

## J. Y. Interpretation No.381 ( June 9, 1995 ) \*

**ISSUE:** Shall the quorum requirement and the amount of affirmative votes to be cast in the First Reading Meeting held for the amendment of the Constitution be in accordance with Article 174, Subparagraph 1, of the Constitution?

**RELEVANT LAWS:**

Articles 34 and 174, Subparagraph 1, of the Constitution ( 憲法第三十四條、第一百七十四條第一款 ) ; Article 1, Paragraph 9, of the Amendments to the Constitution ( 憲法增修條文第一條第九項 ) ; J. Y. Interpretation No. 342 ( 司法院釋字第三四二號解釋 ) ; Article 8 of the Organic Act of the National Assembly ( 國民大會組織法第八條 ) ; Articles 42, 43, 44, Subparagraph 2, and 46, Subparagraph 12, of the Regulation of the National Assembly Proceedings ( 國民大會議事規則第四十二條、第四十三條、第四十四條第二款、第四十六條第十二款 ) .

**KEYWORDS:**

Constitution ( 憲法 ) , amend ( 修改 ) , proposal for an amendment ( 修改案 ) , quorum ( 出席人數 ) , National Assembly ( 國民大會 ) , delegate to the National Assembly ( 國民大會代表 ) , First Reading ( 一讀 ) , self-governance ( 自律 ) . \*\*

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\* Translated by Professor Chun-Jen Chen.

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

**HOLDING:** The quorum and the amount of votes required to amend the Constitution, as set forth in Article 174, Subparagraph 1, of the Constitution requiring two-thirds of the total number of delegates to the National Assembly to be present and a three-fourths affirmative vote to be cast, are those of requirements of a meeting of the National Assembly making a resolution to amend the Constitution. The Constitution as well as statutes is silent with respect to what Reading Meetings, their quorums and amounts of vote are needed in order to make a resolution of a constitutional amendment. The First Reading Meeting held for the amendment of the Constitution is not by itself the adoption of the constitutional amendment. Its quorum requirement falls into the domain of self-governance matters of the National Assembly. The National Assembly has the discretion and this will not give rise to constitutional issues when it adopts the one-third quorum as promulgated by Article 8 of the Organic Act of the National Assembly, the two-thirds quorum as mandated by Article 174, Subparagraph 1, of the Constitution,

**解釋文：**憲法第一百七十四條第一款關於憲法之修改，由國民大會代表總額三分之二之出席及出席代表四分之三之決議之規定，係指國民大會通過憲法修改案時，必須之出席及贊成之人數。至於憲法修改案應經何種讀會暨各次讀會之出席及議決人數，憲法及法律皆未規定。修改憲法所進行之一讀會程序，並非通過憲法修改案，其開議出席人數究採國民大會組織法第八條代表總額三分之一，或採憲法第一百七十四條第一款所定三分之二之出席人數，抑或參照一般會議規範所定出席人數為之，係屬議會自律之事項，均與憲法無違。至自律事項之決定，應符合自由民主憲政秩序之原則，乃屬當然，併此指明。

or a quorum according to the rules of general meetings. Of course, it is needless to say that every self-governance decision shall be made in accordance with the principles of the constitutional structure of free democracy.

**REASONING:** The National Assembly, consisting of delegates elected directly by people in a free territory and indirectly by political parties pro rata, exercises political power for nationals per procuration according to the mandate of the Constitution. National representative bodies may prescribe procedural rules on how their powers are exercised, provided such rules are not in contravention to the law and the Constitution. This well-recognized political principle is often referred to as parliamentary self-governance or parliamentary autonomy. Besides the written procedural rules of the parliament, there are various unwritten rules whose applications may vary from one resolution to another. This principle has been delineated by us in Judicial Yuan Interpretation No. 342. It is also in accordance with Article 1, Paragraph 9, of the Amendments

**解釋理由書：**國民大會由自由地區人民直接選出之代表及依政黨比例方式選出之代表組織之，依憲法之規定代表全國國民行使政權。而民意代表機關其職權行使之程序，於不牴觸憲法及法律範圍內，得依其自行訂定之議事規範為之，學理上稱為議會自律或議會自治。至議會規範除成文規則外，尚包括各種不成文例規，於適用之際，且得依其決議予以變通，業經本院釋字第三四二號解釋闡釋甚明。憲法增修條文第一條第九項規定：「國民大會行使職權之程序，由國民大會定之，不適用憲法第三十四條之規定」，亦係本於同一旨趣。

to the Constitution, which states: “The National Assembly has the authority to prescribe procedures governing how its powers are exercised regardless of the mandate of Article 34 of the Constitution.”

The two-thirds quorum and the three-fourths affirmative vote requirements set forth in Article 174, Subparagraph 1, of the Constitution are mandates for the adoption of the constitutional amendment resolution. The one-third quorum and a one-half affirmative vote requirement set forth in Article 8 of the Organic Act of the National Assembly govern resolutions made for matters other than the constitutional amendment, and hence are not in contravention to Article 174, Subparagraph 1, of the Constitution. With respect to how Reading Meetings proceed and what quorums and amounts of affirmative vote of respective Reading Meetings are, the National Assembly has the authority to decide following the principles of parliamentary autonomy and within the scope of the Constitution. Of course, it is needless to say that every self-governance de-

憲法第一百七十四條第一款規定，憲法之修改由國民大會代表總額三分之二之出席及出席代表四分之三之決議，此乃關於國民大會議決通過憲法議案出席及可決人數之規定。國民大會組織法第八條規定，國民大會非有代表三分之一以上人數之出席，不得開議，其議決除憲法及法律另有規定外，以出席代表過半數之同意為之，此為關於國民大會討論議案，無憲法第一百七十四條第一款之適用或法律無特別規定時，必須具備之出席及可決人數之規定。至於修改憲法如何進行讀會以及各次讀會之出席及可決人數，憲法及法律皆未加以規定，於不牴觸憲法範圍內，得依議事自律之原則為之，惟議事自律事項之決定，應符合自由民主之憲政秩序，乃屬當然。中華民國八十一年四月七日修訂之國民大會議事規則第四十四條第二項及第四十六條第三項，則以憲法第一百七十四條第一款為依據，明定修改憲法

cision shall be made in accordance with the principles of the constitutional structure of free democracy. Articles 42, 43, 44, Subparagraph 2, and Article 46, Subparagraph 12, of the Regulation of the National Assembly Proceedings as amended on April 7, 1992, on the basis of Article 174, Subparagraph 1, of the Constitution, require a two-thirds quorum and three-fourths affirmative vote for the adoption of resolutions of the amendment to the Constitution and for the ratification of the amendment proposal submitted by the Legislative Yuan in Second Reading and Third Reading Meetings. The same rules are silent with regard to the quorum in the First Reading Meeting, except for Article 43 which requires a review of the proposal after general discussions in the First Reading Meeting. According to the petition and accompanying materials submitted by the National Assembly, the one-third quorum and two-thirds quorum were both once adopted in different First Reading Meetings by the first and second sessions of the National Assembly when amending the provisions of the Temporary Provisions Effective during the Pe-

之議案及複決立法院所提之憲法修正案所進行之第二讀會及第三讀會，其議決以代表總額三分之二之出席，出席代表四分之三之決議行之。而第一讀會之出席人數則未見諸明文，同規則第四十三條，對一讀會中修改憲法之議案，僅規定經大體討論後，應即交付審查。又依據國民大會聲請本院解釋之聲請書及附送資料記載，第一屆國民大會及第二屆國民大會進行修訂動員戡亂時期臨時條款或增訂憲法條文之第一讀會，固多以上開國民大會組織法所定以代表總額三分之一為出席開議之人數，但亦有適用憲法第一百七十四條第一款所定以代表總額三分之二為出席開議之人數者。是故修改憲法所進行之一讀會程序，並非通過憲法修改案，其開議出席人數究採國民大會組織法第八條代表總額三分之一，或採憲法第一百七十四條第一款所定三分之二之出席人數，抑或參照一般會議規範所定出席人數為之，係屬議會自律之事項，均與憲法無違。

riod of National Mobilization for Suppression of the Communist Rebellion. Therefore, the First Reading proceeding for the constitutional amendment cannot be equated to the adoption of the constitutional amendment resolution, and its quorum requirement falls into the domain of parliamentary autonomy and will not give rise to constitutional issues regardless what quorum is adopted, the one-third quorum as promulgated by Article 8 of the Organic Act of the National Assembly, or the two-thirds quorum as mandated by Article 174, Subparagraph 1, of the Constitution, or a quorum according to rules of general meetings.

Justice Sen-Yen Sun filed dissenting opinion.

本號解釋孫大法官森焱提出不同意見書。