

## *The Legal Debate of ECFA Referendum*

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As expected the Referendum Review Committee (RRC) under the Executive Yuan on June 3 rejected the ECFA referendum petition by the opposition Taiwan Solidarity Union (TSU). Since it deprives the Taiwanese people of their rights this move amounts to a complete disregard of the principles of democratic rights of the people and direct democracy.

Based on Article 10, Paragraph 1, of the Referendum Act, the number of people supporting a referendum proposal shall be more than 0.5% of the 17,321,622 people who were eligible to vote in the 12th election of president and vice president, namely more than 86,608 people. And given that 109,720 people had backed the TSU-initiated ECFA referendum proposal, it was early on not just a TSU affair (the TSU has less than 15,000 members) but rather a direct expression of the opinion of more than 100,000 people who felt that the Taiwanese people should be their own boss.

As Grand Justice Hsu Yu-hsiu said in her partly concurring and partly dissenting opinion on Constitutional Interpretation No. 645: “In order to spark so many citizens to sign up to a referendum proposal, its goal, content, scope, aftermath and other related

issues are bound to be announced in a public procedure. There will even be publicity campaigns and advertisements and the news media will also inevitably report about it, and the message will be spread further through modern channels of information. Citizens participating in the signature campaign have their own motivation to sign up so that a referendum proposal can definitely not succeed based on the arbitrary efforts of an individual or a very small number of people. Therefore the proposed referendum has its democratic legitimacy even if its content is somewhat incomplete or at odds with the current system.” Moreover Article 2, Paragraph 5, of the current Referendum Act stipulates that “The matters subject to referendum shall be determined by the Referendum Review Commission.” Article 34 again stipulates “The Executive Yuan shall set a national Referendum Review Commission to review the following matters:

1. To determine the matters subject to national referendum.
2. To determine whether a proposal of national referendum is raised for the same matter as prescribed in Article 33.” This article amounts to granting the RRC the power to “substantially review” referendum

proposals that have been raised through public signature campaigns. The objective of such a referendum review mechanism is not to help the people realize its democratic rights, but to restrict the forming of the will of the people in an actual violation of the principles of the democratic rights of the people and direct democracy. In her written opinion Hsu further states: “If a referendum is initiated by the people, the right to determine its topics is an important intention of the right to referendum. Since the decision on how to conduct the voting often involves technical matters, the voting process should be decided and carried out by the administration on condition that the principle of cost efficiency is met. If the right to determine the referendum topics does not belong to the people, the right to referendum exercised by the people is severely curtailed, which again violates the principles of the democratic rights of the people and direct democracy.”

Based on the principle of the democratic rights of the people, the members of the Legislative Yuan must be elected by the people, meaning they must gain the people’s approval. The objective of this is to entrust to these representatives the right to oversee the executive organs – in other words the Executive Yuan. However, the RRC is not more than a subordinate organ under the Executive Yuan. But the reason why the RRC rejected TSU’s ECFA referendum proposal

is the explicit and clear opinion of people’s democratic rights still must be reviewed and approved by the RRC – an executive agency that per se has only be commissioned by the people and is overseen by it - before it can be accepted and passed. Isn’t all this putting the cart before the horse and getting values wrong in full disregard for the referendum system and the spirit of democracy?

Actually when the RRC made its decision to turn down the TSU’s ECFA referendum proposal, it did not only bow to pressure from the Ma government, an even greater role played immense pressure from the Chinese side. China has always viewed referendums as an uncontrollable beast and has always been highly wary of any expression of the collective will of the Taiwanese people. Also the topics and aspects covered by this ECFA referendum more directly get to test the public will regarding China's arrangements for Taiwan’s future. While China always professes that it will respect the feelings of the Taiwanese people, it will definitely not allow such thing to happen as soon as its vague united front propaganda is put to a real test and the outcome is beyond its control. Or else, wouldn’t China face obstruction at every turn and not be able to get what it wants regarding any decisive arrangement that it makes for Taiwan in the future?

These aspirations also match the wishes of the Ma government. The hidden true goal

of the rejection of the ECFA referendum is that the Ma government hopes that not a single agreement reached with China in the future will require the consent of the people. This means that it even wants to take away the opportunity of putting referendum proposals to public vote so that Taiwan's future is entirely decided by the government machinery and the legislators of the party that holds an absolute majority in the legislature instead of letting the 23 million Taiwanese decide by themselves.

In the wake of the rejection of the ECFA referendum this time, the green camp should therefore not only continue to propose one ECFA referendum proposal after the other to highlight that the Ma government acts willfully in complete disregard for the public will, but also launch the staunchest boycott moves in the legislature and through county and city councillors. Even more important is uniting the entire Taiwanese people to launch the strongest street protests and social movements when necessary, or else the negative consequences will be hard to fathom and hard to undo. Furthermore it is foreseeable that the ECFA referendum will continue to be a hot issue that might even influence the five municipal elections in November and the parliamentary and presidential elections in 2012. **BT**