

⁵⁴ Approximately 19.7 feet.

⁵⁵ Commonwealth Electoral Act 1918 (Cth) § 340.

⁵⁶ *Id.* § 340(1A).

⁵⁷ “Officer includes the Electoral Commissioner, the Deputy Electoral Commissioner, the Australian Electoral Officer for a State or Territory, a Divisional Returning Officer, an Assistant Returning Officer, an Assistant Divisional Returning Officer, an Antarctic Returning Officer, an Assistant Antarctic Returning Officer, a presiding officer, a deputy presiding officer, a substitute presiding officer, an assistant presiding officer, a pre-poll voting officer, an electoral visitor, a mobile polling team leader and a mobile polling team member.” Commonwealth Electoral Act 1918 (Cth) § 4.

⁵⁸ *Id.* § 341.

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FRANCE

CAMPAIGN FINANCE: AN OVERVIEW

Executive Summary

Official electoral campaigns in France are very brief. Campaign finance is strictly regulated. All forms of paid commercial advertisements through the press or by any audiovisual means are prohibited during the three months preceding the election. Instead, political advertisements are aired free of charge on an equal basis for all of the candidates on national television channels and radio stations during the official campaign. Campaign donations and expenditures are capped. Candidates must appoint an independent financial representative to handle all their financial matters relating to the election. Campaign accounts are audited by a special commission. Candidates whose campaign accounts are certified may be reimbursed up to 50 percent of their expenses by the state if they meet certain conditions.

I. Introduction

Until relatively recently, regulating campaign financing was clearly not one of the top priorities of the French legislature, although reforms had been discussed. It was only in 1988 that France started to issue laws and decrees relating to the funding of political parties and election campaigns, twenty years after Germany and the Scandinavian countries.¹ The rising costs of electoral campaigns primarily caused by the employment of new sophisticated means of communication, an increasing recourse to illegal sources of funding, the fact that France was lagging behind other European countries in this field, and several embarrassing scandals,² led to the promulgation of two laws in March 1988: the Organic Law 88-226³ and Law 88-227 of March 11, 1988,⁴ relating to financial transparency in political life. These were modified and completed by Law 90-55 of January 15, 1990, relating to limits on election expenditures and the

¹ LAURENT TOUVET & YVES-MARIE DOUBLET, *DROIT DES ELECTIONS* § 401 (Ed. Economica, 2007).

² There were no special regulations concerning the funding of political parties until 1988. Parties were subjected to the 1901 law on associations and all of its restrictions on funding. There was no direct public funding, and donations and gift were prohibited. As a result, political parties developed multiple techniques of illegal financing. In 1987, the press uncovered several scandals that forced the government and parliament to confront the issue. See Véronique Pujas & Martin Rhodes, *Party Finance and Political Scandal in Italy, Spain, and France*, 22 *WEST EUROPEAN POLITICS* 41-63 (July 1999).

³ Loi 88-226 du 11 mars 1988 relative à la transparence financière de la vie politique [Law 88-226 of March 11, 1988, relating to the financial transparency in political life], *JOURNAL OFFICIEL [J.O.] Official Gazette of France*, Mar. 12, 1988, p. 3288.

⁴ Loi 88-227 du 11 mars 1988 relative à la transparence financière de la vie politique [Law 88-227 of March 11, 1988, relating to financial transparency in political life], *J.O.*, Mar. 12, 1988, p. 3290.

reporting of political funding activities.⁵ These laws and additional regulations enacted in 1993, 1995, 1996, 2001, 2003, 2004, and 2006, have significantly modified the legal framework of political funding activities.⁶ The legislature's aim was to "moralize" political life by prohibiting certain candidates' practices, put a ceiling on electoral expenses, regulate public financing and private donations for electoral campaign and other political activities, and assure financial transparency in political life. In addition, it created a monitoring body, the *Commission nationale de contrôle des comptes de campagnes et des financements politiques* (National Commission on Campaign Accounts and Political Party Financing, hereafter CNCCFP) to ensure the enforcement of these laws.

The President of the Republic and the members (*députés*) of the National Assembly are elected through direct universal suffrage while members of the Senate are elected by an electoral college. This report, therefore, focuses on the financing of presidential campaigns and of the *députés*' campaigns.

The President is elected for a five-year renewable term.⁷ An absolute majority of the votes cast is required for election on the first ballot. If no candidate receives a majority in the first ballot, a second round of balloting is held two weeks later. Only the top two, first-round candidates who choose to remain in the running are eligible for the second balloting. Presidential elections must be held not less than twenty days and not more than thirty-five days before the expiration of the term of the President then in office.⁸ France's most recent presidential election took place in April and May of 2007.

The National Assembly has 577 *députés* elected for a five-year term. Candidates winning 50 percent or more of the vote in their constituencies are elected on the first ballot. If no candidate received a majority, candidates winning less than 12.5 percent are eliminated and the other candidates go on to a second round of voting. The candidate who receives the most votes is elected. The last National Assembly election took place on June 10 and 17 of 2007.

II. Duration of Official Campaigns

Even if the French have the feeling that they live in an almost quasi-permanent electoral campaign, the length of an official campaign is very brief. As a general rule, it only lasts for the two weeks preceding the first ballot and if necessary the week between the two ballots.⁹

The Electoral Code provides that "the electoral campaign is officially opened the second Monday that precedes the first round of balloting."¹⁰ Ballots are always held on a Sunday. If a

⁵ Loi 90-55 du 15 janvier 1990 relative à la limitation des dépenses électorales et à la clarification du financement des activités politiques [Law 90-55 of January 15, 1990, relating to limits on election expenditures and the reporting of political funding activities], J.O., Jan. 16, 1990, p. 639.

⁶ LAURENT TOUVET & YVES-MARIE DOUBLET, *supra* note 1, § 401.

⁷ 1958 Constitution art. 6, CODE ELECTORAL, Annexe II, p. 811 (Daloz 2008).

⁸ *Id.* art. 7.

⁹ LAURENT TOUVET & YVES-MARIE DOUBLET, *supra* note 1, § 305.

second ballot is necessary, the campaign re-opens the next day for a week.¹¹ The dates of elections are set forth by decree. In the 2007 presidential election, for example, the decree provided that the first ballot would take place on April 22, 2007, and, if necessary, the second ballot would occur on May 6, 2007. The campaign officially started on April 9, 2007.¹²

In the case of the election to the National Assembly, however, the official campaign opens twenty days before the date of the first ballot.¹³

There are several additional important dates during the preparation of an election. Contributions by physical persons to one or more candidates for a specific election are authorized only “during the year preceding the first day of the election and until the date of the ballot when the election is completed.”¹⁴ They must be collected through an authorized financial representative appointed by the candidate, never paid directly to the candidate himself.¹⁵

In addition, three months before the ballot, which date is set forth by decree, the following are prohibited:

- All forms of paid commercial advertisements through the press or by any audiovisual means;¹⁶
- Affixing electoral posters or other campaign material in locations and spaces other than those officially assigned to each candidate by the local authorities; and¹⁷
- For the candidates, providing toll-free telephone numbers and computer databases to the public.¹⁸

III. Regulation of Private Funding

A. Contributions by Physical Persons

As seen above, contributions given by physical persons to one or more candidates for a specific election are authorized only during the year preceding the election. With regard to contribution amounts, a distinction is made between contributions below or equal to €150,¹⁹

¹⁰ CODE ELECTORAL art. R.26.

¹¹ *Id.*

¹² Decree 2007-227 of February 21, 2007, J.O, Feb. 22, 2007, p. 3258.

¹³ CODE ELECTORAL art. L.164.

¹⁴ *Id.* art. L.52.4.

¹⁵ *Id.*

¹⁶ *Id.* art. L.52.1.

¹⁷ *Id.* art. L.51.

¹⁸ *Id.* art. L.50-1.

¹⁹ As of April 21, 2009, the exchange rate for Euros to U.S. dollars is €1 = US\$1.29504.

(referred to as “cash contributions”) and contributions of more than €150. Contributions of more than €150 must be paid by check or online, with the donor duly identified. A physical person duly identified is allowed to contribute up to €4,600.²⁰ Cash contributions cannot exceed €150 per donor. The total amount of cash contributions to a candidate cannot exceed 20 percent of the authorized campaign expenditure amount when such amount is equal to or more than €15,000.²¹

Physical persons’ donations made to political parties or to election campaigns, and political party membership fees, give rise to a tax credit equal to 66 percent of their amount, with a limit of 20 percent of the taxpayer’s taxable income. Proof of the donation or fee must be provided in order to be allowed the credit.²² A candidate’s contribution to their own campaign does not give rise to a tax deduction.

B. Corporate, Union, and Other Advocacy Group Contributions

No legal entity is allowed to participate in financing a political candidate unless the legal entity is a political party or a political group. Financing is not allowed in any form whether direct, e.g., by donating money, or indirect, e.g., by rendering services or granting favors or advantages to a candidate’s political campaign by providing services and products below regular market fees or prices.²³

Nor is a legal entity allowed to finance political parties or political groups. Financing is not allowed in any form whether direct, e.g., by donating money or properties, or indirect, e.g., by rendering services, providing products below regular market fees or prices, or granting favors or advantages to political parties, groups, their financial representatives, or associations.²⁴

The intent of Parliament was to cut any link between the economic world and the political world. To compensate for this loss of funding, it sensibly increased public funding.

C. Foreign Contributions

Foreign states or foreign legal entities cannot make direct or indirect donations to a political candidate.²⁵ No restriction is mentioned regarding foreign physical persons, and there is no provision regarding the requirement to raise all or the majority of funds within a candidate’s home constituency. Political parties also are prohibited from receiving contributions from foreign states or foreign legal entities.²⁶

²⁰ CODE ELECTORAL, L.52-8.

²¹ *Id.*

²² CODE GÉNÉRAL DES IMPÔTS art. 200 (Dalloz 2008).

²³ CODE ELECTORAL art. L.52-8.

²⁴ Loi 88-227 du 11 mars 1988 relative à la transparence financière de la vie politique., CODE ELECTORAL art. 11-4, Annexe IV, p. 890.

²⁵ CODE ELECTORAL art. L.52-8.

²⁶ Loi 88-227 du 11 mars 1988 relative à la transparence financière de la vie politique, CODE ELECTORAL art. 11-4, Annexe IV, p. 890.

D. Candidate's Own Contribution

There is no limit to the amount a candidate may contribute to his own campaign other than the general ceilings on campaign expenditures; however, proof that the funds legitimately belong to the candidate must be provided.

E. Political Party Contributions

There is no limit to the amount a political party may wish to contribute to the campaign of one of its candidates other than the general ceilings on campaign expenditures. The ceilings on campaign expenditures are discussed below.

IV. Ceilings on Campaign Expenditures

France has placed ceilings on campaign expenditures. The ceiling on expenditures for the 2007 presidential campaign for each presidential candidate was €16,166,000.00 for the first ballot, and €1,594,000.00 for each of the two candidates present at the second ballot.²⁷ The 2007 campaign account of President Nicolas Sarkozy shows that his expenditures were €21,038,893.00,²⁸ while the total expenditures of his opponent, Segolène Royal, were €20,712,043.00.²⁹

As for the election of the *députés*, the ceiling is composed of a fixed base (€38,000 per candidate), and an additional amount depending on the population of each electoral district (€0.15 for each resident) multiplied by a revalorization coefficient of 1.18. For example, the ceiling in an electoral district of 107,425 residents would be calculated as follows: €38,000 + (€0.15 x 107 425) x 1.18 = €63,854. Ceilings are reviewed every three years.³⁰

Ceilings may come into conflict with Article 10 of the European Convention on Human Rights, which proclaims the right to freedom of expression. The European Court of Human Rights held in *Bowman v. The United Kingdom*³¹ that imposing on independent third parties a £5 ceiling³² on publications for the purpose of supporting a candidate's election campaign was a disproportionate interference with the applicant's freedom of expression.

The case arose after Mrs. Bowman, the executive director of the Society for the Protection of the Unborn Child, was prosecuted for arranging the distribution of one and a half

²⁷ Decree 2007-140 of February 1, 2007, on Increasing the Ceilings on Campaign Expenditures, J.O., Feb. 3, 2007, p. 2097.

²⁸ Decision of the National Commission on Campaign Accounts and Political Financing of November 26, 2007, regarding Nicolas Sarkozy, presidential candidate, J.O., Jan. 10, 2008, p. 574.

²⁹ Decision of the National Commission on Campaign Accounts and Political Financing of November 26, 2007, regarding Segolène Royal, presidential candidate, J.O., Jan. 10, 2008, p. 568.

³⁰ CODE ELECTORAL, L.52-11.

³¹ *Bowman v. United Kingdom*, 63 Eur. Ct. H.R. 175 (1998).

³² As of April 21, 2009, the exchange rate for British pounds to U.S. dollars is £1 = US\$1.46789.

million leaflets across the United Kingdom before the parliamentary elections in April 1992. The leaflets compared the record on abortion of the candidates and clearly exceeded the £5 limit. The Court found that the £5 limit operated “as a total barrier to Mrs. Bowman’s publishing information with a view to influencing the voters in favor of an anti-abortion candidate.”³³ The Court further stated that:

It [the court] is not satisfied that it was necessary thus to limit her expenditure to GBP 5 in order to achieve the legitimate aim of securing equality between candidates, particularly in view of the fact that there were no restrictions placed upon the freedom of the press to support or oppose the election of any particular candidate or upon political parties and their supporters to advertise at national or regional level, provided that such advertisements were not intended to promote or prejudice the electoral prospects of any particular candidate in any particular constituency.³⁴

It concluded that the restriction in question was disproportionate to the aim pursued.³⁵

No case against France on similar issues and based on Article 10 of the European Convention on Human Rights could be located. As for a challenge to the ceilings based on the constitutional principle of freedom of expression, the French courts historically have stayed away from challenging the constitutionality of laws. The review of the constitutionality of laws is solely entrusted to the Constitutional Council, which expresses an opinion on the validity of a measure before it is promulgated. A provision declared unconstitutional cannot be promulgated and therefore cannot take effect.

V. State Funding

A. Direct Funding

Presidential candidates are each entitled to reimbursement from the state, equal to one twentieth of the allowable ceiling for their election campaign. However, for candidates that obtained at least 5 percent of the vote on the first ballot, the reimbursement amount is 50 percent of the allowable ceilings on expenditures. In any case, the amount of reimbursement cannot exceed the actual expenses as shown in the candidate’s campaign accounts.³⁶ The state pays in advance €153,000 to the candidates when the official list of candidates is published in the official gazette.³⁷

Candidates in an election for the National Assembly who receive at least 5 percent of the vote on the first ballot are also partly reimbursed for their electoral expenses. The amount

³³ Bowman v. United Kingdom, 63 Eur. Ct. H.R. at 189.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Law 62-1292 of November 6, 1962, on the Election of the President of the Republic as amended, art. 3, CODE ELECTORAL, Annexe II, p. 815.

³⁷ *Id.*

refunded is 50 percent of the allowable ceiling and cannot exceed the actual expenses as shown in the candidate's campaign accounts.³⁸

To benefit from this reimbursement, the campaign accounts of the candidates must first have been approved by the monitoring body, the CNCCFP. The state also will reimburse the candidates for the cost of paper and for the printing of ballots, posters, and election circulars. Justification must be provided for these expenses.³⁹

B. Indirect Funding

As a general rule, all forms of paid commercial advertisement through the press or by any audiovisual means during the three months preceding an election are prohibited.⁴⁰ The state provides free access to public radio and television for political advertisement for a certain amount of time during the official election campaigns.

Each presidential candidate is entitled to an equal amount of time for public television and radio broadcast advertisement during the official campaign.⁴¹ The total minimum air time set forth by law is fifteen minutes per television channel and radio station for each candidate on the first ballot and one hour on the second ballot. The High Council on Audiovisual (*Conseil supérieur de l'audiovisuel*, hereafter CSA), an independent administrative authority, approves the actual amount of time of advertisement in cooperation with the candidates. During the 2007 presidential election, CSA approved forty-five minutes of advertisement per channel and station for each candidate for the first ballot⁴² and sixty minutes for the second ballot.⁴³ CSA also established with the candidates the duration, format, and numbers of advertisements to be run within the time limits set forth above.

In the National Assembly election, political parties or groups may use public radio and television for 3½ hours for the first ballot, and 1½ hours for the second ballot. The 3½-hour and 1½-hour periods are divided into two equal parts, one being used by parties belonging to the majority and the other by opposition parties. The time used by each party within their general time slot is decided by the presidents of the parties. If no agreement between the presidents can be reached, the time will be divided by the bureau in charge of the general management of the outgoing National Assembly.⁴⁴

Groups and parties that are not represented at the National Assembly have seven minutes for the first ballot and five minutes for the second, provided that they have at least seventy-five candidates running in the election.

³⁸ CODE ELECTORAL art. L.52-11-1.

³⁹ CODE ELECTORAL art. R.39 (Dalloz 2008).

⁴⁰ *Id.* art. L.52-1.

⁴¹ Decree 2001-213 of March 8, 2001, art. 15, CODE ELECTORAL, Annexe II, p. 828.

⁴² CSA Decision 2007-142 of April 3, 2007, J.O., Apr. 5, 2007, p. 6453.

⁴³ CSA Decision 2007-282 of April 27, 2007, J.O., Apr. 29, 2007, p. 7666.

⁴⁴ CODE ELECTORAL art. L.167-1.

In addition, radio and television channels have the duty to keep the public informed during the electoral campaign and special broadcasts are organized so candidates have the opportunity to express themselves. The principle applicable to these broadcasts is one of equal treatment of the candidates. CSA closely monitors the media to verify that this principle is upheld.⁴⁵

VI. Audit of Campaign Accounts

To give more weight to campaign reform, the legislature put into place a rigorous system of controls. It created an independent administrative authority, the CNCCFP, to audit campaign accounts of the candidates.⁴⁶

A. Campaign Accounts

During the year preceding an election, candidates must appoint an independent individual or association to handle all their financial matters relating to the election. This appointed agent is required to maintain a separate campaign account, to deposit collected funds, and to pay for expenditures.⁴⁷ He must keep records of all receipts and expenses according to their sources and nature. The name of each donor and the amount of their contribution must be indicated.⁴⁸

Each candidate must file their campaign account with the CNCCFP with all necessary justifications on the ninth Friday following the election at the latest. Each candidate's account must be certified by an accountant.⁴⁹

B. Composition and Role of the CNCCFP

The CNCCFP is composed of nine members appointed by decree for five years: three members from the *Conseil d'Etat* (France's Supreme Court for administrative matters); three members from the *Cour de Cassation* (France's Supreme Court for judicial matters); and three members from the *Cour des comptes* (France's national audit court).⁵⁰ The CNCCFP has a permanent secretariat, comprised of thirty to forty persons made available by the Justice, Interior, and Finances Departments. In addition, the CNCCFP calls on approximately 160 judges from either the judicial or the administrative courts to investigate the campaign accounts.⁵¹

These accounts must be reviewed by the CNCCFP within six months, running from the date of filing, if the election is not contested, or two months, running from the date of expiration of the filing delay, if the election is contested. The CNCCFP renders one of the following

⁴⁵ LAURENT TOUVET & YVES-MARIE DOUBLET, *supra* note 1, § 366.

⁴⁶ CODE ELECTORAL art. L.52-14.

⁴⁷ *Id.* art. L.52-4.

⁴⁸ *Id.* art. L.52-12.

⁴⁹ *Id.*

⁵⁰ *Id.* art. L.52-14.

⁵¹ LAURENT TOUVET & YVES-MARIE DOUBLET, *supra* note 1, § 464.

decisions:⁵²

- Approves the account. This will happen either when the candidate strictly adheres to the law, or when the irregularities are minor and do not alter the truthfulness of the accounting or show a willingness to circumvent the law.
- Reassesses the account. Usually, the CNCCFP will reassess the expenditures, modifying the classifications made by the candidate and disapproving expenditures it judges should not be part of the campaign account. After being reassessed, the account may be approved or rejected if it shows a negative balance.
- Rejects the account when there is violation of one or more dispositions of the Electoral Code.

The candidates are notified of the decisions and the grounds on which they were based. In addition, the CNCCFP also sees to the publication of the campaign accounts in a simplified form in the official gazette.

The CNCCFP also notifies the competent judge or the Public Prosecutor's Office of irregularities, including the failure of a candidate to submit his campaign account, the rejection of an account for a violation of the legislation on campaign financing, or that an account exceeds the ceiling on campaign expenditures even after reassessment.⁵³

C. Penalties for Irregularities

When a candidate exceeds the ceiling on expenditures, the CNCCFP determines a sum equal to the amount in excess that the candidate must pay to the Public Treasury.⁵⁴ In addition, a fine of €3,750 and/or imprisonment for up to a year may be imposed on a candidate who does not respect the following provisions:⁵⁵

- Requirements regarding the handling of all financial matters through an authorized financial representative;
- Prohibitions on paid commercial advertisements through the press or by any audiovisual means and on providing toll-free telephone numbers and computer databases to the public three months before the ballot;
- Limitations on the ceilings for donations; or
- Requirements concerning the ceiling on campaign expenditures.

⁵² CODE ELECTORAL art. L.52-15.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* art. L 113-1.

Finally, the same penalties will apply to anyone who contributes to the financing of election campaigns in violation of the limit set by the law or manages the campaign funds for a candidate in violation of conditions provided for by the law.

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GERMANY

CAMPAIGN FINANCE: AN OVERVIEW

Executive Summary

German election laws and campaign finance laws differ significantly from those of the United States. In Germany, the political parties are tightly run organizations that finance election campaigns, nominate candidates, exact membership dues from their members, and subject members in Parliament to strict caucus rules. The parties receive government funds and are subject to some not very onerous disclosure requirements. The individual candidates or members of Parliament are minor players in these systems.

The length of election campaigns is not defined by federal law. State and local laws limit campaign billboards to a few weeks before the election. State laws limit campaign advertising in radio and television to a few spots that are allotted in the month preceding the election. By an agreement among the states, the political parties may not purchase any advertising time on radio or television, and are thereby limited to the few officially granted campaign spots.

Germany has provided public funding to the political parties since 1958. Since then, the Federal Constitutional Court has frequently ruled on the fair distribution of government funds to the parties and on the tax treatment of private donations, thus causing frequent changes in legislation. Currently, the overall annual amount that can be allotted to the parties is €133 million.¹ Parties receive funds in proportion to the latest election results plus a partial matching of €0.38 per donated Euro for private donations up to €3,300. The parties, in return, must submit yearly financial statements to the legislature. In these, only contributors of more than €10,000 per year must be named. Private individuals may deduct 50 percent of their donations below €3,000 (twice that for joint returns) from taxable income, or claim a tax credit of €825 (€1650 for joint returns). There are no limits on private or corporate contributions.

Aside from a prohibition on influencing the voters on Election Day in or near the polling place, Germany has no federal legislation on political advertisements. Political speech may be robust, but it is not exempt from the governance of the criminal laws, and these contain stringent provisions against various forms of hate speech, insult, and defamation. There are no limits on campaign spending.

¹ As of the date of this report, 1 Euro is equal to 1.33370 U.S. dollars.

I. Introduction – The Role of the Parties in Elections and in the System of Government

Germany elects the Federal Diet, the representative chamber of the bicameral federal legislature, by popular vote.² As a rule, these elections are held every four years,³ and these are the only popular federal elections in Germany. The members of the Federal Council, the other chamber of the federal legislature, are appointed by the state governments,⁴ and the Federal President is elected by the Federal Diet and an equal number of electors from the state parliaments. There are, however, popular elections for state parliaments⁵ and for the European Parliament,⁶ and these are relevant for federal campaign finance law (*see* Part III(A), below, “Public Funding of the Parties”).

The election system for the Federal Diet combines a closed list proportional representation system with a single-member district system. Each voter casts two ballots: one for a state-wide party list and the other for one of the candidates competing in a district. Half of the representatives are the winners of the district ballots, and the other half are chosen from the party lists in proportion to the election outcome.⁷

Under this election system, the political parties are the main players, and this is a significant difference from the United States, where the individual candidates are the main actors in federal elections.⁸ The preponderant role of the parties in Germany may explain why German and U.S. campaign legislation is so different.⁹ In Germany, campaign finance law and accountability requirements focus on the party, not the individual candidate.

Germany even guarantees the role of the political parties in the political process in the Basic Law, the Federal Constitution, which in its article 21, paragraph 1 provides as follows:

² Grundgesetz für die Bundesrepublik Deutschland [GG], May 23, 1949, BUNDESGESETZBLATT [BGBl., official law gazette of the Federal Republic of Germany] 1, art. 38.

³ The legislative period is four years, GG, art. 39, but it can be shortened if the legislature casts a vote of no-confidence in the Federal Chancellor. GG, art. 67.

⁴ GG, art. 51.

⁵ G. LICHTENBERGER, STAATSBÜRGER-TASCHENBUCH 202 (München, 2000).

⁶ Europawahlordnung, repromulgated May 2, 1994, BGBl. I at 957, as amended.

⁷ Bundeswahlgesetz [BWahlG], repromulgated July 23, 1993, BGBl. I at 1288, as amended, §§ 4–7; G. SMITH, DEMOCRACY IN WESTERN GERMANY 130 (New York, 1979).

⁸ J. Griffin, *Campaign Finance in the United States*, American Institute for Contemporary German Studies, Issue Brief (Sept. 2008), available at <http://www.aicgs.org/analysis/publications/topics/elections.aspx> (last visited May 1, 2009).

⁹ For the relevance of the electoral system on the candidate- or party-centeredness of campaign finance rules, *see* J. Johnson, *Democracy and Disclosure: Electoral Systems and the Regulation of Political Finance*, 7 ELECTION LAW JOURNAL No. 4 (2008), available at <http://www.liebertonline.com/action/doSearch?target=article&volume=7&year=2008&issue=4&journalCode=elj&journal=elj&searchText=Joel+W.+Johnson&filter=single> (last visited May 2, 2009).

Political parties shall participate in the formation of the political will of the people. They may be freely established. Their internal organization must conform to democratic principles. They must publicly account for their assets and for the sources and use of their funds.¹⁰

In Germany, the political parties also dwarf the role of the individual legislator in the legislative process: Germany is a parliamentary republic in which the executive branch of government is provided by the same political party or coalition of parties that holds a majority in the Federal Diet.¹¹ Moreover, the individual representatives in the party caucuses are bound by a strictly enforced voting discipline.¹²

II. Duration of Election Campaigns

A. Federal Law

German federal law contains no provisions limiting the duration of election campaigns. Moreover, there appears to be no consensus in case law or legal literature on how long election campaigns are or should be, and it is not clear whether the federal legislature would have the power to limit their duration.¹³ The Federal Constitutional Court held in 1966¹⁴ that there is a short period before an election that is definable as the campaign period. Its length, however, is not specified, and it may vary for different purposes. Since then, however, the Court has frequently overruled its holdings in the 1966 decision, most notably in a 1992 decision in which the Court held that the political parties should be subsidized by the government on a continuous basis, and not only during definable campaign periods.¹⁵

According to the Court, however, the day on which the Federal President announces the date of the election¹⁶ is of significance for governmental activities.¹⁷ This announcement is usually made six months before the election.¹⁸ The Federal Constitutional Court held in 1977 that from that date on the executive branches of the federation and the states must be particularly careful when providing public information so as to remain neutral and not to engage in election campaigning.¹⁹

¹⁰ Translation from PRESS AND INFORMATION OFFICE, BASIC LAW FOR THE FEDERAL REPUBLIC OF GERMANY (Bonn, 1998).

¹¹ GG, arts. 63, 64.

¹² S. PADGETT & T. BÜRKETT, POLITICAL PARTIES AND ELECTIONS IN WEST GERMANY 171 (New York, 1986).

¹³ C. WALTHER, WAHLKAMPFRECHT 29 (Baden-Baden, 1989).

¹⁴ Bundesverfassungsgericht [BVerfG], decision of July 19, 1966, 20 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVerfGE] 56.

¹⁵ BVerfG, decision of Apr. 9, 1992, 85 BVerfGE 264.

¹⁶ BWahlG, § 16.

¹⁷ BVerfG, decision of Mar. 2, 1977, 44 BVerfGE 125.

¹⁸ W. SCHREIBER, HANDBUCH DES WAHLRECHTS ZUM DEUTSCHEN BUNDESTAG 325 (Köln, 2002).

¹⁹ BVerfG, decision of Mar. 2, 1977, 44 BVerfGE 125.

B. State Law – Billboards

The limitation of billboards and flyer distributions to a short period preceding the election is a general practice in the German states.²⁰ In Bavaria, for instance, the State Ministry of the Interior issued a Directive on the use of public streets and roads for campaign purposes.²¹ It limits the use of loudspeakers and billboards on state-owned roads to six weeks before the election for federal and European elections, to four weeks for state elections, and to two weeks for municipal elections. In addition, this Directive recommends that the local communities enact similar rules for the roads owned by them.

C. State Law – Radio and Television Broadcasts

A short campaign period is also taken for granted under the state laws and interstate agreements that deal with the giving of air time by public and private radio and television broadcasters to campaigning political parties.²² In Bavaria the campaign spots of the public broadcasters are granted during a period of exactly thirty-one days before the election.²³ The same time frame is provided for the private broadcasters of most of the states by a joint communication of the state supervisory agencies for private broadcasters.²⁴

The campaign spots on the broadcast media are not a very sizeable benefit. Not only are they granted for a short campaign period but, depending on state law or agreement, they may not exceed broadcasting times of one and one-half minutes or two and one-half minutes per advertisement. Moreover, only a handful of campaign spots are allocated to the major parties, and proportionally less to smaller parties. For instance, for the federal election of 1990, the Christian Democratic Union, one of the largest parties in the country, was only granted eight advertisement spots in each of the public television broadcasting networks.²⁵ In 2005, the state supervisory agencies for the private broadcasters published guidelines indicating that a total allocation of twelve minutes per campaign period per broadcaster was appropriate for each of the two largest political parties, while smaller parties should get six or three minutes, depending on their size. The parties were to decide how to break this time down, whether, in the case of the larger parties, they wanted eight one and one-half minute slots, or twenty-four half-minute periods.²⁶

²⁰ WALTHER, *supra* note 13, at 30.

²¹ Staatsministerium des Inneren, Werbung auf öffentlichen Strassen, June 30, 1980, BAYERISCHER STAATSANZEIGER No. 30 (1980).

²² A. SCHULZE-SÖLDE, POLITISCHE PARTEIEN UND WAHLWERBUNG 190 (Frankfurt, 1994).

²³ Satzung über die Wahlwerbung in Angeboten nach dem Bayerischen Mediengesetz, Feb. 4, 1999, BAYERISCHER STAATSANZEIGER No. 6, as last amended by Satzung, May 8, 2008, § 8, Bayerischer Staatsanzeiger No. 20, available at http://www.blm.de/apps/documentbase/data/de/wws_08_neu.pdf (last visited May 4, 2009).

²⁴ Rechtliche Hinweise der DLM zu den Wahlsendezeiten für Politische Parteien, July 6, 2005, available at <http://www.alm.de/fileadmin/Download/Positionen/Rechtliche-Hinweise-Wahlsendezeiten-2005.pdf>

²⁵ C.V. Mannstein, *Was Werbung wirklich leisten kann*, FRANKFURTER ALLGEMEINE ZEITUNG, Nov. 17, 1990, at 13.

²⁶ Rechtliche Hinweise der DLM zu den Wahlsendezeiten für Politische Parteien, July 6, 2005, available at <http://www.alm.de/fileadmin/Download/Positionen/Rechtliche-Hinweise-Wahlsendezeiten-2005.pdf>.

The severity of limiting campaign airtime for the political parties is enhanced by the consensus of the German states that the political parties may not purchase advertisement time from broadcasters.²⁷ This prohibition is valid at any time, not only during the campaign period, and it effectively limits the period during which the public must put up with campaign spots. Nevertheless, the public is not deprived of political information in the broadcast media because the broadcasters have the mandate to inform the public on political matters and they air programs in which politicians participate in discussions or interviews.²⁸

III. Funding and Disclosure

A. Public Funding of the Parties

The political parties receive governmental funds for all their constitutional functions,²⁹ and campaigning is one of these functions. In fact, the parties are supported by the government on a continuous basis. Public funding is granted to all parties that have obtained 0.5 percent of the vote in the latest national or European election, or one percent in the latest state election in one of the German states.³⁰ Funding is limited in two ways: the overall limit for all annually disbursed funds is 133 million Euros, and a party may not receive more public annual funds than it has earned or otherwise generated during the year.³¹

Within these limits, each year the parties are granted €0.70 for each obtained vote, except that €0.85 are granted for the first four million votes obtained in an election. Generally, the vote for the party list is counted for this purpose, and not the ballot for the single constituency candidate (*see* Part I, above, “Introduction”). In addition, the parties are entitled to matching funds of €0.38 for each Euro received from membership fees and individual donations not exceeding €3,300. The government distributes funds four times a year, in the form of estimated advance payments that are based on former entitlements, and these payments are later adjusted to the appropriate amount as computed by the statutory formula.³²

²⁷ Rundfunkstaatsvertrag, Dec. 31, 1991, as amended, BAYERISCHES GESETZ- UND VERORDNUNGSBLATT 132 (2007), § 7 ¶ 8 & § 42, ¶ 2, reprinted in W. HAHN & T. WESTING, BECK'SCHER KOMMENTAR ZUM RUNDfunkRECHT 1 (München, 2008).

²⁸ H. SCHNEIDER & WOLFGANG ZEH, PARLAMENTSRECHT UND PARLAMENTSPRAXIS 411 (1989).

²⁹ Parteiengesetz [ParteiG], repromulgated Jan. 31, 1994, BGBI. I at 149, as last amended by Gesetz, Dec. 22, 2004, BGBI I at 3673, § 18, available at www.bundeswahlleiter.de/bundestagswahl2005/downloads/parteieng.pdf.

³⁰ J. IPSEN, PARTEIENGESETZ 195 (München, 2008).

³¹ ParteiG, § 18, para. 5.

³² ParteiG, § 20.

B. Private Funding of the Parties

In Germany, private funding of political parties is encouraged, as a counterweight to heavy government funding.³³ The law is silent on donations to individual representatives for their own political use, yet these are permissible and parliamentary rules provide disclosure rules and limits for these donations that are similar to the statutory rules governing donations to the parties.³⁴ They are, however, of lesser practical importance, and the statutory provisions presume that the donation is given to the individual in his role as a representative of the party, by obligating this individual to turn party donations over to the party as soon as possible.³⁵

There is no limit on the amounts that individuals or corporations may contribute and only a few restrictions apply.³⁶ Public disclosure of the donor must be made in the annual financial statement of the party only if his donations exceed €10,000 per year. Private donations in excess of €50,000 must be disclosed immediately. Donations from charitable organizations and from trade unions, professional associations, and industrial or commercial associations are prohibited. The law expresses this prohibition by stating that these associations may not be used as a conduit for funneling funds to the parties.³⁷ Donations from governmental bodies, from aliens outside the European Union if the donation exceeds €1,000, and anonymous donations in excess of €500 are also prohibited.

In the past fifty years, the tax deductibility of political donations was the subject of many decisions of the Federal Constitutional Court, and German law was often changed accordingly.³⁸ In 1994, the deductibility of corporate political donations was abolished.³⁹ Currently, individual donors may deduct from income political party contributions, be they donations or membership dues, up to an annual amount of €1,500 (€3,000 for couples filing jointly),⁴⁰ or they may claim an annual tax credit of half the donated amount up to a maximum credit of €825 (€1650 for couples filing jointly).⁴¹

C. Administration, Disclosure and Enforcement

The President of the Federal Diet receives and publishes the annual financial statements of the parties. He also evaluates these statements and publishes his findings as a legislative

³³ BUNDESPRÄSIDENTIALAMT, BERICHT DER KOMMISSION UNABHÄNGIGER SACHVERSTÄNDIGER ZU FRAGEN DER PARTEIENFINANZIERUNG 52 (Baden-Baden, 2001).

³⁴ Verhaltensregeln für Mitglieder des Deutschen Bundestages, Geschäftsordnung des Deutschen Bundestages, repromulgated July 2, 1980, BGBl. I at 1237, as amended, Anlage 1, available at http://www.bundes-tag.de/parlament/funktion/gesetze/go_btg/anlage1.html.

³⁵ ParteiG, § 25, para. 1; IPSEN, *supra* note 30, at 329.

³⁶ ParteiG, § 25.

³⁷ IPSEN, *supra* note 30, at 347.

³⁸ *Id.* at 907.

³⁹ *Id.*

⁴⁰ Einkommensteuergesetz [EStG], repromulgated Oct. 19, 2002, BGBl. I at 4211, as amended, § 10b.

⁴¹ EStG, § 34g.

document.⁴² If indicated, he may appoint a commission of independent experts to deliberate on any desirable changes in party finance law.⁴³

The President of the Federal Diet also administers the public funding program. Based on the financial statements submitted by the parties, he determines the amount of the public funding for each party, by, if necessary, cutting all the entitlements proportionally to stay within the overall statutory limit of €133 million. The Federal Audit Office examines the work of the President of the Federal Diet and also examines the financial statements of the parties. The payments to the political parties are made from federal funds, and the parties at the federal level must allocate an appropriate portion of the funds to the party units at the state and local levels.⁴⁴

The disclosure obligations of the parties are based on section 21, paragraph 1 of the Basic Law,⁴⁵ which provides that the parties must account for their receipts, assets, and expenditures. These requirements are further specified in the Political Party Act.⁴⁶ Each party must submit an annual financial statement to the President of the Federal Diet. These statements are submitted by each party at the state level and are then consolidated into an overall report by the party at the federal level. The financial statements must live up to proper accounting practices and are subject to extensive review. The reports are published as legislative documents.

In the annual report, the income of the party must be broken down into the categories of:

- Membership dues;
- Mandatory contributions of officials;
- Donations from individuals;
- Donations from corporations;
- Receipts from commercial activity and participations;
- Receipts from other assets; and
- Receipts from events, publications, etc.

Fiscal and criminal sanctions apply to serious contraventions of the accounting and disclosure requirements.⁴⁷ If, due to inaccuracies in the financial statement, a party obtains public funds to which it is not entitled, the President of the Federal Diet makes the appropriate corrective adjustment. In addition, a penalty is imposed for any wrong statements. It amounts to twice the discrepancy between the shown amount and the actual amount. If a party fails to list a

⁴² ParteiG, § 23a.

⁴³ ParteiG, § 18 para. 7

⁴⁴ ParteiG, § 19-22.

⁴⁵ See PRESS AND INFORMATION OFFICE, *supra* note 10, and accompanying translation.

⁴⁶ ParteiG, §§ 23–31.

⁴⁷ ParteiG, §§ 31a–31d.

donation in its financial statement or has retained prohibited donations, the penalty is three times the concealed or wrongly received amount.⁴⁸

Criminal penalties of up to three years' imprisonment or a fine apply to intentional violations that aim at concealing the receipt or use of funds. The offense can be committed by any conduct that causes the financial statement to be wrong, also by incorrectly breaking major donations into smaller donations (so as to avoid disclosure of the donor), and failure of the recipient of a donation to forward it to the proper party representative.⁴⁹ The latter version of this offense guards against the creation of unlisted slush funds that may come into existence when receipts are not properly recorded and thereby allow for their unrecorded disposition.⁵⁰

Enforcement of the accounting and disclosure rules appears to have been lax until 2002, when the accounting provisions were tightened in a reform⁵¹ that was the response to a major party financing scandals of the 1990s. At that time, Federal Chancellor Helmut Kohl, the head of the Christian Democratic Union, the largest German conservative party, had accepted large donations without officially turning them over to the party, thus allowing him to use the funds for political purposes, but without reflecting their use in the party's accounts.⁵²

D. Actual Funding of the Parties

In 2006, the political parties received about 30 percent of their income from the government, about 28 percent from membership dues, an additional 12 percent in mandatory contributions from elected and appointed officials, 10 percent from individual donations, and 3.5 percent from corporate donations.⁵³ In addition, the parties had some receipts from commercial endeavors and investments.⁵⁴ The figures for 2005 were similar,⁵⁵ and the figures for both years were typical for the situation in recent years.

Due to the low threshold for funding eligibility, minor parties have benefitted from public funding. Whereas they could not expect to get many donations, the public funds allow them to function. Among all the larger parties, public funds make up a similar percentage of their overall receipts. There are, however, systemic differences in the funds received from other sources. The conservative parties are more likely to obtain corporate donations, whereas the Socialist Party

⁴⁸ ParteiG, § 31c.

⁴⁹ ParteiG § 31d.

⁵⁰ IPSEN. *supra* note 30, at 340.

⁵¹ Aches Gesetz zur Änderung des Parteiengesetzes, June 29, 2002, BGBl. I at 2268.

⁵² BUNDESTAG DRUCKSACHE 14/4747 at 24, available at <http://drucksachen.bundestag.de/drucksachen/index.php>.

⁵³ *Einnahmen der Bundestagsparteien in 2006*, UNKLARHEITEN.DE, <http://www.parteispenden.unklarheiten.de/?seite=auswertung> (last visited May 2, 2009).

⁵⁴ *Id.*

⁵⁵ *Einnahmen der Bundestagsparteien in 2005*, UNKLARHEITEN.DE, <http://www.parteispenden.unklarheiten.de/?seite=auswertung> (last visited May 2, 2009).

generates a sizeable income from party-owned commercial endeavors, particularly newspapers and other media enterprises.⁵⁶

E. Parliamentary Rules for Members of the Federal Diet

Parliamentary Rules of Conduct⁵⁷ provide that members of the Federal Diet must inform the President of the Federal Diet of any donations received and honoraria and salaries earned while serving in the Federal Diet. For individual donations in excess of €5,000, the name of the donor must be provided, and donations from one donor exceeding €10,000 in a calendar year will be published in parliamentary sources and on the webpage of the Federal Diet. Private donations that may not be received by the parties may also not be received by the members of the Federal Diet, and financial sanctions apply to the contravention of these prohibitions. Some rudimentary information on salaries and honoraria will also be published if they exceed €10,000 per year.

IV. Regulation of Political Advertisements and Free Speech

Aside from a prohibition of advertising, influence-peddling, or signature-collecting on Election Day in or near the polling place,⁵⁸ no specific rules on political advertisements are contained in German federal law. In particular, there is no ceiling on campaign expenditures.

The parameters of permissible campaigning conduct are set by constitutional guarantees on the one hand, and the applicability of criminal law, on the other. The most pertinent constitutional guarantees are contained in the Federal Constitution's article 5, which guarantees freedom of expression, and in its article 21, paragraph 1, which establishes the role of the political parties in the political process.

According to a 2002 decision of the Federal Constitutional Court,⁵⁹ the parties have the right to campaign by means of posters, flyers, and similar modes of distributing campaign materials. In exercising this right, however, the parties remain bound by restrictions of administrative and civil law, as for instance, an individual's right to deny the acceptance of advertising material in his mailbox,⁶⁰ or city ordinances limiting the use of billboards.⁶¹

⁵⁶ BUNDESTAG DRUCKSACHE 14/4747 at 31, available at <http://drucksachen.bundestag.de/drucksachen/index.php>.

⁵⁷ Verhaltensregeln für Mitglieder des Deutschen Bundestages, Geschäftsordnung des Deutschen Bundestages, repromulgated July 2, 1980, BGBl. I at 1237, as amended, Anlage 1, available at http://www.bundestag.de/parlament/funktion/gesetze/go_btg/anlage1.html.

⁵⁸ BWahlG § 32.

⁵⁹ BVerfG, reasoned chamber decision denying certiorari, Aug. 1, 2002, reprinted in NEUE JURISTISCHE WOCHENSCHRIFT 2938 (2002).

⁶⁰ *Id.*

⁶¹ Verwaltungsgericht München, decision of May 26, 2002, BAYERISCHE VERWALTUNGSBLÄTTER 732 (2002).

In a 1978 decision,⁶² the Federal Constitutional Court ruled on the applicability of criminal law to campaign activities. The Court held that broadcasters may refuse campaign spots that obviously violate criminal provisions. In the case at issue, the Communist parties of several states had published statements that employed very disparaging language about parliaments and democracy, and, according to the Court, this may have constituted offenses under section 90(a) of the Criminal Code (CC),⁶³ prohibiting the disparagement of the state and its symbols, and also under CC section 90(b), prohibiting the anti-constitutional disparagement of constitutional organs.

Among the other criminal offenses that conceivably could be perpetrated in campaign spots is incitement to hatred against segments of the population, in particular racial, ethnic, or religious groups, as stated in CC section 130. Incidentally, this provision also penalizes the dissemination of the holocaust lie. Section 131 of the CC also could be committed in advertisements. This provision prohibits the glorification of violence in print, the media, or public statements or displays. In addition, the CC contains a group of offenses dealing with insult, malicious gossip, and disparagement⁶⁴ that also could become applicable in aggressive campaigning.

The above-cited German criminal provisions and their applicability to political speech show a major difference between the constitutional guarantees of free speech in the United States and Germany. The German guarantee of free speech is not absolute. In Germany, article 5 of the Basic Law guarantees free speech to the extent that it is not abridged by statutory law. Moreover, the constitutional guarantee of human dignity also imposes limits on free speech.⁶⁵

V. Concluding Remarks

From the German point of view, the German system of financing election campaigns through the public funding of political parties has many advantages. German politicians may spend less time on fund-raising than their American counterparts. In addition, the accounting responsibilities of the parties free individual members and candidates from burdensome paperwork, while the focus of the disclosure rules on large donors protects the privacy of candidates, elected officials, and small donors. Germans care deeply for their privacy. Moreover, the absence of spending limits and limits on private donations makes for an uncomplicated and easy to administer financial system.

The drawback of the German system, from an American perspective, is the overwhelming role of political parties in public life. It is hard to conceive that American politicians and the American public would be content with a political system in which the individual politician is reduced to the role of a cog in the well-oiled party machine.

⁶² BVerfG, decision of Feb. 14, 1978, 47 BVerfGE 198.

⁶³ Strafgesetzbuch [StGB], repromulgated Jan. 2, 1975, BGBl I at 1, and Nov. 13, 1998, BGBl. I, 3322, as amended.

⁶⁴ StGB §§ 185–200.

⁶⁵ H. JARASS & B. OIEROTH, GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND 194 (München, 2007).

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ISRAEL
CAMPAIGN FINANCE: AN OVERVIEW

Executive Summary

Political candidates are included in the party groups and candidate lists competing in the general elections for the Knesset (Parliament). Their candidacy is supported by their party, which incurs expenses in promoting them. Candidates, however, also run independent campaigns in their party primaries. Israel's campaign finance laws restrict the identity of donors and the amounts of both donations and expenses. Parties and candidate lists may receive funding from both public and private sources. The restrictions imposed by law are recognized as potentially infringing upon freedom of speech. Constitutional rights in Israel, however, are not considered absolute, and have to be balanced against competing constitutional rights, such as the right of equality.

I. Introduction

Israel maintains a parliamentary system of government, with the Prime Minister serving as the executive authority of the state and the head of the government,¹ and the President serving as the Head of State but not the head of the government.² Knesset (Parliament) members are chosen from candidate lists selected by the parties, following their own primaries. The Prime Minister is selected by the President and is usually the head of the largest party, or the party capable of forming a coalition government, as is the case with the current Prime Minister, Mr. Binyamin Netanyahu.

Most major parties elect their candidates in primaries. The financing of the primary elections held by the political parties is regulated by the Parties Law, 5752-1992³ as amended. The financing of the general elections for the Knesset, as well as those held for the Prime Minister is regulated primarily by the Political Parties (Financing) Law, 5733-1973,⁴ as amended.

¹ Basic Law: The Government, as amended, § 1 & 3, 22 LAWS OF THE STATE OF ISRAEL (hereafter LSI) 257 (5728-1967/68).

² See Basic Law: The President of the State, 18 (LSI) 111 (5724-1963/64).

³ Parties Law, 5752-1992, § 17, SEFER HA-HUKIM [Book of Laws, Official Gazette (hereafter S.H.)], No. 1395 p. 190 (5752-1992), hereafter Parties Law. Full up-to-date version in Hebrew is available at the Nevo Legal Database at www.nevo.co.il (by subscription).

⁴ Political Parties (Financing) Law 5733-1973 (hereafter PP(F)L) 27 LSI 48 (5733-1972/73). Full up-to-date version in Hebrew is available at the Nevo Legal Database at www.nevo.co.il (by subscription).

This report discusses the following issues related to the financing of political campaigns under Israeli law:

- The length of the period of election campaigns;
- Funding sources;
- Restrictions on contributions and expenditures; and,
- The implications of such restrictions on freedom of speech.

As a general rule, the financing of political campaigns is derived from both private as well as government funding. Parties obtain government funding for the duration of the campaign as well as for ongoing expenses. The funding and expenditures of both political campaigns and ongoing activities are subject to extensive rules of financial disclosure and enforcement.

II. Duration of Election Campaign

A. General Elections

The general election campaign period lasts from the “determining day” until the election day. The “determining day” is defined as follows:

- (1) The 101 day period prior to the Knesset election day, normally four years from the day on which the previous Knesset was elected;
- (2) For an election taking place under a law adopted by the Knesset to dissolve itself prior to the expiration of its term of office- the third day following the commencement of such law;
- (3) In an early election, either for failure to form a government, or by decision of the President or the Prime Minister in accordance with Basic Law: the Government and Basic Law:, the Knesset- the third day after the creation of the cause for early election.⁵

B. Primary Elections

- (1) The period beginning with the day of the decision of the party conducting primaries and ending with the termination of 14 days following the primaries; the party will schedule the primaries within six months from its initial decision;
- (2) For a candidate for the post of Party Chairman, Prime Minister, a Minister or a Knesset Member- a period beginning on the determining day as defined above,

⁵ *Id.* § 1.

and if the party did not make a decision regarding conducting the primaries within 30 days from the determining day, the period will end at the termination of these 30 days; or,

- (3) If the election period for primaries has commenced under either of the above options, and the Party later decides to cancel the primaries, the period ends on the day of such decision.

The law clarifies that where the election period has ended in the absence of primaries, and the party decides to conduct primaries within 120 days following the end of the election period, both periods will be considered as one for the purpose of the restrictions on the ceiling on the amount of contributions from one donor and the total ceiling on contributions and expenses.⁶

III. Funding Sources for Political Campaigns

A. Private Funding

1. Sources

a. Individual Contributions

Individual contributions to general elections are permitted as long as they originate from donors who are Israeli citizens and residents above the age of eighteen, and are not anonymous. This is based on an express prohibition against anonymous donations,⁷ and on a requirement that contributions may only be made by a voter as defined in the Elections Law.⁸

Although foreign individual contributions are prohibited in general elections, they are permitted in primaries. This conclusion is based on the following Parties Law definition of “donation”:

a “donation”- in money or money worth, directly or indirectly, in Israel or abroad, in cash or in a commitment of any kind, but excluding personal volunteer activity, the value of which does not exceed 50,000 NIS (approximately \$12,000), and is not within the occupation of the volunteer.⁹

b. Corporate, Union and Other Advocacy Group Contributions

Party groups, candidate lists and elected officials such as the Prime Minister, Ministers, Members of Parliament, members and heads of local authorities are prohibited from receiving donations from corporations or registered partnerships in Israel or abroad during both the general

⁶ Parties Law, §28A, as amended in 2008.

⁷ PP(F)L §8 (D2).

⁸ Knesset and Prime Minister Election Law (Consolidated Version), 5729-1969, as amended, 23 LSI 110 (5729-1968/69).

⁹ Parties Law §28A, translated by author, R.L.

election and during primaries.¹⁰

Personal donations by members of *Kibbutzes*¹¹ and agricultural societies are not regarded as corporate donations for the purpose of this prohibition on the receipt of contributions, so long as the contributions made by their members are reasonable under the circumstances. Assistance to a candidate from his/her own party is similarly not prohibited.¹² Also permitted are corporate contributions to a cultural or educational enterprise of a party group or of a body connected to a party group and serving a cultural or educational purpose.¹³

Amounts spent or donated to a party group for the purpose of election or ongoing activities within the General Labor Organization (The *Histadrut*) are not subject to the contribution limits of the Political Parties (Financing) Law, as long as they are reflected in its accounts in a way that will enable the State Comptroller to clearly identify and verify them.¹⁴

Donations by non-profit organizations (NPOs, *amotot* in Hebrew) are not prohibited so long as they are reported and do not exceed the ceilings provided by law. An investigation conducted by the Israeli State Comptroller's Office into the financing of the 1999 elections resulted in a report critical of the violation of mandatory reporting and the excessive donations by NPOs.¹⁵ The Comptroller determined that activities by NPOs may be subject to campaign finance regulation if they constitute a "campaign message," in that they are designed to influence voters to vote or to refrain from voting for a candidate or for a party group and there is an organizational link between the party group and the NPO.¹⁶

2. Contribution Limits

a. To Candidates

The Political Parties (Financing) Law applies to party groups and candidate lists. Candidates do not have the right to an independent campaign for election to the Knesset election. Party groups and candidate lists nominate their candidate for the post and incur expenses in promoting that individual's candidacy. Candidates, however, run independent campaigns within their party primaries.

The Law limits the total amount that may be contributed to an individual's campaign in the primaries to an amount equal to;

¹⁰ Parties Law §28D(a); PP(F)L §8 (A).

¹¹ Collective farms.

¹² The Parties Law, § 28d.

¹³ PP(F)L, §8B.

¹⁴ PP(F)L §17.

¹⁵ See REPORT OF THE RESULTS OF AN AUDIT OF THE PARTY LISTS FOR THE ELECTION PERIOD OF THE FIFTEENTH KNESSET AND FOR THE PRIME MINISTER (STATE COMPTROLLER OFFICE, Jan. 2000) [in Hebrew].

¹⁶ For further information see R. Levush, *Israel: Campaign Finance Regulation of Advocacy Activities by Non-Party Organizations*, 3 FOREIGN LAW BRIEF (Law Library of Congress, Sep. 2000).

- 405,000 NIS (\$97,237.00) plus 2 NIS for every voter above 100,000 voters; or,
- double this amount for a candidate for Prime Minister or Party Chairman in primaries with up to 50,000 qualified voters; and,
- four time this amount in primaries with over 50,000 eligible voters.

Additional amounts are provided for candidates who competed for the above positions as well as for a position of a Member of the Knesset in the same party within 120 days.¹⁷

A candidate may receive one donation or several donations from an individual donor, the aggregate values of which do not exceed 10,000 NIS (\$2,401) in primaries. An individual donor may provide donations to different candidates during primaries, the aggregate total of which does not exceed 30,000 NIS (\$7,210). In primaries for candidacy for Party Chairman and Prime Minister, where only one candidate may be elected, an individual donor may donate only to one candidate. In primaries where the number of qualified voters exceeds 50,000, an individual donation may amount to 40,000 NIS (\$9,594). The law clarifies that the donations of a person and his family members and dependants are considered one donation.¹⁸

b. To Parties

A party or a candidate list may not receive any donation from a household exceeding 2000 NIS (\$480) in an election year and 1000 NIS (\$240) for any other year.¹⁹

3. Limitations on Campaign Expenditures

a. Financial Ceilings

Section 7 of the Political Parties (Financing) Law imposes several limitations on the expenses that a political group is allowed to incur. The ceiling on election expenses is seventy financing units, subject to specific additional limitations (the latest available value of one financing unit in March 2003 was NIS 1,288,900 (\$309,825.20)).²⁰ The law provides that the expenses of a party group;

- composed of up to five Knesset members is limited to ten financial units;
- composed of six to 10 Knesset members may not exceed two financing units per each Knesset member;

¹⁷ Parties Law § 28h.

¹⁸ *Id.* § 28f.

¹⁹ PP(F)L, §8(b) & (c).

²⁰ Notice regarding a Change of Amount of Financing Unit, 5763-2003, Yalkut Hapirsumim (Government Notices) No. 5070, p. 2124 (2002).

- exceeding 10 Knesset members, may not exceed 2 financing units for each of the first ten members, and one and half times of one financing unit for every remaining member.
- b. Encouragement of Voluntary Spending Limits

A party group may notify the Knesset Chairman that it is foregoing direct public financing under the Law. This notification will result in a major increase of the allowable ceiling for a private household contribution; from NIS 2000 (\$480.687) to NIS 60,000 (\$14,403.19).²¹

B. Government Funding

1. Direct Funding to Parties and to Candidates

Parties are entitled to direct funding of their national elections and of ongoing expenses. The monies are paid out of the Treasury, through the Chairman of the Parliament, into the party's bank account.²² Account numbers must be supplied to the Chairman of the Parliament within fifteen days after the determining day.

a. Conditions for Eligibility

The Law awards the right to be financed to every party group or the candidate list proposed by the party group. A *party group* is defined as follows:

- a group which in the elections to the incoming Parliament has submitted a list of candidates as a party group of the preceding Parliament and is represented in Parliament by at least one member;
- a party, whose representative(s) has (have) been recognized in the Parliament as a party group by the Parliament House Committee; or,
- a combination of two or more parties which maintain one party group in Parliament.²³

A party is defined as “a group of people united in order to promote political or social objectives in a legal way and to promote the representation of those objectives in the *Knesset* by elected people.”²⁴

To receive government financing, within 15 days after the determining day (defined

²¹ PP(F)L §8C.

²² *Id.* § 2(b).

²³ *Id.* § 1.

²⁴ *Id.*

above), the party group must have:

- notified the Chairman of the Parliament of the names of not fewer than two and not more than eight consenting representatives, at least one of whom is a Member and at least one of whom has been declared by the party group and by himself as being familiar with the party group's financial position;²⁵
 - submitted to the Chairman of the Parliament a declaration signed by its representatives that it has done everything necessary to ensure that proper accounts of its income and expenditures in accordance with the relevant directives of the State Comptroller were kept,²⁶ in particular, the Directives of Political Parties Financing (Bookkeeping of Accounts of Party Group), 5738-1978;²⁷
 - notified the Chairman of the Parliament of its bank account numbers;²⁸ and,
 - notified the chairman of the Parliament of the name of the party group's accountant, his address and other details requested by the chairman, and submitted a consent form signed by that accountant to serve as such.²⁹
- b. Amount or Formula of Calculation of Campaign Funding

A new party group is entitled to one financing unit per seat won by the party group in the elections, plus an amount equal for one financing unit. For other parties, the financing received is in accordance with the number of seats the party group won in the outgoing Parliament, plus the number of such seats won in the incoming Parliament, divided by two and added by an amount equal to one financing unit.³⁰

The funds provided as public financing for an electoral campaign are paid after the delivery of a certificate by the Chairman of the Central Election Committee to the Chairman of the Parliament. It certifies that a party group has submitted a candidate list for the next Parliament, and the party group will be paid its election expenses in advance. The advance is to be in the amount of 60% of one financing unit for each Member who belonged to the party group on the date of submission of the candidates list.³¹ In the case of a party group of fewer than five, the above amount will be given if an independent bank warrantee has been submitted for the difference between this amount and the amount calculated based on the actual number of Knesset

²⁵ PP(F)L, § 6(a)(1).

²⁶ *Id.* § 6(a)(2).

²⁷ Political Parties Financing (Management of Party Group Accounts) 5738-1978, as amended, KOVETZ HATAKANOT 592.

²⁸ PP(F)L, §6(a)(3).

²⁹ *Id.* §6(4).

³⁰ Parties Financing Decision (Financing Units and Payment Dates) 5751-1981, as amended, KOVETZ HATAKANOT 351, 1413 (5759-1999)

³¹ PP(F)L, § 4(a).

Members.³²

When a party group obtains at least one seat in the elections, 85% of the election expenses are paid immediately after publication of the election results and 15% immediately after the State Comptroller has submitted a favorable report following an audit of the political group.³³ An advance received by a party group is deducted from the above payments. If the advance exceeds the amount due to the party group, the excess is to be deducted from the first payment made to the group for operating expenses.

2. Indirect Funding

The Law provides for public indirect funding by providing free transportation to the polls for voters not currently residing near their polling place,³⁴ by encouraging voters to vote and by explaining voting procedures.³⁵ The most substantial form of indirect public financing, however, is the allocation of free campaign broadcasts to all parties and candidate lists participating in the elections.

In accordance with the Elections (Modes of Propaganda) Law, 5719-1959,³⁶ each party and candidates' lists will be given ten minutes of airtime, and each party already represented in the outgoing Parliament will receive three additional minutes of airtime for each Member. Although the television broadcasting time is free, the program itself must be produced and financed by the parties, and approved by the Chairman of the Central Election Committee. Similarly, radio campaign broadcasts are also free, and are allocated to every party or list for a period of 25 minutes; every party represented in the outgoing Parliament will be given six minutes for each Member.

IV. Campaign Finance Law and Freedom of Speech

The effect of campaign finance legal restrictions on the right to freedom of speech has been raised primarily in the context of advocacy activities by NPOs. During the course of an audit of the 1999 elections accounts, it had been argued that the limitations on donations provided by the Political Parties (Financing) Law do not apply to election advertising by NPOs. This is based on the principles of freedom of speech, freedom of organization, and the right to engage in non-parliamentary activities concerning social and political issues.

In his 2000 report, the State Comptroller recognized the status and the power of the principle of freedom of speech in Israel's democracy. He stated, however, that freedom of speech, like other basic principles, has a relative value. Accordingly, democracy is based on additional basic values, including the value of equality of the elections, and the principle of

³² *Id.* §4(a)(a1)0

³³ *Id.* §4(b).

³⁴ PP(F)L, § 18.

³⁵ Elections (Modes of Propaganda) Law, 5719-1959, §16-16a.

³⁶ *Id.* § 15(A).

commitment to public interest, which dictates that elected officials should not depend on wealthy people.³⁷

According to the report, the objective of Israel's Political Parties (Financing) Law is to protect these values by limiting the donations party groups may receive. Israel's legal system recognizes the need to balance freedom of speech with other values, sometimes at the cost of affecting the former. Thus, election laws, including the Political Parties (Financing) Law, as well as the Election Law (Propaganda Means) 5719-1959, affect the freedom of political speech of the party groups themselves. Their impact, however, is for a worthy purpose, since they are designed to protect the values of equality, fairness of elections, and the orderly exercise of public administration. According to the Comptroller, when the legislature provided in the Political Parties (Financing) Law that financial limits should be imposed on the whole extent of political speech, this rule also applies when the speech is by NPOs whose activities contribute to the party groups themselves.³⁸

Therefore, a NPO speech or activity may be restricted by the finance law if it qualifies as "election advertising" (may influence potential voters to vote or refrain from voting in a certain way) and if there is an organizational link between the party group and the NPO.³⁹

V. Conclusion

Israel's campaign finance law reflects the recognition that democratic elections require the balancing of several competing constitutional rights, including the right to equal access, the opportunity to be elected, and freedom of speech. It has therefore adopted a system of both public and private funding of the general election as well as ongoing expenses of political parties. Different amounts are allotted for these purposes and the law defines the periods relevant for general and primary campaigns.

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³⁷ See REPORT OF THE RESULTS OF AN AUDIT OF THE PARTY LISTS FOR THE ELECTION PERIOD OF THE FIFTEENTH KNESSET AND FOR THE PRIME MINISTER (STATE COMPTROLLER OFFICE, Jan. 2000) [in Hebrew]; see also R. Levush, ISRAEL: CAMPAIGN FINANCE REGULATION OF ADVOCACY ACTIVITIES BY NON-PROFIT ORGANIZATIONS, 3 FOREIGN LAW BRIEF (LAW LIBRARY OF CONGRESS, Sep. 2000).

³⁸ *Id.*

³⁹ *Id.*

LAW LIBRARY OF CONGRESS
UNITED KINGDOM
CAMPAIGN FINANCE: AN OVERVIEW

Executive Summary

Legislation to prevent excessive spending by electoral candidates in the United Kingdom has been in place since 1883. The UK's system of regulating campaign financing focuses on limiting the expenditure of political parties and individual candidates, rather than limits on donations that can be received by these parties and individuals, combined with a transparent reporting system of donations received and election expenditure incurred.

I. Introduction

Legislation to prevent excessive spending by electoral candidates in the UK has been in place since the Corrupt and Illegal Practices Prevention Act 1883.¹ The current law regarding campaign financing in the United Kingdom is contained in the Representation of the People Act 1983 (RPA) and the Political Parties Elections and Referendums Act 2000 (PPERA). The UK's system of regulating campaign financing focuses on limiting the expenditure of political parties and individual candidates, rather than limiting the donations that can be received by these parties and individuals.

There are three types of distinguishable regulated expenditure during a general election: “distinction is made between ‘campaign expenditure’ incurred to promote a party or its policies in general, ‘controlled expenditure’ incurred by registered third parties to promote parties or candidates, and ‘election expenditure’ incurred on promoting a specific candidate.”²

This report will focus on campaign financing relating to general parliamentary elections to the Westminster Parliament (hereinafter “general election”), which are held at least once every five years. The political party that wins the most seats at a general election then goes on to form the government. These elections must occur every five years, or when Parliament has been dissolved through a Royal Proclamation, as issued upon the advice of the Prime Minister.³ There are not set timetables for when an election should be held, other than the requirement that it occur within the five-year maximum life of Parliament. As a result, the Prime Minister has a

¹ The Corrupt and Illegal Practices Prevention Act 1883, 46 & 47 Vict., c. 51.

² LAW LIBRARY OF CONGRESS, CAMPAIGN FINANCING: UK (Rpt. No. 2000-09042).

³ RPA, c. 2, sched. 1; The Septennial Act 1715, 1 Geo. 1 Stat. 2, c. 56, as amended by the Parliament Act 1911, 1 & 2 Geo. 5, c. 13, § 3. The effect of the Proclamation is to vacate all the seats in the House of Commons.

political and tactical advantage in being allowed to decide the date of the general election. The average length of Parliament since 1945 has been three years and seven months.

Given the way that Parliament is dissolved, the duration of the campaign period is very short, being generally six to seven weeks.⁴ For the last general election, the formal announcement of the election was made on April 4, 2005, and elections were held on May 5, 2005.

II. Financing of Political Parties

The PPERA substantially overhauled the regulation of campaign financing with regard to political parties. Prior to this act, the role of political parties in fundraising money for elections was unregulated.⁵ The PPERA introduced a regime aimed at increasing transparency in donations to political parties.

The PPERA subjects political parties to campaign spending limits (known as “campaign expenditure”) a year prior to a general election. As the date of a general election is typically not known until a few weeks prior, to comply with the law, political parties must continually maintain records of their expenditure and received donations. Spending by individual candidates on their election expenses is generally excluded from this definition of campaign expenditure and is regulated through the RPA, as amended by the PPERA (see discussion, below).⁶

The definition of campaign expenditure for political parties extends to “party political broadcasts, advertising, unsolicited material to electors, manifesto or other policy documents, market research and canvassing, media/publicity, transport, rallies or other events.”⁷ The law also requires that any notional expenditure (incurred when another person pays the cost that the political party would have otherwise had to pay) be counted as a campaign expenditure incurred by the party.⁸

The campaign spending limits of political parties is considerably higher than that of individual candidates. In the 2005 general election the national campaign expenditure limits were £30,000 (approximately US\$42,000) per constituency contested. For all three major parties contesting seats nationwide, this amounts to around £19 million (approximately US\$26 million).⁹

⁴ ROBERT ROGERS AND RHODRI WALTERS, *HOW PARLIAMENT WORKS* 23 (3d ed. 2004).

⁵ LAW LIBRARY OF CONGRESS, *supra* note 2.

⁶ PPERA § 72, sched. 9.

⁷ *Id.*, sched. 8.

⁸ *Id.* § 73.

⁹ THE REVIEW OF THE FUNDING OF POLITICAL PARTIES, *STRENGTHENING DEMOCRACY: FAIR AND SUSTAINABLE FUNDING OF POLITICAL PARTIES* 9 (Mar. 2007), available at http://www.partyfundingreview.gov.uk/files/strengthening_democracy.pdf.

In the 2005 general election the campaign expenditure of the Conservative Party was £17.85 million (approximately US\$25 million), £17.94 million (approximately US\$25 million) for the Labour Party, and £4.32 million (approximately US\$6 million) for the Liberal Democrats.¹⁰ Additionally, the two main political parties combined expenditure in the twelve months prior to the election was approximately £90 million (approximately US\$126 million).¹¹ The higher figure takes into account the annual expenditure of these parties.

III. Donations to Political Parties

There are no limits on the amount of donations that political parties may receive; however, there are laws that govern who may be a donor, as well as limits, noted above, on spending by political parties on campaign expenditure. The aim of the law is to regulate donations to political parties through transparency, as political parties must make their finances public.¹² Political parties may only accept donations above £200 (approximately US\$280) from “permissible donors.”¹³ Donations are defined in the PPERA to include “gifts of money and property; subscriptions and affiliation fees; sponsorship; money spent on behalf of a party; the provision of property, services, or facilities; or the lending of money other than at commercial rates.”¹⁴ Permissible donors are defined as: an individual registered on a UK electoral register; a UK registered political party; a UK registered company; a UK registered trade union; a UK registered building society; a UK registered limited liability partnership; a UK registered friendly/building society; or a UK based unincorporated association.¹⁵

Until the Electoral Administration Act 2006,¹⁶ donors to political parties were legally obliged to report their donations to the Electoral Commission by January 31 of the year after the donation was made if they donated more than £5,000 (approximately US\$7,000).¹⁷ This was repealed, as “in practice this provision has been of little use.”¹⁸

Foreign donors, other than registered British electors living abroad, are not considered to be permissible donors. If a donation is received from a donor that does not fall into these categories, the political party must return the donation or, if the donor cannot be identified, return the money to the Electoral Commission.¹⁹ If the Electoral Commission believes that a political

¹⁰ *Id.* (generally).

¹¹ *Id.* at 9.

¹² PPERA §§ 80-84. See also THE REVIEW OF THE FUNDING OF POLITICAL PARTIES, INTERIM ASSESSMENT – PART 1 at 16 (Dec. 2007), available at http://www.partyfundingreview.gov.uk/files/Part_1.pdf.

¹³ PPERA § 54

¹⁴ *Id.* § 50; LAW LIBRARY OF CONGRESS, *supra* note 2.

¹⁵ PPERA § 54.

¹⁶ Electoral Administration Act 2006, c. 22.

¹⁷ PPERA § 68.

¹⁸ Electoral Administration Act 2006, c. 22, Explanatory Notes, ¶ 303.

¹⁹ PPERA §§ 56-57.

party has received donations from a non-permissible source they “may seek forfeiture orders in the courts to recover from political parties the value of donations.”²⁰

IV. Reporting Requirements of Donations

Donations over £5,000 (approximately US\$7,000) to the main political party offices, or over £1,000 (approximately US\$1,400) to constituency or local party offices, are required to be reported to the Electoral Commission. These reports are required to be made on a quarterly basis, and every week during a general election campaign.²¹ As a result of a loophole in the PPERA, the major political parties took out loans to circumvent the rules in this Act during the 2005 Parliamentary election.²² The law has since been amended and now any loans, as well as sponsorship, must also be reported in the same way as donations.²³

V. Reporting Expenditure

After general elections, political parties are required to submit a report that details all party campaign expenditure they incurred to the Electoral Commission. This report does not include the election expenses of any individual candidate, which continues to be regulated under the RPA.²⁴

The report is required to include the itemization of all items that money was spent on and must be submitted within three months of the election if the parties incurred less than £250,000 in campaign expenditure. For parties that spent more than £250,000 the reports are to be submitted within six months of the election, and include a statement from an independent auditor.²⁵

VI. Financing of Individual Candidates (Election Expenditure)

Under the RPA and the PPERA, candidates for elections have spending limits that they cannot exceed (known as “election expenditure”), and they may not incur personal election expenses of more than £600 (approximately US\$840).²⁶ These limits are set through secondary legislation by the Secretary of State and may only be changed when the Secretary of State “considers that the variation is expedient in consequence of changes in the value of money” or

²⁰ *Id.* § 58; LAW LIBRARY OF CONGRESS, *supra* note 2.

²¹ PPERA, §§ 62-63; THE REVIEW OF THE FUNDING OF POLITICAL PARTIES, *supra* note 11, at 10. The forms for reporting donations are available on the Electoral Commission’s website, at <http://www.electoralcommission.org.uk>.

²² Andrew Pierce, David Charter & Philip Webster, *Loans to Tory party dwarf the £14m lent to Labour*, TIMES (London), Mar. 18, 2006, <http://www.timesonline.co.uk/tol/news/politics/article742542.ece>.

²³ PPERA, Part IVA, as inserted by the Electoral Administration Act 2006, c. 22.

²⁴ PPERA § 72.

²⁵ *Id.* §§ 80-84.

²⁶ The limits are currently set by Order under the RPA §§ 76-76A.

upon the recommendation of the Electoral Commission.²⁷ For the 2005 general election the limits for candidates under the RPA was “£7,150 [approximately US\$10,000] plus £0.05 [approximately US\$0.07] per elector in a borough (urban) constituency and £0.07 [approximately US\$0.10] per elector in a county (less densely populated) constituency.”²⁸ The Electoral Commission reported that the average amount spent by an electoral candidate at the 2005 general election was £4,000 (approximately US\$5,600).²⁹

VII. Issues with Spending Limits

The current law provides that spending limits apply for expenses that are incurred from the point that Parliament is dissolved, which is when an individual typically becomes an electoral candidate.³⁰ Items or services purchased prior to the dissolution of Parliament, but used afterwards in the candidate’s election campaign, count towards the candidate’s spending limits. This law has caused concern that significant amounts of money have been spent by potential candidates prior to the dissolution of Parliament, as the law in its current form does not regulate this type of expenditure.³¹ As the expenditure is not regulated, there are no official figures; however, the Electoral Commission has noted that candidates were concerned that the start date for spending limits on election expenditure was too close to the election date, thus “a significant period of campaigning would therefore not be regulated by the new controls [and it would effectively] ... render candidates’ expenses limits meaningless.”³²

An Impact Assessment from the UK’s Ministry of Justice notes that the current law allows electoral candidates “to undertake high levels of spending up until, in practice, five or six weeks before the date of the election. This has resulted in damage to public confidence in our electoral system and the perception that it is possible to buy electoral advantage.”³³

A bill is currently before Parliament that would alter the time frame that the spending limits apply to electoral candidates, to take into account spending prior to the dissolution of Parliament. The Political Parties and Elections Bill provides that:

all expenditure used by or on behalf of the candidate [for election expenses] which are used for the purposes of the candidate’s election, are regulated by the candidate spending limit. The person’s formal candidature status (whether adopted as a candidate or not)

²⁷ RPA § 76A. *See, e.g.*, The Representation of the People (Variation of Limits of Candidates’ Election Expenses) Order 2005, S.I. 2005/269.

²⁸ RPA § 76 (2). *See also* Ministry of Justice, Impact Assessment of Political Parties and Elections Bill – Controls on pre-candidacy spending for certain general election, Mar. 2009, *available at* <http://www.justice.gov.uk/publications/docs/impact-assessment-controls-on-pre-candidacy-spending-for-certain-general-elections-lords-introduction.pdf>.

²⁹ Ministry of Justice, *supra* note 27.

³⁰ RPA § 118A.

³¹ Ministry of Justice, *supra* note 27.

³² *Id.*

³³ *Id.*

does not determine whether or not the expenditure is regulated. The purpose for which expenditure is used will be the key consideration.³⁴

VIII. Definition of Election Expenses

The Electoral Commission has provided guidance on items considered to be election expenses and includes such things as costs associated with:

printing and distributing leaflets; advertising material; expenses associated with the telephone and internet; administrative costs, such as the maintenance of a campaign office; postage; expenses relating to holding public meetings; fees paid to election agents, sub-agents, polling agents or to clerks and messengers during the election etc.; and expenses relating to the hire of committee rooms during an election.³⁵

It considers that:

Election expenses are any expenses incurred in promoting a candidate's election. All expenses incurred in relation to items used to promote a candidate during a specified period must be treated as the candidate's election expenses and count against the candidate's election expenses limit, regardless of when the expenditure was incurred.³⁶

IX. Donations to Electoral Candidates

There are no limits on the donations that electoral candidates may receive, other than that, as with political parties, donations over £50 (approximately US\$70) must come from permissible donors.³⁷

X. Reporting Requirements for Electoral Candidates

Candidates are required to submit a return detailing their campaign expenses to the Electoral Commission within thirty-five days of the declaration of the election result.³⁸ Donations of more than £50 to the candidate must be included in the return.³⁹

³⁴ 15 Dec. 2008 PARL. DEB., H.C. (6th ser.) 480W, referring to The Political Parties and Elections Bill 2008-9, HL Bill 26, available at <http://www.publications.parliament.uk/pa/ld200809/ldbills/026/2009026.pdf>.

³⁵ House of Commons Library: Standard Note, *Election Expense Limits*, SN/PC/3413, 2005, <http://www.parliament.uk/commons/lib/research/briefings/snpc-03413.pdf>, referring to RPA, sched. 4A. (inserted by the Electoral Administration Act 2006, § 27(1)). See also Electoral Commission, *Election expenditure and donations: guidance for candidates and election agents*, 2004.

³⁶ Electoral Commission, *Candidate's Election Expenses*, <http://registers.electoralcommission.org.uk/regulatory-issues/legcandidates.cfm> (last visited Apr. 28, 2009).

³⁷ RPA § 71A & sched. 2A.

³⁸ RPA § 81.

³⁹ RPA § 71A & sched. 2A.

XI. Indirect Funding

There are a number of other ways through which political parties and individual candidates can derive benefits without having to incur expenses. One of the most notable aspects for political parties is that, as paid political advertising in the broadcast media is prohibited in the UK, political parties receive a certain amount of broadcasting time on national television and radio free of charge.⁴⁰ The formula for the allocation, length, and frequency of party political broadcasts are determined by the independent communications regulator Ofcom (Office of Communications) for commercial broadcasters with public service obligations.⁴¹ The rules provided by Ofcom are that “Major parties will normally be offered a series of broadcasts before each election.... Other registered parties may qualify for a broadcast on the basis of contesting one sixth or more of the seats up for election, modified as appropriate for proportional representation systems.”⁴² The British Broadcasting Corporation is not regulated in this respect by Ofcom, but carries a provision in its charter agreement that it will carry party political broadcasts.⁴³

Candidates at parliamentary elections are entitled to one election communication (weighing up to 6 oz.) delivered by post without charge to every elector or address within a constituency.⁴⁴ Candidates may also use state-funded school premises or other public meeting rooms for the purpose of holding election meetings without charge.⁴⁵

XII. Campaign (‘Controlled’) Expenditure by Third Parties

Individuals or groups that aim to promote or disparage electoral candidates are also subject to controls and restrictions on the campaigning that they can do. They may incur expenditure (referred to as “controlled expenditure”⁴⁶) by holding public meetings or organizing public displays, or by issuing advertisements, circulars, or publications. They can spend up to £500 (approximately US\$700) at a general election “presenting to the electors the candidate or his views, or the extent or nature of his backing or disparaging of another candidate.”⁴⁷

⁴⁰ Communications Act 2003, c. 21, § 333.

⁴¹ *Id.*; House of Commons Library: Standard Note, *Party Election Broadcasts*, SN/PC/03354, Feb. 2009, available at <http://www.parliament.uk/commons/lib/research/briefings/snpc-03354.pdf>.

⁴² House of Commons Library: Standard Note, *Party Election Broadcasts*, SN/PC/03354, Feb. 2009, <http://www.parliament.uk/commons/lib/research/briefings/snpc-03354.pdf>. See also Office of Communications (Ofcom), *The Ofcom Broadcasting Code 2008, Elections and Referendums*, <http://www.ofcom.org.uk/tv/ifi/codes/bcode/elections/>.

⁴³ *Id.*

⁴⁴ RPA § 91.

⁴⁵ *Id.* § 95.

⁴⁶ “Controlled expenditure” is defined in section 85 of the PPERA as “expenses incurred by or on behalf of the third party in connection with the production or publication of election material which is made available to the public at large or any section of the public (in whatever form and by whatever means).”

⁴⁷ Electoral Commission, *Candidate’s Election Expenses*, <http://registers.electoralcommission.org.uk/regulatory-issues/legcandidates.cfm> (last visited Apr. 28, 2009); RPA § 75.

National Election Expenditure by third parties varies considerably. In this instance, third parties may apply to be “recognized” third parties by the Electoral Commission. Upon becoming a recognized third party, the level of controlled expenditure promoting one party or disparaging another⁴⁸ increases to a maximum of £793,100 in England, £108,000 in Scotland, £60,000 in Wales, and £27,000 in Northern Ireland in the year leading up to an election.⁴⁹ If no notice has been given, the limit of expenditure permitted is reduced to £10,000 in England and £5,000 in Scotland, Wales, and Northern Ireland.⁵⁰ Recognized third parties must complete a return that specifies the election that occurred and all controlled expenditure that was incurred during this period.⁵¹

XIII. Freedom of Speech and Expression Issues

The ban on paid broadcasting has raised questions as to whether it infringes the right to freedom of expression addressed in Article 10 of the European Convention on Human Rights, which was given effect in the domestic law of the UK by the Human Rights Act 1998.⁵² In a case from the European Court of Human Rights involving a ban of political broadcasts in Switzerland,⁵³ the court held that the ban on political broadcasts there infringed the right to freedom of expression, but did concede that a prohibition could be compatible with this article in some circumstances if it met a “pressing social need.”⁵⁴ In an older case specifically relating to the UK paid political broadcasting ban before the European Commission of Human Rights, the court held that it was compatible with the Convention.⁵⁵ In the UK, “the ban on political advertising has been a major factor in limiting the amount of money political parties can spend on election campaigning and therefore on the amount they have to raise. As a result, there is broad support for the ban among the political parties in the UK.”⁵⁶

Prior to the PPERA, there was a £5 limit of contributions that third parties could make towards election campaigns as they were considered to be an election expense.⁵⁷ A case was brought against the UK and went to the European Court of Human Rights, which decided that the limit of £5 (approximately US\$7) was contrary to the right of freedom of expression contained in Article 10 of the European Convention on Human Rights.⁵⁸ The provisions in the

⁴⁸ PPERA §§ 88, 95 & sched. 11.

⁴⁹ Only individual residents in the UK, registered UK overseas electors, a registered party, or a permissible donor within the PPERA may give notification to the Electoral Committee and become a recognized third party. PPERA §§ 88-95.

⁵⁰ *Id.* § 94.

⁵¹ *Id.* §§ 96-100.

⁵² Human Rights Act 1998, c. 42.

⁵³ *VgT Verein gegen Tierfabriken v. Switzerland*, App. No. 24699/94, 34 Eur. H.R. Rep. 159 (2001).

⁵⁴ *Id.*; see also discussion, LAW LIBRARY OF CONGRESS, *supra* note 2.

⁵⁵ *X and the Association of Z v. United Kingdom*, App. No. 4515/70, 38 Eur. Comm’n H.R. Dec. & Rep. 86 (1971).

⁵⁶ LAW LIBRARY OF CONGRESS, *supra* note 2, at 12.

⁵⁷ *Id.*

⁵⁸ *Bowman v. United Kingdom*, App. No. 24839/94, 26 Eur. H.R. Rep. 1 (1998).

PPERA regulating third-party contributions were introduced to address the consequences of that judgment.⁵⁹

XIV. Concluding Remarks

Campaign financing laws continue to be an ongoing concern in the UK. Loopholes in the law that provide political parties and candidates with the means of bypassing spending limits are being exposed and closed, and yet at the same time the duration of the spending limits on individual candidates are proving to be ineffective. The government is currently looking to legislate on these issues and the various provisions they are considering show the difficulty in finding an effective resolution.

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⁵⁹ PPERA, Part VI.