

JUDICIAL REFORM

OUR GOALS:

- Press restart
- Implement necessary change
- Empower democratically elected officials
- Limit judicial activism
- Protect the institution of democracy
- Promote an overhaul of Israel's judiciary system

BACKGROUND:

Though the right has often been in control of Israel's government in recent years, it has successfully implemented precious few of its policies. Lacking well-developed political platforms, beset by a delayed understanding of the facts on the ground, unaccustomed to governing and lacking the gumption to govern effectively, and crippled by ineffective relationships with the political left and other governmental power hubs, the right has not been able to fully realize its vision and put its policies into place.

Beyond these significant challenges, the right is challenged by an ever-evolving self-defeating governmental system. Through the years, the left has systematically gained control of non-elected government centers of power, injected them with its jargon and worldview and transformed them into the center-of-gravity for decision-making. Effectively, this process has shackled the right, making it impossible

to initiate and implement strategic change in a governmental system undemocratically controlled by the left and a host of "professional committees" that are faithful to a leftist agenda and not accountable to the public. Rather than focusing its efforts on governance, the right has been put on the defensive time and again.

This document does not seek to analyze the steps taken by the left, nor to identify past failures by the right and assign blame. It rather looks toward the future and seeks to outline a concrete plan for the right's return to power and the realization of its values and policies, in conjunction with deepened commitment to the principles of democracy and the innate Jewish character of the State of Israel.

The key to overcoming these challenges is restoring checks and balances and enabling the people to once again control decision making and policy determination via their elected leaders and the mechanisms of democracy. More specifically, the Religious Zionist Party seeks to address the following intrinsic problems:

THE PROBLEM: THE ATTORNEY GENERAL

The Attorney General is a non-elected governmental authority with unlimited power and a built-in conflict of interests. At current, the Attorney General has three primary responsibilities:

- To provide the government with legal advice during the process of formulating legislation and advise ministers on fulfilling their responsibilities
- To represent the government in court
- To oversee criminal proceedings, including the decision to investigate government officials and issue an indictment

For starters, "All power tends to corrupt, absolute power corrupts absolutely". Concentrating too much power in the hands of one individual will ultimately lead to a misuse of power.

To exacerbate matters, the fact that the Attorney General both provides legal advice and legal representation for the government in court, is inherently problematic. Legal advice, like all other genres of advice, should not be binding. Ultimately, it should be the government's prerogative to assess the issues, consider the legal advice, and arrive at a practical decision. But when the legal counselor must also present the government's position in court, failure to adhere to the Attorney General's legal advice spells legal disaster for the government should the government's legislation or policy be challenged in court, which happens regularly. The Attorney General will often choose not to present the government's position in court if it does not coincide with his personal opinion and politics, leaving the government bereft of legal representation. Denied its day in court, the government must forfeit the case.

Moreover, since he bears responsibility for indicting senior governmental officials, the Attorney General can easily pursue punitive measures against government officials who do not "fall in line". Essentially, in the current climate, the Attorney General is not bound by anything or anyone and has become the ultimate authority in the State of Israel. The potential for corruption is a clear and present danger to the institution of democracy.

THE SOLUTION:

- The position of Attorney General will be divided into three separate positions:

1. Legal counselor - This individual will be appointed by the government to provide non-binding legal advice to the government for the duration of the government's tenure. Each ministry will have its own legal counselor appointed by the minister.

2. Public prosecutor - This individual will be appointed by the Minister of Justice to a 6-year term and will be responsible for overseeing criminal proceedings.

3. Legal Representation - This individual will be appointed by the government to a 6-year term to represent the government in all non-criminal court proceedings. If the individual chooses not to represent the government in a specific case, the government will be entitled to hire external legal representation.

- An independent body will be established to review the decisions of the public prosecutor and the government's legal representation.

THE PROBLEM: EXCESSIVE JUDICIAL ACTIVISM

The State of Israel has experienced an ever-increasing imbalance of power between the judicial branch of government (Supreme Court) and the executive branch of government (Knesset).

Though the judicial branch of government is meant to keep the executive branch in check and ensure justice, over the years this delicate balance has been eroded by excessive judicial activism that de facto imposes a judge's personal politics and agendas on the entire system, robbing the executive branch of its democratically endowed power. In recent years, the Supreme Court has struck down laws and overturned government decisions that did not appeal to the judges. To exacerbate matters, whereas in other democratic countries judges are appointed by the executive and legislative branches of government, in Israel the method for appointing judges is largely controlled by the judiciary itself. Granted veto power against potential nominees, Supreme Court justices protect their ranks and the judges who serve in this all-important branch of government do not reflect the will of the people, resulting in an elitist, empowered judiciary that imposes its will on the rest of the country, with absurd and painful implications.

THE SOLUTION:

- Elected officials will have a majority decision on court appointments. In this way, the composition of the courts will be a better reflection of the will of Israeli society, as in most democratic countries.
- Supreme Court nominees will undergo a public hearing to clarify their legal positions and general attitude toward justice and law and the balance between these different elements.
- The "Override Clause" will be passed by the Knesset and establish that the court can only strike down a law passed by the Knesset if the judges unanimously determine that the law contradicts one of the Basic Laws. The court will not be authorized to cancel Basic Laws.
- The legal limitations of locus standi will be given formal legal standing. This means that one can challenge a government action or law in court only if he has been directly harmed by that act or law. This will put an end to the court's excessive judicial activism whereby the court hears challenges from anyone interested in thwarting government policy.
- The courts will not be allowed to cancel government decisions based on the legal consideration of "unreasonableness". This will restore the reins of government to the country's elected officials and ensure that their decision making cannot be overturned by the courts at whim.
- The government will have the authority to appoint officials without a professional oversight committee, to ensure that the country's elected officials have the final say in these important appointments.
- Ministers will be authorized to replace up to 50% of the employees in their ministries to ensure that they will be able to implement their policies and not be thwarted by an entrenched layer of non-elected officials within their own ministries.

THE PROBLEM: SEPARATION OF POWERS

If the Attorney General or judiciary are not pleased with the personal choices or politics of a public official, they can easily fabricate charges against him to stop him in his tracks. The ever-present threat of indictment casts a shadow on the entire institution of democracy and limits the authority of democratically elected officials to implement their policies.

THE SOLUTION:

- Do away with the principle of "Breach of Trust" from the penal code. In recent years, this principle has been abstracted to mean just about anything that the courts do not approve of and provides the legal basis for indicting public officials for a host of behaviors which do not really comprise a breach of trust at all.
- Restore parliamentary immunity for members of Knesset. As in other democratic countries, parliamentary immunity does not protect felons. It rather allows members of Knesset to operate independently and impose their policies, without fear of being indicted by a disapproving Attorney General or prosecuted in court. A Knesset member's immunity will be subject to removal by the Knesset itself.
- Legislate the "Impeachment Law" which will prevent the police from investigating a serving Prime Minister or other government minister for offenses committed in the context of their job that were not severe and did not harm public interests. This law ensures that charges can be brought against public officials only via impeachment. The law seeks to protect the democratic process and prevent the government from coming to a standstill as the official is under investigation and trial. The goal of the law is to mitigate the potential damage to the entire governmental system caused by unnecessary, possibly politically motivated, investigations.

We do not delude ourselves. Realizing the goals outlined here is a long and arduous process, which will undoubtedly encounter fierce opposition.

Yet, despite the difficulties that lie ahead, we take confidence in our vision for the future. These necessary changes will not only give Israel's right the tools to implement its policies and make sustainable change. They will also give the system the shakeup that it desperately needs and help an entire country get back on track and reinstate the values that it holds dear.