

J. Y. Interpretation No.340 (February 25, 1994) *

ISSUE: Is the relevant provision of the Public Officials Election and Recall Act, which provides to the effect that the guarantee deposit for a party-recommended candidate may be reduced by half, unconstitutional?

RELEVANT LAWS:

Article 7 of the Constitution (憲法第七條) ; Articles 38, Paragraph 2 and 50, Paragraph 5 of the Public Officials Election and Recall Act (公職人員選舉罷免法第三十八條第二項、第五十條第五項) .

KEYWORDS:

right of equality (平等權) , suffrage (參政權) , party-recommended candidate for public office (政黨推薦之公職候選人) , guarantee deposit (保證金) .**

HOLDING: Article 38, Paragraph 2 of the Public Officials Election and Recall Act provides, “The guarantee deposit for a party-recommended area or aboriginal candidate will be reduced by half provided, however, that the same shall be paid in full if the political party

解釋文：公職人員選舉罷免法第三十八條第二項規定：「政黨推薦之區域、山胞候選人，其保證金減半繳納。但政黨撤回推薦者，應全額繳納」，無異使無政黨推薦之候選人，須繳納較高額之保證金，形成不合理之差別待遇，與憲法第七條之意旨有違，應

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withdraws its recommendation.” The said provision is tantamount to requiring a candidate who is not recommended by a political party to pay a higher amount of guarantee deposit and thus unreasonably discriminates against such a candidate. Therefore, it is contrary to the intent of Article 7 of the Constitution and hence shall no longer apply.

REASONING: All citizens of the Republic of China, irrespective of party affiliation, shall be equal before the law, which is unambiguously provided under Article 7 of the Constitution. While registering his or her interest in running for various public offices, a candidate shall pay a guarantee deposit whose amount will be published by the election commission in advance, provided that a candidate for village head or li head need not pay the same. The foregoing is also clearly set forth in Article 38, Paragraph I of the Public Officials Election and Recall Act as promulgated and amended on August 2, 1991. Nevertheless, Paragraph II of the said article provides, “The guarantee deposit for a party-recommended

不再適用。

解釋理由書：中華民國人民無分黨派，在法律上一律平等，憲法第七條定有明文。人民登記為各類公職候選人時，應繳納保證金，其數額由選舉委員會先期公告，但村里長候選人免予繳納，中華民國八十年八月二日修正公布之公職人員選舉罷免法第三十八條第一項亦有明文規定。同條第二項則規定：「政黨推薦之區域、山胞候選人，其保證金減半繳納。但政黨撤回推薦者，應全額繳納」，無異使無政黨推薦之候選人，須繳納較政黨推薦之候選人為高之保證金。如主管機關公告之保證金過高時，則有意參選者，僅須結合少數人員，即可依法以備案方式成立政黨，再以政黨推薦名義減輕其負擔，反足使小黨林立，無助於政黨政治之健全發展。是上開公職人員選舉罷免法之規定，係

area or aboriginal candidate will be reduced by half provided, however, that the same shall be paid in full if the political party withdraws its recommendation.”

The said provision is tantamount to requiring a candidate who is not recommended by a political party to pay a higher amount of guarantee deposit than a party-recommended candidate. If and when the amount of the guarantee deposit published by the competent authority is too high, a person intent on running for the public office concerned may simply bring together a handful [or small group] of people and form a political party by means of placing the same on record pursuant to law, and then lessen his or her financial burden in the name of a party-recommended candidate. As a result, smaller parties will be mushrooming, which may not be conducive to a healthy development of party politics. Hence, the aforesaid provision of the Public Officials Election and Recall Act has imposed unnecessary restrictions on the people's suffrage and qualifies as unreasonable discrimination. Therefore, it is contrary to the intent of the aforesaid Article 7 of the

對人民參政權所為不必要之限制，形成不合理之差別待遇，與首開憲法第七條規定意旨不符，應自本解釋公布之日起不再適用。

Constitution and hence shall no longer apply as of the date of this Interpretation.

As an additional note, the second half of Article 50, Paragraph 5 of the Public Officials Election and Recall Act is not found to have infringed upon any constitutionally protected right of the people in providing that the party membership of a candidate who is not recommended by his or her party or whose recommendation is later withdrawn by his or her party will not be published.

至公職人員選舉罷免法第五十條第五項後段，關於未經所屬政黨推薦或經政黨推薦後撤回之候選人，不刊登其黨籍之規定，於人民憲法上所保障之權利並無侵害可言，併此說明。