

Standing of Public Interest Organizations in Israel

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Abstract

The Article suggests that broad standing rights in Israel not only have contributed to the development of constitutional and administrative law, but also encourage the establishment of public interest organizations whose activities focus on filing petitions in those areas. Many of these petitions deal with issues that have significant political implications. This Article presents the broad standing rights in Israel, indicates the role of broad compliance in the development of Israeli constitutional and administrative law, describes the contribution of the broad standing in Israel to the establishment of public interest organizations and civic groups, and offers explanations of the dominance of these organizations and groups in filing petitions on issues which do not involve claims of violation of human rights or of individual interests.

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I. INTRODUCTION

The broad standing rights in Israel allow petitions on general constitutional and administrative law issues that do not involve individual rights or interests. This Article argues that the broad standing policy not only has contributed to the development of constitutional and administrative law in Israel, but also encourages the establishment of public interest organizations whose activities focus on filing petitions in those areas. Many of these petitions deal with issues that have significant political implications.

This Article presents the broad standing rights in Israel, indicates the role of broad compliance in the development of Israeli constitutional and administrative law, describes the contribution of the broad standing rights in Israel to the establishment of public interest organizations and civic groups, and offers explanations for the dominance of these organizations and groups in filing petitions on issues which do not involve claims of violation of human rights or of individual interests.

Part II of this Article briefly presents the standing laws in Israel. Part III shows that the broad standing policy in Israel has led to the development of Israeli constitutional and administrative law. A significant contribution to the development of Israeli constitutional and administrative law has also been made in Supreme Court of Israel (“Supreme Court”) decisions in which petitions by public interest groups or civic groups have been rejected. Part IV presents indications that public interest organizations and civilian groups in Israel were established as a result of the broad standing rights. And Part V suggests some illuminations on the establishment of public interest organizations and civic groups that focus on litigation in public and political governmental areas where there is no prejudice to individual rights or individual interests.

II. STANDING IN ISRAEL

Since the 1980s, there has been significant expansion of standing in Israel,¹ in particular in the Supreme Court in its role as the High Court of Justice (HCJ), which is in charge of much of the determinations on constitutional and administrative law. While, in the U.S., “historically individuals could not enforce public rights without sovereign authorization, because neither Congress nor the Constitution authorized individual suits,”² the concept adopted by the Israeli Supreme Court is that rules of law concerning public

¹ See Ruth Gavison, *Constitutions and Political Reconstruction? Israel's Quest for a Constitution*, 18 INT'L SOCIO. 53, 63 (2003) (pointing out that “[s]ince the beginning of the 1980s, . . . [t]he Supreme Court started relaxing to the point of abolishing the requirements of standing and the requirement of justiciability”).

² F. Andrew Hessick, *The Separation-of-Powers Theory of Standing*, 95 N.C. L. REV. 673, 689 (2017).

rights are worthy of enforcement in court, and, in order to allow this, standing shall be extended. Thus, in *Ressler v. Minister of Defense*—the guiding Israeli precedent on standing in constitutional and administrative law matters—the Supreme Court of Israel held that, wherever petitioners “can point to an issue of particular public importance or to a serious flaw in the functioning of a public authority,” they will be allowed to bring the matter before the court.³

In practice, as the literature indicates, almost anyone can bring a claim in Israel on constitutional and administrative law matters.⁴ The extension of standing has considerable implications for Israeli law and society. As Itzhak Galnoor indicates:

[E]xpanding the right of standing . . . has led to a significant change in accessibility to the court. While in the past, in order to have his status recognized, a petitioner was required to prove real and direct impingement on his personal interests, over the years the court has moderated these requirements by recognizing a variety of impingements, especially by recognizing the status of public petitioners. The expansion of the right of standing has changed the focus of the High Court of Justice from the traditional role of adjudicating in concrete disputes into the arena of public life.⁵

³ HCJ 910/86 *Ressler v. Minister of Defense*, 42(2) PD 411 (1988) (Isr.).

⁴ Menachem Hofnung, *The Unintended Consequences of Unplanned Constitutional Reform: Constitutional Politics in Israel*, 44 AM. J. COMPAR. L. 585, 590 (1996).

⁵ Itzhak Galnoor, *The Judicialization of the Public Sphere in Israel*, 37 ISR. L. REV. 500, 524 (2004). See also Marcia Gelpe, *Constraints on Supreme Court Authority in Israel and the United States: Phenomenal Cosmic Powers; Itty Bitty Living Space*, 13 EMORY INT'L L. REV. 493, 528 (1999) (asserting that “[s]tanding has been expanded in several ways, most notably to allow a private party with no personal stake in a matter to obtain judicial review of a decision by a public authority if corruption, a constitutional violation, or another claim of outstanding public interest is alleged. As a result of this expansion, there are no substantial legal limitations on standing, at least in important constitutional and administrative law cases.”); Emily Singer Hurvitz, *Future of the AUMF: Lessons from Israel’s Supreme Court*, 4 NAT’L SEC. L. BRIEF 43, 60 (2014) (pointing out that “Israel recognizes ‘public petitioner’ standing in cases that involve issues of public importance”); Eileen Kaufman, *Deference of Abdication: A Comparison of the Supreme Court of Israel and the United States in Cases Involving Real or Perceived Threats to National Security*, 12 WASH. UNIV. GLOB. STUD. L. REV. 95, 96 (2013) (asserting that “[t]he Israeli Supreme Court utilizes highly relaxed rules of standing in cases challenging unlawful governmental conduct”); John T. Parry, *Judicial Restraints on Illegal State Violence: Israel and the United States*, 35 VAND. J. TRANSNAT’L L. 73, 100 (2002) (pointing out that “Israel’s expansive standing doctrine allows citizens to petition the court in its capacity as High Court of Justice in the absence of a personal, material stake in the outcome.”); Gal Dor, *Governmental Avoidance Versus Judicial Review: A Comparative Perspective on Israeli Decision-Making Strategies in Response to Constitutional Adjudication*, 13 TEMP. INT’L & COMPAR. L.J. 231, 232 (1999) (arguing that “[t]he authority of the Israeli High Court to intervene in and invalidate the activities of other governmental agencies is supposed to be subject to none of the traditional procedural restrictions, such as standing.”); Stephen Goldstein, *Protection of Human Rights by Judges: The Israeli Experience*, 38 ST. LOUIS UNIV. L.J. 605, 613 (1994) (asserting that “[d]espite the very strong judicial activism of the first period, the High Court of Justice did not depart from traditional procedural restrictions on judicial intervention in activities of other branches of government found in the doctrines of standing, justiciability and

Since the *Ressler* decision, not only can petitioners file without individual personal interest, but “all cases involving an argument regarding the threat to the rule of law, or cases that have a substantive public impact, are eligible for application.”⁶ As a result, there has been a dramatic increase in the number of public petitioners to the court.⁷

The liberal rules of standing in Israel enable courts to hear cases that ordinarily would not find their way before a court.⁸ The rules of standing, including the standing of citizen watchdog groups, have allowed, *inter alia*, judicial review of claims challenging the legality of civil servants’ behavior even where no individual interests were harmed.⁹ The only significant exception to the broad standing rights in Israel is where the decision under review violates a right or a personal interest of a particular individual who decided not to submit a petition to the court.¹⁰ This liberalization “of the standing requirements has been characterized as revolutionary and effectively abolishing standing.”¹¹ In some cases, especially those in which the petitions concern a matter of great public interest, a large number of petitions in the same matter are submitted to the court.¹² However, as far as public petitions

political question. While there remain some differences of opinion among the justices on some of these points, the recent period of judicial activism has been characterized by the abolishment, or virtual abolishment, of these procedural restrictions on judicial intervention in the activities of other branches of government. Today, there are virtually no procedural restrictions on the authority of the High Court of Justice to intervene in, and invalidate, the activities of other governmental agencies This development is part of a more fundamental shift in the perception of the High Court of Justice of its role—from protecting human rights to safeguarding the ‘rule of law.’”); Robert Nicholson, *Legal Intifada: Palestinian NGOs and Resistance Litigation in Israeli Courts*, 39 SYRACUSE J. INT’L L. & COM. 381, 392 (2012) (arguing that “[a]nother benefit for plaintiffs in Israel is the courts’ extremely liberal standing requirements. In American courts, a petitioner must be personally, significantly, and directly harmed by the respondent’s actions in order to demand relief from the courts. In Israel, this requirement has been relaxed to the point of nonexistence. Past requirements for bringing a suit to the High Court included standing, clean hands, and justiciability. Since the 1980s, however, the Court has received almost every petition regardless of the petitioner’s personal interest in the matter.”).

⁶ Margit Cohn, *Judicial Deference to the Administration in Israel*, in DEFERENCE TO THE ADMINISTRATION IN JUDICIAL REVIEW, 39 IUS COMPARATUM – GLOB. STUD. IN COMPAR. L. 231, 247 (2019); see also HCJ 910/86 Ressler, *supra* note 3.

⁷ Jonatan Adiri, *Terror in the Court: Counter-Terrorism and Judicial Power in the Israeli Case Study*, 1 NW. INTERDISC. L. REV. 55, 91 (2008).

⁸ Aharon Barak, *Foreword: A Judge on Judging: The Role of a Supreme Court in a Democracy*, 116 HARV. L. REV. 19, 106 (2002).

⁹ *Id.* at 106–07.

¹⁰ See, e.g., HCJ 962/07 Liran v. Attorney General, unpublished (2007) (Isr.); HCJ 8876/21 Amsalem v. Minister of Defense, Deputy Prime Minister, unpublished (2021) (Isr.). Another exception to broad standing rights in Israel is public petitions by petitioners who are not residents of Israel and who do not claim that a governmental decision personally harms them. See, e.g., HCJ 2915/96 Hikind v. Government of Israel, 50(1) PD 818 (1996) (Isr.).

¹¹ Kaufman, *supra* note 5, at 108.

¹² See, e.g., HCJ 2592/20 Movement for Quality Government in Israel v. Attorney General, unpublished (2020) (Isr.) (in which the Israeli Supreme Court ruled on eight different petitions against the imposition of the role of forming a new government on Benjamin Netanyahu and

and those petitioners who do not claim a violation of their personal rights are concerned, the Supreme Court has discretion to reject some of the petitions outright and only discuss in substance the petitions which are sufficient to adequately present to the court all of the considerations required for its decision.¹³

The development of standing in Israel is connected to the doctrine of justiciability since public petitioners tend to bring to court petitions regarding political life and security matters, topics traditionally considered to be nonjusticiable. Indeed, many of the public petitions deal with issues that raise the question of justiciability.¹⁴

III. DEVELOPMENT OF ISRAELI CONSTITUTIONAL AND ADMINISTRATIVE LAW AS A RESULT OF THE BROAD STANDING POLICY

One notable implication of the broad standing policy in Israel is the development of constitutional and administrative law on issues where governmental decisions do not usually infringe upon individual rights or interests. This Part presents several notable examples where the Supreme Court both granted and rejected such relevant petitions.

A. Examples of the Israeli Supreme Court Granting Petitions

In a series of decisions made following petitions filed by public interest organizations and civic groups, the Israeli Supreme Court set rules that limit governmental authority and discretion with regard to nominations of elected officials and public servants.¹⁵ With two decisions in the early 1990s, the

against the coalition agreement—of which four petitions were filed by public interest organizations, three petitions were filed by civic groups or individuals, and one petition was filed by a political party).

¹³ Thus, for example, in December 2020, the Israeli Supreme Court heard fifteen petitions filed against the Basic Law: Israel – The Nation State of the Jewish People (known in Israel as the “Nation Law”). The court rejected outright two subsequent petitions because they did not add to the previously filed petitions. See H CJ 3064/19 Bronshtein v. Knesset of Israel, unpublished (2019) (Isr.); H CJ 8349/20 Hass v. Knesset of Israel, unpublished (2021) (Isr.). For more information on the discretion of the Israeli Supreme Court in cases of constitutional and administrative law, see generally Ariel L. Bendor, *The Israeli Judiciary-Centered Constitutionalism*, 18 INT’L J. CON. L. 730 (2020).

¹⁴ See Daphne Barak-Erez, *Broadening the Scope of Judicial Review in Israel: Between Activism and Restraint*, 3 INDIAN J. CONST. L. 118, 119–20 (2009). For the connection between standing and justiciability in Israel, see also Ariel L. Bendor, *Are There Any Limits to Justiciability? The Jurisprudential and Constitutional Controversy in Light of the Israeli and American Experience*, 7 IND. INT’L & COMP. L. REV. 311, 313 (1997) (pointing out that “[i]n Israel, since the 1980s—perhaps as a result of the recognition of broad and well-nigh unlimited entitlement for most claimants to standing before the courts in cases of constitutional and administrative law—justiciability, in all its central aspects, has become the subject of fundamental debate among Supreme Court Justices and commentators.”).

¹⁵ For critical discussions of decisions by the Israeli Supreme Court in the field of appointments, see generally Yoav Dotan, *Impeachment by Judicial Review: Israel’s Odd System of Checks and Balances*, 19 THEORETICAL INQ. L. 705 (2018); Ariel L. Bendor & Michal Tamir, *The Reciprocal Engulfment of Law and Ethics in Israel: The Case of Appointments to Senior Positions*, 23 TRANSNAT’L L. & CONTEMP. PROBS. 229 (2014).

Supreme Court established that the State's prime minister must exercise the power to remove a minister or deputy minister from office if the attorney general has drawn up an indictment against the minister or deputy minister alleging a grave criminal offense.¹⁶ The court ruled that the drafting of an indictment against a member of Knesset (MK) did not, however, negate the legality of that member's appointment as chair of a Knesset committee.¹⁷

Similar rulings were made by the Supreme Court following petitions by public interest organizations and groups of public petitioners concerning government appointments of senior public servants—such as general directors of government ministries.¹⁸ In another decision, the Supreme Court ordered that three directly-elected mayors be dismissed because charges had been filed against them.¹⁹ The decision was handed down shortly before local elections, and the court ordered the city councils to depose mayors charged with criminal offences, though according to the law they could keep their positions until they were tried and convicted.²⁰

Broad standing has not only been a basis for ruling on matters relating to public office appointments. The broad standing rights of public interest organizations in Israel have led to significant rulings on a variety of other constitutional and administrative law issues. For example, the Supreme Court ruled that the Knesset is not allowed to abuse its constitutional authority by enacting temporary Basic Laws.²¹ The court also reversed a Knesset committee's decision not to remove an MK's parliamentary immunity—who was charged with forgery with intent to aggravate already aggravated circumstances, fraud, and breach of trust—after voting electronically on a bill in place of another MK.²² In another decision, the Supreme Court ordered the interim speaker of the Knesset to convene the Knesset plenum for two days to

¹⁶ See HCJ 3094/93 *Movement for Quality Government in Israel v. State of Israel*, 47(5) PD 404 (1993) (Isr.) [hereinafter *Deri* decision] (for an English translation of the *Deri* decision, see <https://perma.cc/43T9-S3J6>); HCJ 4267/93 *Amitai – Citizens for Sound Administration & Moral Integrity v. Prime Minister*, 57(5) PD 441 (1993) (Isr.). For a brief discussion of the *Deri* decision, see SUZIE NAVOT, *THE CONSTITUTIONAL LAW OF ISRAEL* 127 (2007).

¹⁷ See HCJ 7367/97 *Movement for Quality Government in Israel v. Attorney General*, 52(4) PD 547 (1998) (Isr.).

¹⁸ See HCJ 6163/92 *Eisenberg v. Minister of Building and Housing*, 47(2) PD 229 (1993) (Isr.) (for an English translation of the decision, see <https://perma.cc/6K8W-HL3B>).

¹⁹ See HCJ 4921/13 *Ometz – Citizens for Proper Administration & Social Justice in Israel v. Rochberger*, 66(3) PD 135 (2013) (Isr.). For a discussion of the case, see Suzie Navot & Moran Kandelshstein-Haine, *Israel Judicial Enforcement of Ethical Norms in Politics: From the Dismissal of Cabinet Members to the Expulsion of Elected Mayors*, 23 EUR. PUB. L. 15 (2017).

²⁰ HCJ 4921/13 *Citizens for Proper Administration*, *supra* note 19.

²¹ See HCJ 8260/16 *Ramat Gan Academic Center of Law and Business v. Knesset of Israel*, unpublished (2017) (Isr.). For the decision, see also Nadiv Mordechay & Yaniv Roznai, *A Jewish and (Declining) Democratic State? Constitutional Retrogression in Israel*, 77 MD. L. REV. 244, 259–60 (2017).

²² See HCJ 11298/03 *Movement for Quality Government in Israel v. Knesset Committee*, 59(5) PD 865 (2005) (Isr.).

elect a permanent speaker.²³ Following the court's decision, the interim speaker of the Knesset resigned.²⁴ In a decision regarding the legality of an outline that was decided by the Israeli government concerning the handling of the country's gas reservoirs, the Supreme Court invalidated the outline by a majority vote because it included an *ultra vires* stability clause, in which the government pledged to object to any future legislation amending the outline.²⁵

There have also been many cases in which the Israeli Supreme Court has ruled on the merits regarding petitions of organizations against policies that infringe on human rights, even if the petitions have been filed by organizations and not by individuals personally harmed by the policy. For example, the Supreme Court accepted a petition filed by a number of human rights organizations against the police regarding the authority of police officers to detain people for ID checks.²⁶ The court ruled that the law authorizes the police to require a person to present an ID without suspicion of committing an offense only for the very limited purposes of obtaining information that exists on the ID or finding out if a person has an identification card.²⁷ The rationale behind the ruling was the need to prevent labeling persons as suspects for no reason.²⁸ Another example of a human rights petition—which was only filed by human rights organizations with recognized standing—is a decision in which the court invalidated a procedure of the Israeli Ministry of the Interior that prevented female foreign workers who worked in Israel legally from continuing to stay in Israel for the purpose of completing their periods of work once they had given birth.²⁹

In all of these cases, and in many hundreds of other cases, the Supreme Court would not have ruled on the merits without its broad standing policy. Whole areas of constitutional and administrative law, which do not pertain to individual rights or interests, but which touch on issues that are the focus of the public and political agenda in Israel, have evolved only because of broad standing rights used by public interest organizations and civic groups.

²³ See HCJ 2144/20 Movement for Quality Government in Israel v. Speaker of the Knesset, unpublished (2020) (Isr.).

²⁴ See *MK Edelstein Resigns as Speaker of the Knesset; Says High Court's Decision Obliging a Vote on Electing a New Speaker "Harms the Sovereignty of the Nation"*, KNESSET NEWS (Mar. 25, 2020), <https://m.knesset.gov.il/en/news/pressreleases/pages/press253201.aspx>.

²⁵ See 4374/15 Movement for Quality Government in Israel v. Prime Minister, unpublished (2016) (Isr.) [hereinafter Gas Outlive decision]. For a summary of the Gas Outlive decision, see <https://perma.cc/GND4-WPVJ>. For a discussion of the decision, see Sharon Yadin, *Israel's Law and Regulation After the Gas Discoveries*, in REGULATION IN ISRAEL: VALUES, EFFECTIVENESS, METHODS 217 (Eyal Tevet et al. eds., 2021).

²⁶ See HCJ 4455/19 Justice and Equality for Ethiopian-Israelis v. Israel Police, unpublished (2021) (Isr.).

²⁷ See *id.* ¶ 22 (President Hayut's opinion).

²⁸ See *id.* ¶ 21 (President Hayut's opinion).

²⁹ See HCJ 11437/05 Kav LaOved (Worker's Hotline) v. Ministry of the Interior, 64(3) PD 122 (2011) (Isr.). For an English summary and analysis of the decision, see <https://perma.cc/9F3U-SFH9>.

B. Examples of the Israeli Supreme Court Rejecting Petitions

Judicial decisions on the merits of petitions filed by public interest groups or civic groups that do not claim that their rights or interests have been violated contribute greatly to the development of Israeli constitutional and administrative law, even when those petitions are dismissed because the court found the actions lawful. Following are some examples of dismissed petitions.

Regarding the legality of appointments to public positions—which, as mentioned above, developed in Israel largely as a result of the broad standing policy—the Supreme Court found that, if no indictment was drafted, actions by a government minister could not lead to the minister's obligatory removal from office or to a prohibition on their reappointment.³⁰ In another decision, the Supreme Court held that a person who has been convicted of a criminal offense may be appointed as a government minister if the court which convicted the individual determined that the offense in question was not one involving moral turpitude.³¹ The Supreme Court recently held—rejecting a series of seven petitions, six of which were filed by public interest organizations and civic groups and one of which was filed by an opposition party—that, although the Knesset does not have absolute discretion in electing the prime minister, its discretion is extremely broad and the Knesset could legally entrust Benjamin Netanyahu as prime minister even though he has been charged with a number of corruption offenses.³² In the same decision, the court rejected as premature claims against the coalition agreement under which the

³⁰ See HCJ 1993/03 Movement for Quality Government in Israel v. Prime Minister, 57(6) PD 817 (2003) (Isr.). For an English translation of the decision, see <https://perma.cc/3VJB-NBBK>. See also HCJ 2533/97 Movement for Quality Government in Israel v. Government of Israel, 51(3) PD 46 (1997) (Isr.). For a discussion of this decision, see Ariel L. Bendor, *Investigating the Executive Branch in Israel and in the United States: Politics as Law, the Politics of Law*, 54 U. MIAMI L. REV. 193, 222–24 (2000) [hereinafter Bendor, *Investigating the Executive Branch*].

³¹ HCJ 5853/07 National Religious Women's Organization v. Prime Minister, 62(3) PD 445 (2007) (Isr.). For an English translation of the decision, see <https://perma.cc/J8X8-THDW>.

³² See HCJ 2592/20 Movement for Quality, *supra* note 12. See also HCJ 7928/19 Rafful v. Netanyahu, unpublished (2019) (Isr.) (ordering Benjamin Netanyahu to resign as Prime Minister, ordering him to resign as Minister, ordering the government to appoint another Minister to serve as acting Prime Minister, ordering the attorney general to express his opinion on whether the president can impose on Netanyahu the formation of a new government, and ordering the attorney general to compel Netanyahu to resign from all of his Ministry positions until his trial ends. Those petitions were rejected due to holding new elections at too close a time); HCJ 7773/19 Movement for Quality Government in Israel v. Netanyahu, unpublished (2019) (Isr.) (a similar petition that was also rejected); HCJ 8145/19 Berry v. Attorney General, unpublished (2020) (Isr.) (declaring that the law does not allow imposing the role of forming the government on an MK who has been indicted for serious offenses or, alternatively, to order the attorney general to express his opinion on this matter immediately. The petitions were rejected for being theoretical and premature, but the court noted that the issue raised in the petition was fundamental and important, and it rejected the argument that the petition was not justiciable); HCJ 2848/19 Ben-Mair v. Netanyahu, unpublished (2020) (Isr.) (ruling that the decision of the president to impose the task of forming the government on Benjamin Netanyahu was not a legal violation justifying the court's intervention. The court rejected the petitioners' position that the president had a duty to ignore the election results and the recommendations of the party leaders, and to determine that Netanyahu was disqualified from serving as prime minister due to the letter of suspicion that was pending against him at the time).

government was formed.³³ The petitions on these issues were rejected only after parts of the agreement were amended following the justices' comments, leaving room for future petitions as long as the coalition agreement is implemented.³⁴ A petition filed by a public interest organization and two citizens to invalidate the appointment of one of the MKs as the Israeli Minister of Defense following Prime Minister Benjamin Netanyahu's resignation as the defense minister was rejected due to the fact that the tenure of the new minister was expected to end soon.³⁵ The court held, however, that MKs can be appointed as new ministers in a transitional government only when necessary to ensure the proper functioning of the government.³⁶

Petitions rejected by the Supreme Court have contributed to the development of Israeli constitutional and administrative law in other areas as well. For example, the Supreme Court, in a majority opinion, dismissed petitions against the decision of the State's president to pardon the head of the General Security Service and three of his assistants in respect to all of the offences attributed to them, including murder, in connection with the incident known as "bus no. 300," holding that the president is empowered to pardon persons before conviction.³⁷ In another case, the court ruled by a majority vote that the State does not have an obligation to enforce the core curriculum on culturally unique educational institutions, notably ultra-Orthodox institutions.³⁸ The petition was rejected on the merits, although the main contention of the petitioners, a civic group whose members were not ultra-Orthodox, was that core education is essential for the preservation of the right to education of ultra-Orthodox children.³⁹ The Supreme Court also rejected—by a majority opinion and on the merits—a petition by a number of public interest organizations joined by several opposition MKs against the government's decision on the volume of natural gas exports from Israel.⁴⁰ The court rejected the petitioners' claim, premised on the non-delegation doctrine, that this regulation should have been passed through a parliamentary act.⁴¹ In another decision, the Supreme Court rejected the petitioners' claim that the

³³ See HCJ 2592/20 Movement for Quality, *supra* note 12, ¶¶ 20–27 (President Hayut's opinion).

³⁴ See *id.* ¶ 20 (President Hayut's opinion).

³⁵ HCJ 7510/19 Orr-Hacohen v. Prime Minister, unpublished (2020) (Isr.).

³⁶ See *id.* ¶ 15 (President Hayut's opinion).

³⁷ See HCJ 428/86 Barzilai v. Government of Israel, 40(3) PD 505 (1986) (Isr.). For an English translation of the decision, see <https://perma.cc/ET5T-JKKN>. For a discussion of the decision, see Gad Barzilai, *Between the Rule of Law and the Laws of the Ruler: The Supreme Court in Israeli Legal Culture*, 49 INT'L SOC. SCI. J. 193, 204 (1997).

³⁸ See HCJ 3752/10 Rubinstein v. Knesset of Israel, unpublished (2014) (Isr.).

³⁹ See *id.* ¶ 15 (Justice (emer.) Arbel's decision).

⁴⁰ See HCJ 4491/13 Academic Center for Law and Business v. Government of Israel, 67(1) PD 167 (2014) (Isr.).

⁴¹ See *id.* ¶¶ 14–45 (President Grunis' opinion).

government's decision to adopt an outline concerning the handling of the country's gas reservoirs required parliamentary primary legislation.⁴²

The Supreme Court also rejected petitions requiring the government to comply with all provisions of the Iran Nuclear Program Act;⁴³ requiring the government to order the attorney general and the state attorney to cancel an oral hearing procedure set for Netanyahu;⁴⁴ requiring the incoming state comptroller to publish audit reports which were prepared and signed during the term of his predecessor;⁴⁵ requiring the invalidation of the Twenty First Knesset Dissemination Law;⁴⁶ and requiring the invalidation of emergency regulations enacted by the government to deal with the COVID-19 pandemic crisis, as opposed to the enactment of a law by the Knesset.⁴⁷

Charles Black argued in the American context that the legitimation function of the courts was as, if not more, important as the limiting function.⁴⁸ It seems this is true in Israel, as well, because—in these and many other cases—where the Israeli Supreme Court rejected on the merits petitions filed by public interest organizations or civic groups that did not claim that their own rights or interests were violated, the court not only developed Israeli constitutional and administrative law, but also fulfilled a legitimation function.

Indeed, the legitimacy that the court confers on governmental decisions when it rejects petitions on the merits, and not due to the lack of standing, is legal. While the rejection does not necessarily grant the governmental decision public legitimacy, a court's determination—and certainly when it comes to the Supreme Court—that a governmental decision is legal, often also has public and even moral significance, even if the court does not intend to confer the decision public legitimacy.⁴⁹ This is especially true when the court does not base its decision on the text of a Basic Law or a parliamentary act only, but

⁴² See Gas Outlive decision, *supra* note 25.

⁴³ HCJ 3181/19 Legal Clinics, The Academic Center of Law and Science v. State of Israel, Accountant General of the Treasury, unpublished (2019) (Isr.) (rejecting the petition in light of the government's statement that it was implementing the law to address the excessively inclusive nature of the remedy requested).

⁴⁴ HCJ 6389/19 Movement for Equality in Government v. Attorney General, unpublished (2019) (Isr.) (dismissing the petition in light of the broad discretion given to the attorney general).

⁴⁵ HCJ 5849/19 Democratic Camp v. State Comptroller, unpublished (2019) (Isr.) (rejecting petitions because they relied on publications in the media rather than a proven, concrete, factual basis).

⁴⁶ HCJ 3747/19 Aviram v. Knesset of Israel, unpublished (2019) (Isr.) (rejecting petitions on the ground that, under Basic Law, the Knesset does not limit the Knesset's discretion to disperse).

⁴⁷ HCJ 2399/20 Adalah & Joint List v. Prime Minister, unpublished (2020) (Isr.) (dismissing the petition because the regulations had expired and no decision was required on the merits).

⁴⁸ See CHARLES L. BLACK, JR., *THE PEOPLE AND THE COURT: JUDICIAL REVIEW IN A DEMOCRACY* 48–53 (1960) (describing the “legitimizing” function of judicial review).

⁴⁹ See Bendor, *Investigating the Executive Branch*, *supra* note 30, at 222 (noting that “The Supreme Court's decision in the Bar-On Affair is another example of how the exercise of judicial review of a decision may, contrary to its purpose, become a tool which confers substantive public legitimacy on that decision.”).

rather holds that the decision is justified and reasonable on its merits. Furthermore, Israeli court decisions that counter some governmental practices allow courts to confer legitimacy on other governmental policies.⁵⁰

IV. THE ROLE OF BROAD STANDING IN THE ESTABLISHMENT OF PUBLIC INTEREST ORGANIZATIONS IN ISRAEL

Beyond helping to develop Israeli constitutional and administrative law, a second implication of the broad standing policy in Israel concerns the role of expanding standing in the establishment of public interest organizations and civic groups. Not only has the Israeli Supreme Court become an avenue for participation in decision-making processes, communication with official authorities, and protest against these very same authorities,⁵¹ but the broad standing policy has encouraged the establishment of quasi-political organizations whose main channel of activity is filing petitions to the court.

The legal literature indicates that broad standing encourages public interest organizations and civic groups to petition the Supreme Court on public and political issues.⁵² However, it seems that the broad standing policy in Israel does not only encourage filing petitions by existing public interest organizations and civic groups, but also encourages the establishment of organizations whose activities, and whose dominant purposes, focus on

⁵⁰ See Ronen Shamir, *Landmark Cases and the Reproduction of Legitimacy: The Case of Israel's High Court of Justice*, 24 L. & SOC'Y REV. 781, 799 (1990) (pointing out that "The [Israeli supreme] court legitimized policies by first establishing its own legitimacy as an institution which stood above and outside particular political interests. In light of this stature, the court could authoritatively uphold other, even apparently identical, policies. The court's legitimacy was promoted at those moments in time when it reached decisions that were in apparent contrast to dominant political interests.").

⁵¹ See Gal Dor & Menachem Hofnung, *Litigation as Political Participation*, 11 ISR. STUD. 131, 131 (2006).

⁵² See, e.g., Hofnung, *supra* note 4, at 593 (indicating that "[t]he enormous increase in petitions of organized groups to the High Court during the 1980s was encouraged by the Court's . . . willingness to lower the previous high barriers of justiciability and standing, which prevented petitioners from presenting their cases in the past."); Cohn, *supra* note 6, at 247 (pointing out that "most petitions involving highly-publicized and sensitive issues are brought by a variety of civic groups, some of them repeat players"); Jayanth Kumar Krishnan, *Public Interest Litigation in a Comparative Context*, 20 BUFF. PUB. INT. L.J. 19, 21 (2001) (asserting that "[s]ince the 1980's, many different types of Israeli interest groups have sought to redress their grievances in front of the country's highest court. One possible explanation for why this has occurred is because during the 1980's the Israeli Supreme Court liberalized the requirements for gaining standing as a petitioner."); Daphne Barak-Erez, *Judicial Review of Politics: The Israeli Case*, 29 J.L. & SOC'Y 611, 631 n. 88 (2002) (noting, "the enormous growth in legal litigation initiated by petitioners who were not directly affected by the government decision at hand but rather opposed it on ideological and political grounds. This growth originates in the new policy of the Supreme Court to relax its doctrine concerning standing, and the increasing tendency of Israeli NGOs to pursue their goals through litigation.") [hereinafter Barak-Erez, *Judicial Review of Politics*]; Shlomo Mizrahi & Assaf Meydany, *Political Participation through the Judicial System: Exit, Voice, and Quasi-Exit in Israeli Society*, 8. ISR. STUD. 118, 118 (2003) (suggesting that, "in an attempt to create alternative supplies of policy decisions, many groups in Israel appeal to the Supreme Court . . . [B]y using an activist approach, expressed in its willingness to accept petitions without over-questioning the justiciability and standing of these petitions, the High Court of Justice (HCJ) adopts a . . . strategy of encouraging appeals.").

litigation before the courts, and the Supreme Court in particular. Following are two significant indications of this hypothesis.

First, the largest and most prominent NGO involved in petitioning the Supreme Court on public issues that usually do not involve infringement of individual rights or interests—the Movement for Quality of Government in Israel (MQG), founded in 1990—appears in the Nevo database as a petitioner in 280 substantial Supreme Court decisions (that are three pages or more).⁵³ The organization’s website, under the title “Watchdog Legal Action,” states,

The MQG is on-call 24/7 alert to expose and prevent public misdeeds (both national and local) that violate Israel’s legal and constitutional safeguards, e.g. the illegal use of public funds, inappropriate political appointments, bribe takings and bribe giving, the discrimination against whistle blowers, and the failure to implement regulations regarding transparency, oversight and freedom of information.⁵⁴

Alongside MQG, several smaller organizations have previously or are currently operating with similar goals and are based around a dominant purpose of litigation. For example, the organization Ometz – Citizens for Proper Administration and Social Justice has been quite active, appearing as a petitioner in 31 Supreme Court decisions (that are three pages or more).⁵⁵ Smaller public interest organizations—which are not always officially incorporated—such as the Movement for Purity and the Israeli Democracy Guard, have recently begun to operate and are also focused on filing petitions to the Supreme Court on public issues that do not involve infringement of individual rights or interests.

Second, there is some evidence, based on an empirical study, that litigation is a significant part of all the activities of certain public interest groups.⁵⁶ The groups that were examined were women’s groups, environmental groups, and civil liberties groups.⁵⁷ While the study did not focus on the field of activity that this Article focuses on—governmental activity that usually does not involve any violation of individual rights or interests, such as the fight against public corruption—even in these organizations, the more legal the organization’s area of interest, the higher the rate of petitions that the organization submits to the courts compared to all of its activities.⁵⁸ Thus, litigation tactics for public interest organizations are used by 50 percent of civil liberties/civil rights

⁵³ NEVO LEGAL DATABASE, <https://perma.cc/6Y7V-CMY2> (last visited Apr. 22, 2022).

⁵⁴ See *Achievements*, MOVEMENT FOR QUALITY GOVERNMENT IN ISRAEL, <https://perma.cc/6NR8-W6ML> (last visited Apr. 22, 2022).

⁵⁵ See NEVO LEGAL DATABASE, *supra* note 53.

⁵⁶ See Krishnan, *supra* note 52.

⁵⁷ See *id.* at 23.

⁵⁸ See *id.* at 49 (pointing out that, “[a]s for litigation, this tactic is used by forty-four percent of women’s groups, thirteen percent of environmental groups, and fifty percent of civil liberties groups.”).

groups, 44 percent of women's groups, and only 13 percent of environmental groups.⁵⁹

In the United States, where standing is granted only to plaintiffs that establish a concrete injury that falls "within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question,"⁶⁰ it has been noted that, "in many cases, the nominal plaintiff is a more-or-less shadowy character. The litigation is conducted and managed for the most part by a public interest organization or law firm or some other representative body."⁶¹

In Israel, however, the broad standing rights lead to judicial review and encourage the establishment of organizations specializing in public litigation. This phenomenon is different from the situation in other countries, as described by Charles Epp, who argues that judicial attention and approval for individual rights grows out of "deliberate, strategic organizing by rights advocates."⁶² According to Epp, strategic rights advocacy succeeds only when

⁵⁹ See *id.* at 85; Yoav Dotan & Menachem Hofnung, *Interest Groups in the Israeli High Court of Justice: Measuring Success in Litigation and in Out-of-Court Settlements*, 23 L. & POL'Y 1, 12 (2001) (pointing out, "We found a significant and constant rise in the number of petitions issued by NGOs during the research period. Thus, for example, out of 822 petitions submitted to the HJC in 1980, only twelve (1.5%) were filed by twelve groups. The number of petitions filed by groups rises sharply to forty in 1986 (4.4% of 903 petitions). This trend continues well into the 1990s. In 1989, fifty-nine petitions (5.6%) were issued by groups. In 1991, out of 1,069 files reviewed, 143 (13.4%) were filed by seventy-two different groups, and in 1993, out of 1,208 files, 150 (12.4%) were brought up by 117 different groups. That rate was maintained in 1995, when, out of 1,214 petitions reviewed, 151 (12.4%) were filed by 102 groups.").

⁶⁰ *Ass'n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970). For the standing law in federal courts in the U.S., see, e.g., *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992); Katherine B. Steuer & Robin L. Juni, *Court Access for Environmental Plaintiffs: Standing Doctrine in Lujan v. National Wildlife Federation*, 15 HARV. ENV'T L. REV. 187, 189 (1991); Tacy F. Flint, *A New Brand of Representational Standing*, 70 U. CHI. L. REV. 1037, 1037 (2003); Nancy C. Staudt, *Modeling Standing*, 79 N.Y.U. L. REV. 612, 623–26 (2004).

⁶¹ Abram Chayes, *Public Law Litigation and the Burger Court*, 96 HARV. L. REV. 4, 24–25 (1982). For public interest legal organizations in the U.S., see also Catherine Albiston et al., *Public Interest Law Organizations and the Two-Tier System of Access to Justice in the United States*, 42 L. & SOC. INQUIRY 990 (2017) (investigating how political, economic, and institutional factors have shaped public interest legal organizations in the U.S. and how the organizations vary in the services they offer and in their geographical location relative to poverty and population in the U.S.).

⁶² CHARLES R. EPP, *THE RIGHTS REVOLUTION: LAWYERS, ACTIVISTS, AND SUPREME COURTS IN COMPARATIVE PERSPECTIVE* 2 (1998). See also Charles R. Epp, *Implementing the Rights Revolution: Repeat Players and the Interpretation of Diffuse Legal Messages*, 71 L. & CONTEMP. PROBS. 41, 44 (2008) (pointing out that "'have-not' parties might gain some of the advantages of the 'haves' by developing repeat-player organizational capacities and longer-term legal strategies aimed at 'playing for the rules,' rather than aiming only for short-term success in the case at hand. In particular, if the 'have-nots' can develop organized litigation-support groups, long-term funding for litigation campaigns, and long-term strategies for legal change, then they may gain influence over the development of legal policy.") (citations omitted).

there is a “support structure” consisting of organizations dedicated to establishing rights.⁶³

V. ILLUMINATIONS ON THE ESTABLISHMENT OF PUBLIC INTEREST
ORGANIZATIONS IN ISRAEL FOLLOWING THE EXPANSION OF STANDING
RIGHTS

With the broadening of standing on issues that, in many cases, have significant political implications and do not involve infringements of individual human rights or interests, legal scholars and practitioners could expect many petitions to be filed by political parties—particularly opposing parties—or by representatives of such parties. In addition, petitions on such issues could be expected to be filed by individuals who are interested in such matters even if they do not have a distinct partisan or political affiliation. However, a lot of the petitioners on such issues are not political parties,⁶⁴ representatives of political parties, or even individuals, but are instead public interest organizations or civic groups that organize in order to submit a particular petition. Such civic groups usually include professionals—whether in the legal or other fields, such as technology, industry, business or academia.⁶⁵ Indeed, “[t]he easiest way to challenge political decisions is to bring them to court”;⁶⁶ and “courts can serve as a key avenue of political participation for individuals and groups who might otherwise not be recognized.”⁶⁷ But how can we understand the founding of groups, whether public interest organizations or civic groups, whose main purpose, and sometimes even whose sole purpose, is to file petitions with the Supreme Court on issues with obvious political implications?

⁶³ See Charles R. Epp, *The Support Structure as a Necessary Condition for Sustained Judicial Attention to Rights: A Response*, 73 J. POL. 406 (2011) (defending his thesis, according to which the answer to the question why do some high courts devote sustained attention to rights while others do not is that a rights-advocacy support structure is a necessary condition for making sustained judicial attention to rights possible).

⁶⁴ Yet, in Israel, there has also been a noticeable trend in which Israeli parties and politicians have turned to the courts for intervention in national and internal party affairs, government policies, and even parliamentary procedures. For data, see Yoav Dotan & Menachem Hofnung, *Legal Defeats, Political Wins—Why Do Elected Representatives Go to Court?*, 38 COMP. POL. STUD. 75, 87–94 (2005).

⁶⁵ See, e.g., HCJ 5031/10 *Ir Amim Association v. Nature and National Parks Conservation Authority*, unpublished (2012) at ¶ 4 of Justice Hayou’s opinion (Isr.) (saying that Petitioner 1 is, by definition, “a non-profit public association that works in the city of Jerusalem to strengthen stability in the city, for equality among its residents and to promote an agreed political future in Jerusalem. Petitioners 9-2 are academics and public figures active in Jerusalem affairs.”); HCJ 288/00 *Human, Nature and Law—Israeli Association for Environmental Protection v. Minister of the Interior*, unpublished (2001) at ¶ 3 of Justice Cheshin’s opinion (Isr.) (“The first petitioner before us, . . . aims to promote environmental protection in Israel, and works to prevent environmental hazards, protect public health and enforce the law in the environmental field. Petitioners 2 and 3 are distinguished academics and professionals in the fields of environment and ecology. Petitioner 4 is a distinct naturalist and active in the field of nature conservation and the environment for decades.”) (English translation by Author).

⁶⁶ See Barak-Erez, *Judicial Review of Politics*, *supra* note 52, at 631.

⁶⁷ See Krishnan, *supra* note 52, at 89.

One possible explanation for the dominant role of public interest organizations in filing petitions on issues with political implications that do not indicate a violation of individual human rights or interests is the professionalism and experience of public interest organizations that specialize in filing such petitions. Indeed, this explanation also applies to public interest organizations specializing in human rights litigation.⁶⁸ However, people whose human rights have been violated, especially those who are not disadvantaged and have sufficient private resources,⁶⁹ do not necessarily seek the assistance of public interest organizations. Instead, individuals are more likely to submit a petition with the help of a private lawyer. As mentioned above, public interest organizations and civic groups are often made up of well-established professionals and have the resources required to file petitions on issues where the petitioners have no personal interest.⁷⁰

A second possible explanation for the dominant role played by public interest organizations and civic groups in filing petitions in cases where no human rights or interests were violated—specifically regarding petitions filed with the stated purpose of promoting the rule of law—is the political character of many of these petitions and the justiciability difficulties they provoke. Even if, in practice, the judges and the Israeli public are aware of the political implications—and possibly the political motives—of the petitioners, there is public and legal symbolic value in the petitions not being filed by political parties or by politicians, but rather by non-partisan public interest organizations or civic groups.

VI. CONCLUSION

Broad standing in Israel has been criticized, including by some Supreme Court justices.⁷¹ This Author does not share that criticism. To the extent that it is imperative to respect the rules of constitutional and administrative law, judicial review is required in cases where the violation of such rules does not involve an infringement of individual rights or interests. Furthermore, the

⁶⁸ Most of the litigation public interest organizations still specialize in human rights. See Barak-Erez, *Judicial Review of Politics*, *supra* note 52, at 631 n. 88 (pointing out that “[o]ne instance illustrating this trend concerns the Association for Civil Rights in Israel (ACRI). According to ACRI’s annual reports, the association, which was founded in 1972, hired an in-house attorney for the first time only in the year 1984-1985. In the year 2000-2001, the association’s legal department employed a staff of seventeen: eleven lawyers, three interns, and three office workers.”). For the standing of human rights organizations in Israel in public petitions, see *supra* notes 26–29 and accompanying text.

⁶⁹ For the importance of public interest organizations as petitioners in human rights litigation regarding disadvantaged groups, see Sheikh Mohammad Towhidul Karim, *Role of Public Interest Organizations in Developing Public Interest Litigation: An Analytical Study*, 49 ENV’T POL’Y & L. 145 (2019).

⁷⁰ *Id.*; see also *supra* note 65 and accompanying text.

⁷¹ See, e.g., APA 19/2966 Human Rights Watch et al. v. Minister of the Interior, unpublished (2018) (Isr.) (noting that Justice Noam Sohlberg’s concurring opinion casts doubt on the standing of a non-Israeli citizen to raise constitutional arguments on behalf of the rights of Israeli citizens and residents).

broad standing policy has contributed to the development of Israeli constitutional and administrative law even in cases where public petitions were rejected on their merits and thus not only in cases where the Supreme Court accepted the petition.

Broad standing does not only contribute to the promotion of constitutional and administrative law by providing access to the court to existing organizations, but it has also led to the establishment of new organizations and civic groups. The establishment of public interest organizations that specialize in a particular field and demonstrate social engagement in said field has a positive social value and should be welcomed.

However, the constant flow of public petitions in Israel gives the impression that some are not submitted to the court in good faith, i.e., with the sincere expectation for relief. The Supreme Court will need to create ways⁷² to preserve the positive implications of broad standing while minimizing its misuse by public interest organizations and other civic groups.⁷³

⁷² For the imposition of expenses in favor of the state treasury on public petitioners who have filed their petitions without a factual and legal basis, see HCJ 4341/21 Feinstein v. Minister of Health, unpublished (2021) (Isr.).

⁷³ For critical discussions on the extension of standing rights in Israel, see Joshua Segev, *The Changing Role of the Israeli Supreme Court and the Question of Legitimacy*, 20 TEMP. INT'L & COMP. L.J. 1, 31–34 (2006); Joshua Segev, *The Standing Doctrine: What Went Wrong?*, in OXFORD HANDBOOK OF THE ISRAELI CONSTITUTION (Aharon Barak et al. eds., forthcoming, 2022) (available at SSRN: <https://perma.cc/8X6L-4J79>); Amos Shapira, *A Proposal for Constitutional Judicial Review in Israel*, 11 TEL AVIV UNIV. STUD. L. 123, 127–30 (1992); Ruth Gavison, *Legislatures and the Quest for a Constitution: The Case of Israel*, 11 REV. CONST. STUD. 345, 369, 377 n. 89 (2006); DANIEL FRIEDMANN, *THE PURSE AND THE SWORD: THE TRIALS OF ISRAEL'S LEGAL REVOLUTION* 303–07 (2016).