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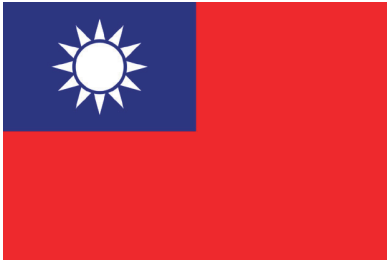
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Taiwan



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I. INTRODUCTION

Taiwan held its first-ever constitutional referendum in November 2022. On the ballot, there was a proposal to amend Article 130 of the Republic of China (ROC) Constitution, which prescribes that “[a]ny citizen of the Republic of China who has attained the age of 20 years shall have the right of election in accordance with the law. Except as otherwise provided by this Constitution or by law, any citizen who has attained the age of 23 years shall have the right of being elected in accordance with law.” Because of this outdated constitutional provision that was enacted in 1947, Taiwan has been and continues to be an outlier among liberal democracies by denying the right to vote to 18 and 19-year-olds.

The proposed constitutional amendment, i.e., the proposed Additional Article 1-1 of the ROC Constitution, was a straightforward one: “Any citizen of the Republic of China who has attained the age of 18 years shall have the right of election, recall, initiative, and referendum in accordance with the law. Except as otherwise provided by this Constitution or by law, any citizen who has attained the age of 18 years shall have the right of being elected in accordance with the law. The provisions of Article 130 of the Constitution shall cease to apply.” In other words, the proposed amendment would lower the voting age from 20 to 18, and the age of candidacy from 23 to 18 (except as otherwise provided by law). If the proposed amendment were ratified, the Elections and Recalls Act and the Presidential Elections and Recalls Act would have to be revised accordingly, but the age of candidacy for certain offices could still be set at a higher age as provided by the Constitution (specifically requiring that candidates for President and Vice President be at least 40 years or older) or by law (such as requiring a higher age of candidacy for municipality/county mayors).

Under the existing constitutional amendment rules established by Additional Article 12 of the Constitution, a constitutional amendment bill can only be initiated by one-fourth of the members of the Legislative Yuan (LY), Taiwan’s unicameral parliament. To become a part of the Constitution, an amendment bill must first pass the LY by a three-fourths vote with a quorum of three-fourths of LY members. After this vote, the amendment bill must then be ratified by an absolute majority of eligible voters in a constitutional referendum held six months later. Since popular voting in Taiwan is not compulsory and the highest voter turnout rate in recent years has never gone beyond 75%, it can be argued that the constitutional amendment in Taiwan

requires not only a legislative supermajority but a referendum supermajority as well.

Ultimately, the constitutional referendum failed to meet the ratification threshold. With the voter turnout rate being around 58.97%, about 84.79% of the turned-out voters would have to vote “yes” for the proposed constitutional amendment to be ratified. Yet, only 49.77% of the turned-out voters did so, while 44.21% of them simply voted “no.” The referendum result showed that the proposed constitutional reform of the voting age and age of candidacy was far more controversial among ordinary voters than their political representatives and the six-month referendum campaign did little to change the hearts and minds of the voters in Taiwan.

The remainder of this report is organized as follows. Section II lays out the history and process leading to the 2022 constitutional referendum. Section III explores why the constitutional referendum failed. Section IV looks ahead to the constitutional future of Taiwan in the aftermath of the failed reform.

II. PROPOSED, FAILED, AND SUCCESSFUL CONSTITUTIONAL REFORMS

Voting age reform has been an issue in Taiwan for over two decades. The first constitutional amendment bill for lowering the voting age was introduced in the LY in 2002. Since 2006, voting age reform has gained some more traction thanks to the advocacy in Taiwan’s civil society. In 2015, the two major parties in Taiwan—the Kuomintang (KMT) and the Democratic Progressive Party (DPP)—had pledged to support this specific cause as part of the constitutional reform rekindled in the wake of the Sunflower movement of 2014. The constitutional amendment process was soon abandoned, however, because the KMT and the DPP could not agree on anything else.

The constitutional reform process was restarted after President Tsai Ing-wen won her re-election in 2020. By March 2022, 87 bills of the constitutional amendment had been introduced to the LY. In order to hold a constitutional referendum concurrently with the nationwide local elections scheduled in November 2022, the LY leadership had long planned to clear the constitutional amendment bills no sooner and no later than late March 2022. The LY Select Committee on Constitutional Amendments, however, did not begin its review process until January 2022. With little time left and no hope to negotiate a package deal that both the DPP and the KMT lawmakers would agree

upon, the DPP-dominated select committee reported to the LY nothing but the bill on lowering the voting age and the age of candidacy—a proposal that all parties had proclaimed to support. This bold move forced the opposition KMT lawmakers to publicly declare their stance on the roll-call record, and the KMT caucus decided to support the long-overdue voting age reform rather than obstructing it, just minutes before the floor vote. On March 25, 2022, the LY cleared the proposed amendment by a vote of 109-0 with only four abstained votes.

The second stage of the constitutional amendment process began with a slightly bumpy start, as the KMT raised but quickly dropped its objection to the plan of holding the constitutional referendum and the 2022 local elections on the same day. The KMT's objection was short-lived, because the plan was well within the discretion of the Central Election Commission (CEC). The special referendum day as provided by the Referendum Act, after all, applies only to citizen-initiated ordinary referendums. Moreover, it was widely believed that the constitutional referendum would be doomed to fail if it were not held concurrently with the November elections due to insufficient voter turnout. The CEC scheduled the constitutional referendum as planned, but the episode may have foreshadowed the lack of bipartisanship in the referendum campaign.

During the eight months from March to November, the campaign which supported the ratification of the proposed amendment had sought hard to persuade voters that lowering the voting age and age of candidacy is the right thing to do. After all, under the Civil and Criminal Codes, Taiwanese are already regarded as adults when they reach 18 years of age. Male citizens who are 18 or older are also obligated to serve compulsory military service. The supporters further emphasized that lowering the voting age to 18 has long been a global trend, and expanding the electorate would make Taiwan a more democratic country. Notwithstanding the strong arguments for the “yes” campaign, it appeared that many voters in Taiwan still harbored the view that the 18–19-year-olds are too young to vote or run for office. Some opponents of the proposed amendment specifically criticized the simultaneous lowering of the age of candidacy, arguing that it has not been discussed enough. In addition, many people believed that the proposed constitutional amendment was an unnecessary waste of political energy as the voting age could simply be lowered through legislation. It was rather difficult for the reform proponents to knock down all the bad arguments against the proposed amendment, especially since most of the public discussion on this issue took place on social media and instant communication platforms that were replete with misinformation. All political parties having seats in the LY endorsed the “yes” campaign by issuing press releases, running advertisements, and/or organizing campaign rallies. The question of whether they had done everything they could do to mobilize their supporters to vote for ratification is debatable. The strongest supporters for the constitutional referendum arguably came from NGOs like the Taiwan Youth Association for Democracy. This organization had partnered with many college student unions in creating a grassroots, non-partisan, and student-based campaign for the ratification vote, both physically and virtually. The referendum campaign, indeed, had turned many college and high school students into activists.

The CEC launched an awareness campaign featuring a Taiwanese baseball star to encourage voters to get out and vote on the constitutional

referendum. To foster public deliberation, the CEC also held five rounds of broadcast public presentations in mid-November. However, since not one person came forward and registered as a representative of the “no” campaign, only the representatives of the proponents took part in the CEC-held presentations.

III. THE SCOPE OF REFORMS AND CONSTITUTIONAL CONTROL

To many people's dismay, the long-overdue constitutional reform of voting age and age of candidacy failed to pass the ratification threshold, even though it had managed to garner the support of the majority of Taiwan's voters. The failure can be understood and appraised from three different perspectives. Let's start off by discussing the arduous amendment rules that matter. As mentioned above, the current constitutional amendment rules in Taiwan require a supermajority agreement at both the legislative and ratification stages. This institutional design was to “democratize the process of anticipated further alteration of the Constitution.” The linking of referendums to constitutional amendments “was hailed as a momentous step towards bringing Taiwan's Chinese Constitution closer to the Taiwanese people.” But most countries require supermajority agreement only at the legislative phase, and the dual-supermajority rule has rendered Taiwan's ROC Constitution one of the most entrenched constitutions in the world. Given the de facto supermajority referendum threshold, it would take a political miracle for the proposed voting age and age of candidacy amendment to be ratified. Notably, some scholars have suggested that it is the amendment culture as measured by the past rate of amendment, rather than the stringency of amendment thresholds, that determines the level of constitutional rigidity. However, this argument strengthens our contention that the amendment rules matter significantly in the context of Taiwan. The fact that the ROC Constitution had been amended seven times from 1991 to 2005 suggests that the Taiwanese people were not hesitant to change their supreme law of the land. The people of Taiwan are willing to modify their constitution in response to a changing society. However, constitutional amendments have completely disappeared since the installation of the new amendment rules in 2005. It is therefore clear to us that the 2022 failure resulted in part from the stringency of the constitutional amendment rules.

Secondly, the referendum outcome might be attributed in part to the limited scope of the proposed constitutional reform. In the previous seven rounds of constitutional revision in Taiwan, all amendments were brought together and put to a vote as a package. Perhaps because package deals are more likely to create win-win scenarios for the participating parties, studies have maintained that “the bundle of compromises approach was the one most likely to secure the passage of the constitutional revision.” By contrast, the failed 2022 reform featured a single-subject amendment proposal. Ostensibly, few politicians objected to the proposal publicly, fearing that they might alienate future voters. Nonetheless, the proposal failed because, as with any single-subject proposal, bipartisanship greatly lowered the incentive for any political party to campaign for a proposal also endorsed by their political nemesis. There is no wonder that political parties cared much more about the local elections held on the same day than about the constitutional referendum itself.

Finally, political partisanship played a role in determining the outcome of the referendum vote. Specifically, a 2021 public opinion survey found that 56.5% of the DPP supporters were already in favor of the voting age reform, but 67.3% of the KMT supporters were against it. This apparent partisan divide is arguably shaped by a prevailing view that young voters lean more toward the pro-independence DPP than the pro-unification KMT. That is, many KMT voters might tend to oppose the enfranchisement of 18–19-year-olds for fear of empowering their rivals. The outcome of the referendum vote seemed to highlight this partisan divide. As pointed out by a post-referendum electoral analysis, Taiwan's voters still voted along party lines in this constitutional referendum. Frankly speaking, the DPP supporters voted heavily in favor of the proposed amendment while many of the KMT supporters voted “no” to the reform as if the amendment proposal were a partisan initiative rather than a bipartisan one. It appears that the constitutional referendum had turned into a different kind of referendum—that is, a vote of confidence in the incumbent DPP government. Given that the DPP performed poorly in the 2022 local elections, which were often viewed as some sort of mid-term elections in Taiwan, the failed ratification vote might be collateral damage to the electoral politics of the day as well.

IV. LOOKING AHEAD

In the past, all constitutional amendments in Taiwan were passed either by a single representative entity known as the National Assembly (1947–2000), or by the LY and a National Assembly (2005) that functioned as an ad hoc constitutional assembly. The 2022 constitutional referendum marked the first time that Taiwanese voters directly took part in the constitutional amendment process as the authority with the final say. Therefore, the failure suggests that collaboration among political elites, though still a necessary condition, is no longer sufficient for a constitutional amendment in Taiwan. Lowering the voting age and age of candidacy has long been a tough sell among ordinary voters throughout history and around the world. What sets Taiwan apart is not only that ordinary voters in Taiwan get the final say, but that they would have to approve such reform measures by a resounding supermajority vote. We would be able to report a success story of civic participation in the constitutional amendment, had the constitutional amendment rules in Taiwan required only that the constitutional referendum meet a 50% turnout threshold.

Given the electoral calendar and political dynamics in Taiwan, it seems unlikely that the LY will re-propose the defeated amendment any time soon. Nevertheless, the LY might still take the initiative to lower the voting age by simply writing it into the current election laws, as argued by some constitutional law scholars. Considering that the total number of “yes” votes exceeded the number of “no” votes in the 2022 referendum, the LY could regard this outcome as a political mandate that favors such change. On the other hand, the LY may view the referendum result as a final verdict of the people and choose to remain inactive on this issue. In this case, the voting age and age of candidacy in Taiwan would likely remain at least 20 and 23, respectively, for quite a while.

In a broader sense, the referendum failure might indicate that the channel of formal constitutional change has been blocked. Unless the DPP and the KMT could reach a wider consensus and propose a

package proposal for large-scale constitutional reform, it seems that constitutional unamendability has become a reality in Taiwan. This suggests that informal constitutional change, such as judicial review or the development of unwritten constitutional norms through power politics, may play an even more important role in Taiwan's constitutional future. Given the rigidity of the ROC Constitution, it also follows that the gap between the capital-C Constitution and the small-c constitution might be wider and wider over time. Alternatively, constitutional reformers may simply give up amending the Constitution through the arduous formal procedure and go extra-constitutional—write a new Taiwan Constitution through a more majoritarian constitution-making process. But peaceful constitution-making seems at best a distant hope in Taiwan in view of the curse of geopolitics and political polarization from within.

V. FURTHER READING

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