

J. Y. Interpretation No.442 (December 12, 1997) \*

**ISSUE:** Does the law violate the constitutional protection of the people's right of instituting legal proceedings in providing that matters of election or recall of elected public officials shall be finalized on appeal to the high court only and under no circumstances may retrial be applied for?

**RELEVANT LAWS:**

Articles 16 and 23 of the Constitution (憲法第十六條、第二十三條) ; Article 109 of the Public Officials Election and Recall Act (公職人員選舉罷免法第一百零九條) .

**KEYWORDS:**

election (選舉) , recall (罷免) , appeal (上訴) , review of judgment (審查原裁判) , right to sue (訴訟權) , retrial (再審) .\*\*

**HOLDING:** The purpose of Article 16 of the Constitution, providing that the people have the right of instituting legal proceedings, is to ensure that people may file a lawsuit in accordance with legal procedures and receive a fair judgment. In regards to the system of different

**解釋文：**憲法第十六條規定人民有訴訟之權，旨在確保人民得依法定程序提起訴訟及受公平之審判。至於訴訟救濟應循之審級制度及相關程序，立法機關自得衡量訴訟性質以法律為合理之規定。中華民國八十三年七月二十三日修正公布之公職人員選舉罷免法第一

---

\* Translated by BAKER & McKENZIE.

\*\* Contents within frame, not part of the original text, are added for reference purpose only.

adjudication levels and the relevant procedures for pursuing legal remedies, the legislative agency may on its own consider the nature of the lawsuit to regulate it appropriately by law. Article 109 of the Public Officials Election and Recall Act, as amended and promulgated on July 23, 1994, providing that decisions from election lawsuits must be finalized on the first appeal and may not be appealed again, is within the scope of the legislative agency's discretion and meets the special needs of election-related lawsuits. It does not infringe upon the constitutional protection of the people's right of instituting legal proceedings, is necessary to advance public interests and benefits, and is not in conflict with Article 23 of the Constitution.

**REASONING:** The purpose of Article 16 of the Constitution, providing that the people have the right of instituting legal proceedings, is to ensure that people may file a lawsuit in accordance with legal procedures and receive a fair judgment. In regards to the system of different adjudication levels and the relevant pro-

百零九條規定，選舉訴訟採二審終結不得提起再審之訴，係立法機關自由形成之範圍，符合選舉訴訟事件之特性，於憲法保障之人民訴訟權尚無侵害，且為增進公共利益所必要，與憲法第二十三條亦無牴觸。

**解釋理由書：**憲法第十六條規定人民有訴訟之權，旨在確保人民得依法定程序提起訴訟及受公平之審判。至於訴訟救濟應循之審級制度及相關程序，立法機關自得衡量訴訟性質以法律為合理之規定。選舉、罷免為公法上之權利，其爭議之處理，雖非可完全置私人權益於不顧；然其究係重在公益之維

cedures for pursuing legal remedies, the legislative agency may on its own consider the nature of the lawsuit to regulate it appropriately by law. Election and recall is a public legal right. The resolution of the relevant disputes, though it cannot completely ignore private rights, should place emphasis on preserving public interests, which is not entirely the same as civil litigations protecting private rights. Also, there is a specific term limit to the office of public officials. If there are many adjudication levels in lawsuits relating to election and recall, then the situation may arise where the office term ends before the lawsuit is finalized. It may also affect the elected official's ability to concentrate on his/her official duties. Therefore, for the purpose of ensuring the order of law, there is the need to adjudicate lawsuits promptly relating to election and recall. Appeal in legal procedures is an abnormal procedure. It is in essence a system to remedy the wrong determination of facts in the original judgment and is different from the usual legal procedures. Because it is an abnormal procedure, it contradicts the principle of finality of judgment.

護，而與保障私權之民事訴訟不盡相同；且公職人員任期有一定之年限，選舉、罷免之訴訟倘審級過多，當難免於時間之拖延，不僅將有任期屆滿而訴訟猶未終結之情形，更有使當選人不能安於職位致影響公務推行之結果。是為謀法秩序之安定，選舉、罷免訴訟自有速予審結之必要。茲訴訟法上之再審，乃屬非常程序，本質上係為救濟原確定判決之認定事實錯誤而設之制度，與通常訴訟程序有別，亦因其為非常程序，要不免與確定判決安定性之要求相違。因之，對於確定判決應否設有再審此一程序，當不能一概而論，而應視各種權利之具體內涵暨訴訟案件本身之性質予以決定，此則屬於立法機關自由形成之範疇；倘其所為之限制合乎該權利維護之目的，並具備必要性者，即不得謂其係侵害憲法所保障之訴訟權。現行選舉、罷免訴訟既採當事人進行主義，復採合議制之審判，其於第一審程序即已慎重進行，以達訴訟之目的，縱使第一審偶有疏未注意之處，致影響當事人權益，亦可因上訴而獲得維護，亦即其經兩次之辯論（一、二審），在健全之司法組織與成員運作下，即應予以信賴，認事用法亦可期待其已臻於理想。因此，基於目的性之要求暨選舉、罷免訴訟之特

Therefore, there is no single solution to the question of whether there should be an appeal to final judgment, which question should be determined on a case-by-case basis depending on the rights involved and the nature of the lawsuit. Thus, this is within the discretion of the legislative agency. If the restriction satisfies the goal of protecting the rights of the people and is a necessary measure, then it does not infringe upon the constitutionally protected right of instituting legal proceedings. The current election/recall lawsuit is an inter-parte action and is adjudicated by a panel of judges. The proceeding at the trial level is already very scrupulous so that it may satisfy the object of the lawsuit. Even if there is a neglected issue at the trial level affecting the rights of the parties, their rights can be protected on appeal. After going through two arguments (at the trial and appeal levels), under the operation of a competent judicial structure with professional personnel, the judgment should be trusted, and the determination of facts and application of law should be close to ideal. Therefore, based on certain needs and the special nature of

性，其予排除再審此一非常程序，本為增進公共利益所必要，難認其有逾越憲法第二十三條之規定。

election and recall lawsuits, it is necessary to eliminate the procedure for reviewing the judgment on appeal for the public interest. Thus, it cannot be said to violate Article 23 of the Constitution.

Justice Sen-Yen Sun filed concurring opinion.

Justice Young-Mou Lin filed concurring opinion.

本號解釋孫大法官森焱、林大法官永謀分別提出協同意見書。