



Summary of Reply Briefs Submitted by Adalah on Behalf of Arab Members of Knesset and Political Party Lists to the Central Elections Committee for the 16th Knesset

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Introduction

This document summarizes four reply briefs submitted by Adalah on behalf of Arab Members of Knesset (MKs) and political party lists on 27 December 2002 to the Central Elections Committee (CEC) for the 16th Knesset. These briefs responded to motions seeking to disqualify the Arab MKs and political party lists from running in the 28 January 2003 Knesset elections in Israel.

In an unprecedented move, Attorney General (AG) Elyakim Rubenstein, relying on anonymous General Security Services (GSS) sources, submitted a motion to ban the National Democratic Assembly (NDA) party list, led by MK Dr. Azmi Bishara, from participating in the elections. Other disqualification motions were filed by right-wing MKs and political parties against MKs Dr. Azmi Bishara, Abd el-Malik Dehamshe (United Arab List), and Ahmad Tibi (Arab Movement for Renewal-Ta'al), as individual candidates, and against three political party lists – the NDA, the United Arab List, and the joint Democratic Front for Peace and Equality (Hadash)-Ta'al list.

The motions to disqualify the Arab MKs and political party lists were based on Section 7A of the Basic Law: The Knesset and its May 2002 amendments. According to this law: "Any candidate list or any single candidate running for the Knesset elections will not participate in the election if the direct or indirect goals or actions of the candidate list or of the candidate is one of the following: (1) denial of the existence of the State of Israel as a Jewish and democratic state; (2) incitement to racism; or (3) support of armed struggle, of an enemy state or of a terrorist organization against the State of Israel."

The CEC held hearings on these motions on 30-31 December 2002. The CEC, chaired by Supreme Court Justice Mishael Heshin, is comprised of 41 representatives of all political parties in the outgoing 15th Knesset. There are eight representatives of the Labor party, six Likud, five Shas, three Meretz, two Shinui, two Center, two National Union, two United Torah Judaism, and one each for all of the remaining parties. Five representatives of the Arab political parties are members of the CEC. Contrary to CEC Chairman Justice Heshin, who voted against the disqualifications, the majority of CEC members voted to ban the NDA list and MKs Azmi Bishara and Ahmad Tibi from participating in the elections. The CEC approved the candidacy of MK Abd el-Malik Dehamshe, as well as the participation of the UAL and the Hadash-Ta'al list.

A Supreme Court panel of 11 justices reviewed the disqualifications and heard Adalah's appeal against the decision to ban the NDA on 7 January 2003. On 9 January 2003, the Supreme Court overturned the decisions of the CEC, allowing the NDA and MKs Azmi Bishara and Ahmad Tibi to participate in the elections (For more details, see Adalah's Elections New Updates, at www.adalah.org).

P.O. Box 510 Shafa'amr 20200 Israel Tel: (972)-4-950-1610 Fax: (972)-4-950-3140

شفاةمرو ٢٠٢٠٠ ص.ب ٥١٠ هاتف: ٤-٩٥٠١٦١٠ فاكس: ٤-٩٥٠٣١٤٠

שפועם 20200 ת.ד. 510 טלפון: 04-9501610 פקס: 04-9503140

Email: adalah@adalah.org

<http://www.adalah.org>

I. MK Dr. Azmi Bishara and the National Democratic Assembly (NDA)

MK Dr. Azmi Bishara holds a Ph.D. in Philosophy, which he received from Humboldt University (Berlin). He taught at Bir Zeit University for ten years where he headed the Philosophy and Cultural Studies Department for two years. He also worked as a senior researcher with the Van Leer Institute in Jerusalem. He is a founder of Muwatin – The Palestinian Institute for the Research of Democracy, and a prestigious social sciences journal, Theory and Criticism. Dr. Bishara has written several books and academic articles on democracy, civil society and Middle East politics, published both in Israel and abroad. He is often a key speaker at international conferences on these issues

Dr. Bishara was a founder of the NDA, and has been representing the political party in the Knesset since 1996. The NDA held one seat in the 15th Knesset. In this Knesset, MK Bishara served as a member of the Constitution, Law and Justice Committee, the Education and Culture Committee, and the State Control Committee.

Four separate motions were submitted to the CEC seeking to disqualify MK Bishara and/or the NDA party list from running in the 28 January 2003 Knesset elections in Israel. In an unprecedented move, the AG submitted one of the disqualification motions, while the others were filed by right-wing MKs and political parties - MK Yisrael Katz (Likud), MK Michael Kleiner and Herut, and MK Avigdor Leiberman and the National Union, et. al.

Relying almost exclusively on previously “secret” General Security Service (GSS) materials and anonymous sources, the AG claimed in his motion that the NDA list headed by MK Bishara should be disqualified, pursuant to Section 7A(a)(1) and (a)(3) of the Basic Law: The Knesset. These provisions state that: “Any candidate list or any single candidate running for the Knesset elections will not participate in the election if the direct or indirect goals or actions of the candidate list or of the candidate is one of the following: (1) denial of the existence of the State of Israel as a Jewish and democratic state; ... or (3) support of armed struggle, of an enemy state or of a terrorist organization against the State of Israel.” All of the AG’s allegations were completely and comprehensively refuted in the reply brief.

Adalah’s 80-page reply brief was prepared by Adalah General Director, Hassan Jabareen, Advocate. The factual section of the brief is comprised of the lengthy affidavit of MK Bishara, with numerous references to the supporting affidavits of Dr. Jamal Zahalka, a candidate on the NDA list; academic experts; NDA party activists; and community leaders. Extensive documentary evidence was also cited and provided to the CEC including MK Bishara’s publications and interviews, his statements and bills proposed in the Knesset, as well as videotapes and audiotapes of his key speeches. A comprehensive set of materials produced and disseminated by the NDA were also included. Numerous legal arguments were set forth challenging both the statute and the evidence relied upon by the AG. The total submission amounts to approximately 1,500 pages.

In the reply brief, Adalah argued that:

The political platform of the NDA calls for an all-inclusive, liberal-democratic state - “a state of all of its citizens.” The vision and agenda of this political program is for Jewish and Arab citizens of Israel. Such a democratic state would include the Arabs in Israel as full citizens and would not discriminate against them. It would treat them as full partners in decision-making processes, allow for their equal representation in state institutions, distribute state resources equally to Palestinian and Jewish citizens of Israel, and cancel all legislation and policies that discriminate against the Palestinian minority. The use of national-Zionist institutions, such as the Jewish Agency, to prevent the Arab citizens of Israel from enjoying the resources of the state

would also be prohibited. In his affidavit, MK Bishara elaborates that this political program exposes the inherent contradictions in the definition of the state as a Jewish and democratic state.

In his affidavit, MK Bishara also states that a liberal, civil state is based on the recognition of an individual's freedom and autonomy. Individual rights are also directly related to minority group rights, such as language rights and culture rights. MK Bishara emphasizes that the granting of group rights and the recognition of Arab citizens of Israel as a national minority furthers democratic values. This political agenda recognizes the national affiliation of the Arab minority, but refuses to make their belonging to the civic nation conditioned upon the subordination of citizens' national affiliation to the Zionist ideology. While citizenship is the only criterion that delineates the civic identity of the state, the different national affiliations of citizens would also be recognized identities that the state must protect and must allow its members to nurture and cultivate. Accordingly, the belonging of Arab citizens of Israel to the Arab nation and the Palestinian people should be recognized and all other attempts that depict the Arabs in Israel as citizens who lack a history prior to 1948 can and should be contested.

This platform, emphasized MK Bishara in his affidavit, is not a call for the destruction of the state of Israel; it is a call for its democratization. No democracy is complete or genuine unless it guarantees equality and dignity for all its citizens regardless of their national, religious or ethnic affiliations. The NDA calls for equal recognition of the individual and collective rights of Palestinian citizens of Israel .

The AG's extraordinary legal request to ban the NDA, stated MK Bishara, is politically-motivated, and consistent with his ideological positions against the goals and objectives of the NDA. In several articles authored by the AG since 1998, he expressed vehement opposition to the liberal, democratic agenda of a "state of all of its citizens," in an attempt to de-legitimize it.

The AG's claim that the NDA has a hidden agenda of supporting terror and encouraging violence is completely false and erroneous. In his affidavit, MK Bishara stressed that the NDA has no hidden agenda; it is not an underground movement. All of the NDA's goals are public, clearly stated and consistent. Utilizing state institutions, the NDA's struggle for equal civil rights for Palestinian citizens of Israel and for a liberal-democratic society is a strategic choice. The AG's argument that the NDA has a hidden agenda is inherently illogical, stated MK Bishara in his affidavit: "It is the consistent characteristic of my positions that bothers the AG. Those who fail to meet the challenge posed by the NDA's consistency can only rely on 'mythical arguments' that appear in the form of arguments about a hidden and masked agenda. They can only rely on the gossip of one GSS informer or another whose identity is not revealed, whose education is not assessed, and of whom, only his negative motivations are known."

In reply to the AG's claim concerning supporting terror and encouraging violence, MK Bishara stated in his affidavit that as part of its political and moral vision, the NDA uses only political and democratic tools to advance its agenda. The party completely rejects violence. The NDA "supports the right to self-determination of peoples, of all peoples. A people have no right to govern another people by force. No people are superior to another. Equality between peoples requires equality in their treatment. A people under foreign rule imposed on it by force has the right to resist this rule and to struggle for liberation." Accordingly, while the NDA and its leadership have unequivocally reaffirmed the right of peoples to resist a foreign occupation - an internationally recognized right - it has never called for violence. The NDA publicly opposes all terror activities harming innocent civilians, and strives for equality in a state that does not enforce its will over other peoples or violently limit their freedoms. For the NDA, the Knesset is the most relevant venue in which to raise the issue of ending the occupation. The NDA has and will continue to work in legitimate ways towards this goal.

MK Bishara also stressed that despite seeing the Lebanese opposition to Israeli occupation as legitimate, he has never called for the methods of Hezbollah to be adopted in the Occupied Territories. In fact, in various speeches, he detailed the reasons why the Lebanese model would not be appropriate as a model for Palestinian resistance. Referring specifically to his 2001 speech in Kardaha, Syria, MK Bishara explained that he called for resistance to the occupation accompanied by a unified Arab diplomatic position. Such a strategy would prevent either a full-scale war in the region or a complete Palestinian submission to Israeli dictates. A unified Arab front would exert diplomatic pressure on the United States and enable negotiations for a just and lasting peace.

On these points, Adalah argued in the reply brief that the AG is wrongfully intervening in the political process, and that all of the evidence submitted by him should be precluded from consideration. The AG is a party both to criminal proceedings currently pending against MK Bishara and to the disqualification motion. In November 2001, the AG requested that the Knesset lift MK Bishara's immunity in order to specifically submit charges against him for these political speeches in Umm al-Fahem and in Syria. While the case is pending, and despite the likelihood that the indictments will be dismissed, the AG again returned to same forum – the Knesset – in December 2002 seeking MK Bishara's disqualification based on the same allegations. As quoted in the reply brief: "This action harms the separation of powers between the executive branch and the judiciary. It also harms the status of the judiciary, in that it harms MK Bishara's right to the presumption of innocence until proven guilty and his ability to protect himself."

No less severe is the AG's reliance on GSS materials, previously "secret evidence," disclosed for the first time in this disqualification motion. MK Bishara adamantly denied and rejected as baseless the AG's specific accusations based on anonymous tips and unidentified, undocumented claims of informants. In addition, Adalah argued that the GSS materials relied upon by the AG should also be precluded as their use violates the principle of separation of powers: "GSS intervention is a very dangerous precedent because [the GSS], which is under the authority of the Prime Minister, will permit itself to actually choose who will be in the legislature." Moreover, the role of the GSS is to prevent clear and immediate security threats. Socio-political interpretation by the GSS of alleged statements and activities – a substantial part of which relies on undisclosed secret sources and evidence – is not part of its expertise.

II. MK Abd el-Malik Dehamshe and the United Arab List (UAL)

MK Abd el-Malik Dehamshe is a lawyer, a graduate of Hebrew University, and has been an MK since 1996. He is the leader of the United Arab List (UAL) and a representative of one stream of the Islamic Movement in Israel, which is one of the parties that comprise the list. The UAL held five seats in the 15th Knesset. In this Knesset, MK Dehamshe served as Deputy Chairperson of the Knesset, and as a member of the House Committee, the Committee for Public Petitions, and the Parliamentary Inquiry Committee on the Issue of Water.

The motion to disqualify MK Abd el-Malik Dehamshe and the UAL was filed by MKs Avigdor Lieberman, Benny Elon, Zvi Handel, Yuri Shtern, and the joint National Union-Israel Beiteinu-Moledet-Tekuma party. The petitioners claimed that MK Abd el-Malik Dehamshe and the UAL should be prevented from running in the elections, in accordance with Section 7A(a)(1) and (a)(3) of the Basic Law: The Knesset, because their objectives include, implicitly or explicitly, the “denial of the existence of the state of Israel as a Jewish and democratic state” and “support of armed struggle, of an enemy state or of a terrorist organization against the State of Israel.” All of their allegations were refuted in Adalah’s reply brief.

Adalah’s 40-page reply brief was prepared by Adalah Staff Attorneys Orna Kohn and Gadeer Nicola. The brief is based on the affidavits of MK Abd el-Malik Dehamshe and UAL candidates MK Talab El-Sana and MK Mohammed Kanan, and is supported by substantial documentary evidence.

In the reply brief, Adalah argued that:

There is no legal basis for the disqualification request. The candidate and the political party list utilize state institutions to struggle for democratic values and equality; call for a solution of the Arab-Israeli conflict by peaceful means and by recognition of the right of the Palestinian people to self-determination within the territories occupied in 1967, in accordance with UN resolutions; respect all laws; call for minority rights, freedom of religion and worship; and struggle for freedom of expression and freedom of choice within the state of Israel and for a more moral and equitable society. Adalah presented a series of bills proposed, parliamentary questions posed, and speeches made during the 15th Knesset by MK Dehamshe and UAL MKs on a variety of civil and social matters, which reflect the aims and objectives of the party.

The facts relied upon by the petitioners are false. The petitioners used newspaper and web articles from the Israeli media in a very selective manner, and provided only partial information to the CEC. In addition, the journalists’ accounts often quoted MK Dehamshe and his colleagues out of context, and offered completely distorted and inaccurate versions of their actual statements.

As to statements allegedly made concerning al-Aqsa mosque and other Muslim holy sites:

The petitioners’ claimed that the statements and activities of MK Dehamshe and the UAL concerning al-Aqsa mosque and other Muslim holy sites are part of the general struggle by the Palestinians, and proves their “support of armed struggle” against the state. MK Dehamshe and other UAL candidates have expressed their actual fear that al-Aqsa mosque, one of the most important holy sites for Muslims in Israel and worldwide, is in danger. Their fear is heightened due to repeated threats by extremist right-wing Israeli Jewish groups to destroy the mosque. They have also made critical remarks directed at the government for its role in failing to protect and/or preserve other holy sites and buildings including the state-sanctioned demolition of mosques, the desecration of cemeteries, and the use of mosques for secular, commercial purposes. MK Dehamshe made these statements as part of his role as an MK and a public

representative of his community. He voiced warnings – not threats – regarding present dangers to these Muslim holy places, which also reflect his religious convictions. Adalah presented extensive documentation to support this argument, consisting of MK Dehamshe’s parliamentary work and official requests to establish a parliamentary investigatory committee into the matter of harming Muslim religious sites. Adalah also provided a copy of Professor Danny Rabinovitz’s testimony before the official Commission of Inquiry, which discussed the actuality of Islamic Movement’s fear regarding al-Aqsa mosque.

As to use of the term “shaheed” (martyr):

The petitioners claim that the statements made by MK Dehamshe regarding his willingness to be a “shaheed,” actually promote the armed struggle being waged against Israel. In his affidavit, MK Dehamshe states that: “Indeed I said, and I stand behind my words, that I would be willing to be a “shaheed” for al-Aqsa, yet the meaning given by the petitioners to the term “shaheed” lacks any basis and proves their ignorance in the best case scenario and their malicious intentions in the worst case scenario. A shaheed, well known to any Arab and Muslim, is not someone who is consciously risking their life, but rather, someone who was killed without actively doing anything, and that is what I meant.” Supporting documentation included an opinion by Dr. Elias Attala, an Arabic linguistic expert, and testimony by Sheikh Nimer Darwish, the spiritual leader of the southern branch of the Islamic movement in Israel regarding the use of the term “shaheed.”

As to alleged use of violence and intimidation:

MK Dehamshe and the other UAL candidates have never called for or resorted to the use of threats or violence and have always acted responsibly toward the public that they represent. Their statements did not and were not taken as incitement by the Arab community in Israel.

All of the Arab MKs represent the Arab national minority in Israel and are compelled to act differently than other MKs, who represent the Israeli Jewish majority. The Arab MKs and parties do not sit in the government, are not part of the coalition, and do not have an open door to ministers or the Prime Minister to resolve problems of the community that they represent. Usually, their interventions are ignored or even used against them, and they are compelled to strongly protest violations of the rights of Arab citizens of Israel. These violations include widespread home demolitions, land confiscation, the desecration of holy sites, and police violence.

For example, the petitioners claim that MK Dehamshe called on supporters “to break the hands and legs” of policemen. The police investigated MK Dehamshe for these alleged statements and closed the case, based on the production of a tape recording of the event. Contrary to Israeli media reports, MK Dehamshe had in fact said: “If the police come to demolish a home and breaks hands and legs, then we will break their hands and legs.” He made these comments upon seeing injuries inflicted on a family – Palestinian citizens of Israel – by the police, in the course of demolishing their home.

III. MK Dr. Ahmad Tibi

MK Dr. Ahmad Tibi is a medical doctor, a graduate of Hebrew University, and has been an MK since 1999. He is the head of Ta'al (Arab Movement for Renewal), which held one seat in the 15th Knesset. In this Knesset, MK Tibi served as a member of the Internal Affairs and Environment Committee, the Economics Committee, the Anti-Drug Abuse Committee, and the Parliamentary Inquiry Committee on Violence in Sports. For the elections to the 16th Knesset, MK Tibi and Ta'al formed a joint party list together with Hadash (Democratic Front for Peace and Equality).

The motion to disqualify MK Tibi was filed by Likud MK Michael Eitan. The Likud party claimed that MK Tibi should be disqualified, pursuant to Section 7A(a)(3) of the Basic Law: The Knesset, as his actions are an explicit or implicit indication of his support of an armed struggle by Palestinian terror organizations headed by Yasser Arafat against the state of Israel. The motion also alleged that MK Tibi is the public relations agent of Yasser Arafat; that he solicits support for the Intifada and Yasser Arafat among "Arab Israelis"; and that he is responsible for the sharp increase in the involvement of "Arab Israelis" in terror activities. In addition, the Likud claimed that MK Tibi used his position as an MK to advance the interests of Yasser Arafat and the Palestinians and that "his entire tenure as an MK is full of anti-Israeli actions, which included various expressions of solidarity and support with and support to enemies of the state." Further, the motion alleged that MK Tibi interfered with the efforts of the Israeli army by giving interviews to the media in which he spoke out against the occupation.

Adalah's 33-page reply brief was prepared by Adalah Staff Attorney Marwan Dalal. The brief is based primarily on the affidavit of MK Ahmad Tibi, and is supported by documentary evidence, which comprehensively refutes the allegations put forward by the Likud.

In the reply brief, Adalah argued that:

The accusations against MK Tibi are false and do not represent his views. The allegations are based solely on quotations and excerpts from newspaper articles, which are presented partially and out of context. Such reliance on media reports conflicts with Supreme Court precedents, which require that motions for disqualification relate directly to the activities and officially-stated goals of the candidate in question. The Likud's false allegations seek to divert attention from MK Tibi's wide-ranging parliamentary work. Supporting documentation was presented that included numerous Knesset speeches and bills proposed by MK Tibi on issues such as health, the environment, and anti-racism.

There is no factual basis for allegations that MK Tibi provided support to terror organizations. MK Tibi stressed in his affidavit, that throughout his term as an MK, he has utilized all of his contacts and talents in an effort to achieve a just peace between Palestinians and Israelis. He emphasized his belief that open dialogue between the Israeli and Palestinian leaderships is essential to achieve such a peace. Further, MK Tibi stated that he believes that occupied peoples, including the Palestinian people, have the right to resist occupation. At the same time, he opposes the killing of innocent people on both sides. Several of MK Tibi's public speeches, in which he repeatedly and explicitly articulated these positions, were included with the reply brief. Also included was a supportive letter by Prof. Yaron Ezrahi of the Israel Democracy Institute, in which he stated that MK Tibi is an authentic representative of a political stream supported by Palestinian citizens of Israel, and that barring him from the Knesset could jeopardize the democratic system as well as relations between Arab and Jewish citizens of the state.

IV. Joint Hadash-Ta'al List

The Democratic Front for Peace and Equality (DFPE) ("Hadash") is a joint Jewish-Arab political party. It is composed of the DFPE itself; the Israeli Communist Party - one of the oldest political parties, which also served in the first Knesset; and other Jewish and Arab groups. Its platform includes: Evacuation of all of the settlements and full Israeli withdrawal from all of the 1967 Occupied Territories; recognition of the right of the Palestinian people to establish an independent and sovereign state in the Palestinian territories alongside the state of Israel ("two states for two peoples"); and the promotion of the rights of workers and Arab citizens of Israel. The party held three seats in the 15th Knesset.

MK Mohammad Barakeh is the leader of the Hadash list, and has been a member of Knesset since 1999. At Tel Aviv University, where he studied mathematics, he was chairperson of the Arab Students Committee. He is the former General Secretary of Hadash, and a member of the Board of Directors of *Al-Ittihad* newspaper and of the Emil Toma Research Institute. He is also a member of the Central International Council for Peace in the Middle East. In the 15th Knesset, MK Barakeh served as a member of the House Committee, the Finance Committee, the Anti-Drug Abuse Committee, the Parliamentary Inquiry Committee on Social Disparity, the Special Committee for Discussion of the Security Service Law, and the Parliamentary Inquiry Committee on Traffic Accidents.

Ta'al (Arab Movement for Renewal) was established in 1996, founded by MK Dr. Ahmad Tibi. The party's agenda includes ending the occupation of the Palestinian Territories, and advancing progressive internal change within Arab society in Israel. Ta'al joined the Knesset in 1999, with one seat held by MK Tibi.

Herut and MK Michael Kleiner submitted a motion to the Central Elections Committee seeking the disqualification of the joint Hadash-Ta'al list, in accordance with Sections 7A(a)(1) and 7A(a)(3) of the Basic Law: The Knesset. The motion focused on statements collected from media sources that were attributed to MK Mohammed Barakeh and MK Ahmed Tibi. The motion cited three statements allegedly made by each MK, and argued that these statements showed that the Hadash-Ta'al list "den[ies] the existence of the state of Israel as a Jewish and democratic state" and lends "support of armed struggle, of an enemy state or of a terrorist organization against the State of Israel."

In the motion, MK Kleiner claimed that MK Barakeh had stated that ending the occupation would not mean ending the story for Arab citizens of Israel; that Hezbollah is a guerilla group that resisted the illegal Israeli occupation of South Lebanon; and that the Palestinian Intifada is a response to Israeli aggression. The motion also referred to statements allegedly made by MK Tibi including: that "Jewish and democratic" means "Jewish for the Arabs and democratic for the Jews;" that he is closely tied to, and has the full trust of Yasser Arafat (a statement made in 1996); and that the "Intifada will win over the occupation, the last occupation on earth."

Adalah's 40-page reply brief was prepared by Adalah Staff Attorney Marwan Dalal. The brief is based on the affidavits of MK Mohammed Barakeh, MK Issam Makhoul (Hadash), MK Ahmad Tibi, and is supported by documentary evidence.

In the reply brief, Adalah argued that:

MK Kleiner's interpretation of the statements attributed to MK Barakeh is wrong and misleading. MK Barakeh's remarks refer to the fundamental right of peoples to be free from foreign occupation, and their right to struggle for liberty. The reply brief also included a detailed expert opinion on the status of Hezbollah, by Professor Ze'ev Maoz, a leading academic expert

on security issues. From 1994 to 1997, Prof. Maoz headed the Jaffee Center for Strategic Studies at Tel Aviv University; he is currently head of the university's School of Government and Policy. In his expert opinion, he stated that Hezbollah is a guerilla group, not a terrorist organization, "whose operative goal was to fight the Israeli occupation in Lebanon." In addition, several concrete examples of statements made by MK Barakeh were provided, including public speeches against the targeting of civilians, and against policies that cause innocent people to suffer. Numerous examples of Hadash and MK Barakeh's intensive parliamentary work in the Knesset, including bills proposed, laws enacted, and speeches made about poverty and other social issues, were provided to highlight the agenda of the party.

MK Kleiner's allegations against MK Tibi and Ta'al should also be rejected as baseless.

Arguments similar to those advanced by MK Kleiner against MK Tibi and Ta'al were raised in 1996 and rejected by the Supreme Court in the *Isaacson* case. In 1996, Ta'al successfully registered with the Registrar of Political Parties and was preparing for the upcoming vote, when Isaacson, a right-wing activist, appealed the Registrar's decision. The Supreme Court refused to overturn the Registrar's decision, holding that the aims and goals of Ta'al did not violate the Jewish character of the state. Adalah argued that Ta'al seeks to strengthen individual and collective rights, which are consistent with democratic principles. As in the case of MK Barakeh, Adalah stressed MK Tibi's vocal opposition to the targeting of civilians, the legitimacy of his calls to end the occupation and to struggle for liberty, and his record of parliamentary work on a variety of social issues.

V. Legal Arguments

In the reply briefs, Adalah raised both challenges to the Section 7A of the Basic Law: The Knesset and to the evidence, as presented by the petitioners. The legal arguments common to all of the cases follow:

Challenges to the Statute:

- The right to vote and the right to be elected gained a higher status after the enactment of the Basic Law: Human Dignity and Freedom (1992). Any new legislation passed after the enactment of the Basic Law: Human Dignity and Freedom which places restrictions on these rights, such as the May 2002 amendments to Section 7A of the Basic Law: The Knesset, must be very specific so as not to harm these rights.
- Section 7A (a)(1) of the Basic Law: The Knesset, which relates to the “Jewish and democratic nature” of the state, should be interpreted broadly and inclusively, in accordance with Supreme Court precedent. Disqualifying a candidate or a political party list that raises a legitimate and democratic political agenda would harm the values of the state as a democratic state. It will harm the minority’s rights to equality and freedom of expression, their right to challenge the majority’s political positions, and their basic right to demand change in legitimate ways.
- Section 7A (a)(3) of the Basic Law: The Knesset, which relates to “support of terror,” was added to the law in May 2002. This new amendment is unconstitutional, particularly in light of the Basic Law: Human Dignity and Freedom, as it imposes severe restrictions on protected rights, and should be declared void on two grounds.
 - (1) The Knesset did not provide a definition in the text of the legislation or a separate set of criteria to determine what constitutes a terror organization. In Israel, the executive branch classifies and designates certain organizations as terrorist, not the Knesset. This situation violates the principle of separation of powers as the executive branch can determine, as it sees fits, which groups are terror organizations. In this way, the executive branch can also determine which political parties can and cannot participate in the Knesset elections.
 - (2) The term “support” is vague and overbroad and limits freedom of expression rights. A statement relating to a principled position, according to which, any people have the right to oppose occupation, can be interpreted as “supporting an armed struggle against the State.” A statement, according to which a neighboring state has the right to protect itself from an Israeli military attack, can also be interpreted as supporting an enemy state against State of Israel.
- Alternatively, as Section 7A(a)(3) of the Basic Law: The Knesset imposes severe restrictions on freedom of expression rights, it must be strictly interpreted. Read in light of the Basic Law: Human Dignity and Freedom, the provision must be interpreted as follows: Only actual support given to a specific terror organization, which helps its armed struggle; a specific call to join a specific terror organization to aid its struggle; or a specific call to a specific terror organization to continue its armed struggle may be prohibited.

Challenges to the Evidence:

- Section 7A(a)(3) of the Basic Law: The Knesset may not be applied retroactively, and thus all of the evidence relied upon by the petitioners, as it relates to alleged statements and activities of the MKs prior to the enactment of this amendment in May 2002, must be

precluded. The principle of non-retroactivity is a cornerstone of law-making; it applies in order to prevent harm to vested rights and it is required for the stability of and public trust in the legal system. Numerous statutes provide that they may not be applied retroactively, unless specifically stated in the statute itself. Additionally, a long-line of court judgments, which detail rules of statutory interpretation, prohibit the retroactive application of laws.

- The motions presented no evidentiary foundation upon which to disqualify the parties and candidates. The evidence introduced did not directly relate to the parties' central goals and activities, the principal test that must be used in order to determine qualification for the Knesset. The motions for disqualification largely ignored the speeches, publications and statements of the candidates, which testify to their goals and the goals of their parties.