

J. Y. Interpretation No.331 (December 30, 1993) \*

**ISSUE:** Article 69, Paragraph 2, of the Public Officials Election and Recall Act provides: “to those elected pro rata based upon the votes won by each political party, the provisions governing recall procedure are not applicable.” Is said exclusion in conflict with the Constitution, thus being null and void?

**RELEVANT LAWS:**

Article 133 of the Constitution (憲法第一百三十三條); Articles 1, 2 and 4 of the Amendments to the Constitution (憲法增修條文第一條、第二條及第四條); Article 69, Paragraph 2, of the Public Officials Election and Recall Act (公職人員選舉罷免法第六十九條第二項); Article 30, Paragraph 1, of the Constitutional Interpretation Procedure Act (司法院大法官審理案件法第三十條第一項).

**KEYWORDS:**

congressmen (中央民意代表), recall (罷免), election (選舉), National Assembly (國民大會), Legislative Yuan (立法院).\*\*

**HOLDING:** According to Article 4 of the Amendments to the Constitution, congressmen representing overseas Chi-

**解釋文：**依中華民國憲法增修條文第四條規定，僑居國外國民及全國不分區之中央民意代表，係按該次選舉

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\* Translated by Lawrence S. Liu.

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

nese and the National Sector shall be elected pro rata based on the total ballots won by each political party in a particular election, rather than on votes cast by eligible voters in a precinct concerned. Thus, such congressmen shall not be recalled by means of balloting of the eligible voters in the precinct concerned. Article 69, Paragraph 2, of the Public Officials Election and Recall Act, which reads: "Provisions governing the recall procedure shall not apply to those elected to represent overseas Chinese and the National Sector," is therefore not in conflict with the Constitution. Nonetheless, if any of said congressmen should lose his membership in the political party from which he is elected, it is certain that he will also be deprived of his eligibility for a position in the Congress, since only then can the constitutional intent of introducing such a system be met. In addition, a law governing such a procedure of replacement of congressmen, so as to fill the vacancy left by the deposed, shall be enacted accordingly.

**REASONING:** It is provided in

政黨得票總數比例方式產生，而非由選舉區之選民逕以投票方式選出，自無從由選舉區之選民以投票方式予以罷免，公職人員選舉罷免法第六十九條第二項規定：「全國不分區、僑居國外國民選舉之當選人，不適用罷免之規定」，與憲法並無牴觸。惟此種民意代表如喪失其所由選出之政黨黨員資格時，自應喪失其中央民意代表之資格，方符憲法增設此一制度之本旨，其所遺缺額之遞補，應以法律定之。

**解釋理由書：**中華民國憲法增

Article 4 of the Amendments to the Constitution that the election and recall of members of the National Assembly and the Legislative Yuan shall be arranged in accordance with provisions set forth in the Public Officials Election and Recall Act. Since said members representing overseas Chinese and the National Sector shall be elected by means of party-list proportional representation, rather than by votes cast by eligible voters in a precinct concerned, it follows that they shall not be recalled by the balloting of eligible voters in the precinct concerned, as stipulated in Article 133 of the Constitution. Under such a circumstance, the people's right to recall is restricted. Article 69, Paragraph 2, of the Public Officials Election and Recall Act, which reads: "Provisions governing the recall procedure shall not apply to those elected to represent overseas Chinese and the National Sector," follows the above-mentioned constitutional intent and is therefore not in conflict with the Constitution.

Articles 1, 2 and 4 of the Amendment to the Constitution introduced the

修條文第四條規定，國民大會代表、立法院立法委員之選舉罷免，依公職人員選舉罷免法之規定辦理之。僑居國外國民及全國不分區名額，採政黨比例方式選出之。僑居國外國民及全國不分區名額選出者，既係按政黨比例方式產生，而非由選舉區之選民逕以投票方式選出，自無從依憲法第一百三十三條規定，由原選舉區選民以投票方式，予以罷免。人民之罷免權亦因此而受限制。公職人員選舉罷免法第六十九條第二項規定：「全國不分區、僑居國外國民選舉之當選人，不適用罷免之規定」，即係本於上述意旨，與憲法並無牴觸。

憲法增修條文第一條、第二條及第四條增設按政黨比例方式選出僑居國

system of party-list proportional representation for the election of congressmen who represent overseas Chinese and the National Sector. The legislative intent of such Articles is to ensure that a certain portion of congressmen, while they are exercising the power conferred, do not yield to the will of regional voters in particular precincts, so that they may learn the genuine will of the people as a whole and preserve national interests; in addition, said Articles also are meant to prompt political parties to nominate the most talented, virtuous and reputable members to be said congressmen within the quota proportionate to total ballots won in a particular election and allocated to each party, so that such congressmen may serve their country. Nonetheless, if any of said congressmen should lose his membership in the political party from which he is elected, it is certain that he will also be deprived of his eligibility for the position in the Congress, since the legal foundation of his election is forfeited. Only then can the constitutional intent of introducing such a system be met (See Article 30, Paragraph 1, of the Con-

外國民及全國不分區中央民意代表之規定，旨在使中央民意機關有部分代表，於行使職權時，不為地區民意所侷限；而能體察全國民意之所在，發揮維護國家整體利益之功能；並使政黨在其所得選票總數比例分配之全國不分區當選名額內，選出才德俱優，聲譽卓著之黨員任中央民意代表，為國家民主憲政建設，貢獻其心力。惟此種民意代表既係由所屬政黨依其得票比例分配名額而當選，如喪失其所由選出之政黨黨員資格時，即失其當選之基礎，自應喪失其中央民意代表之資格（參照司法院大法官審理案件法第三十條第一項，關於被宣告解散之政黨，其依政黨比例方式產生之民意代表喪失其資格之規定），方符憲法增設此一制度之本旨。至其所遺缺額之遞補，應由法律定之，以維政黨政治之正常運作。

stitutional Interpretation Procedure Act, which provides that where a political party is declared dissolved, its congressmen elected on the basis of party-list proportional representation shall be disqualified as such.) In addition to the aforesaid, a law governing such a procedure of replacement of congressmen, in order to fill the vacancy left by the deposed, shall be enacted accordingly so as to maintain the due course of operation of political parties under democracy.