



The Israeli Law Professors' Forum for Democracy

Initial response to the proposed laws regarding taxing foreign donations and expelling “terror-supporting” students from academic institutions

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The Israeli Law Professors' Forum for Democracy, an ad hoc and voluntary group of experts on Israeli law and specifically Israeli public law, expresses its grave concern over the apparent intention to abolish the independence of the judiciary, to subordinate it to the government and to the partisan political considerations of the executive branch, to undermine the independent status of the attorney general and civil service legal counsels, and to violate human rights. This is our initial response to the proposed laws regarding taxing foreign donations and expelling “terror-supporting” students from academic institutions.

This coming Sunday (May 28th), two bills, to be brought before the ministerial legislation committee, would gravely harm basic rights if passed. In light of the serious harms they will cause to basic democratic principles, they must be viewed for all purposes as part of the judicial coup.

* We, members of the Israeli Law Professors' Forum for Democracy, hold different academic views regarding the details of the various reforms proposed by Israel's 37th Government to change Israel's democratic regime. However, we are united in the opinion that the host of the government's proposals - which are an unprecedentedly severe attack on the independence of the judiciary, the Attorney General and government legal advisors, the police, the military, and public broadcasting - will seriously damage the rule of law and Israel's democratic character. Therefore, we joined this forum to make our professional opinion available to the public at this fateful time. The position papers or other professional materials produced by us reflect the prevailing position among the members, even if they are not unanimous. The list of Forum's members and all position papers on our behalf are available at <https://lawprofsforum.org/en>. Follow us on Twitter: <https://twitter.com/lawprofsforum>. Contact us: lawprofessorsforum@gmail.com.

The first is a proposal to amend the Income Tax Code, imposing an exorbitant 65% tax on every donation to an Israeli NGO from a “foreign state entity,” and revoking the nonprofit status of these NGOs in Israel which would deny them tax exemptions even concerning donations from Israelis. The position of the Israeli Law Professors’ Forum for Democracy is that this bill contravenes the basic foundations of democratic rule, and it is no coincidence that similar laws were enacted in recent years in authoritarian countries such as Russia.

If limiting donations to civil society was not serious enough, this proposal is especially harmful since the obligation to pay such a tax will not fall on donations from private foreign entities. As is well known, foreign billionaires have donated enormous sums in recent years to right-wing organizations and media outlets, deeply influencing the public discourse in Israel. The proposed law was constructed in such a way as to target NGOs identified by the government as defenders of Israeli democracy. It is a grave and unacceptable attack on equality and freedom of expression.

To the extent that the purpose of the proposal is to prevent foreign influence on public discourse in Israel, there is no relevant distinction between a governmental donation and a private one. On the contrary, governmental donations are much more transparent than those by shady billionaires whose motives are unknown. In addition, governmental donations are granted according to professional criteria, allowing for NGO independence, and are under constant supervision.

The states donating to human rights organizations in Israel are friendly ones, who also fund research, culture, and more. Taxing their donations could have serious international repercussions.

We therefore maintain that this bill, intends to harm organizations identified with opposition to the Netanyahu government, and is part of a broader attempt to entrench the government’s rule within the broader framework of the judicial coup. It is also unconstitutional and must be rejected by the ministerial legislation committee.

The second bill concerns expelling “terror-supporting” students from academic institutions and “breaking up terror-supporting cells.” Under the guise of fighting terror, this proposal seeks to harm freedom of expression and association by students, and violates core principles of academic freedom. The proposal provides that expression of support for an armed struggle against an enemy state or a terror organization, or an expression of support for an act of terror, will lead to the suspension of a student from their studies for a period of 30 days, and if they will again do so, they will be permanently suspended. Moreover, any recognition of a degree earned outside of Israel will

be suspended for a period of five years. At its core, the bill is not concerned with “support of terror” in institutions of higher education, as criminal law already grants the state tools to deal with such issues. Rather, the prohibition is against waving the Palestinian flag, which it explicitly prohibits.

The proposed law greatly harms freedom of expression, by addressing an imaginary problem. There are no so-called “terror cells” in institutions of higher education. Waving a Palestinian flag is intended to express the national-ethnic identity of those doing so, or support for the ambitions of the Palestinian people for independence, expressions that a democratic regime must allow. In the accompanying explanation it is claimed that the existing legal framework does not provide tools for academic institutions to act against support of terror, and in the same breath claims that the institutions remain silent in light of this behavior. These claims are outrageous. The role of the academic institution is not to deal with support of terror. That is the job of the police. The proposed law seeks to censor expression only because the content does not find favor in the eyes of the government, and to force the academic institution to take action against students, thus damaging the independence of the institution and academic freedom, contradicting Section 15 of the Council of Higher Education Law

The proposed law is especially grave because it labels institutions of higher learning, whose purpose is to offer space for critical thinking and open and free discourse, as a threat that must be dealt with. Therefore, the proposed law falls squarely with authoritarian efforts by states such as Hungary and Poland, aiming to limit academic institutions only because of their putative critical views.

These proposals will lead to the destruction of free expression in Israel and the labeling of internal enemies, all with the intention of entrenching the power of the government. These proposals must be opposed, as there is no place for such laws in a democratic state.