

30 December 2021

To: Chairman MK Gilad Karib

Members of the Knesset Constitution, Law, and Justice Committee

## Position Paper on Fake News and Violation of Human Rights for Discussion on 3 January 2022

In preparation for the committee meeting to be held on 3 January 2022 on the subject of fake news and the violation of human rights, enclosed please find our position paper detailing the main points of our report on the subject and our proposed law amendments, which are based on the premise that the phenomenon of fake news poses a real threat to the democratic regime and to human and civil rights in the State of Israel. I appeal to you to adopt our recommendations as detailed in this paper.

Zulat's report "Fake News and the Violation of Human Rights: Challenges and Responses" describes a number of human rights that are violated by the massive spread of fake news, and in response to this challenge proposes amendments to existing legislation based on lessons learned from other countries. Fake news disguised as news content nowadays plagues social media platforms, conveniently shielded by the basic right to freedom of expression, which supposedly does not distinguish between truth and falsehood. The basic right to freedom of expression has been abused in recent years in ways that threaten other rights as follows:

- **The right to privacy:** This right is significantly eroded due to the lack of oversight on digital platforms, which take advantage of the absence of transparency to easily and quickly gather a great deal of information about users without their knowledge.
- **The right to equality:** This right is violated through the dissemination, at times systematic, of false messages and information to the point of endangering life. Its violation primarily affects ethnic minorities.

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- **The people's right to know:** This right can no longer be limited to ensuring that people have access to information, but must also ensure that the information they receive is not false.
- **The people's right to free elections:** This right is materially violated as a result of the dissemination of false and personally targeted information, utilizing data collected in advance about the voter's particulars and preferences. This practice destroys the foundations of the democratic system.
- **The right to health:** When information, even if reliable and professional, is washed away by waves of conspiracy theories, the right to health is undermined. This situation prevents some segments of the population from receiving appropriate medical care and leads to loss of life.
- **Freedom of the press:** This fundamental value faces ongoing challenges and ever-growing danger in Israel in light of the high availability of unreliable sources of information that undermine the press' ability to be the watchdog of democracy.

Fake news has harmed the Israeli Health Ministry's ability to deal with and curb the spread of the Covid-19 pandemic, and has even led to death threats against healthcare workers. These problems are not unique to Israel. Fake news about the coronavirus and the risks of the vaccine developed against it have also undermined global efforts to stop the spread of the pandemic, thereby intensifying political and economic crises, destabilizing democratic regimes, and strengthening authoritarian propensities and regimes. Moreover, fake news has been used by a variety of elements in Israel, including parties and political leaders, to influence the results of the Knesset elections. As stated, Israel is no different from the rest of the world, as this is a global phenomenon.

### **Zulat Seeks To Focus on Two Amendments: The Right to Health and the People's Right to Free Elections.**

As mentioned, Zulat's fake news report describes the violation of a number of rights, but in the committee discussion we will focus on two of them: The right to health and the people's right to free elections, which are urgent items on the public agenda and require legislation that provides an immediate response.

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The proposed bill is intended to update and strengthen existing law provisions pertaining to enforcement against distributors of fake news and adapt them to the overall struggle against the phenomenon, while simultaneously addressing and remaining sensitive to the need to protect freedom of expression. The bill does not deal with enforcement against social media platforms, which clearly require separate and new legislation, due to the complexities and sensitivities associated with freedom of expression and censorship of the Internet. Nor does it deal with the spread of fake news among private individuals, which is already addressed by the Prohibition of Defamation Law-1965 and the Protection of Privacy Law-1981, but is instead intended to fill the gaps in the response to the proliferation of fake news that is affecting the whole or parts of the public.

The proposed bill focuses on what appear to be the most urgent manifestations of the phenomenon during the political and health crisis (the Covid-19 pandemic) of recent years: fake news liable to endanger public health, impede democratic and free elections, and use false identities; websites whose main activity is to spread fake news; groups operating in an organized or unorganized manner to spread fake news.

### The Right to Health:

Fake news about the coronavirus and the risks of the vaccine developed against it undermine global efforts to stop its spread, thereby intensifying political and economic crises, destabilizing democratic regimes, and strengthening authoritarian propensities and regimes. In Israel, fake news harmed the Health Ministry's ability to deal with the pandemic and curb its spread, and even led to death threats against healthcare workers.

**Zulat proposes:** To amend Article 159 of the Penal Code-1977 to explicitly address the dissemination of fake news that might harm public health.

### The People's Right to Free Elections:

The bill anchors in legislation the rulings by the chairmen of the Central Election Commission (CEC), retired justices Hanan Melcer and Elyakim Rubinstein, regarding the applicability of key provisions of the Election Law-1959 (Propaganda Methods) to the Internet (Ruling 16/19 Jewish Home and Ruling 8/21 Attorney Shahr Ben-Meir), thereby improving the law's compatibility with the reality of recent years, where much of the election propaganda is diffused via the Internet, and regulating the oversight over it. The bill does not constitute a comprehensive amendment to the law, as proposed by the

committee headed by retired Supreme Court President Dorit Beinisch that reviewed it, but instead focuses on the issue of fake news in order to curb its spread, which aims to impede democratic and free elections, given the massive use of this technique by political parties and candidates in Israeli and other election campaigns in recent years.

### Zulat proposes:

a) To amend Article 126 of the Knesset Elections Law-1969 (Combined Version), and to add the publication and spread of false information, on the Internet or elsewhere, to the list of election-related offenses.

b) To amend Article 10 of the Election Law-1959 (Propaganda Methods), and to apply to posts on the Internet or any other electronic platforms, including text messages, the duty of disclosure and identification set forth in subsections (a)(3) and (b)(5) following any necessary modifications.

c) To amend Election Law-1959 (Propaganda Methods), and add to it a clause whereby in the 14 days prior to an election, no propaganda will be published on the Internet or any other electronic platforms, including text messages, by parties and candidate lists that have not been approved by the CEC chairman. Under this clause, the CEC chairman would be entitled to reject propaganda or pose conditions for its approval on the grounds that it violates the provisions of this law or Article 126(7) of the Knesset Elections Law-1969 (Combined Version). The CEC chairman would also be entitled to take into consideration the identity and size of the population for which the propaganda is intended. This assessment is of utmost importance given the attempts in recent years to suppress or encourage voting among specific population groups by selectively directing to them fake, misleading, or partial information. Alternatively, we propose to establish that the CEC chairman would be the supreme authority dealing with a party or specific candidates circulating false information as of 90 days prior to Election Day.

d) To amend Article 13 of the Election Law-1959 (Propaganda Methods), and add to it a clause on "unfair interference," which would apply to the publication and dissemination of fake news via the Internet or by any other means.

e) To amend Article 7 of the Party Financing Law-1973, and add to it a clause banning election expenses aimed at committing unfair interference as defined in Article 13 of the Election Law-1959 (Propaganda Methods).

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### More suggestions for dealing with fake news:

To deal with the use of false identities to spread fake news on social media, Zulat proposes: To amend the Penal Code-1977, and add impersonation aimed at disseminating fake news, as defined in Article 159, to the list of offenses.

To deal with websites that primarily spread fake news, Zulat proposes: To amend Article 4l(a) of the Communication Law-1982 (Bezeq and Broadcasting), and add a site whose purpose is to spread fake news as defined in Article 159 of the Penal Code-1977 to the definition of "an Internet site that primarily carries offensive content."

In recent years, we have seen systematic and deliberate efforts by Israeli groups and political elements to manipulate the outcome of elections, which have cast a pall on the viability of free elections in Israel. To deal with groups operating in an organized or unorganized manner to disseminate fake news, Zulat proposes: To amend the first addition to the Law on Combating Criminal Organizations-2003, and to add to the definition of "criminal organization" an organized or unorganized group of persons operating in an organized, systematic, and continuous fashion to disseminate fake news, in particular with the aim of interfering with the proper conduct of elections.

The bill is attached as an appendix.

I call on the committee's chairman and its members to adopt Zulat's proposed bill for dealing with fake news in order to preserve the democratic character of the State of Israel as well as human and civil rights.

Best regards,

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Executive Director of Zulat for Equality and Human Rights

Legal advice: Attorney Eitay Mack