

China and the Hong Kong High Court Issue Decisions on Legislative Council Controversy (Update)

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On November 7, 2016, China's National People's Congress Standing Committee (NPCSC) issued a [decision](#) concerning the oaths that Hong Kong officials, including legislators, must take before assuming office. Eight days later, [Hong Kong's High Court determined](#) that two "pro-democracy" members-elect of Hong Kong's Legislative Council (Legco), Sixtus Baggio Leung Chung-hang and Yau Wai-ching, had "declined" to take the required oath on October 12, 2016, and are therefore "disqualified from assuming the office of a member of the Legco." The NPCSC and High Court decisions may lead to efforts to invalidate the oaths taken by 13 other Legco members. With China having [guaranteed Hong Kong a "high degree of autonomy"](#) for 50 years after Hong Kong's return to Chinese sovereignty in 1997, the decisions raise questions about the autonomy of Hong Kong's judicial system and the future of democracy in Hong Kong.

This growing controversy may be of interest to Congress as the United States-Hong Kong Policy Act of 1992 (22 USC 66, [P.L. 102-383](#)) states that it is U.S. policy to support democratization in Hong Kong and the preservation of its "high degree of autonomy."

Specifics of the NPCSC's Decision

The NPCSC's decision, purportedly interpreting Article 104 of the [Basic Law of the Hong Kong Special Administrative Region \(SAR\) of the People's Republic of China](#) (Basic Law), mandates that all Hong Kong public officials who are required to take an oath of office must "accurately, completely and solemnly read out the oath prescribed by law." Failure to do so, the NPCSC states, "shall be treated as declining to take the oath." According to the decision, "no arrangement shall be made for retaking the oath." The decision concludes with the statement, "An oath taker who makes a false oath, or, who, after taking the oath, engages in conduct in breach of the oath, shall bear legal responsibility in accordance with the law."

The High Court Decision

The High Court's ruling did not rely on the NPCSC's decision, focusing instead on the events of October 12, 2016, and the requirements of Hong Kong's Oaths and Declarations Ordinance (ODO). Justice Thomas Au Hing-cheung ruled that

Leung and Yau, by mispronouncing or modifying words in the prescribed text and other actions, had "declined" to take the oaths "as requested" and, under the ODO, must be disqualified from becoming Legco members.

Legco's Oath Controversy

Following Legco elections of September 4, 2016, the 70 Legco members-elect attempted to take their oaths of office on October 12, 2016, but [five of those oaths were ruled invalid](#) by the Legco President. The oaths given by Leung Chung-hang and Yau Wai-ching were particularly controversial because each member-elect held up a banner saying, "Hong Kong is not China," and substituted what some consider vulgar or profane language for certain words in the prescribed oath (including "China").

Legco President Leung initially ruled that all five Legco members-elect would be allowed to retake their oaths during the next Legco session scheduled for October 19, 2016. Two members-elect (Edward Yiu Chung-yin and Wong Ting-king) were able to retake their oaths successfully, but [Legco's "pro-establishment" members staged a walkout](#)—thereby denying the necessary quorum—before the other three (Lau Siu-lai, Leung Chung-hang, and Yau Wai-ching) could retake their oaths.

On October 18, Chief Executive Leung Chun-ying and Justice Secretary Rimsky Yuen Kwok-keung filed a [suit in Hong Kong's High Court](#) to prohibit Leung and Yau from retaking their oaths. After the High Court accepted the case, President Leung reversed his decision to allow Leung and Yau to retake their oaths, indicating that he would wait until the High Court has issued its ruling.

Leung and Yau, with the support of some of Legco's "pro-democracy" members, have attempted to enter the Legco chambers in an effort to retake their oaths, resulting in the disruption of Legco proceedings. Lau Siu-lai was able to retake her oath on November 2, 2016.

Implications of the NPCSC and High Court Decisions

The timing and content of the NPCSC's decision complicated an already complex legal controversy in Hong Kong. By issuing its decision prior to the High Court's releasing its judgement, the NPCSC appeared to be trying to influence the ruling of Hong Kong's judicial system. In addition, [some legal analysts](#) assert that the decision went beyond interpreting the Basic Law, and effectively amended the Basic Law and Hong Kong's ODO.

The High Court ruling has set new standards for deeming oaths invalid, and created a precedent for prohibiting the retaking of oaths. A [Hong Kong taxi association has filed a case](#) with the High Court to invalidate the oaths of eight more "pro-democracy" Legco members.

In addition, the NPCSC decision may increase local support for Hong Kong's political parties that advocate greater autonomy, self-determination, and independence from China. Hong Kong's Legco controversy will most likely continue, as [Leung and Yau contemplate appealing](#) the High Court's judgement to the Court of Final Appeal, and others consider challenging the oaths taken by ["pro-establishment" Legco members and Chief Executive Leung](#).

Reactions to the NPCSC Decision and High Court Ruling

Reactions in Hong Kong generally fell along expected political divisions in the city, with Chief Executive Leung and the "pro-establishment" Legco members welcoming the NPCSC decision and the High Court ruling, and the "pro-democracy" Legco members opposing both decisions. An estimated [8,000-13,000 people marched](#) to China's Liaison Office in Hong Kong on the evening of the NPCSC decision. Hong Kong police used batons and tear gas to disperse the protesters. On November 8, 2016, over 3,000 [Hong Kong lawyers staged a silent march](#) to Hong Kong's Court of Final Appeal in opposition to the NPCSC's decision. An estimated [28,500 people rallied](#) on November 13, 2016, in support of the NPCSC decision.

In response to the NPCSC's decision, a spokesperson for the U.S. Consulate in Hong Kong posted a [statement on Twitter](#) saying, "It is unfortunate that this particular situation was not resolved within Hong Kong's Legislative Council or within its well-respected courts."