

Israel: Controversy over Judicial System Changes and Proposals

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In July 2023, the Israeli Knesset passed a [law to limit the judiciary’s use of “reasonableness”](#) in reviewing government decisions. This law was one of the government’s [January proposals](#) from Prime Minister Benjamin Netanyahu’s [coalition](#) to reduce the judiciary’s power to check government action.

The proposals—which [Netanyahu](#) and [supporters say](#) would provide corrective balance within an Israeli system that lacks explicit constitutional boundaries to judicial review—have triggered a charged national debate, including [mass protests](#). Some opponents to the proposals [have asserted](#) that they might alter the character of Israel’s democracy, potentially impacting the [ongoing criminal trial against Netanyahu](#) and [worsening tensions with Palestinians](#). Such changes could have [implications](#) for U.S.-Israel relations.

The coalition passed the July reasonableness law after compromise talks with opposition leaders [stalled](#). These talks began after Netanyahu [delayed other proposals in March](#) that would have given the government control over Israel’s [Judicial Appointments Committee \(JAC\)](#) and allowed the Knesset to [override](#) most decisions of the High Court of Justice (HCJ). Netanyahu instituted that delay in the face of major civil disobedience, [saying](#) he wanted to “prevent civil war.”

The [July legislation](#) amends Israel’s quasi-constitutional [Basic Law on the judiciary](#) by preventing judges from overturning administrative decisions they find “unreasonable in the extreme.” Supporters of removing the reasonableness test [argued](#) that it infringed on the government’s popular mandate, and also that courts could still invoke [other common law doctrines](#)—like proportionality, anti-discrimination, and conflict of interest—to review government decisions. Opponents [maintained](#) that the reasonableness standard was necessary to protect uncoded rights and prevent public corruption.

The Knesset may consider [additional legislation](#) affecting the JAC. Netanyahu [has said](#) that the coalition is willing to try until sometime in November to “reach a comprehensive agreement” with the opposition, but opposition leader Yair Lapid [has demanded](#) an 18-month moratorium on further judiciary-related legislation before resuming talks.

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Popular Reactions and Potential Court Review

The proposed judicial changes [have polarized much of the Israeli populace](#), with broad divisions manifest between

- **Opponents**, many of whom are members of the largely secular and Ashkenazi (Jews of European origin) communities that have traditionally held leading roles in government, the military, and the burgeoning high-tech sector; and
- **Supporters**, including many from certain groups with growing populations like West Bank settlers, Jewish nationalists, and the ultra-Orthodox (some of whom hail from a Mizrahi, or Middle Eastern Jewish, background).

Since January, hundreds of thousands of opponents have joined in [regular non-violent protests](#) against the proposed changes, with thousands of supporters engaging in [non-violent counter-protests](#). A [July poll](#) suggested that Israelis support a compromise-based judicial reform process over the government's proposals by a more than two-to-one margin, and that majority approval of popular protests does not extend to disruptions of traffic or airport access, or to refusals to report for military reserve duty.

The HCJ is planning [to hold a hearing](#) on petitions challenging the reasonableness law on September 12. Disagreement between the HCJ and Knesset majority on the law's implementation [could spark a national crisis](#). To date, the HCJ has not invalidated any of Israel's Basic Law provisions, but has indicated [it could reverse provisions](#) that fundamentally change the nature of democracy in Israel or abuse the constitutional process. One Israeli legal expert [has speculated](#) that possible red lines for the HCJ could be if the government tries to replace the attorney general or change the composition of the JAC.

General Assessment

The following implications of the judicial system changes and proposals have relevance for Members of Congress contemplating legislative and oversight options.

Israel's security and economy. Reportedly, thousands within Israel's [military reserves](#) have threatened to suspend their service, and some in the [workforce](#) (including doctors) have gone on strike or warned that they might. Consequently, observers have raised questions about effects on the country's [defense readiness](#) and [economic strength](#). According to a media report citing [an unnamed U.S. official](#), the Pentagon "is concerned that the crisis facing the Israeli military could have negative implications for Israel's deterrence strategy and encourage [Iran](#) or [Hezbollah](#) to conduct military provocations that could escalate the situation in the region."

Reportedly, the Israeli military [may be more concerned](#) about reduced cohesion, readiness, and recruitment over the long term than an immediate breakdown in performance. [One source argues](#) that highly-skilled reservists like fighter pilots who stop volunteering would probably return in the event of a crisis.

Possible democracy, governance, and regional/international implications. Much debate surrounding potential changes to the judiciary focuses on their meaning for Israeli democracy and governance. Some argue that weakening judicial review [could enable certain government actions](#), such as expanding Israel's West Bank control at Palestinians' expense, increasing economic preferences and military service exemptions for ultra-Orthodox Jews, or altering minority rights and the religious-secular balance in Israel. [Some debate](#) whether Israelis [might face legal prosecution](#) in international fora if the independence of Israel's judiciary arguably erodes. Additionally, developments regarding [Palestinian issues](#) could impact ongoing U.S. efforts to facilitate [Israel-Saudi Arabia normalization](#).

Netanyahu's legal future. Some have [speculated](#) that legislative changes could lead to Netanyahu replacing the current attorney general with one amenable to dismissing the legal case against Netanyahu. [One source](#) quoted Netanyahu as saying he would not make such a move, while citing an Israeli legal expert who questioned Netanyahu's credibility.

U.S. reactions. [President Biden's efforts](#) to steer Netanyahu toward compromise have [generated debate](#) about [U.S. input](#) into Israel's domestic politics. Members of Congress have voiced [varying opinions](#) on Israel's [legislative proposals](#) and [U.S. involvement](#). [Some](#) have joined [letters](#) or a [proposed resolution](#) expressing support for judicial review and liberal democracy in Israel. Others have [stated support](#) for Israel to handle its own democratic decisions and/or [advised](#) U.S. officials to [stay out](#) of the process. Some observers [question](#) the potential impact on U.S.-Israel relations of a perceived divergence in core values.

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