

**Remarks of Professor Yasmin Dawood
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on Bill C-23, An Act to amend the Canada Elections Act and other Acts and to make consequential amendments to certain Acts

before the

Standing Committee on Procedure and House Affairs

March 31, 2014

Professor Dawood is a co-author, along with Professors Maxwell Cameron, Monique Deveaux, Genevieve Fuji Johnson, Patti Tamara Lenard, and Melissa Williams, of an Open Letter to Parliament on the Fair Elections Act (Bill C-23). The Open Letter was signed by over 170 academics at Canadian universities who study the principles and institutions of constitutional democracy, including sixteen past presidents of the Canadian Political Science Association.

Professor Dawood, J.D., Ph.D. (Political Science) is a law professor at the University of Toronto. She specializes in election law and constitutional law, and she also holds an appointment in the Department of Political Science, University of Toronto.

Thank you, Mr. Chair, and good evening.

My name is Yasmin Dawood. I am a law professor at the University of Toronto, and my areas of specialty are election law and constitutional law.

Two weeks ago, my colleagues and I wrote an Open Letter to Prime Minister Harper and the Members of Parliament to express our profound concern that the Fair Elections Act, Bill C-23, would, if passed, damage the institution at the heart of our country's democracy: voting in federal elections.

The Open Letter has been signed by over 170 professors at Canadian universities who study the principles and institutions of constitutional democracy, including sixteen past presidents of the Canadian Political Science Association.¹ This overwhelming and unprecedented level of support from democracy experts across the country is a measure of how damaging we think this legislation would be for the future of our democracy.

Our primary concern is that Bill C-23 would seriously undermine the integrity and fairness of the electoral process. The Bill's provisions would impair voting rights and political participation, create partisan bias in election administration, increase the influence of money in elections, diminish transparency and accountability, and undermine public confidence in the legitimacy of our democratic process.

¹ The Open Letter has been submitted to the Standing Committee as supporting documentation.

Although we have multiple concerns about the Bill, I would like to focus on four issues.

1. First, Vouching: As Mr. Neufeld has testified to this Committee, there is simply no evidence of a link between vouching and fraudulent voting. Although there are record-keeping errors associated with vouching, such errors do not justify the disenfranchisement of thousands of eligible voters. Indeed, the Supreme Court has made clear that incorrect record-keeping of vouching does not amount to an irregularity that would overturn an election result.² The Charter-protected right to vote is fundamental and may not be abridged on account of administrative mistakes.³

Recommendation: We recommend that vouching be retained, and that the vouching procedures be simplified. We also recommend that Voter Information Cards (VICs) should, at the discretion of Elections Canada, be used to confirm a voter's address since VICs are the only document issued by the federal government that gives current address and that provides an address accuracy rate higher than that of driver's licences.

2. Second, The Role of Elections Canada: Bill C-23 prevents the Chief Electoral Officer from engaging in citizen education campaigns aimed at increasing voter turnout. While political parties undoubtedly play an important role in motivating citizens to vote, we think that Elections Canada, a non-partisan agency, plays a special role in reaching out to voters that political parties are less likely to target. Historically, political parties have not focused on younger citizens

² *Opitz v Wrzesnewskyj*, 2012 SCC 55 at para 107, [2012] 3 SCR 76.

³ *Ibid* at paras 1, 37.

because of low turnout among youth. Nor do they reach out to citizens unlikely to support them. We need a non-partisan agency like Elections Canada to reach out to *all* voters.

Recommendation: We recommend that there should be no restrictions on the public communication of the Chief Electoral Officer and Elections Canada.

3. Third, Ensuring a Level Playing Field: We are concerned that certain aspects of Bill C-23 create the actuality and appearance of a partisan bias in the electoral process. For example, Bill C-23 would exempt “fundraising expenses” from the spending limits for political parties. The political parties can use this exemption when soliciting donations from prior donors who have given more than \$20 in the previous five years. This loophole would increase the influence of money on politics, and it would be particularly beneficial for the party with the longest list of donors, which in this case, is the governing Conservative party.

Bill C-23 also provides that central poll supervisors would be selected from lists provided by the candidate of the party that won the district in the last election. This provision violates the norm that the administration of the electoral process should be strictly neutral. It unnecessarily politicizes the administration of the polling station, introduces the possibility of partisan bias, and provides an advantage to incumbents.

Recommendation: We recommend that Bill C-23 be revised to remove the fundraising exemption from the spending caps for political parties. We also recommend that central poll supervisors be chosen through a neutral non-partisan process.

4. Fourth, Effective Compliance and the Commissioner’s Independence: Bill C-23 fails to provide the Commissioner with the power to compel witness testimony – an essential power that is required by the Commissioner to effectively investigate electoral infractions. Bill C-23 also fails to require political parties to provide Elections Canada and the Commissioner with receipts and supporting documentation about their election expenses.

In addition, we are concerned that Bill C-23 would remove the Commissioner’s ability to speak with the public. Under the new confidentiality requirements of Bill C-23, members of the public and Members of Parliament would have no access to information about the Commissioner’s investigations into electoral infractions, such as the robocalls affair. While there are narrow exceptions to this requirement, the Commissioner will be effectively muzzled from communicating about investigations into electoral infractions, unless charges are laid. Although Bill C-23 does provide that a report on the Commissioner's activities will be forwarded to Parliament, it explicitly states that the report may not contain “the details of any investigation.”⁴

Recommendation: We recommend that Bill C-23 provide the Commissioner with the power to compel witness testimony. We also recommend that political parties be required to provide receipts and supporting documentation for their election expenses. In addition, we recommend that the new confidentiality requirements on the Commissioner be eliminated.

⁴ Section 152 of Bill C-23, amending section 16(1) of the *Director of Public Prosecutions Act*, S.C. 2006, c. 9, s. 121.

Conclusion

Not only are we concerned about the substance of the proposed rules, we are also alarmed by the speed at which Bill C-23 is being rushed through Parliament.

In addition, the process by which Bill C-23 was drafted departs from a long-standing political practice in Canada whereby electoral reforms were undertaken through widespread consultation with all the political parties and close collaboration with Elections Canada. Parliament has also traditionally relied on the insights of parliamentary commissions, such as the Lortie Commission, which provided expert advice and research on how electoral rules should be structured. The use of independent boundary commissions for electoral redistricting is another example of the importance of an impartial process that relies on extensive consultation with citizens, experts, and Members of Parliament. International standards for electoral law reform likewise prescribe widespread consultation with all stakeholders and close collaboration with an independent administrative agency.

We are deeply concerned that the process by which Bill C-23 was drafted will establish a new precedent in our country's political practices. Rather than providing a neutral structure for political competition, the rules of democracy will themselves become the new battleground for partisan control. This political precedent will be deeply damaging to democracy as successive majorities in Parliament rewrite the electoral rules in an effort to gain a partisan advantage. We urge the governing party to consider the long-term consequences of its approach. It will hurt all the political parties, and will diminish the strength, fairness, and vitality of our democracy.