

## Analysis of comparative issues on the early voting system between major countries and South Korea

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### 1. Liberal democracy and national sovereignty

Article 1 (1) of the Constitution of the Republic of Korea states that “The Republic of Korea shall be a democratic republic,” and stipulates that it is a single system state, and Article 1 (2) states that “The sovereignty of the Republic of Korea shall reside in the people and all state authority shall emanate from the people. And Article 24 states that “All citizens shall have the right to vote under the conditions as prescribed by Act.”

In a liberal democracy, citizens who hold the sovereignty must be guaranteed the legitimacy and fairness of the election process, the integrity of the voting and counting process, and the strictness of the judicial process for electoral disputes under the Constitution and law. This is the cornerstone to maintain and develop the state of modern constitutional and democratic nations, and through this, citizens can demonstrate their sovereignty. If there is a gap in the border, the territory collapses, and if education, the spirit of the nation, and the culture are corrupted, the people will break apart. If the election’s fairness, integrity, and strictness are undermined, the people and their sovereignty are contaminated and the state itself is in crisis.

### 2. The danger of interfering with the early voting system and electoral sovereignty

Since the introduction of the early voting system and the electronic counting system, suspicions of election irregularities have been raised extensively, substantially, and continuously in South Korea. In particular, legal disputes were filed in nearly half of the electoral districts after the April 15, 2020, general election, but trials and verdicts have been indefinitely delayed for more than a year, beyond the 180-day deadline for handling election lawsuits. The fact that elections and invalidity lawsuits have been filed in various constituencies across the country, but the deadline for trials and verdicts have exceeded, means that the integrity of the electoral democracy in South Korea and the right to dispute electoral results are broken.

In short, trust in electoral management has been broken since the April 15 general election. Suspicions of election fraud are also a problem, but relying on public opinion without attempting to resolve these suspicions transparently and actively is also a serious problem. It can be said that the legitimacy of agencies that are supposed to uphold the Constitution, like the National Election Commission and the Supreme Court, has disappeared. This situation is not simply a matter of operating and managing the electoral system. It could lead to a national crisis in which the systemic legitimacy of liberal democracy, the (republican) unity of the democratic republic, and the essence of the people’s sovereignty are undermined.

The allegation of fraudulent votes within the Korean society currently raised goes beyond the operational level of the Public Official Election Act and the National Election Commission’s management policies. This means that it is necessary to reflect on the fundamental issues of the ballot counting system and make improvements, including coming up with fundamental measures such as abolishing the early voting system and the electronic ballot counting

system. However, the March 9, 2022 presidential election will take place without these measures. The Republic of Korea will hold its upcoming presidential election without an institutional mechanism for flawless elections, political processes and election procedures, and the public's broken trust. The people have no choice but to pass through this fog with no visibility.

### 3. Introduction of South Korea's early voting system: increase participation by providing ease of voting

South Korea first introduced early voting in the April 27, 2013 by-election. Early voting is a system that allows voters who aren't able to vote on election day to visit polling sites days before election day. Early voting was introduced to enhance voter participation who may not have the time to stand in line to vote on top of the difficulty of finding a polling site on election day despite their busy lives.

Early voting can be seen as a concept like absentee voting in that people can vote before election day. According to Article 158 of the Public Official Election Act, it allows absentee voting for those who cannot vote at polling stations on election day, but the purpose of introducing this system is not being utilized due to the very small number of absentee voters. In addition, in various surveys of non-voters, most of the respondents expressed that the reason for not voting is due to "personal reasons and/or work," so introducing early voting is to encourage their participation in elections. As shown in the cases of major countries such as the United States and Japan, early voting, which has the advantage of convenience, was introduced based on the significance that it positively encourages voters to participate.

The public debate on early voting has continued to be discussed for the benefit of "increasing voter turnout" by enhancing the convenience of voting since its inception. "Providing convenience" created a myth of trusting the early voting system, and rejected criticism and discussions on institutional reform. There has been no firm and thorough public debate in the so-called system covering South Korea's political, administrative, judicial, media, and academic areas on major issues such as whether early voting can be introduced in the Republic of Korea, which has a single-term presidential system. As suspicions about election integrity were raised during the April 15 general election, the public began to realize that there were problems in the institutional design and implementation of South Korea's early voting system.

The first issue is that the Korean early voting system is a system connected to the electronic voting system, which implies the possibility of digital manipulation. The second issue is that South Korea's early voting is managed and controlled by an electronic system, goes through a wide and concentrated postal system, and is linked to an electronic counting system. It is digitally operated and not manually counted. The devil is in the details. South Korea's early voting system began with the universal justification of "expanding the people's suffrage" by "enhancing the convenience of voting," but the system has a built-in system of electronic voting to the postal system to electronic counting. Public suspicions and resistance to the April 15 election results began with evidence that these "devilish details" worked to manipulate the general election. In addition, the delay and avoidance of judicial action against these various election disputes raise suspicions that there was a possibility of serious crimes being committed.

#### 4. Characteristics of the current early voting system: electronic voting disguised as paper ballots

The fundamental concept of South Korea's current early voting system since 2013 is "electronic voting supplemented with paper [ballots]." In the 2010s, the election law had changed to maximize the convenience of voting. South Korea's early voting is:

First, it is designed to allow "Any Voter at Any Polling Place (AVAP)" without pre-registration at around 4,000 early voting stations nationwide. Early voting does not seem to be electronic voting on the surface. However, all functions are concentrated on the central server. In the AVAP early voting system, the "Undefinable Voter List for a Polling Place (UVLP)" cannot be specified. There is only a national database of all voters.

Second, when anyone suddenly enters any early voting station, it is checked with the central server in real-time, and the ballot in the constituency is printed on the spot (Instant Printing of the Relevant Ballot, IPRB). Since the core center of Internet communication and the central servers is in operation, replacing the terminal with a touchscreen electronic voting machine instead of using a paper ballot at any time can even make the paper ballot disappear.

The NEC is researching this plan. The essential feature of the electronic voting system is that anyone can suddenly appear and vote anywhere (AVAP), that the electoral roll can't be confirmed at any early voting station (UVLP), and that when entering the early voting station, the ballot in the constituency is printed on the spot (IPRB). Early voting uses paper ballots, not touchscreen electronic voting machines, on top of these characteristics of electronic voting. Therefore, South Korea's early voting system is a "de facto electronic voting disguised as paper (printed ballots)" that is completely different from major democratic countries.

In addition, problems related to the postal delivery of "outside jurisdiction" early votes, errors and possible manipulation in mail classification and delivery made by subcontractors of postal offices, not the actual postal office, were exposed.

#### 5. Analysis of comparative issues on early voting between major countries and South Korea

Before the introduction of the early voting system, South Korea's National Assembly Secretariat studied cases of major countries adopting the early voting system, including the United States, Japan, Canada, Switzerland, Australia, Sweden, and Russia. In addition, the National Election Commission introduced the voting systems of major countries already using early voting such as the U.S., Japan, Sweden, Switzerland, Australia, and Canada in its annual report titled "The Comparative Research on Election Systems in Each Country."

However, this annual report lacks a comparative analysis of the differences in the early voting systems, similarities and differences in early voting by country, and the similarities and differences between major countries and Korean early voting systems. It is impossible to determine whether this was intentional or plain ignorant, but by introducing and operating the early voting system, there is no trace of the characteristics of the country's political system that has already adopted early voting and its constitutional political implications. In addition, in-depth studies by the NEC, legislative researchers at the Supreme Court, and scholars and

experts majoring in constitutional and political science have not raised convincing claims so far. Also, the existence of the “basic patterns and common elements of early voting” commonly adopted by major countries and differences between such countries were not analyzed, so the Korean early voting system lacks evaluation and verification. South Korea’s early voting system has the following characteristics, and it has room for the fatal damage to the “electoral integrity” of a democratic state.

First, there are more than 200 countries on this planet, but they are divided into a federal state and a unitary state. In addition, a horizontal governing system is divided into a parliamentary cabinet system and a presidential system. Depending on the distinction between the national and political systems, the way the election system is operated can vary, so the NEC and Korean lawmakers have little to compare the constitution, system review, and consideration for countries adopting the early voting system. Whether large or small, each country is treated as just a country regardless of its constitution and governance.

The early voting system was mainly adopted by countries like the United States, Canada, and Australia, where federal and local governments were separated, and local governments had high autonomy in applying the election laws. Sweden and Japan are the main examples of a single system, and presidential (two-way administration) countries like France do not adopt the system. In the end, it can be viewed that adopting early voting in a country, like the Republic of Korea, which is a single-term presidential system and is divided due to an armistice, can cause fundamental problems constitutionally, election-wise, and politically.

Second, in-depth research and public debate are needed on why the National Election Commission designed and implemented a unique early voting system in South Korea by ignoring and excluding essential conditions needed in early voting. The early voting system in major countries used as examples by the NEC allows voters who have registered as “electors” to vote in advance. In addition, no country in the world allows “any voter at any polling place (AVAP)” to vote on the spot without prior registration.

Third, the “postal process” accompanying early voting is generally carried out directly by voters through the national postal system, and after voting at early voting stations, “postal delivery companies,” not election officials, oversee separating and delivering the mail-in votes. The postal classification and delivery system operated by the Korean early voting system was not strictly and transparently managed by public institutions or through civic surveillance but turned out to be an insolvent and opaque system capable of losing or replacing the mail-in votes. A large amount of “evidence of alleged election manipulation” was revealed due to the insolvency and opacity of the postal classification and delivery system handling early voting stations’ “outside jurisdiction” early voting ballots, which widely spread suspicions of manipulation during the April 15 general election. This was also an important reason for the legal disputes, which were filed in nearly half of the constituencies. In addition, the current early voting system includes fundamental issues of unconstitutionality, such as the possibility of distorting the “stability of the votes” due to the 5-day difference between early voting and election day.

6. Should we abolish or supplement the early voting system?

In a liberal democracy, citizens must be guaranteed the legitimacy and fairness of the election process, the integrity of the votes and the count, and the strictness of the judicial process for election disputes under the Constitution and law. Since the April 15 general election, the Republic of Korea lost its aspect as a liberal democratic constitutional state and fell into a “state of crisis” as the integrity of the democratic election process and public confidence in judicial action were fundamentally undermined.

The allegation of illegal voting within the Korean society currently raised goes beyond the operational level of the Public Official Election Act and the National Election Commission’s management policies. This means that it is necessary to reflect on the fundamental issues of the ballot counting system and to make improvements, including coming up with measures such as abolishing the early voting system and the electronic ballot counting system. South Korea’s early voting system was introduced and implemented to “enhance turnout (the right to vote) by boosting the convenience of voting,” which is conceptualized as “electronic voting disguised with paper ballots.” The current early voting system is operated in conjunction with digital electronic counting, which deviates from the poor and opaque postal delivery system and monitoring and control of “ordinary citizens” and facilitates the manipulation of the results. The early voting system is “a system that looks like an angel, but the devil is in the details built-in.” South Korea’s early voting does not mandate “pre-registration of voters,” which is essential in major developed countries, and implemented an extremely difficult “incomplete election management” of “outside jurisdiction” early voting ballots. No country prints from a digitized integrated election register roll at a polling station without voter registration.

The early voting system was mainly adopted by federal governments and countries where its state governments control elections and early mail-in ballots, as well as in countries, such as Sweden and Japan, where it has a single-system parliamentary cabinet. Both countries require strict “pre-registration of voters,” and in Japan, the reasons for allowing early voting must be stipulated in the election law, and early voters must submit an “affidavit” stating the reasons to participate in early voting. Major countries that have provided convenience for voting through early voting are operating to the extent that they strictly maintain the principles of transparency and integrity in voter accountability and management.

In South Korea, which adopts the presidential system, is in a state of division, and is in a fierce ideological and political competition, the early voting system can seriously infringe on voting rights. After the April 15 general election, many Koreans are faced with this issue. The current early voting system to its postal service to its electronic counting system is likely to make the Republic of Korea an Orwellian totalitarian country and become a target for an “evil force” seeking eternal power. In this context, it is best to abolish the current early voting system. If it’s difficult to rid of early voting, there should be a plan to create a supplementary system that makes it difficult for the current early voting system to work to manipulate the election and promote the citizens’ support and political persuasion.

However, the general public has experienced the convenience of voting through this system, and the intentional avoidance of defense and public debate in institutional areas such as politics, the media, the judiciary, and academics is a reality. Whether it’s abolished or supplemented, it will not be easy, and the timing is poor. What the citizens should do for the March 9 presidential election is to campaign to reduce participation in early voting, while systematically monitoring the details in which early voting, mail-in votes, and digital

elections are intertwined. Due to the situation, opposition parties and leaders, who are parties to the election, have begun to encourage early voting, citing the possibility of low turnout on election day due to the Omicron variant. This is the foolishness of the haughty who are ensnared by the devil. Professors' Solidarity for Freedom & Justice (PFJ) must fight this.