The Supreme Court of Israel HCJ5478/11
Sitting as the High Court of Justice

MK Dr. Ahmad Tibi

Represented by Adv. Hassan Jabareen and/or Orna Kohn and/or Suhad Bishara and/or Sawsan Zaher and/or Fatmeh El-'Ajou and/or Haneen Naamnih and/or Rami Jubran and/or Rima Ayoub of Adalah – The Legal Center for Arab Minority Rights in Israel, 94 Jaffa Street, Haifa, P.O. Box 8921, Haifa 31090, Tel:04-9501610, Fax: 04-9503140.

Petitioner

-v.-

Speaker of the Knesset, MK Reuven Rivlin
The Knesset, Kiryat Ben-Gurion, Jerusalem 91950

Respondent

Petition for *Order Nisi*

This petition is for an *order nisi*, whereby the Honorable Court is requested to order the respondent to show causewhy the introduction to the Knesset of the Budget Principles Bill (Amendment – Denial of the Nakba) – 2011, submitted by the petitioner, Member of KnessetDr. Ahmad Tibi,should not be permitted.

The following are the grounds for the petition

1. The petitioner is the Deputy Speaker of the Knesset and a Member of Knesset [MK] representing the Ra'am-Ta'al political party(the Arab Movement for Renewal).

2. The petition concerns the extreme unreasonableness of the decision taken on 4 July[2011] by the Knesset Presidium, headed by the respondent, not to approve the introduction of the Budget Principles Bill (Amendment – Denial of the Nakba) – 2011, which was submitted by MK Dr. Ahmad Tibi[hereinafter: MK Tibi's bill], to the Knesset. The Knesset Presidiumdecided not to sanctionthe bill, claimingthat it negatedthe existence of the State of Israel as the state of the Jewish people. The Petitioner will argue that this decision radically exceeded the authority[of the Presidium] on three principal groundsto be specifiedhereinafter.

3. The Petitioner presented his bill to the Speaker of the Knesset and his deputies for theirapproval to introduce it to the Knesset, in accordance with the procedure set forthin Regulation134 of the Knesset'sRegulations. The bill seeks to amend another law, enacted on 21 March 2011, which amends Article 3Bof the Budget Principles Law – 1985, and is

known as the "Nakba Law". The latterlawstipulatesthat the Minister of Finance is authorized to reduce monetary transfers from the state's budget to anybody that receives state funds if that bodyhas made a payment that was essentially expended on:

1. Rejecting the existence of the State of Israel as a Jewish and democratic state;
2. Incitement to racism, violence or terrorism;
3. Support for an armed struggle or act of terror by an enemy state or a terrorist organization against the State of Israel;
4. Commemorating Independence Day or the day of the establishment of the state as a day of mourning; [and/or]
5. An act of vandalism or physical desecration that dishonors the state's flag or symbol.

4. MK Tibi's bill seeks to replacesubsection 4, above[Article 3B(B)(4) of the Nakba Law]with the text:

> Public denial of Nakba day as a historical, factual and constitutive event marking the tragedy of the Palestinian people, including the Arab minority in the State of Israel, or an intentional action to deny them a senseof feeling at home, ownership, and full equality in the State of Israel.

5. The following text appears inthe explanatory notesof MK Tibi's bill:

> It is proposed to allow the denial of funds to associations and organizations that deny the tragedy of the Nakba, owing tothe awareness of the national disaster, the Nakba that befell the native Palestinianinhabitants of the country. This law is meant to prohibit actions that in any way comprise the denial of this catastrophe,withthe purpose of recognizing the suffering and pain of the other, including that of a national minority. Additionally, it is proposed to permit the denial of funds to bodies that intentionally take action to deny the Palestinian people, including the Arab minority in the State of Israel,a sense of feeling at home, ownership, and full equality.[…]

6. On 4 July 2011, the Knesset Presidium decided,bya vote of 5 to 2, not to sanction the introduction of MK Tibi's bill. The decision was based on Regulation134(c) of the Knesset'sRegulations, according to which, "The Speaker and deputiesof the Knesset will not sanction a bill that, in their view, is racist in essence or negates the existence of the State of Israel as the state of the Jewish people."[…]

7. The Speaker of the Knesset, MK Reuven Rivlin, who was among the opponents of the bill's introduction to the Knesset,justified its disqualification as follows:

> We are asked today to decide on a matter that is not purely a legal matter, but a matter comprised of both law and facts. It concerns a decision that is not simple, andnotwithstanding the respect that I have for the Knesset's Legal Advisor and his recommendations, there are moments when one must decide according to one's conscience.The statements [made in the bill] that speak of the Nakba as a disaster in

> practice denyIsrael as a Jewish state. The bill views the State of Israel as the cause of the Palestinian catastrophe. Therefore, if the Nakba is a catastrophe, then the establishment of the State of Israel is a catastrophe. The Palestinians did indeed suffer a grave disaster which was brought upon them by their leaders, but the establishment of the State of Israel is not the cause. This bill constitutes a clear affront and act of provocation towardsthe State of Israel and will, therefore, not find its place in the Knesset.[…]

8. On the other hand,two of the Respondent's deputies voted to sanction the introduction of the bill to the Knesset. MK Tibi explained that his bill was a mirror image of Amendment #40 to the Budget Principles Law, as follows:

> Do notregard the shadows cast by mountains as mountains. The Budget Principles Law (Amendment #40)– 2011, whichpassed its second and third readings on 22 March 2011, imposes a penalty (reduction of budget funds) on anyone who marks Nakba Day. The bill under discussion is a mirror image of the said law, and, therefore, its introduction to the Knesset must be authorized.[…]

9. The second deputy who supported the approval of the bill and its introduction to the Knesset, MK Uri Maklev, stated that his position wassuch notwithstandinghis opposition to the bill's content, as follows:

> Beyond the statements of the Legal Advisor, and in spite of the fact that I am, of course, firmly opposed to the content of the bill, in my opinion it is difficult to say that it constitutes a disgrace to the Knesset, at the very least because assertions such as this are voiced continuallyby Arab members of Knesset.[…]

10. The Legal Advisor to the Knesset, Attorney Eyal Inon, recommended to the Knesset Presidium not to disqualify the bill and his statement was documented as follows in the summation of the meeting: "I recommend that thePresidium not disqualify the bill in light of the limited interpretation adopted by the Presidium over the years regarding Regulation134(c) [of the Knesset'sRegulations], and this in spite of it being, as aforementioned, dubious." The Legal Advisor added that in his view, and although there wasno direct ruling regarding the interpretation of the terms in Regulation134(c), it wasdoubtful thatthe Presidium's decision not to authorize the introduction of the bill wouldstand in the Supreme Court,because of the Supreme Court's consistent policy of stringently interpreting regulations that violate the freedom of expression and impinge on the parliamentary and political actions of MKs.[…]

11. MK Ahmad Tibi does indeed oppose the definition of the state as Jewish and believes in a state "of all its nationalities", andstated so before this Honorable Court in the case of *Election Confirmation 11280/02, The Central Elections Committee to the Sixteenth Knesset v. MK Ahmad Tibi*.However, the bill in question does not contend with this issue but with the historical narrative of the Arab minority in Israel, irrespective of the constitutional character of the state.

12. MK Tibi claims that the purpose of introducing the bill is to promote a discussion of the Nakba and the Palestinian narrative, in hope that such a discussion will bring about a change in the positions of some, or even a few, of the MKs who supported the Nakba Law. It is his hope that some MKswill change their views and recognize the facts that the Nakba Law causes an injustice to the Palestinian minority in Israel, that the denial of the history of Arab citizens is not in consistent with the principle of equal citizenship, that the discussion of the history of Arab citizens is highly legitimate, and that the refusal to hold these sort of discussions in itself negates the equal status of Arab citizens in Israel and violates their right to dignity.

13. MK Tibi further explains that he is conscious of the fact that it is unlikely that his bill would be approved in the Knesset in the event that it is brought to a vote before the Knesset Plenum. Nonetheless, he believes raising it for discussion to be an essential part of the role of an MKand an elected representative. In MK Tibi's view, raising the issue of the Nakba and the historical narrative of his constituencyis a challenge to the dominant discourse of the majority of the population in Israel, whichtoday denies the narrative of the Nakba, as well as an essentialprerequisite ofthe historical process that aims atthe advancement of both an official recognition of this narrative in the future and an historical reconciliation between the two peoples.

14. MK Tibi further explains that many of the world's indigenous people viewed the creation of new states as a catastrophe that caused them historic injustice.However,their long and tenacious struggles brought about the recognition of the injustice caused to them, a step that constituted thefoundation for historic reconciliation. Such was the case of the indigenous peoples in the United States of America, who viewed the establishment of the United States as a process of dispossession and oppression. As a result of their years-long struggle,theyfinally gained official recognition in 2009,when the Senate passed Resolution No. 37, in whichthe United States apologized to the indigenous peoples for the historic injustices caused to them. Such is also the case of the indigenous peoples of Australia. In 1999, following a long struggle, the Australian parliament issued a decision known as the Memorandum for Reconciliation, which explicitly states thatthe most shameful injustice inAustralian history wasthatperpetrated against the country's indigenous peoples. Moreover, the struggle of Australia's indigenous people for recognition of the devastation and injustice caused to them did not end there, butled, on 13 February 2008, to an official apology by the Australian government to the elected representatives of the indigenous peoples. A similar process took place in New Zealand in 1995,whenQueen Elizabeth IIoffered an official apologyto the representatives of the Maoris, the indigenous people of New Zealand, for the historical injustice caused to them.A law was then legislated accordingly. It is superfluous to mention the South African reconciliation processthatledto the establishment of a new South Africa could not have occurred had it not been preceded by the mutual recognition,in 1994,of the legitimacy of the narrativesof thetwo populations in the country.

See[United States of America],Department of Defense Appropriations Act of 2010, Pub. L. No. 111-18, § 8113, 123 Stat. 3409,2009:http://thomas.loc.gov/cgi-bin/query/F?c111:8:./temp/~c111qRtStz:e144258;
Australia (Cth), Parliamentary Debates, House of Representatives, 26 August1999, 9205 (John Howard, Prime Minister):http://www.aph.gov.au/hansard/reps/dailys/dr260899.pdf;
Australia (Cth), Parliamentary Debates, House of Representatives, 13 February2008, 167 (Kevin Rudd, Prime Minister):http://www.aph.gov.au/hansard/reps/dailys/dr130208.pdf;
New Zealand, Waikato Raupatu Claims Settlement Act 1995 (No. 58): http://www.legislation.govt.nz/act/public/1995/0058/latest/DLM369893.html.

15. The processes thatbrought about the historical reconciliation processes described above included adetermined struggle byindigenouspeoplesor minority groups for the recognition of their historical narrative, and particularly of the injustices caused to them. Without such recognition it would not have been possible to advance their equality or treat them with dignity, as there can beno group equality without official recognition of cultural and social differences. It is necessary to examine and understand the submission of MK Tibi's billin this context.MK Tibi is employingabasic parliamentary tool, the submission of a legislative proposal, for the purpose of holding a debate in the Knesset Plenum on a subject that liesat the center of the historical narrative of his voters.

Background to the legislation of Regulation134(c) of the Knesset's Regulations

16. Regulation134 of the Knesset's Regulations determines the right of anMK who is not a minister or a deputy minister to introduce private bills to the Knesset, setting out the following procedures:

> (a) Any member of Knesset, other than a minister or a deputy minister, is permitted to introduce a law proposal.
> […]
>
> **(c) The Speaker of the Knesset and the deputies will not authorize a law proposal that is, in their view, racist in its essence, or denies the existence of the State of Israel as the state of the Jewish people.**[Emphasisadded.]

17. Regulation134(c) was added on 13 November 1985, following the ruling by the Supreme Court in HCJ 742/84 *MK Kahane v. The Speaker of the Knesset*,P.D.39(4) 85 (1985). This ruling disqualifiedthe Knesset Presidium's decision to prevent the introduction of law proposals submitted to the Knesset by former MK Meir Kahane. In light of this case, it was decided to add Regulation134(c) to the Knesset'sRegulations in an attempt to anchor the authority of the Knesset Presidium in order to prevent the introduction of law proposals "thatcontainoffensive racist statementswhich are not recognized by the law as they contravene the values on which the State of Israel, its democratic character, and the honor of the Knesset, are founded".See the protocol of the 137thsession of the 11thKnesset.

18. The second justification for disqualification noted in Regulation134(c) –denial of the State of Israel as the state of the Jewish people – was added, as [the protocol of] the deliberation in the Knesset shows, as an act of compromise, even though the direct reason for the amendment did not require it, and in spite of the fact that opposition to its inclusionwas voiced during the said deliberation. One of the mainopponents ofthis text was Hadash party MK Tawfik Toubi, whose statement was included in the protocol of the above session, as follows:

> The addition proposed by the majority of the Knesset Committee likewise raises fierce opposition. If the matter under consideration was the need to disqualify laws that deny the existence of the State of Israel, so be it. Butwe oppose the way in which theaddition is worded [i.e.] to disqualify law proposals that deny the existence of the State of Israel as the state of the Jewish people,for two reasons: this type of definition, which asserts that the State of Israel is only the state of the Jewish people,ignores its Arab residents-citizens and does not mention them, conveys to the Arab population in Israel that there is no room for themin the State of Israel, that they are second class citizens,or that the Arabs in the State of Israel are strangers in their homeland, which is their only homeland, of whichthey have no other. The State of Israel was established, according to the United Nations resolutionof 1947, in order to realize the right to self-determination of the Jewish people in this land, andthat same resolution also called for the establishment of a state in which to realize the right to self-determination of the Arab people. The State of Israel is the homeland of both peoples, the Jewish people and the Arab Palestinian people who live in Israel. That historical resolutiondetermined the obligation of equality in the homeland.

19. This bill is the first instance in whichthe Respondent has disqualified a bill on the grounds that it deniedthe existence of the State of Israel as the state of the Jewish people.

Exceeding authority

20. Regulation134(c) of the Knesset Regulations, which allows the Presidium to disqualify,*a priori*, a bill that denies the existence of the State of Israel as the state of the Jewish people, is highly problematic.It violates basic rights, particularly the rights to equality and freedom of expression, which include the right to be part of the political decision making process. Therefore – and in keeping withcase law, sincethe regulationunder considerationwas passed before the legislation of the Basic Law: Human Dignity and Liberty –when interpretations [of a legal text] are required they must be donein conformity withthe provisions of the [aforesaid] Basic Law and give substantial weight to the rights it protects. It must be emphasized that even before the enactment of the Basic Law: Human Rights and Liberty, the Honorable Court was asked, in the caseof *Ben Shalom***,**to interpret the phrase "denial of the existence of the State of Israel as the home of the Jewish people"as it appears in Article 7a of the Basic Law:The Knesset. Article 7a permits the disqualification a [political party] list from running in elections to the Knesset on this ground.The position of the majority, headed by Chief Justice Shamgar, virtually ignored the functional aspects of this argument, and instead emphasized the need for the protection

of basic freedoms, first and foremost the freedom of political expression.[See] Election Appeal (EA) 2/88 *Ben-Shalom v. Central Elections Committee for the Twelfth Knesset*P.D. 43(4) 221 (1989).

21. In the matter of *Tibi*,the Honorable Court was asked to give its interpretation of the rationalethat appears in section 7A of the Basic Law: the Knesset, which disqualifies a list from running for Knesset elections if it denies the existence of the State of Israel as a Jewish-democratic state. Relating to core characteristics of the State of Israel as a Jewish state, then-Chief Justice Barak noted asfollows:

> What are, therefore, the "core" characteristics that shape the minimal definition of the State of Israel asa Jewish state?These characteristics have at one and the same time both traditional and Zionist features. At their center is the right of every Jew to immigrate to the State of Israel, where the Jews will be the majority; Hebrew is the official, principle language of the state, and it holidays and symbols reflect the national revival of the Jewish people; Jewish heritage is a fundamental element of its religious and cultural heritage.
> EA 11280/02 *The 16th Knesset Central Elections Committee v. MK Tibi*, P.D. 57(4) 1, 22 (2003);
> See also, EA 561/09 *Balad v. The 18th Knesset Central Elections Committee*(unpublished;decision delivered on 7 March 2011).

22. The firstargument for the clear and simple determination that the Respondent exceeded his authority is that MK Tibi's bill does not relatetothe core characteristics of the State of Israel as a Jewish state,as stipulatedin case law. The bill does not touch on Jewish heritage, the Law of Return, the status of the Hebrew language, orthe holidays or symbols of the State of Israel. It is no accident that none of the members of the Knesset's Presidium has claimed that the bill compromises one of thesecharacteristics. The Respondent's decision is therefore in contravention of case law.

23. We note, beyond what is required for the deliberation of the petition, that even if a billcompromises one of the above core characteristics – which,as stated is not the case with MK Tibi's bill –this does not establish sufficientcause to invoke the Knesset Presidium'spowers of disqualification according to Regulation34(c) of the Knesset's Regulations, which concern the second argument under consideration. The reason isthat in practicingthis authority it is necessary to apply the strictest possible certainty testregardingfreedom of expression, whichshould therefore apply inthese kinds of cases.

24. Also applicable is the decision delivered in the caseof *Raam Engineers*, which concerned the claim of the Nazerat Illit (Upper Nazareth) Municipality that the prohibition against posting advertisements in Arabic on the municipality's billboards stemmed from a Zionist position that the "Jewish-democratic" character of the city must be preserved. The Honorable Court rejected the municipality's assertion and determined that the right of an individual's freedom of expression to use the language of his choice mustbe subject to the

strictest possible test for certainty.SeeCivil Appeal (CA) 105/92 *Raam Engineers Ltd. v. The Municipality of Upper Nazareth*P.D.47(5) 189 (1993).

25. The Respondent'sargument that the Palestinian narrative should be denied because thePalestinian's catastrophe was caused by their leaders, and was nota result of the establishment of the State [of Israel],is the anticipatedmoral position of anyonewho believes in the constitutional values of the State of Israel, sincethe legitimacy of the state as a Jewish state would otherwise be undermined. It is, however, illogical. There is no link between commemoratingthe Nakba or relating to it as a catastrophe that befell the Palestinian people and non-recognition ofthe State of Israel or its constitutional values. Historical narrative is in a realm apart fromthat of the state's constitutional character.

26. If the Respondent's argument werevalid, then anyone who relates to the Palestinian narrative in asympathetic or positive manner,identifies with this narrative, or does not deny or reject itnecessarily denies the constitutional character of the State of Israel. However, in reality there arejudicial bodies and scholars who relate to the Palestinian narrative without impairingit.Some people even call for the recognition of the historical injustice caused to the Palestinian people withoutthat affecting their Zionist outlookor standpointtowards the constitutional character of the State of Israel.

27. The report of the Official Commission of Inquiry headed by Justice Theodore Or, for example, describes the Nakba as the "most severe collective trauma in the history" of Arab citizens of Israel, as follows:

> The Arab minority in Israel is a native population that perceives itself to be under thehegemony of a majority that is largely not [native]…The founding of Israel, which the Jewish nation celebrates as the realization of a generations-long dream, is bound up in theirhistorical memory with the most severe collective trauma in their history – the *Nakba*…Thecontent and symbols of the state, which are also anchored in law and pay tribute to thevictories of that conflict, represent defeat to the Arab minority, and it is doubtful that theycan genuinely identify with them. Time can perhaps assuage the pain, but with risingnational consciousness, awareness of the problem also increases, a problem that is part ofthe very founding of the state.
> *Report of the National Commission of Inquiry to Investigate the Clashes between the Security Forces and Israeli Citizens in October 2000*,vol. 1, pp.26-27.

28. Professor Mordechai Kremnitzer also referred on several occasions to the Nakba and the Palestinian narrative in a mannerthat is incompatible with the positiontaken by the Respondent. In a policy paper published by the Israel Democracy Institute he stated the following:

> The circumstances of the establishment of the state are perceived by Palestinians as a severe injustice againstthem. The harm to theirsense of being at home, to their identity and identification thatin their view are boundto its being a "Jewish" state

> add to this injustice. The Jewishness of the state was an excuse and a rationalization for discrimination against and the systematic deprivation of the Arab minority in matters of land, planning and development, the allocation of resources for education and culture, etc. …alongside the common attitude among Jews that Arab citizens of Israel cannot be expected to be Zionists […] As long as a Palestinian state is not established, as long as a substantial part of the Jewish population opposed its establishment, and as long as there is no official recognition of the Palestinian minority as a national minority that has rights as such, it is highly doubtful whether it is possible to demand recognition and acceptance of the Jewish character of the state from the Palestinian minority. This recognition on the part of Arab citizens is made difficult by the status of citizenship in the State of Israel, which is granted to any Jew who comes to settle in in Israel, and the fact that that status and that bond must be achieved throughacceptance of the Jewish faith.
> Mordechai Kremnitzer, *Disqualification of Lists*,The Israeli Democracy Institute, PositionPolicy Paper No. 59,2005,pp.49-51.

29. An additional example of academic Zionists whose approach is not in keeping with the position of the Respondent isan editorial article by Professor Ruth Gavisonon the Nakba Law, written prior to its enactment:

> The fact that the day on which the Jewish majority in the State of Israel celebrates the beginning of its renewed political independence in its state is the very same day that for some of the members of the Palestinian minority in Israel symbolizes the day of their "catastrophe"– (the Nakba) – is a fundamental fact of our lives here. No law in the world can change it. It must be noted that, in contrast tothe accepted Palestinian position, it did not have to be this way. This day could have been a day of joint celebration for Jews and Palestinians marking the establishment of theirnational states,living alongside each other in peace and economic cooperation. However, in practice, the Palestinians went to war against the Partition Plan, and the result of that war wasthe establishment of the State of Israel on the ruins of Palestinian society in its territory, since many Palestinians became refugees and a Palestinian state has not yet been established. Sadness and mourning are the natural feelingsof members of a nation that has experiencedsuch an event, even if it had a part to play in it. But the real question which must be addressedboth by ourselves and Palestinian citizens of the State [of Israel] is how weshould contendwith this historical situation. **History must not be denied. It is, moreover,forbidden and ineffective to prohibit it by law. The joint challenge is to face it.**[Emphasis added.]
> Ruth Gavison,"The Nakba Law: Not Smart and Not Just,"*Ynet*, 27 May 2009.

30. The various aforementioned positions, which are not consistentwith the Respondent's position, clearly demonstrate that the Respondent's position constitutes a political position.Consequently, even if the Respondent's positionenjoys wide public support, the law cannot be bent and case law cannot be altered to suit it, which, as detailed in the *Tibi* decision,requires that there be an attemptto altercore characteristics of the state, amatter which, as clarified above, is not part of MK Tibi'sbill.

31. The second argument for determining that the Respondent's decision greatly exceeds his authorityis based on the fact that the decision is inconsistent with the purposeof Regulation134(c) of the Knesset'sRegulations. The interpretation of the objective purpose of the law must take basic rights into consideration and, in this case,give substantial weightto the rights of the minority in the parliament, tofree parliamentary expression, and to the principle of equality between Members of the Knesset.

32. **The purpose of thepowersset forth in Regulation 134(c) is to disqualifybills whose very introduction to the Knesset would causea severe sense of social alienationto the point thatthey would be highly likely to harm the image of the Knesset, the public or a part thereof, in that the mere deliberation of the bill would affront and humiliateMembers of the Knesset.** An example of is the deliberation of a racist bill, or a bill that incites hatred or generates conflict within the public or a segmentthereof. ScholarsAmnon Rubinstein and Barak Medinarefer to this issue in detail,clarifying that:

> It is appropriateto reserve the useof the powers set forth in Regulation 134(c) of the [Knesset's] Regulations for exceptionally extreme cases [of bills], where there isa substantialconcernthat their introduction to the Knesset would in andof itself legitimize the positions expressed therein.The most clear-cut, and virtuallythe only, case where there may be justification for employing the powers of disqualification is that of a bill that is racist in essence, which proposes to followprocedures that constitutepersecution, humiliation, debasement, hatred, hostility or violence, or that generate disputes within the public or parts of the population, on the basis of color, race, or national-ethnic affiliation (Article144a of the PenalCode – 1977). In contrast, it is appropriate to refrain fromemploying these powersin the case ofbills that propose to change certain characteristicsthat give expression to the Jewish nature of the state, or those that containa reference to the democratic character of the state, while omittingthe Jewishcharacter of the state. It is appropriate – and this is the approach of the Knesset Presidium – to interpret the grounds for disqualification based on the[denial] the existence of the State of Israel as the "state of the Jewish people" in a restricted mannerthat is comparableto the way in whichit is interpreted with regardto Section 7A of the Basic Law: The Knesset.
> Amnon Rubinstein and Barak Medina, *The Constitutional Law of the State of Israeli,Vol. 2*, The Government and Civilian Authorities, 6th edition, 2005, p. 735.

33. We note, in this regard, that the members of the Knesset Presidium did not oppose the introduction of the bill to the Knesset on the basis of the aforementionedarguments, and that none of them claimedthat the discussion of the Nakba was itself humiliating or offensive. On the contrary, the deliberation of this issue by the Presidium did not demonstrate that the deliberationcreateda sense of severesocial alienation or harmedthe feelings of any of itsparticipants.The Respondent's arguments in this case and those documented at the meeting[at which MK Tibi's bill was disqualified]are purely political.

34. The interpretation of the purpose of Regulation134(c) of the Knesset's Regulations, as presented above, is consistent with and necessary to the requirement to protect the minority's freedom of political expression from suppression by the majority in parliament.

Justice Levi spoke of the connection between freedom of political expressions and the democratic process, and of the special need for judicial review of the decisions of the parliamentary majority, whichseeksto impose the majority's positionby aggressivelyrepressing the political positionof a minority group,stating:

> If you denya person or a group of people the right to be elected, then you have denied them the right to express the political views they have formed, and the right to participate in shaping the character of the regime and influencing its actions. Consequently, restrictions of this kind are reluctantly acceptedby the adherents of democracy.However,it appears at times that the strength of the opposition to these restrictionsdiminishes when the apparent harm is aimed at minority groups in the population. This refers mainly to cases where a broad agreement is reached that a minority will not be allowedrepresentation in government institutions because, according to the majority's viewpoint, the minority's platform includes goals thataim to undermine the foundations ofthe democraticregime.Consequently, and while simultaneously exalting basic rights, the majority denies the minority the right to participate in the most clearly democratic mechanism (elections), and from here it is a short distance tothe minority seekingalternative means of expression and influence, even if these slide into the realm of forbidden behavior. In order to avoidthese [situations], the legislator must contemplate his steps wisely, so that he is not found perpetuating the rule of the majority through flawed means whilealso undermining the ability of the minority to fight for its views. The courts have a decisive role to play in this area, as they are charged with monitoringand criticizing legislation that intends to restrict the right to vote or to be elected,in order to ensure that the garlandsthat are placed by all on the heads of basic rightsare not mere décor, but are available to all who wish to take part in the political game.
> EA 11243/02 *Feiglin v. The Chairman of the Election Committee*, P.D.57(4)145, 156 (2003).

35. The third argumentfor determining that the Respondent's decision exceeded [his]authority stems fromin the denial of the principle of equality between MKs that led to discrimination against the Petitioners and to the violation of the right to dignity of both the Petitioner and the Arab public in Israel. The rights to equality and dignity are constitutional rights underthe Basic Law: Human Dignity and Liberty.

36. Discussion of the Nakba took place previously during the deliberationson the Nakba Law.In this process,some were in favor and some opposedthe law.It was not claimed at the time that raising the issue of the Nakba in the Plenumwould itself create any problemswhatsoever that would prohibit the holding of this parliamentary debate.The Petitioner wishes to hold a discussion in the Plenum on Article 3B(B)(4) of the Nakba Lawthat has been approved by the Knesset. He wishes to challenge the NakbaLaw through one provisionthat he views as racist. The Respondent's decision to prevent the Petitioner from introducinga bill to the Knesset that relates to an issue that the coalition itself has raised, introduced, presented, and deliberated before Knesset's committees and the Plenum is discriminatory and tainted by extraneous motives and considerations.

37. Consequently, there is no justification for the discriminatory treatment of the Petitioner ina matter wherein the majority received different treatment. The Honorable Court'srole in this instance is to defend the equal right of the minority, which is part of the opposition, to raise the issue usingthe parliamentary tools provided to that end. Dr. Yigal Marzel has spokenofthe need for judicial intervention to protect a minoritygroup in the opposition from being oppressed by the majority, as follows:

> The Court has a vital role to play in this regard: insofar as the opposition is a minority which contends with a majority that holds the powersof the legislature, and in practice also the powers of the executive, it is often exposed to harm by the majority.This, of course, does not refer to physical harm, but to the undermining of the standing of the opposition and to the diminution of itsability to function, to the extent that the constitutional roles that [the opposition] is meant to fulfill will be impaired. The majority in a legislature can harm the opposition in many ways: it can stipulate rules of procedure that deprive[the opposition] of its rights and standing, it can decide not to deliberate billsthat maybenefit [the opposition], or to deliberate them in a way that deprives the opposition of its rightto prepare itself and garnersupport. The minority may encounter many kindsof deprivation. The courts, therefore, have an important role to play in protectingthe opposition from the power of the majority. And although this relates, on occasion, to internal parliamentary matters, it is the duty of the court – which is a neutral factor in matters of political disagreement and struggles between parties– to protect the minority in the opposition and safeguardits rights. In this context,it is vital that the courts grant the opposition and its members the right to stand in court and be willing to review even those decisions that ostensiblyseems to be"internal"legislature decisions, if it appears that owing to thesedecisions there is an essential violation of the opposition's standing and ability to function. The court's oversight is not limited to monitoring the regulations and procedures of the parliament, but may also extend tojudicial criticism of the constitutionality of legalprovisions that contain inappropriate regulationsconcerning the standing of the opposition,on condition that the law contains a provision authorizing the court todo so. In the framework of protecting the standing of the opposition, it is highly important to identify a situation in which supposedly neutral regulations, or rules of procedure that are "general"in nature, are merely an attempt by the parliamentary majority to deprive the minority and impede its ability to function to anextent that justifies intervention.
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> Yigal Marzel, "The Constitutional Standing of the Parliamentary Opposition,"*Mishpatim*,vol. 38,217,245-246 (2008).

38. Moreover, the Respondent's decision violates the 'right to dignity of Arab citizens, in contravention of the Basic Law: Human Dignity and Liberty. The violation of the right to group dignity itself leads to the violation of the individual'sright to dignity and occurs when the violation impinges oncomponents of the group's identity,presenting it as inferior orunwelcome, or when it containselements of group oppression. The Palestinian narrative comprises an indivisiblepart of the identity of the Arabs in Israel. Hence, the Respondent's decision to prevent the introduction of the bill, while at the same time allowing the introduction of a lawlike the Nakba Law, whichimpairs the narrative ofthis group,violatesafundamental component of the identity of the Arab citizens and results in

their exclusion and humiliation.SeeHCJ 4541/94 *Miller v. The Minister of Defense*,P.D.49(4) 94, 132 (1995).

39. Professor Dani Stetman defines the right to dignity in terms of non-degrading treatment,stating that,"the most significantfeature of degradation is the feeling of social exclusion. When a person is humiliated, a message is sent to him that he does not belong, or that he is not worthy of being a member of a certain group,where belonging to that group is important to the self-esteem of the victim."It can thus be determined that the Respondent's decision does not treat the Petitioner and his voters with dignity.SeeDani Stetman,"Two concepts of Dignity", *Iyunei Mishpat*,vol. 24, no.3,561, 559, 563.See also HCJ 6824/07 *Manaa v. The Tax Authority*(unpublished; decision deliveredon 20 December 2010) para. 31 of Judge Fogelman's ruling.

40. The philosopher Jeremy Waldron has addressed to the right to dignity of groups, which constitute communities possessing unique characteristics in terms of culture, identity and size.He stressed the importance of a public discourse to advance recognition of the standing of these groups, as follows:

> It is possible that everything we want to say about the dignity of a people could by some heroic effort of analysis be reduced in the end to an account of the massive contribution that a given community makes tosustaining the dignity of its individual members. But it is also possible a people qua community has a human importance in terms of culture, identity, destiny that goes beyond what is severally or cumulatively good for the human individuals that it comprises, an importance that cannot be characterized except in communal terms. It is possible that even though groups are in the end nothing but composites of individuals, yet there is something in the group as such that has importance in itself. We should be ready to give the best account we can of this something, if it exists, and it may be impossible to do so without characterizing it in dignitary terms […] Also, even when individual rights and obligations are at issue, groups may develop a stake in those issues that requires to be respected as much as the dignity of the individuals originally affected. For example, it may be that, in some cases where the primary injustice we are fighting is injustice at the individual level, talk of group dignity can be a way of conveying respect for the community that has taken upon itself the burden of remembering the injustice and of trying to do something about it.
> Jeremy Waldron, *The Dignity of Groups*, New York University School of Law, Public Law & Legal Theory Research Paper, Working Paper No. 08-53, November 2003, pp. 21-23:http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1287174

Based on the above arguments, the Honorable Court is requested to grant an *order nisi*, as requested at the outset of this petition, and following receipt of the Respondents' response, to make it absolute.

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Hassan Jabareen, Adv.

Haifa, 21 July 2011