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Reexamining the Role of the Constitutional Court in Taiwan’s Democratization — Evidence from the J.Y. Interpretation No. 261

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Abstract

Most Taiwan law scholars claimed that the Constitutional Court paved the way for Taiwan’s democratization and constitutional reforms. These legal studies consider the J.Y. Interpretation No. 261 as the most critical decision in Taiwan’s democratic transition as this decision provided the constitutional foundations for the retirement of the first-term national representatives and led to subsequent constitutional reforms. In this paper, we challenge this dominant view. We reexamine the political role of the Constitutional Court during the processes of Taiwanese democratization by citing J.Y. Interpretation No. 261 as a hard case. We argue that the Constitutional Court made little contribution to Taiwan’s democratization. This paper shows that the role of Taiwan’s Constitutional Court in the process of democratization has been far more complicated and far less promising than is commonly

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thought. We also argue that J.Y. Interpretation No. 261 provides at least three political functions for the dominant party: first, it solved a political dilemma for the political elites; second, it helped the political elites to remove the political outliers. Third, it legitimated the ruling party's political agenda.

Keywords: Justice, Constitutional Court, J.Y. Interpretation No. 261, Democratization, Judicial Politics