J. Y. Interpretation No.735（February 4, 2016）*

【No-confidence Motion Proposed during the Extraordinary Session】

ISSUE: Is a no-confidence motion stipulated under Article 3, Paragraph 2, Subparagraph 3 of the Amendments to the Constitution of the Republic of China permitted to be proposed during an extraordinary session of the Legislative Yuan convened due to other specific matters ?

RELEVANT LAWS:

Article 3 of the Amendments to the Constitution（憲法增修條文第 3 條）；Article 69 of the Constitution（憲法第 69 條）；Article 6 of the Legislative Yuan Organization Act（立法院組織法第 6 條）；Article 37 of the Legislative Yuan Power Exercise Act（立法院職權行使法第 37 條）

KEYWORDS:

no-confidence motion（不信任案）, Legislative Yuan（立法院）, extraordinary session（臨時會）**

HOLDING: Article 3, Paragraph 2, Subparagraph 3 of the Amendments to the Constitution of the Republic of China

解釋文：中華民國憲法增修條文第三條第二項第三款規定：「行政院依左列規定，對立法院負責，……三、

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* Translated by Chung-Lin CHEN

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stipulates: "The Executive Yuan shall be accountable to the Legislative Yuan in accordance with the following provisions; … (3) With the signatures of more than one-third of the total members, the Legislative Yuan may propose a no-confidence motion against the Premier of the Executive Yuan. After 72 hours since the no-confidence motion is made, an open-ballot vote shall be cast within 48 hours. …" The purpose of this provision is to require the open ballot vote to be completed within the provided time limit so as to avoid the delay and suspension that affects political stability. But the provision does not require that a no-confidence motion must be proposed during an ordinary session. Article 69 of the Constitution stipulates: "In any of the following circumstances, the Legislative Yuan may hold an extraordinary session: 1. At the request of the President; 2. At the request of no less than one-fourth of its Members." It only stipulates the procedure of convening an extraordinary session and does not limit the subject matters that can be reviewed therein. Therefore, the Constitution does not prohibit the Legislative Yuan from re-

立法院得經全體立法委員三分之一以上連署，對行政院院長提出不信任案。不信任案提出七十二小時後，應於四十八小時內以記名投票表決之。……」旨在規範不信任案應於上開規定之時限內，完成記名投票表決，避免懸宕影響政局安定，未限制不信任案須於立法院常會提出。憲法第六十九條規定：「立法院遇有左列情事之一時，得開臨時會：一、總統之咨請。二、立法委員四分之一以上之請求。」僅規範立法院臨時會召開之程序，未限制臨時會得審議之事項。是立法院於臨時會中審議不信任案，非憲法所不許。立法院組織法第六條第一項規定：「立法院臨時會，依憲法第六十九條規定行之，並以決議召集臨時會之特定事項為限。」與上開憲法規定意旨不符部分，應不再適用。如於立法院休會期間提出不信任案，立法院應即召開臨時會審議之。

viewing a no-confidence motion in an extraordinary session. Article 6, Paragraph 1 of the Legislative Yuan Organization Act provides: "An extraordinary session shall be proceeded in accordance with Article 69 of the Constitution, and only the specific matters that the extraordinary session is convened for can be decided." The part that is not consistent with the meaning and purpose of the aforementioned Constitution provision shall no longer be applicable. When a no-confidence motion is proposed during recess, the Legislative Yuan shall immediately convene an extraordinary session to review the motion.

REASONING: Article 3, Paragraph 2, Subparagraph 3 of the Amendments to the Constitution of the Republic of China stipulates: "The Executive Yuan shall be accountable to the Legislative Yuan in accordance with the following provisions; … (3) With the signatures of more than one-third of the total members, the Legislative Yuan may propose a no-confidence motion against the Premier of the Executive Yuan. After 72 hours since the no-confidence motion is made, an

解釋理由書：中華民國憲法增修條文第三條第二項第三款規定：「行政院依左列規定，對立法院負責，……三、立法院得經全體立法委員三分之一以上連署，對行政院院長提出不信任案。不信任案提出七十二小時後，應於四十八小時內以記名投票表決之。（前段，下稱系爭憲法規定）如經全體立法委員二分之一以上贊成，行政院院長應於十日內提出辭職，並得同時呈請總統解散立法院；不信任案如未獲通過，一年內不得對同一行政院院長再提不信任

open-ballot vote shall be cast within 48 hours. …[the former part, *hereinafter* the Disputed Constitutional Provision] Should more than one-half of the total Legislative Yuan members approve the motion, the Premier of the Executive Yuan shall resign within ten days, and may simultaneously petition the President to dissolve the Legislative Yuan; in the event that the no-confidence motion fails to carry, no re-submission of a no-confidence motion against the same Premier of the Executive Yuan may be permitted within one year. [the later part]" The mechanism of a no-confidence motion is established for ensuring party discipline, resolving political stalemate, and realizing political accountability, and also has the positive effect of stabilizing politics (see the Illustration of Constitution Amendment Proposal No. 1 at the Second Session of the Third National Assembly in May, 1997). To avoid a delay and suspension that affects political stability, the Disputed Constitutional Provision provides that after 72 hours since the no-confidence motion is proposed, an open-ballot vote shall be cast within 48 hours. But it does not require that a no-

案。（後段）」不信任案制度係為建立政黨黨紀，化解政治僵局，落實責任政治，並具穩定政治之正面作用（中華民國八十六年五月第三屆國民大會第二次會議修憲提案第一號說明參照）。為避免懸宕影響政局安定，系爭憲法規定乃規範不信任案提出七十二小時後，應於四十八小時內完成記名投票表決，並未限制不信任案須於立法院常會中提出。又憲法第六十九條規定：「立法院遇有左列情事之一時，得開臨時會：一、總統之咨請。二、立法委員四分之一以上之請求。」僅規範立法院臨時會召開之程序，並未限制臨時會得審議之事項。基於儘速處理不信任案之憲法要求，立法院於臨時會審議不信任案，非憲法所不許。惟立法院組織法第六條第一項規定：「立法院臨時會，依憲法第六十九條規定行之，並以決議召集臨時會之特定事項為限。」未許於因其他特定事項而召開之臨時會審議不信任案，與上開憲法規定意旨不符，就此部分，應不再適用。系爭憲法規定既未限制不信任案之提出時間，如於立法院休會期間提出不信任案，立法院自應即召開臨時會審議之。

confidence motion must be proposed in an ordinary session. In addition, Article 69 of the Constitution stipulates: "In any of the following circumstances, the Legislative Yuan may hold an extraordinary session: 1. At the request of the President; 2. At the request of no less than one-fourth of its Members." It only stipulates the procedure of convening an extraordinary session and does not limit the subject matters that can be reviewed therein. In light of the constitutional requirement of a speedy disposition of a no-confidence motion, it is not disallowed by the Constitution for the legislative Yuan to review a no-confidence motion in an extraordinary session. However, Article 6, Paragraph 1 of the Legislative Yuan Organization Act provides: "An extraordinary session shall be proceeded in accordance with Article 69 of the Constitution, and only the specific matters that the extraordinary session is convened for can be decided." On the part that does not permit the review of a no-confidence motion in an extraordinary session convened due to other specific matters, it is not consistent with the meaning and purpose of the aforementioned

Constitution provision and shall no longer be applicable. Since the Disputed Constitutional Provision does not restrict the timing of proposing a no-confidence motion, when a no-confidence motion is proposed during recess, the Legislative Yuan shall immediately convene an extraordinary session to review the motion.

Article 37 of the Legislative Yuan Power Exercise Act is a provision concerning the procedure of the introduction and review of a no-confidence motion. Although this matter falls within legislative self-governance, it is worth noting that, as a matter of course, the provision shall comply with the requirement that the Disputed Constitutional Provision imposes: After 72 hours since a no-confidence motion is proposed, the process of an open-ballot vote shall be completed within 48 hours.

立法院職權行使法第三十七條乃關於不信任案提出、進行審議程序之規定，固屬立法院國會自律事項，惟仍應注意符合系爭憲法規定所示，不信任案提出七十二小時後，應於四十八小時內完成記名投票程序之意旨，自屬當然，併此指明。

Justice Yeong-Chin SU filed a concurring opinion.

Justice Mao-Zong HUANG filed a concurring opinion.

Justice Chun-Sheng CHEN filed a

本號解釋蘇大法官永欽提出之協同意見書；黃大法官茂榮提出之協同意見書;陳大法官春生提出之協同意見書;陳大法官碧玉提出之協同意見書；羅大法官昌發、黃大法官虹霞、蔡大法官明

concurring opinion.

Justice Beyue SU CHEN filed a concurring opinion.

Justice Chang-Fa LO, Justice Horng-Shya HUANG and Justice Ming-Cheng TSAI jointly filed a concurring opinion.

Justice Jiun-Yi LIN filed a concurring opinion.

Justice Ming CHEN filed an opinion concurring in part and dissenting in part.

Justice Pai-Hsiu YEH filed an opinion dissenting in part.

Justice Shin-Min CHEN filed an opinion dissenting in part.

誠共同提出之協同意見書；林大法官俊益提出之協同意見書；陳大法官敏提出之部分協同部分不同意見書；葉大法官百修提出之部分不同意見書；陳大法官新民提出之部分不同意見書。

EDITOR'S NOTE:

Summary of facts: The petitioners, 46 Legislative Yuan members including Chien-min Ke, proposed a no-confidence motion against the Premier of the Executive Yuan in accordance with Article 3, Paragraph 2, Subparagraph 3 of the Amendments to the Constitution of the Republic of China and Chapter 6 of the Legislative Yuan Power Exercise Act during the First Extraordinary Session of the First Session of the Eighth Legisla-

編者註：

事實摘要：聲請人立法委員柯建銘等四十六人，就於中華民國一〇一年七月二十五日立法院第八屆第一會期第一次臨時會，依中華民國憲法增修條文第三條第二項第三款及立法院職權行使法第六章規定，對行政院院長提出不信任案，經立法院院長王金平以與立法院組織法第六條第一項規定不符，裁示無法於該次臨時會處理，認有牴觸憲法之疑義，並認立法院職權行使法第三十七條，自「不信任案提報院會」七十二小

tive Yuan on July 25, 2012. The president of the Legislative Yuan, Jin-Pyng Wang, ruled that the motion cannot be addressed in that extraordinary session because it is not consistent with Article 6, Paragraph 1 of the Legislative Yuan Organization Act. The petitioners believe that the ruling has violated the Constitution. They also believe that Article 37 of the Legislative Yuan Power Exercise Act, which stipulates that a review session shall be convened after 72 hours since "the no-confidence motion is submitted to a Yuan Sitting," violates the meaning and purpose of the Amendment to the Constitution regarding a timely vote after 72 hours since "the no-confidence motion is proposed." Therefore, they filed the petition for an interpretation of the Constitution in accordance with Article 5, Paragraph 1, Subparagraphs 1 and 3 of the Constitutional Court Procedure Act.

時後召開審查之規定，違反系爭憲法增修條文自「不信任案提出」七十二小時後依時限表決之意旨，爰依司法院大法官審理案件法第五條第一項第一款及第三款規定，向本院聲請解釋憲法。