



**Oral Presentation to
the Standing Senate Committee
on Legal and Constitutional Affairs**

**Thursday 6 April 2000
Parliament Buildings, Ottawa**

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I'd like to thank this committee for inviting Environment Voters to appear and discuss Bill C2. I'd like to introduce Liz White, a founding director of Environment Voters. My name is Stephen Best, also a founding director.

Environment Voters appeared before the Standing Committee on Procedures and House Affairs in November on this bill. Today our hope is to take advantage of the differing roles of the House of Commons and the Senate and build on what was discussed in November rather than simply reiterate it.

Our particular concern in November, as it is today, was Part 17 of Bill C2: *Third Party Election Advertising*. Put less elegantly -- but probably more accurately -- Part 17 is the "gag law" section of C2. For what it's worth, it would appear from the draft of Bill C2 that you are now considering that Environment Voters' appearance before that House of Commons committee didn't have much impact.

Before I begin, I'd like to do a few housekeeping chores.

The short notice for this appearance has meant that it has not been possible to have all of the documents we'd like you to consider available in both official languages. For this, we apologize.

Having said that what is properly available in both languages is the oral presentation that was made to the House of Commons committee.

We've also brought copies of a detailed report about our campaign in the 1999 Ontario provincial election. It was Environment Voters' first campaign and targeted 7 electoral districts. It's a very useful analysis, I believe, in that it clearly lays out what Environment Voters is, why Environment Voters campaigns in elections, and the campaign methods Environment Voters uses. It also gives the results of an analysis of the effects the Environment Voters campaign had on the voting patterns. Of the 7 Progressive Conservative Members of Provincial Parliament targeted only 3 returned to the Ontario Legislature.

We've also have copies of the video that formed the basis of our campaign message in Ontario and a video of an interview I conducted last summer in Plymouth, Massachusetts with Tom McMillan who was Canada's Minister of the Environment from 1985-1988, in which he speaks candidly about politics, the environment, environmental groups, and Environment Voters.

To begin, I'd like to try to put our appearance before you into a context that includes ordinary people, to help demonstrate that what we'll be discussing here has real, measurable impacts.

Imagine, if you will, that tomorrow a local chemical producing company accidentally releases a toxic plume into the air that settles on Ottawa and kills -- over a period of a

few days -- 2,000 people! This would be a Bhopal scale event. The sheer horror of the disaster would trigger a massive and immediate response from emergency, medical, law enforcement, and news services, and in the aftermath from political and legal agencies. The deaths would be devastating for the families involved, and severe health consequences would be suffered by tens of thousands for years to come. The economic effects would be in the hundreds of millions, perhaps billions of dollars. Governments at all levels would take measures to insure that such a tragedy would never happen again. The offending company would likely never resume operations.

Contrast that with this.

In Ontario this year, almost 2,000 people *will die prematurely* because of poor air quality. The only differences from the fictional scenario described above will be that these people won't die over one weekend, they won't die in one place, and the blame won't fall on just one company. But these 2,000 real people will die just as painfully and their families will suffer just as much. Another difference between the reality and the fiction is that as of yet no government is going to take measure to insure that the real deaths never happen again.

The crime is that these 2,000 people are going to die needlessly. It's too late for them now, their fate has already been sealed, despite the fact that Canadian governments -- particularly the federal government -- have always had the legislative powers they needed to prevent their deaths. The reality is these people are going to die because our elected politicians and political parties have been compelled for perfectly valid political reasons not to exercise their powers in a way that would have saved these peoples' lives.

Environment Votes is using electoral politics to change that reality. The drafters of Bill C2 seek to prevent Environment Voters from doing that.

The coming deaths of these 2,000 people in Ontario is just one consequence of the continuing degradation of Canada's and the global environment. According to a study done by the National Center for Economic Alternatives in Washington DC, Canada's environment is 40% worse today than it was in 1970. This pattern of continued degradation is also noted in the 1999 report of Canada's Commissioner of the Environment and Sustainable Development, in the 1999 report of Ontario's Environmental Commissioner, in the United Nations Environment Program's *Global Environment Outlook 2000*, and in the World Wildlife Fund's *Living Planet Index*.

Canada has one of the worst environmental records among the western democracies. Canada fails to recognize in public policy that a healthy environment is not a luxury. It is a fundamental necessity of life and a necessary precursor to the social, economic, and physical well-being of all Canadians.

Although the wording varies from report to report, the reason given for the continuing environmental degradation is the same: *failure of governments to act to protect the environment*.

What all the reports fail to discuss, however, is the reason why governments have failed to act. It's not because they're populated by perverse people who enjoy breathing polluted air, drinking unsafe water and watching habitat be destroyed and species

become endangered. The reasons are political. The short-term exigencies of electoral politics -- indeed, the very foundations of our democratic systems -- means that more often than not thoughtful long-term policies which would protect the environment simply cannot be implemented.

While the various agencies who report on the degrading state of the environment generally blame government for failing to act, much if not more blame should be attached to the environmental movement. The modern, international environmental movement -- despite the support of millions of people and access to billions of dollars -- has utterly failed to make the environment a politically relevant issue. They've failed to grasp the fact that we don't have an environmental problem, we have a political one.

We have the technical and scientific expertise, the economic wherewithal, the market systems, the communications systems, and the political systems necessary to fully address the environmental problems facing Canada and the world today. It wouldn't be easy. It couldn't be done overnight. And some things have been lost that can never be recovered. But we can have a clean, healthy environment that is rich in bio-diversity and which is improved rather than degraded every year. Our failure as an environmental movement is in not fully exercising our democratic rights and making our governments implement the policies necessary to protect the environment.

The conclusion from 30 years of failure is inescapable. It will never be possible to protect the natural environment -- let alone restore and enhance it -- until the political environment is changed. It's in the political environment where people decide as a society how they're going live.

The task that Environment Voters has set for itself is to change the political environment, to make it in the political best interests of all politicians and political parties to protect the environment by providing a political benefit for a good environmental record and exacting a cost for a poor one in the form of votes and seats won and lost.

We have to make it more important politically to protect the environment than to acquiesce to the economic and social interests whose short-term goals left unchecked would destroy it. In a modern, market-oriented democracy based on the rule of law there is simply no other route to protecting the environment.

Tom McMillan put it this way in his interview,

"It's a simple fact of political life in our country that it's politicians and government that make most of the decisions in the environmental field ... what will advance the environment of the country is votes -- votes, voters, and the ballot box. What's needed is an organization that makes sure politicians and government act responsibly in the environmental field, rewards them when they do and punishes them when they don't."

Currently, Environment Voters is preparing to campaign in 22 electoral districts in the next federal election. The planned budget is \$50,000 per electoral district and the funds will be raised through direct response television programs -- 30 minute infomercials -- expected to start airing in May. The electoral districts chosen have two things in common: they are currently held by members of the Liberal Party and they will likely be won or lost by 4% of the vote or less.

Environment Voters does not campaign in elections to elect candidates or parties which promise to pass good environmental laws. Rather, Environment Voters holds politicians and parties accountable in elections for what they have actually done while in government. As the Liberal Party currently forms the government of the day, only they have the power to pass sound environmental laws.

If when the next election is called, the Liberals can fairly be judged to have had a good environmental record, Environment Voters will be campaigning to re-elect Liberal incumbents. On the other hand, if their record is poor, Environment Voters will campaign to defeat Liberal candidates. Given the Liberal Party's environmental protection record to date, it seems likely that Environment Voters will be campaigning against Liberals in the next election.

Environment Voters' concern is only policy, not which party holds power. In the Ontario election, Environment Voters campaigned against Progressive Conservative candidates and in favor of Liberals and the NDP.

Bill C2, of course, has been deliberately crafted in the hopes of preventing precisely this kind of political activity. The drafters of Bill C2 hope to prevent Canadian citizens -- through making common cause with organizations like Environment Voters -- from effectively using the only democratic means they have of holding their politicians and governments directly accountable for their record while in office: the right to vote.

Bill C2 doesn't go so far as to ban third party involvement in elections altogether, but the spending limitations are so low as to have the same effect. It's simply not possible to conduct a meaningful campaign in an electoral district on \$3,000. What the government is saying in Bill C2 is *'we don't mind you exercising your right to freedom of expression we just don't want you doing it in such a way that people will actually hear you.'*

The Honourable Don Boudria, Minister of State and Leader of the Government in the House of Commons, told the Standing Committee on Procedures and House Affairs that Bill C2 was part of "perfecting our democratic process."

James Robertson of the Library of Parliament suggests in his legislative overview of Bill C2 that, "The Canadian electoral system ... is known as a model of electoral democracy around the world."

Actually, neither of these statements is true.

Bill C2 does nothing to perfect our "democratic process." Indeed, one of its explicit intents is to diminish rights enshrined in the Charter. And, the Canadian electoral system is recognized as being so archaic and so undemocratic that it is universally rejected by modern and emerging democracies when sincere electoral reform is undertaken.

The constituency-based "winner take all" electoral system entrenched in Bill C2 produces grotesque results that often directly contradict the expressed wishes of voters, sometimes with dire consequences that threaten the very future of Canada.

In the 1996 British Columbia provincial election, the Liberals took 42% of the vote and the NDP only 39%, yet the NDP formed a majority government with 39 seats to the

Liberals 33 -- a direct affront to the voters. The current government of British Columbia is legal, but democratically illegitimate, thanks to our electoral system.

In the 1993 federal election, the Progressive Conservatives earned 16% of the vote and were reduced to 2 seats in the House of Commons. The Reform won only 3% more of the vote than the PCs, yet gained 52 seats. The Bloc earned 1/3 less of the vote than Reform but took more seats and became the Official Opposition.

In 1993, the Canadian electoral system -- this model of democracy perpetuated in Bill C2 -- negated a fundamental criteria for true democracy: the equality of each citizen's vote. In Canada, because of our electoral system, some votes have much more weight than others. In elections, Canadians are not equal before the law. This is contrary to the letter and the spirit of our constitution and Charter of Rights.

But the worst example -- and the one that shows clearly what terrible, long-term damage our electoral system can truly wreck -- was the Quebec election of 1998. In that election, the Liberal Party won 43% of the vote. Fewer people voted for the Parti québécois, only 42%. Yet the PQ formed a majority government with 70 seats to the Liberal's 48.

Canada's electoral system extolled by the Minister and offered as a "model of democracy" utterly misrepresented the will of voters and produced a democratically illegitimate government in Quebec dedicated to the break up of Canada.

The way that the electoral system distorts the number of votes earned by parties relative to the seats gained in legislatures is only the most glaring distortion because it is easy to compare votes cast with seats won. But an even more damaging effect to the country wrought by our electoral system -- one that is not quite so obvious, but just as devastating -- is how it distorts the precedence given the multitude of issues that elected representatives must decide.

The fact that Canada's electoral system so effectively disenfranchises millions of Canadians is the reason for the rise of -- and the argument for the compelling need in our present system for -- third parties to vigorously participate in elections. It is the reason why Environment Voters was founded.

The disturbing underlying premise that corrupts all of Bill C2 is that election laws are not made to serve the citizen, but rather the interests of the major political parties. Bill C2 is a self-serving and pernicious piece of legislation which ought to be resisted by the Senate and by anyone else truly interested in democracy and fair and open elections.

Environment Voters' particular interest with Bill C2 centers on *Part 17: Third Party Election Advertising*. Two months ago, the Supreme Court of British Columbia struck down provisions regarding third party campaigns in British Columbia's *Election Act* that are virtually identical to those found in Bill C2. Furthermore, Mr. Justice Brenner in his Reasons for Judgement rejected the very same arguments and legal precedents that the federal government is relying upon to defend the third party spending restrictions in Bill C2.

The Premier of British Columbia has decided not to appeal the decision of the BC court. At the federal level, the government continues to pursue third party spending limitations despite court rulings that such laws are contrary to the Charter and indications that they

would never survive a Supreme Court challenge. As it is unlikely a Supreme Court challenge to Bill C2 can be concluded in time for the next federal election. Therefore, a reasonable assumption is that the Liberal Party is acting in bad faith in this matter and is hoping that Bill C2 will have chilling effect on third party participation in, at least, the next election.

In the absence of meaningful electoral reform, third party campaigns serve an important democratic function. As Mr. Justice Brenner observed, they allow ordinary citizens to have influence over what issues will be raised in elections, issues that political parties may prefer weren't discussed during a campaign. They allow ordinary citizens to have some control over how an election campaign will evolve, rather than simply remaining as passive consumers of campaign propaganda. This is of course anathema to campaign managers and political strategists who want as much control as possible over the campaign message and the responses to it. If passed in its present form Bill C2 will admirably serve the desires of the political strategists to the detriment of improving Canada's democratic system and of the Charter rights of citizens.

In our opinion and in the opinion of many others who have appeared before these parliamentary committees, Bill C2 is a bad piece of legislation. Some of the most vexing parts, those that apply to third parties and those dealing with the threshold for becoming a registered political party, have already been struck down by various courts, but not by the Supreme Court of Canada. Consequently, there is still doubt about the validity of the restraints on third parties in Bill C2. We believe that the government has an obligation to the citizens of Canada and the third parties it presumes to regulate and deny their Charter rights to clarify these issues before the next election.

That being said, we would ask the members of this committee to consider what measures the Senate might take to recommend to the government that Bill C2 be referred to the Supreme Court of Canada for an opinion on its constitutionality before the next election. Perhaps the Senate is able to refer Bill C2 to the Supreme Court itself. Failure to have the Supreme Court consider this matter will put groups like Environment Voters in the very difficult position of choosing between exercising their Charter rights, which have already been upheld by various courts, and contravening federal election laws.

In closing and in order to be perfectly candid, I'm compelled to add that Bill C2 is so badly conceived -- because it is primarily designed to serve the interests of major political parties and not voters or democracy -- that notwithstanding Part 17 there are numerous ways for third parties like Environment Voters to fully adhere to the letter of Bill C2 and still spend unlimited amounts in any electoral district overtly endorsing or opposing any candidate.

Thank you for this time. Liz and I would be pleased to answer any questions or clarify any points.

Canadian Federal Campaign 2001/2
List of selected Environment Voters Electoral Districts

The Hon. Anderson, David Victoria, BC	Mr. Jordan, Joe Leeds--Grenville, ON
Mr. Bonwick, Paul Simcoe--Grey, ON	The Hon. Kilgour, David Edmonton Southeast, AB
Mr. Byrne, Gerry Humber--St. Barbe--Baie Verte, NF	Mr. Limoges, Rick Windsor--St. Clair, ON
The Right Hon. Chrétien, Jean Saint-Maurice, PQ	The Hon. MacAulay, Lawrence Cardigan, PE
Mr. Easter, Wayne Malpeque, PE	Mr. McGuire, Joe Egmont, PE
Mr. Finlay, John Oxford, ON	The Hon. McLellan, Anne Edmonton West, AB
Mr. Grose, Ivan Oshawa, ON	The Hon. Mifflin, Fred Bonavista--Trinity--Conception, NF
Mr. Hubbard, Charles Miramichi, NB	Mr. O'Brien, Lawrence Labrador, NF
Mr. Ianno, Tony Trinity--Spadina, ON	Mr. O'Reilly, John Haliburton--Victoria--Brock, ON
Mr. Iftody, David Provencher, MB	Mr. Proud, George Hillsborough, PE
Mr. Jackson, Ovid Bruce--Grey, ON	The Hon. Scott, Andy Fredericton, NB