

J. Y. Interpretation No.175 (May 25, 1982) *

ISSUE: May the Judicial Yuan propose and present bills of act to the Legislative Yuan?

RELEVANT LAWS:

Articles 77, 80 and 82 of the Constitution (憲法第七十七條, 第八十條及第八十二條); J.Y. Interpretation No. 3 (司法院釋字第三號解釋).

KEYWORDS:

statutory bills (法律案), the constitutional system of “separation of powers” and “checks and balances” among the five branches of the Central Government (五權分治, 彼此相維之憲政體制), legislative process (立法程序), legislative power (立法權), judicial power (司法權), judicial legislation (司法法規), the separation of power between the adjudication and the prosecution (審檢分隸), judicial reform (司法改進).**

HOLDING: Because the Judicial Yuan is the supreme judicial agency of the country, it naturally has the authority to propose and present statutory bills to the Legislative Yuan with regard to matters

解釋文：司法院為國家最高司法機關，基於五權分治彼此相維之憲政體制，就其所掌有關司法機關之組織及司法權行使之事項，得向立法院提出法案。

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within its authority based on the constitutional system of “separation of powers” and “checks and balances” among the five branches of the Central Government.

REASONING: To resolve the issue of whether the Judicial Yuan may propose and present statutory bills to the Legislative Yuan concerning matters within its authority, J. Y. Interpretation No. 3 has provided this Court with some guidance. Paragraph 3 of J. Y. Interpretation No. 3 states: As stated in the Preamble, our Constitution was established upon the teachings bequeathed by Dr. Sun Yat-sen, who founded the Republic of China. Five branches were established in accordance with Article 53 (the Executive Yuan), Article 62 (the Legislative Yuan), Article 77 (the Judicial Yuan), Article 83 (the Examination Yuan), and Article 90 (the Control Yuan). Each branch is the highest state agency independently discharging its duties, and is equal to the other branches, within the scope of each respective power as originally bestowed by the Constitution. As far as the discharge of duties is concerned, it is the re-

解釋理由書：查司法院關於所掌事項，是否得向立法院提出法律案，本院釋字第三號解釋，雖係就監察院可否提出法律案而為之解釋，但其第三段載有：「我國憲法依據 孫中山先生創立中華民國之遺教而制定，載在前言。依憲法第五十三條（行政），第六十二條（立法），第七十七條（司法），第八十三條（考試），第九十條（監察）等規定，建置五院，本憲法原始賦予之職權，各於所掌範圍內為國家最高機關，獨立行使職權，相互平等，初無軒輊。以職務需要言，監察、司法兩院各就所掌事項需向立法院提案，與考試院同，考試院對於所掌事項，既得向立法院提出法律案，憲法對於司法、監察兩院就其所掌事項之提案，亦初無有意省略或故予排除之理由。法律案之議決，雖為專屬立法院之職權，而其他各院關於所掌事項，知之較稔，得各向立法院提出法律案，以為立法意見之提供者，於法於理，均無不合。」等語，業已明示司法院得向立法院提出法律案。蓋司

sponsibility of the Control Yuan and Judicial Yuan, as with the Examination Yuan, to respectively propose and present statutory bills to the Legislative Yuan with regard to matters within its authority. While the Examination Yuan may propose and present statutory bills to the Legislative Yuan concerning matters within its authority, there is no reason for the Constitution to purposefully omit or intentionally preclude the granting of the same presentment power to the Judicial Yuan and Control Yuan. Whereas it is within the exclusive authority of the Legislative Yuan to pass or veto a statutory bill, it is reasonable and not in violation of any law for the other branches which are more familiar with matters under their respective authorities to express their advisory opinion and to propose and present statutory bills to the Legislative Yuan. Paragraph 3 of J. Y. Interpretation No. 3 clearly indicates that the Judicial Yuan may propose and present statutory bills to the Legislative Yuan with regard to matters within its authority. Because the Judicial Yuan is the supreme judicial agency of the country, it naturally has the author-

法院為國家最高司法機關，基於五權分治，彼此相維之憲政體制，並求法律之制定臻於至當，司法院就所掌事項，自有向立法院提出法律案之職責。且法律案之提出，僅為立法程序之發動，非屬最後之決定，司法院依其實際經驗與需要為之，對立法權與司法權之行使，當均有所裨益。

ity to propose and present statutory bills to the Legislative Yuan with regard to matters within its authority based on the constitutional system of “separation of powers” and “checks and balances” among the five branches of the Central Government to enact proper laws and regulations. The proposal and presentment of statutory bills by the Judicial Yuan to the Legislative Yuan is merely the initiative step of the legislative process, not the final legislative enactment. It is a proper exercise of the legislative power and the judicial power for the Judicial Yuan to propose and present statutory bills to the Legislative Yuan based on its practical experience and needs in adjudicating litigations.

In addition, it is a common goal of all modern civilized nations to protect the rights and interests of their nationals by respecting the judicial decisions and granting more authorities and duties to the judicial agencies. In order for the judicial legislations enacted to meet the actual needs of the people and to function properly, most of the supreme judicial

次按尊重司法，加強司法機關之權責，以保障人民之權利，乃現代法治國家共赴之目標。為期有關司法法規，更能切合實際需要，而發揮其功能，英美法系國家最高司法機關，多具有此項法規之制定權；大陸法系國家，亦有類似之制度。晚近中南美各國憲法，復有明定最高司法機關得為法律案之提出者。足見首開見解，不僅合乎我國憲法

agencies of the Anglo-American law nations are equipped with the authority to propose and present statutory bills to the supreme legislative agency of the country. Many supreme judicial agencies of the civil law countries are also equipped with a similar authority. Recently, the constitutions of many Central and South American countries have specified that the supreme judicial agency of the country may propose and present statutory bills to the supreme legislative agency with regard to matters within its authority. Therefore, it is evident that the opinion set forth in J. Y. Interpretation No. 3 is not only consistent with the legislative intent of our constitution, but also is in accordance with the trend of other national constitutions. Subsequent to the separation of power between the adjudication and the prosecution, the workloads borne by the Judicial Yuan have become increasingly heavy. To facilitate judicial reform, to establish the Judicial Yuan, the Constitutional Court and tribunals inferior to the Constitutional Court to adjudicate civil, criminal and administrative cases and disciplinary actions against the civil servants pursuant

之精神，並為世界憲政之趨勢。且自審檢分隸後，司法院所掌業務日益繁重，為利司法之改進，符合憲法第七十七條、第七十八條、第八十二條、設置司法院及各級法院，掌理民事、刑事、行政訴訟之審判，及公務員之懲戒；並由司法院行使解釋憲法，暨統一解釋法令之職權，以貫徹宏揚憲政之本旨，司法院就其所掌有關司法機關之組織及司法權行使之事項，得向立法院提出法律案。

to Articles 77, 78 and 82 of the Constitution, and to exercise its authority to uniformly interpret the provisions of the Constitution, the Judicial Yuan may propose and present statutory bills to the Legislative Yuan with regard to the organization of its subordinated judicial agencies and the matters governed by its judicial authorities.