Mappy-Polson v. R.L [2017] LRSC 7 (2 March 2017)

SELENA MAPPY-POLSON, SUPERINTENDENT OF BONG COUNTY (PETITIONER) V.S THE GOVERNMENT OF THE REPUBLIC OF LIBERIA (RESPONDENTS). [JUSTICE BANKS DISSENT]

IN THE HONOURABLE SUPREME COURT OF REPUBLIC OF LIB ERIA SITTING IN ITS OCTOBER TERM, A. D. 2016

PETITION FOR DECLARATORY JUDGMENT

Heard: July 18, 2016. Dissent Filed: March 2, 2017

MR. JUSTICE BANKS DISSENTING

Today I have, as I believe have most Liberians, shared tears for Liberia, for by the decision of the majority colleagues of this Court, some of the most sacred rights of the people and the most sacred provision of the Liberia Constitution have been shredded and placed into a waste vent, and by the Act the Constitution has been turned upside down on its head.

This is the second time that a challenge has been mounted in this Court to certain of the provisions of the "Act of Legislature Prescribing A National Code Of Conduct For All Public Officials and Employees of The Government Of The Republic Of Liberia" enacted in 2014 by the Legislature, duly approved by the President of Liberia and published into handbill, giving it the full force of law. In the first action, a petition for declaratory judgment was filed on August 5, 2014 in the Circuit Court for the Sixth Judicial Circuit, Montserrado County, by Citizen Solidarity Council, a duly incorporated and registered Liberian entity authorized to engage in political and other fundamental rights advocacy, against the Government of Liberia. The petitioner, for reasons stated in the petition, sought a declaration of unconstitutionality from the court in respect to sections 5.1 and 5.2 of the Code of Conduct Act of 2014. The matter, having in the same year been certified to the Supreme Court for a resolution of the issue, this Court, on June 27, 2016, by a vote of 3 to 2, declared that the petitioner lacked standing to mount the constitutional challenge to the Act. In that case, my honored Colleague, Madam Justice Wolokolie, and I, dissented, feeling strongly that not only was the majority of the Court in error but that the decision posed a grave threat to our new found democracy of the Liberian people.

Today, barely a little over eight months since the *Citizen Solidarity Council* Opinion, my esteemed Colleague, Madam Justice Wolokolie, and I, find ourselves again faced with the arduous and difficult task of dissenting from the Opinion of the majority of our esteemed Colleagues of this Honourable Court, except that in the instant case, we have determined to file separate dissenting opinions in order to capture the peculiar and unique varying reasons that have motivated our dissent from the majority, given that the new case presents a set of new factors. From my perspective, however, our prior expression of disagreement with our Colleagues and the rationale we advanced for the stance we took in the *Citizen Solidarity Council* case are as relevant today in the instant case as they were when we dissented in that case. We felt then, and I continue to hold the view, that the Opinion in the Citizen Solidarity Council case dealt a devastating blow not just to the constitutional rights guaranteed our citizens and others whose rights I believe were transgressed by the Act, but to the very core of the life of the Constitution.

In the prior Opinion in the *Citizen Solidarity Council* case, the majority did not dwell into the merits of the challenge, but rather focused only on whether the petitioner had standing and capacity to assert a challenge against the Code of Conduct. Yet, even in limiting the sphere of the dispute merely to the standing and capacity issue, we felt that they had dealt a serious blow not just to the jurisprudence of this jurisdiction but also to the constitutional sacred instrument itself since by their treatment of the standing issue, they effectively overturned Article 26 of the Constitution. It is difficult to see how hereafter the Court will be able to salvage the remains of the Article 26 provision of the Constitution, given the magnitude of the devastation inflicted on that provision by the Opinion. We wondered, at the time, how the Supreme Court could profess to rely upon and subscribe to the ruling in the *Center for Law and Human Rights Education v. Monrovia City Corporation* and at the same time effectively overturn and contradict the position taken by the Court in the very case. I make mention of it only to show how the stance taken by the Court in the *Citizen Solidarity Council* case mirrors the contradictory stance it has today taken in the instant case.

However, although in the instant case the Court has finally determined to deal with the merits of the challenge to the constitutionality of one of the original challenged provision of the Code, yet, and because the expressions and sentiments made in our dissent in the *Citizen Solidarity Council* case bear so critically on the instant case, and given that I continue to feel as strongly, and even more strongly today, about the view, ideas and thoughts expressed in that dissent and my disagreement with my Colleagues of the majority, I have deemed it befitting to reiterate the sentiments,

verbatim, as they were echoed in that dissent, and to incorporate them herein as part of the instant dissent. In that dissent, Madam Justice Wolokolie and I stated:

"Because we believe so very strongly that the decision made today by our majority Colleagues is wrong, is violative of the Constitution and the very core of legal and judicial principles, endorses what we believe to be the infringement and trampling of some of the most sacred and fundamental rights granted by the Constitution, subordinates the Constitution to the statute laws of the nation, is not consistent with our core valued beliefs and principles, injures the very basis of the principles and ideals set out in the Constitution, and affect, in the ultimate, the core of our conscience, fundamental values, and belief in the supremacy of the Constitution, we have refused to affix our names and append our signatures to the judgment of the Court. So that there is no disputing the implications and far-reaching repercussions of the decision of our majority Colleagues, let us state upfront what the decision means for the Liberian Constitution, the Liberia nation-state, the Liberian people and the fundamental rights they so dearly fought and died for."

We stated further that:

"[T]he decision today by our distinguished majority Colleagues signifies that this Honourable Supreme Court, a Court whose establishment and supreme powers are traceable not to any legislative enactment, executive order or action, or judicial constructional fiat, but directly by the Constitution itself, has chosen a path, of monumental proportion, that leaves the impression that the Legislature and the Executive can dishonor the nation's most sacred document and that [this] Court is powerless to make a declaration of the dishonor. But of greater concern is that the decision leaves one with the impression that the Legislative and Executive Branches of the Government have powers superior to the Constitution and that they can therefore overturn and override some of the most fundamental and revered provisions of our Constitution. We see the net effect of the action of the Legislature and the Executive to mean that the provisions of our Constitution are subordinate to Acts of the Legislature, and it seems even to the decisional laws of foreign jurisdictions. Hence, we have decided upon this dissent. Today's decision reminds us of the days when although the Constitution provided for equal rights for all of the citizens of Liberia, our indigenous citizens could not exercise certain of the rights guaranteed by that sacred instrument, including right to vote or to even campaign for a person whom they believed could serve the best interest of the nation, primarily because of

legislative and executive fiat in manipulating and subordinating the Constitution, by legislation and executive actions."

In adding to what we said above, I feel that like the decision made in *Citizen Solidarity Council* case, but with even greater ramifications for the rights and freedoms of the nation and its people, and for the democracy and the rule of law we have only recently come to enjoy, experience and cherish, today's decision, the second approbation by my majority Colleagues of this Court in less than a year, signifies a further reneging by this Court of the consecrated constitutional responsibility bestowed upon the Court, and instead opting to sanction positively the brazen unconstitutional assault of monumental proportions by the Legislature, with executive approval, upon not only the very core of the highest and most sacred organic law of our land, but also upon one of the most precious values of our existence, the democracy that vests in us the right to decide, as a nation and as a people, by our votes, who should govern us.

By the decision today, my esteemed Colleagues of the majority of the Court have again chosen to ignore completely the effect of the Act in rendering irrelevant a number of core and revered fundamental rights accorded by the Constitution of Liberia to the people, including the right to assemble, to participate in the political process in choosing the political elective leadership of the nation, the right of equality and equal protection of the law, the right against discrimination, and the overriding of constitutional restrictions imposed on the Legislature in the exercise of powers granted that Body by the Constitution.

I am truly incensed by the Opinion of my majority Colleagues of this Court, because for all its trappings, it renegades the Constitution to the whims of men. Let me summarized what the Opinion of the majority means for the people and nation of Liberia:

(a) That the Article 11 provision of the Constitution that guarantees to all Liberians the equal protection of the law doesn't really accord and was never meant to accord equal protection to the people; that the equal protection applies to only certain Liberians and not to all Liberia; that under the constitutional grant of legislative power, the Legislature may prescribe that a conduct can and should apply to certain of the citizens of Liberia but that the Legislature can exempt the members of that body from the reach and application of the law; that the Legislature may declare a certain act to be criminal and therefore punishable by a penalty but that the act does not apply to legislators, which means that members of that body are free to commit a conduct, a crime under the law passed by the Legislature, but that members of that

body are free to commit that crime and be immune from being charged with or punished for the commission of that crime, so that the equal protection of the Constitution does not apply where the act being committed is done by a member of the legislature. This Court, by its decision today, turns Article 11 of the Constitution on its heel.

(b) The second thing the decision says is that the Article 7 and 8 provisions of the Constitution setting forth that there shall not be discrimination do not apply to laws passed by the Legislature and which specifically set forth that it will apply to other citizens but not to the Legislature, and that certain citizens can be singled out for discrimination simply because of the position which they hold; that members of the Legislature are incapable of committing any abuse of the public office but that members of the cabinet have such propensity and hence members of the Legislature should not and cannot be prohibited from abusing the public office. The decision ignores the basis for the takeover of the military but also the many accusations and even admission by members of the Legislature of the commission of the abuse of the public resources. See The Liberian Institute of Certified Public Accountants of *Liberia v. The Ministry of Finance, 38 LLR 657.*

(c) The third thing that the decision does is to take away from citizens the guarantee of the Constitution that all citizens have the right to freedom of association, to associate with any political party, to canvass for any political candidate or party, attend any meeting of any political party or candidate even if it is done with one's own time and with one's own personal resources, unless you are the President, Vice President, or a member of the Legislature, to donate funds or any other thing of value or non-value to a political party or candidate unless you are President, Vice president or a members of the Legislature or of the rank lower than a deputy minister or lower than a deputy managing director, or lower than the rank of deputy commissioner;

(d) The decision states that the Article 90 provision which says that the Code of Conduct shall apply to all Liberians does not really mean that it should be applicable to all Liberians and that the Legislature may pass an Act that overrides the provision and make the Code of Conduct applicable to only certain persons in the Government and not to others, as for example that the challenged provisions of the Code are not applicable to the President, the Vice President and to members of the Legislature, so that those persons are at liberty to violate the prohibitions of the Code in any manner they wish and that they cannot be accountable to the violation;

(e) The decision states that even though the Code was the outgrowth of an Executive Bill and the Government's highest prosecuting attorneys can appear before the court to defend its constitutionality, the same government personnel defending the constitutionality of the Act and who are covered by the Act and prohibited by the Act from engaging in the prohibited conduct can openly stand simultaneously indulge in violating the Act with impunity by participating in all of the activities prohibited by the Act without fear of any penalty and even with the open encouragement of the highest leadership in the Government, Legislative and Executive.

(f) The decision states that where the Constitution places a blanket prohibition on certain activities that includes the Legislature, the Legislature has the authority to override the Constitution and prevent the application of the constitutional prohibition to that Body or in the alternative to exempt that Body and its member, along with the President and the Vice President, from complying with the constitutional prohibition. On close examination, such act by the Court is tantamount to endorsing the Legislature amendment of the Constitution without submitting the amendment to a referendum by the people. If the Court feels that the legislature can do this to the Constitution, imagine what it will say the legislature can do to the people, as it has done in the instant case in prohibiting on certain citizens the right to associate with or participate in the political process for the determination of the nation leadership under the guise that it is designed to prevent the abuse of public resources but which excludes the Legislature and the approving executive from the ambit of such abuse of the public resources.

(g) The decision further states that although the Constitution vest the legislative powers of the republic in the Legislature, the supreme Court has the authority to exercise that legislative power, thus superseding or overriding the Constitution, both on the powers of the Supreme Court and on the separation of powers, so that even where the Legislature specifically state the categories of persons who are prohibited from certain acts, and excludes others, the Court can expand that list of persons by the inclusion of other persons who the Legislature clearly did not intend to cover, even if by such act the Court not only violates the Constitution but also the basic constitutional and statutory principle that what the law does not grant it withholds. Additionally, the act of the Court is tantamount to amending the Act passed by the Legislature.

(h) That the Supreme Court has the authority to prohibit the exercise of vital and fundamental rights granted by the Constitution, including the right to vote and to

determine by the voting franchise who the leadership of the country should be rather than who the people believe the leadership of the country should be, the Court believing that it can inflict such deprivation even in the absence of the declaration of any state of emergency, either by the President or by Act of the Legislature on request of the president.

(i) The decision of the majority also, while stating that the Act is constitutional, in effect endorse the action by the affected members of the Executive, apparently with executive approval, of the open violation of the Act by engaging in every conduct prohibited by the Act and incurring no sanction for the violation. While my position is that the challenged section of the Act is unconstitutional, for the position taken by the majority of the Court, the actions by the affected executive personnel renders contradiction in the position today taken by the Court, especially given the Court's further pronouncement that the acts of such executives are not susceptible to sanction, including that the "must resign" provision of the Act is not effective or enforceable.

(j) A reading of the Opinion leaves the impression also that the "geniuses of the Constitution", as the majority refers to the framers of that sacred document, did not mean what they said in the document or that they did not know what they were saying in the document, or that neither they nor the members of the Constitutional Advisory Assembly, which reviewed and endorsed the document, and indeed the entire Liberian people who adopted the document in a national referendum were incapable of appreciating or understanding what was said in the document and hence that they cannot know when the Legislature and the Supreme Court have transgressed the provisions contained in the document.

So, in the face of all that has been said above, where does that leave the Constitution since the decision of the majority members of this Court, both by the words used in the Opinion and by the content of the opinion, elevate the Legislature, a body created by the Constitution, to a level superior to the Constitution and similarly elevates the Supreme Court, also a body created by the Constitution, to a level superior to and above the Constitution. All that the majority feels they have to do in accomplishing that goal is to subject the Constitution and the Code of Conduct Act to what may be characterized a "judicial fiat". Indeed, the majority recognized the consequences of the decision made today, for they begin the Opinion by saying that "[w]e are equally not oblivious of the profound constitutional ramifications our answers thereto could have on the governance of the Republic". I fear that the decision today of the

majority will affect the very core of the national democratic sphere of the nation for generations to come; that it will trigger a process that debases and sets the Constitution on its head; and that it has the propensity to inflict immeasurable pains, sufferings and agonies upon the Liberian nation-state long after the current membership of the Court shall have departed this world. As my conscience will not allow me to be a part of a decision that leads to those paths, I am registering in the strongest terms my dissent from the decision.

The first focus of this dissent takes recourse to the premise upon which my esteemed Colleagues of the majority state forms the basis for their decision in support of the Legislature's vilification of the Constitution. It is important that this point is captured at the onset of this dissent because in the contextual view of the Court, it forms the crust for the Court's acquiescence of the deliberate legislative power grab, the outright and open discrimination couched in the Act to achieve that goal, and the design not only to violate provisions of the Constitution but to override core provisions of that sacred document. It is also important to encapsulate the Court's reliance because it highlights the encouragement which the Court today gives to the Legislature to embark upon similar ventures in the future until the nation's most sacred document is rendered meaningless. Here is how the majority conceptualized the powers of the Supreme Court:

"Our forebears have vested in the Supreme Court of Liberia the colossal power to determine the consistency with the Liberian Constitution of any Act of the Legislature, any treaty concluded by the Liberian State, Executive Order issued by the President of Liberia or any traditional custom or regulations; and to declare any such law the Supreme Court determines to be in conflict with the Constitution as "void and of no legal effect".

They then add:

"A careful reading of Article 2 of the Liberian Constitution (1986) highlights and decisively settles two major questions, amongst others: (1) the supremacy and fundamentality of the Constitution over and above any national or international governing instrument; and (2), the forbearers' grant to the Supreme Court of the sole authority to say that a law or an Act of the Legislature is offensive to the Liberian Constitution and that same therefore has no force of the law."

I do not dispute or disagree with the majority that the Constitution confers upon Supreme Court the constitutional power to determine whether an Act passed by the

Legislature is violative of the Constitution or not *[In re the Constitutionality of the Act of the legislature of Liberia Approved January 20, 1914, 2 LLR 157 (1914); In re The Constitutionality of Sections 12.5 and 12.6 of the Judiciary Law, Approved May 10, 1972, 24 LLR 37 (1975)];* and that where the Supreme Court finds that the Act does in fact violate the Constitution, that the Court has the authority to declare the Act unconstitutional, void and of no legal effect. *Kuyete v. Wardsworth and Sirleaf, 28 LLR 163 1979;*The Management of *B. A. O. v. Mulbah and Sikeley, 35 LLR 584 (1988).* Indeed, the Supreme Court has on manifold occasions acknowledged the constitutional investiture of that power upon the Court; and the Court, when it has had the judicial will, has not hesitated using that power, in the interest and preservation of the Constitution and the national good, and in upholding the democratic values of equality and justice enshrined in the Constitution, where an Act of the Legislature, on its face, so denigrates the Constitution or rights guaranteed by that sacred document, as the Code of Conduct Act of 2014 does in the instant case. The independence of the Judiciary and the preservation by it of the sacred constitutional instrument have been the bedrock upon which the national pride of our courts has rested in protecting and defending the Constitution, upholding our democracy and the rights conferred and guaranteed by the Constitution, as in the instant case, the right to political affiliation and vote, to decide who assumes the leadership of the Republic.

In the instant case, a close examination of the Code of Conduct will easily reveal that the Act deflates core provisions of the Constitution and the rights granted thereunder. Yet, the majority decides that because the Legislature is constitutionally vested with the power to legislate, it can therefore arbitrarily legislate away the rights of the people whilst its members, legislators, can exempt themselves from the application of the Act, a course done in defiance of the Constitution which clearly states that any of the prohibitions contained in the Act should be applicable to all public officials, whether elected or appointed. I do not believe that the framers of the Constitution intended such use of the legislative power or that the courts, including the Supreme Court, will accord their blessings to such utter violations. But more than that, the majority chose to ignore the basic elements of constitutional and legislative construction, which is that the courts have a legal obligation to take recourse, firstly, to the history of the Constitution or Act of the Legislature, or the specific provisions thereof, before they proceed to define that sacred document or Acts of the Liberian Legislature by unrelated foreign interpretations.

Let us therefore follow the acceptable constitutional path by resorting to the history of the provisions of the Constitution which they say vest powers in the Legislature to act as that body has acted in passing sections 5.1 and 5.2 of the Code of Conduct. This is important to fully contextualize how the constitutional provisions and the Act should be interpreted. Thus, even at the risk of repeating elements in my prior dissent in the Citizen Solidarity Council case, but as I believe I have a legal obligation to do, I take recourse to the history of the constitutional provisions upon which the challenged Section of the Code of Conduct Act of 2014 is said to be based, a course ignored by the Court. A recanting of this history, although disturbing and painful, is an important part of the nation's history and we cannot ignore it or pretend that it does not exist or never occurred, especially given that it forms the bedrock of the constitutional provision upon which the Legislature professed to have relied in enacting the Code of Conduct Act of 2014.

In 1980, the nation experienced its first military takeover in the one hundred and thirty-three years of the Republic's existence and the declaration of its independence on July 24, 1847. Upon the takeover by the military, the Body set up by it, the Peoples Redemption Council (PRC), announced that amongst the factors responsible for the military intervention were the abuse of public office by top government officials, the misuse of the national resources, especially for personal gains, and endemic corruption in the public sector and within the body politic, which had engulfed the nation. The evidence of this stance, the military ensured that the persons executed on charges of corruption and abuse of the public offices and resources were from all three of the branches of the government. Neither the legislature nor the Judiciary was exempt from the verdict of the military. The military made its views known and quite clear to the Body it set up to draft a new Constitution in replacement for the 1847 Constitution which it had declared abrogated upon the military assumption of state power. Thus, the framers of the new Constitution, the National Constitutional Commission, and the Constitutional Advisory Assembly, the Body set up to review the draft instrument, were fully aware of the position of the military. It was this history that went into the drafting of Article 90 of the Constitution by the national Constitutional Commission. Similarly, it was with that full knowledge of the history of the provision that the Constitutional Advisory Assembly decided to retain the Article 90 provision of the draft Constitution, and which was submitted to and adopted by the people of Liberia in a national referendum duly conducted. It was this instrument that became effective on January 6, 1986.

But in addition to the above, the framers of the Constitution, when they were framing Article 90 of the Constitution, were fully aware of the Articles 5, 7, 8, 11 and 17 provisions which they had earlier worked on when they decided upon Article 90. They knew that the Article 90 provision guaranteed and assured to all Liberians the equal protection of the law; they knew that they had couched in the earlier provisions that al Liberians were equal; that they were not just born equal, but that they could expect that they would be treated equally before the law, whatever that law was, and without discrimination. This was the reason that in Article 90, the framers emphasized that any Code of Conduct which was promulgated should accord to all Liberian that equality and that equal protection. This is why they were keen on providing that the law would be applicable to all Liberians, not just some Liberians. This is why they were even more precise in stating that the Code of Conduct would be applicable to both elected and appointed. They were aware that public officials of the Executive Branch were appointed by the President; they were aware that the government officials of the Legislature were elected by the people. They wanted to ensure that those elected, capable of the same and identical abuses of the public resources, would not promulgate laws on the Code of Conduct that would be applied only to appointed officials and not also to elected or legislative officials.

It was with all the foregoing background, coupled with the reasons and the rationale provided by the PRC for the overthrow of the Government and the execution of officials of all of the branches of the Government, that the framers sought to avoid the mishaps of the past and to ensure that any action taken in regard to the Code would apply to officials of all of the branches of the government, including even the Judiciary. Nowhere in the provision is mention made specifically of the Legislature and the Executive. Mention is made only of elected and appointed officials, thus covering all officials of the three branches of the Government. Thus, the Judiciary did not have to promulgate its own rules in order to be regulated by the Code, as envisioned by the framers of the Constitution. The Code, in the eyes of the framers of the Constitution, would regulate the conduct of all of the officials of the three branches of the Government.

This was the motivation that drove the command of the framers of the Constitution and specifically the Article 90 provision of the Constitution. It had nothing to do with the "extraordinary powers" which the Constitution granted to the Legislature, as wrongly pronounced by my majority colleagues. Properly and correctly interpreted, what the provision says is that in spite of any perceived "extraordinary powers" granted the Legislature, a special was being given that (a) the legislature will pass into

law a Code of Conduct Act and (b) that the Code of Conduct Act will apply to every Liberian public official of all of the branches of the Government. Thus, the Legislature, in spite of the perceived "extraordinary powers" did not have the option of deciding whether to follow one or none of the commands of Article 90. This was a compulsory command and every aspect of its was expected by the framers to be followed; and in spite of the fact that it took the Legislature more than twenty-eight (28) years to pass into law the Code of Conduct, in and of itself a further abuse of the Constitution, the Legislature was without a choice to make the Code not applicable to all Liberians. Any deviation, as was couched in the Code, making Sections 5.1 and 5.2 applicable only to members of the Executive, with the exclusion of the President and Vice President and their staff (and definitely by the exclusion of the legislators), rendered the Code, even without referencing the equal protection clause of the Constitution, discriminatory and hence unconstitutional.

Let us now focus on what precisely Article 90 of the Constitution states, so that there is no doubt as to its precise and unambiguous command to the Legislature. Here is what Article 90, appearing under Chapter XI (Miscellaneous) of that sacred document, states:

"Article 90

(a) No person, whether elected or appointed to any public office, shall engage in any other activity which shall be against public policy, or constitute conflict of interest.

(b) No person holding public office shall demand and receive any other perquisites, emoluments or benefits, directly or indirectly, on account of any duty required by Government.

(c) The Legislature shall, in pursuance of the above provision, prescribe a Code of Conduct for all public officials and employees, stipulating the acts which constitute conflict of interest or are against public policy, and the penalties for violation thereof."

As stated before but not elaborated on, there are a few concerns worth highlighting before we proceed to analysis of the Code itself. At the time the Constitution came into effect, there were a number of key provisions which the framers believed should operate alongside Article 90. The delegation to the Legislature of the power to enact laws was one of those key provisions. This was contained in Article 34. But, while Article 34 vested power in the Legislature to enact laws specific to certain activities of the society, including authority to enact the elections law [34(i)] and "to make all other

laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the Republic, or in any department or officer thereof", no specific reference was made to enacting a Code of Conduct. I do not dispute that the all catching provision of [34(l)] vests in the Legislature the power to make laws relative to the governance of the country. However, it is important to note that in the Article 34 provisions, the framers of the Constitution were very particular in stating core areas which the power covered; and while, believing that other areas may have been left out, and hence the general powers that were granted to the Legislature by Article 34(i), and by which one could deduce that the powers granted in the Article included the power to enact a Code of Conduct, the framers believed that it was important, given the emphasis placed by the military on a system that would prevent the misuse and abuse of the public office, the public trust, the public resources and other avenues of corruption, that the Code of Conduct mandate to the Legislature should be specifically set out in a different Chapter (XI) and a different provisions from the Article 34 provisions (Chapter V) as would emphasize the importance attached to the Code and to give direction as to what was expected to be addressed by the Code rather than leave it to speculation by the Legislature, the Executive or the general public.

Hence, in the context of constitutional and legislative construction, the emphasis must be placed on the tenets, intent, justification and history of Article 90 rather than on the tenets and speculative intent of Article 34. Indeed, this Court has said clearly that in interpreting the law, the court should put itself in the position of the framers of the law. The Testate Estate of the Late Frank ae. *Tolbert v. Gibson-Sonpon, 37 LLR 113 (1993).* Here is how in that case the Court framed the interpretative process of a constitution or statute:

"The various provisions of the Constitution must be construed reasonably to carry out the intention of the framers. It should not be construed to defeat the obvious intent of the framers. The intent should be gathered from both the letter and spirit of the document. The rule being that the written Constitution should be interpreted in the same spirit in which it was produced. The Court should put itself in the position of the men and women who drafted this instrument.**16 AM JUR. 2d.,***Constitutional Law, §* **64, pages 239-240.**

This Court must therefore put itself not only in the place of those individuals who drafted Article 97(a) of the Constitution but also in the place of even those persons who requested its drafting. Human beings consists of men and women with

conscience; therefore as human beings we have the capacity to reassess our doings and, in doing so, we can appreciate the gravity of our acts and the possible repercussion our actions may have upon us. We can imagine this was the position in which those who has anything to do with the inclusion of Article 97(a) in the Constitution found themselves and decided to do something about it.

In interpreting the Constitution, it is the duty of this Court to have recourse to the instrument to ascertain the true meaning of every particular provision. Every statement in the Constitution must be interpreted in the light of the entire document rather than a sequestered pronouncement. This is so because fundamental constitutional provisions are of equal importance and dignity. None of those provisions must be enforced so as to nullify or substantially impair the other. If there is an apparent discrepancy between different provisions, the court should harmonize them if possible. **16 AM JUR 2d.,***Constitutional Law, § 66,***page 242." Id.,**

Several years later, in the case *Garlawolu et al. v. Elections Commission et al., 41 LLR 377 (2003),* the Supreme Court reiterated its position on the principle of construction and interpretation of a constitutional or statutory provision. The Court, without dissent, speaking through Mr. Justice Morris, said:

"In determining this issue, this Court takes recourse to some of its earlier decisions on the construction and interpretation of provisions of the Constitution as guidance. In the case *The Estate of Frank E. Tolbert v. Gibson-Sonpon, 37 LLR 113 (1993),* this Court held that the Constitution should always be and that construed reasonably to carry out the intention of the framers, and should never be construed to defeat the obvious intent of the framers. We also held then that the intent should be gathered from both the letter and spirit of the document; that its provisions should be interpreted in the same spirit in which it was produced; and that in interpreting the Constitution, this Court should put itself in the position of the framers. It is important to note that in this same case, i.e. *The Estate of Frank E. Tolbert v. Gibson-Sonpon,* this Court further held that every provision of the Constitution must be interpreted in light of the entire document rather than a sequestered pronouncement, because every provision is of equal importance. We held that none of the provisions of the Constitution should be interpreted so as to nullify or substantially impair the other provisions and that even where there is apparent discrepancy between different provisions, the Court should harmonize them if possible. In a subsequent case, *The Liberia Institute of Certified Public Accountants v. The Ministry of Finance, et al., 38 LLR 657 (1998),* this Court reiterated that the fundamental principle of constitutional construction is that effect must be given

to the intent of the framers of that organic law and the people who adopted it. This Court also reiterated that constitutions are to be construed in the light of their purpose and should be given practical interpretation so that the plainly manifested purpose of those who created them may be carried out. This Court stated additionally that the intent of the Constitution must be gathered from both the letter and the spirit, the rule being that a written constitution is to be interpreted in the same spirit as it was produced. This Court then passed on the rule of determining the intent of the framers and those who adopted the Constitution by saying that to decipher the spirit and intent of the framers or authors of the Constitution, the entire instrument or document must be considered."

The position taken by the Supreme Court in those cases and many other cases decided earlier and subsequent thereto are not in disharmony. In the case *Shannon v. Liberia Trading Corporation, 23 LLR 66 (1974),* this is how the Court, speaking through Mr. Justice Horace, set out the modus of construction and interpretation of the law applicable to both the constitution and the statutes:

There are other principles to be observed in throwing light on legislative intent in the construction of statutes where the words of the statutes are of doubtful meaning. One such principle comes from consideration of the historical background of the statute.

"A presumption exists that historical facts in connection with the subject matter of an act were known to the legislature at the time of the adoption of the statute, and it is a general rule of interpretation, that where the language of a statute is obscure or of doubtful meaning, the court, in construing such statute, may with propriety refer to the history of the times when it was passed. Under this rule, it is proper to consider the attending conditions or circumstances at the time of the adoption of the law, including the social, economic, and governmental condition of the state or country. Indeed, it has sometimes been said that the first step in the application and interpretation of a statute is to consider the conditions existing prior to its adoption, and that the naming of words in a statute must be closely related to the circumstances of their use. The circumstances attending the adoption of an act may be adverted to, not because they will in any event warrant the court in construing the act differently from what the language imports, but because they enable the court to ascertain what was meant by the legislature where the language employed by it is ambiguous and of doubtful significance. Historical facts and significant circumstances leading up to the enactment of a statement may be noticed, not only in confirmation of the meaning

conveyed by the words used, but also to show that a literal interpretation of the words used is not the intended meaning." *Id., § 295.*

The policy of the State at the time of the legislative enactment is also to be considered in determining its intent. "In construing a law of doubtful meaning or application, the policy which induced its enactment, or which was designed to be promoted thereby, is a proper subject for consideration, where such policy is clearly apparent or can be legitimately ascertained. Indeed, the proper course in all cases is to adopt that sense of the words which promotes in the fullest manner the policy of the legislature in the enactment of the law and to avoid a construction which would alter or defeat that policy, where the construction in harmony with the policy is reasonably consistent with the language used. Even the literal meaning of the terms employed should not be suffered to defeat the manifest policy intended to be promoted."*Id., § 298.*

Another element to be considered in determining legislative intent is the mischief intended to be prevented or remedied by the statute enacted.

"In the construction of an ambiguous statute, it is proper to take into consideration the particular evils at which legislation is aimed, or the mischief sought to be avoided, that is, to the occasion and necessity for the law, or causes which induced its enactment, as well as the remedy intended to be afforded and the result to be attained, or the benefits expected to be derived, where these matters can be legitimately ascertained. Where possible, the statute should be given such a construction as, when practically applied, will tend to suppress the evil which the legislature intended to prohibit. Under these rules the tendency has been to so interpret the statute as to embrace all situations in which the mischief sought to be remedied is found to exist. It is also a general rule that a statute should not be extended by construction beyond the correction of the evils sought by it."*Id., § 305.*

It is proper also to take into consideration the injustice or unfairness a literal interpretation of a statute would cause.

"In the construction of a statute, considerations of what causes injustice may have potent influence. It is not to be supposed that the framers of a statute contemplated a violation of rules of natural justice, and it should not be presumed to have been within the legislative intent to enact a law having an unjust result. To the contrary, it is to be presumed that the legislature intended the law not to work an injustice. Accordingly, it is a general rule that where a statute is ambiguous in terms and fairly susceptible of two constructions, the injustice which may follow one construction or

the other may properly be considered, and the courts, to support their construction of a statute, frequently refer to the injustice thereof, or to the injustice which would result from a different construction of the law. Indeed, it is the duty of courts to render such an interpretation of the laws as will best subserve the ends of justice, in so far as this may be accomplished in accordance with well-established rules of statutory construction, and it is considered a reasonable and safe rule of construction to resolve any ambiguity in a statute in favor of a just or fair interpretation thereof, or in favor of such an interpretation as would promote and effectuate justice, and result in a fair application of the statute. A construction should be avoided which renders the statute unfair or unjust in its operation, where the language of the statute does not compel such a result. The terms employed by the legislature are not to receive an interpretation which conflicts with acknowledged principles of justice if another sense, consonant with those principles, can be given to them. Moreover, the fact that unjust results follow the literal application of the language of a statute justifies a search of the statute for further indications of legislative intent. On the ground that a technicality should not be permitted to override justice, the general intention of the legislature is generally held to control the strict letter of the statute where an adherence to the strict letter would lead to injustice. Under these rules . . . language employed may be restricted or expanded if necessary to avoid an injustice which would result from adhering strictly to such meaning. The general rule that words of a statute are to be construed in their ordinary acceptation and significance is applicable where it is not repugnant to acknowledged principles of justice." *Id., § 370.*

To date, all of the opinions referenced above have remained in full force and effect and constitute the guiding principle for the Supreme Court's interpretation of the Constitution. Recall has been made of any. The majority admits, although acting to the contrary, that a court, when interpreting a provision of the constitution or of a statute, must look to the totality of the Constitution or the Act, and that even but more importantly, the court must look at the intent of the framers. *The Intestate Estate of the late William J. M. Bowieret at. v. Williams et al., 40 LLR 84 (2000);Freeman and Wesseh v. Lewis et al., 40 LLR 103 (2000).* Yet, notwithstanding the recognition of that core constitutional doctrine, the majority colleagues of the Court decided to turn a blind eye and to completely ignore this cardinal constitutional principle of law, adhered to by the Supreme Court since the inception of the Republic. I suggest, therefore, that my colleagues of the majority are clearly wrong in relying on the general and broad provisions of Article 34, as opposed to a careful examination of Article 90 and the

historical context of the development of the provisions of that Article, as would probe into the intent of the framers.

The Court also chose to ignore the further constitutional and statutory principle, enunciated in many of its decided cases that in the interpretation of a provision of the Constitution or a statute where the one provision is of a general nature and the other provision, although in a different document or at a different section or chapter of the same instrument, but dealing with a similar matter, is more specific, the more specific provision prevails as opposed to the general, for it is that specific provision that gives clarity to the intent of the framers of the instrument. See *Neufville v. Diggs et al., 19 LLR 389 (1970)* which states the basic principle although in relation to a previous statute.

There is a second point worth noting in dealing with either the Code or the Article 34 powers granted to the Legislature. A careful reading of other provisions of the Constitution clearly leaves the unmistakable impression that the framers never intended that the powers granted the Legislature did not have bounds or limits to them. This is why in the many cases which this Court has decided in regard to how the Legislature exercised its powers, including the power of contempt, oversight and removal, the Court has decided that the exercise of those powers has limits. Some of those limits include the right of a person appearing before the Legislature to due process of law. Thus, while for example, the Legislature is granted the power of contempt, this Court has said that the use of that power is restrained by the due process of law provisions of the Constitution. The due process of law provisions of the Constitution set out that no persons shall be deprived of the life, liberty, property, privilege, security of the person or any other right but by the due process of law. Hence, while the power is constitutionally recognized in the Legislature to hold a person in contempt of that Body, this Court has also recognized that the exercise of that power is subject to the provision on due process and that when the exercise of the power is done without the due process of law, this Court has reversed the action or decision of the Legislature as clearly violative of the Constitution. *[See Snowe v.Some Members of the House of Representatives, Supreme Court Opinion, October Term, A. D. 2006; Broh v.The Honourable House of Representatives, Supreme Court Opinion, October Term, A. D. 2013; Grace Kpaan v.The Honourable House of Representatives, Supreme Court Opinion, October Term, A. D. 2015, etc.]*

But let us take this further scenario. The majority states that by virtue of the grant under Article 34 to the Legislature to "enact the elections law", which is of a

derivative constitutional nature, and the grant under Article 77(b) to the Legislature to make "laws indicating the category of Liberians who shall not form or become members of political parties", notwithstanding the constitutional proclamation that "the right to be registered as a voter and to vote in public elections", the Constitution clearly grants "extraordinary powers to the Legislature to legislate as to the form and nature political participation and involvement may be permitted to various categories of Liberian citizenry." They then add: Notwithstanding the constitutional right granted to every citizen of age to register and to vote in public elections and referenda, the Legislature has been concurrently directed by the writers of the Constitution to make laws which may properly exclude some citizens from voting." That kind of sweeping pronouncement by the Court means, for example, that the Legislature may pass an Act stating that women are not entitled to or eligible to vote and hence should be excluded from voting. That Act, under the Court's pronouncement, could not be questioned because (a) the Legislature is vested with the constitutional authority to "enact the elections law", and (b) the Legislature has "extraordinary powers to legislate as to the form and nature of political participation and involvement for various categories of Liberian citizenry" and "to make laws which may properly exclude some citizens." It doesn't matter to my majority colleagues that the legislative prohibition of the citizen's right is utterly discriminatory, or that it openly violates other provisions of the Constitution, or that it ignores the restraints placed upon the Legislature by the Constitution not to exceed the bounds of the power and authority granted it by the Constitution, or that the action itself seems to take on the posture of superseding the Constitution itself and giving the impression that the Legislature which is created by the Constitution is greater than the Constitution. When that kind of approach to the law takes roots, then the nation and the people are in serious danger.

Having set out the premise and evoked the constitutional history for the interpretation of Article 90, let us now dissect and examine not just the scope but what Article 90 really says, both in the face of the constitutional history provided above and actual wording of the provision, but the clear content of the of the Article. Sub-section of the Article states in the clearest terms the persons to whom it should apply. It sets out that "No person, whether elected or appointed to any public office, shall engage in any other activity which shall be against public policy, or constitute conflict of interest." The sub-section draws no distinction between or amongst public officials. Indeed, it specifically includes both elected and appointed officials. Nowhere in the sub-section does it state or imply, therefore, that the President, the Vice-

President or Members of the Legislature are excluded from its coverage. Hence, none of those officials, the same as any other public officials, are to engage in any conduct that is against public policy or which could be characterized as conflict of interest. By the clear wording of the provision, the only interpretation that can be given is that it was intended to apply to and affect all public officials and every level of the government. In fact, given the action taken by the military People's Redemption Council Government against only the higher echelon of the public sector, spanning the executive, the Legislature and the Judiciary, the prudent interpretation of the sub-section is that it was intended primarily to prohibit corruption and conflict of interest at the highest echelon of the Governmental machinery of all three branches of the Government. I am of the strong view that in the wake of the clear and unambiguous reach of this constitutional provision, the Legislature is without a choice to determine that only certain persons will be affected by any Act passed by it in furtherance of the mandate given to it to effectuate the provision or that its members are excluded from the reach of the provision. Such action by the Legislature, and the endorsement by the Executive, clearly borders on what is tantamount to an amendment of the Constitution, which neither of those Bodies has the authority to do without first submitting the proposed amendment for national endorsement through a properly organized national referendum.

Further, as a means of strengthening the corruption and conflict of interest prohibition of sub-section (a) of the Article, sub-section (b) states in even more precise terms that: "No person holding public office shall demand and receive any other perquisites, emoluments or benefits, directly or indirectly, on account of any duty required by Government." Again, nowhere in the sub-section does it exempt the President, Vice President, or members of the Legislature from the application of the provision. The correct and proper interpretation then is that the sub-section was intended to be applicable to every public official, not just officials holding subordinate positions.

It was in regard to the above that sub-section (c) then mandated the Legislature to prescribe a Code of Conduct *for all public officials and employees, stipulating the acts which constitute conflict of interest or are against public policy, and the penalties for violation thereof."*

Yet, and in spite of the clear wording of the law, the Legislature, after a delay of more than twenty-eight years without executing this constitutional mandate, finally passed an Act purportedly in fulfillment of the mandate given by Article 90 to effectuate the provisions of the Article. However, judicial notice must be taken of the public

historical fact that some of the most prominent members of the Legislature, prior to the passage of the Code of Conduct Act and even subsequent to the passage of the Act, publicly stated that the Legislative Body was determined that the next president of Liberia must or should come from the Legislature. This recognition is important because it shows the mindset of the Legislature when they passed the Code of Conduct Act of 2014, and accounts for the baseless and illegal discrimination contained in the Act which restricts the application of the Act regarding the abuse of the public resources such that it excludes the President, Vice President and Members of the Legislature. All of these were however ignored by the majority Opinion in deciding that the Legislature has the authority under Article 90 to discriminate and exclude their members from the ambit of the Act, and that the Liberian Constitution is meaningless in its restriction of abuses of the public resources.

We are told by our majority colleagues that the Code of Conduct was enacted by the Legislature, using their wisdom, in the supreme interest of the Liberian people to protect the resources from abuse by public officials and to create a plain level political field for all contesting candidates. My colleagues of the majority must have different definitions as to what is a plain level political field and what protection of the resources from public abuse. What is plain level about the Legislature passing an Act stating that certain members of the society, because they hold certain public offices, should be prohibited from any political activity, because those officials have access to the public resources and could use those public resources for their personal benefit, but that the President, Vice President, members of the Legislature, and other executive officials who are below the rank of deputy ministers, all of whom are public officials in the true sense of the word and who similarly have access to the public resources, are exempt from such prohibition, when the Constitution clearly states that it includes all officials, elected and appointed, who have access to public resources. Who or what instrument vested authority in the Legislature to determine that they have the authority to change the plain and unambiguous words of the Constitution such that they restrict the application of the Constitution and exempt themselves or certain other officials from the constitutional application. Yet, our esteemed colleagues of the majority of the Court state that: "*The State represented by the Liberian Government has a public policy interest to ensure that persons in public positions are prohibited from using their offices and resources allotted to public institutions.* Sections 5.1 and 5.2 of the Code of Conduct are aimed to strengthening competitive politics and the creation of leveled playing field for all candidates." I am prompted, firstly, to ask the question "are members of the Legislature, the President and Vice President and their respective

staffs, and members of the Government below the ranks of deputy cabinet ministers and deputy managing directors, etc. not holding public positions since the majority state that the public policy interest behind the passage of sections 5.1 and 5.2 of the Code of Conduct is to "ensure that persons in public positions are prohibited from using their offices and resources allotted to public institutions." It seems that by this new definition stipulated by the Court, the positions of the presidency, the vice presidency, membership of the House of Representatives or the House of Senate, or of lower ranks than deputy ministers and deputy managing directors are not public positions. If those positions are not public positions, then what are they; how are they characterized; by what right then do they have access to the public resources; and what protection is there in place to ensure that these persons, who, in the eyes of the majority, are not holding public positions, against the abuse of the public resources?

Secondly, what is level or politically competitive about a situation in which the Legislature decides that members of that body, along with their staff, and the president and vice president, along with their staff, and members of the executive below the rank of deputy cabinet ministers, and other public functionaries of similar ranks are free to avail themselves of and use the public resources as they wish or deem expedient for the political promotions to elective public offices, but that persons named in the Act are forbidden from similar behavior? Unless, as the majority seems to state the persons exempted from the prohibition do not hold public positions. Thus, under the theory and rationale used by my majority colleagues, where a member of the cabinet is assigned a vehicle, the same as a Legislator; that the member of the cabinet has a staff, the same as a member of the Legislature; that the member of the cabinet receives fuel for use on the public mission or as a consequence of the office held by him or her, the same as a legislator, the cabinet member, under sections 5.1 and 5.2 of the Code of Conduct is prohibited from indulging in any political activity, including even the right to vote for that in and of itself is a political activity, or from seeking any elective political office, because under the definition of the majority the cabinet member is a public official but the member of the Legislature and other subordinate officials of the cabinet below the rank of deputy cabinet minister are not public officials. My majority colleagues subscribe to the rationale advanced by the respondents that the selective and discriminatory prohibition is justified because the Legislature wants to preserve the public resources from abuse and cabinet ministers and the other persons specifically signaled out by the Act are the public officials who are a threat to the natural and other public resources but that legislators, the president and vice president and their respective staff, who have access to even wider public

resources, can never be a threat to such public resources. Both the history of Article 90 and the thrust of the Article defy such conclusion. Yet, this is what, under the definition of the majority opinion, is ascribe to the term "leveled plain field" and "competitive politics". When did "leveled plain field" and "competitive politics" become the umbrellas under outright discrimination and the desecration of the nation's most sacred document can be justified.

Accordingly, I am of the considered view, contrary to that held by the majority colleagues, that the Legislature, in enacting sections 5.1 and 5.2 of the Code of Conduct, did not act "in performance of its duty imposed under Article 90(c) of the Constitution" and I believe that in including sections 5.1 and 5.2 in the Act, the Legislature did not intend "to enhance the national fight against acts of conflict of interest and to prohibit and undermine engagement in conduct which tends to result in the abuse of public trust." Certainly, the Act does not evidence a people (the Legislature) seeking to discourage the abuse of the public resources; rather, it shows that the Legislature sees itself not as a people subservient to the organic law (the Constitution) but instead as a people (the Legislature) above the law and to whom the law does not apply, determined to perpetuate that goal by insertion in the Code of Conduct Act provisions which they know to be in violation of the organic law of the nation. It is unfortunate that my majority colleagues were persuaded to endorse such a course that runs so patently against the nation's sacred instrument that gave the Supreme Court its very existence.

Furthermore, I believe that my majority colleagues, in deciding as they did, missed an appreciation of the full range of the Act. The Act doesn't just preclude the use of the public resources by certain Executive Branch appointees; instead, it deliberately deprives them of every political and social guarantee under the Constitution—from the right to assemble and consult, including the right to meet with their political representatives on the common good of the nation; to the right of association, including with political parties; to the right of free speech and expression, including the right to question or subscribe to a political ideology of a candidate for public elective office; to the right of equality under the law, equal protection of the law and equal opportunities under the law; to the right to be registered as a voter and to vote for the political candidate of one's choosing; to the right to canvass for a political party or candidate, including expressing a preference for a particular party and candidate; to the right to contribute funds to a political endeavor, party or candidate—unless they resign their appointed positions.

A close examination of the challenged provisions [sections 5.1 and 5.2 of the Code of Conduct] reveal not only that all of the foregoing rights are discriminatorily prohibited and limited to only certain select officials or positions but excludes other officials [the President, Vice President, Members of the Legislature, Assistant cabinet ministers and below, etc.]. The scrutiny reveals also, for example, that a member of the President's cabinet cannot even walk to a political meeting, express support outside of his or her official office for a preferred political candidate, make a donation of his or her own funds (salary or others) no matter how small (like a dollar), or cannot wear a tee-shirt on a non-working day (as Sunday), bought with his or her own money, showing support for a particular political candidate. This is how far-reaching the Act goes.

Thus, while I fully subscribe to the tenet that public officials should not be allowed to use the public resources for their personal gains, political or otherwise, I also believe that the Act goes far beyond the mere attempt to prevent or minimize the use of the public resources by certain public officials of the Executive Branch. Yet, and in spite of all of the foregoing revelations, my colleagues of the majority tell us that the sole intent of the challenged sections is to preserve the public resources from abuse by public officials; that abuse of the public resources, the majority says, does not extend to members of the Legislature and that the Legislature has the right, by virtue of the "extraordinary" powers vested in that body by the Constitution, to exclude their members from the reach of the challenged provisions. That approach turns a blind eye to the many open and public reports of abuses of the public resources by members of all of the branches of the Government. It clearly was not the intent of the framers of the Constitution when they set the guidelines which the Legislature was mandated to follow in designing a Code of Conduct for public officials and employees. The history of the Article 90 provision of the Constitution, as shown earlier, clearly debunks the notion that the Legislature had the authority, by virtue of the "extraordinary" powers granted that body to alter the mandate of the Constitution or to effectively alter the provision of the Constitution.

Moreover, using the rationale of the majority, if the Judiciary did not have the zeal or the commitment to regulate itself by a Code of Ethics, its officials would similarly have the right to indulge in political activities, and to the exclusion of the persons or positions selectively targeted by the Act, but particularly since the Code of Conduct does not include officials of the Judiciary.

Yet, and in spite of all of the above, my majority colleagues would have us believe that the framers of our Constitution intended that the Legislature would or could amend

the guidelines and the mandate laid in that sacred document to exclude themselves and certain other unidentified persons and positions, and thereby breach the core tenets of constitutionalism. The Legislature is vested with no such power, whether under Article 90 or under the claim by the Court of vested legislative "extraordinary powers".

But even more alarming and troubling is that the majority colleagues of the Court, following the same logic attributed to the Legislature's action, tell us further that although the Code of Conduct Act restricts the persons and/or positions to whom the Act applies, the Court, in its wisdom, believed that it is vested with the authority to effectively amend the Act to include persons and positions not covered by the Act because if it stock to the limitations placed in the Act, the Act would not meet the constitutional test and hence would have to be declared unconstitutional, ignoring the fact that by expanding the coverage of the Act the Court was in fact amending the Act and thus legislating, an action which is forbidden by the Constitution, statutes and even the case law of this jurisdiction. Goodman Shipping and Stevedoring Corporation v. National Port Authority, 37 LLR 505 (1994) When the Legislature has passed an Act which specifically states that the coverage of the Act is confined to a certain category of persons or positions, this Court has said that it is not the province of the Court to alter the Act by rationalizing that the Legislature could not have intended to limit the coverage of the Act, and that the Court could therefore expand the coverage of the Act to include persons deliberately and intentionally left out. *The Liberia Water and Sewer Corporation v. Kollie and Kpanan, 37 LLR 239 (1993); Kartoe and Williams v. Inter-Con Security Systems Inc., 38 LLR 414 (1997). The Court eloquently articulated the position in the case Kartoe and Williams v. Inter-Com Security System, Inc., 38 LLR 414 (1997)* when, quoting from the *case Roberts v. Roberts, 7 LLR 358 (1942),* it said:

Mr. Justice Tubman, speaking for the Court in 1942, in the case *Roberts v. Roberts*, said: "The courts have no legislative powers and in the interpretation and construction of statutes, their sole function is to determine, and within the constitutional limits of the legislative power, to give effect to the intention of the Legislature. They cannot read into a statute something that is not within the manifest intention of the Legislature as gathered from the statute itself. To depart from the meaning expressed by the words is to alter the statute, to legislate and not to interpret. If the true construction will be followed with harsh consequences, it cannot influence the courts in administering the law. The responsibility for the justice or wisdom of legislation rests with the

Legislature and it is the province of the courts to construe, not to make the law." *Roberts and Roberts v. Roberts, 7 LLR 358 (1942)."*

I reiterate, in accord with the above sentiments expressed by the Supreme Court, the same as the Supreme Court has said on manifold other occasions thereafter, that it is not the prerogative of the Court to probe into the wisdom of legislative enactment or to replace its views for those of the Legislature, or to substitute its wisdom for that of the Legislature, no matter how it may feel about the Act. *Harris v. Harris and Williams, 9 LLR 344 (1949);Cooper and Gleonder v. Bailey and Lansana, 31 LLR 366 (1983)* Any modification, change, alteration or amendment to the Act is strictly within the prerogative of the Legislature and that where they fail or refuse to make such amendment, unless the Act is found by the Court to be unconstitutional, it is for the people to override the amendment by a constitutional referendum or a change in the Legislature by removal of the members of the Legislature by the elective process or to the patriotism of the people. *The Liberia Water and Sewer Corporation v. Kollie and Kpanan, 37 LLR 239 (1993).* The Supreme Court has declared that to do any of the foregoing is ultra vires, illegal and void ab initio. *Firestone Plantations Company v. Paye and Barbar and Sons, 41 LLR 12 (2002)* It has never been the prerogative of the Court, and the Court has never decided that it has the power, constitutional or otherwise, to amend any Act of the Legislature so that it would not have to declare the Act unconstitutional. In fact, the Opinions of the Supreme Court are replete with the principle and pronouncements of the Court that it is without the power to legislate or extrapolate legislative intent beyond the plain meaning of the statute. *Meridien BIAO Bank Liberia Limited v. Maha Industries Incorporated et al., 40 LLR 774 (2000); Vijayaraman and Williams v. the Management of Xoanon Liberia (Ltd.), 42 LLR 41 (2004); The International Trust Company of Liberia v. Doumouyah et al., 36 LLR 358 (1989); Doe et al. v. Randolph, 35 LLR 724 (1988); Wilson v. Firestone Plantations Company and the Board of General Appeals, 34 LLR 134 (1986); The Original African Hebrew Israelite v. Lewis and Lewis, 32 LLR 3 (1984). Even in the explosive case of Al-Boley and Sluwar v. The Proposed Unity Party, 33 LLR 309 (1985),* the Supreme Court held that "[c]ourts of justice do not enact laws; nor do they have the right to say what laws should have been enacted. They are only to interpret the laws enacted by the Legislature." See also *Kasaykro Corporation v. Stewart and Winter Reisner and Company, 30 LLR 164 (1982).*

Yet, and in spite of those strong unchallenged pronouncements made by the Supreme Court in the referenced cases and in more recent cases, none of which has to date been overturned or recalled, the majority of the Court today has ventured into new territory, where they while effectively admitting that the Act, on its face, violates the

Constitution, but reasoning that as the Legislature did not intend what the Act said, and that in such a case the Court can vary or amend the provision of the Act to alter the words and intent of the Act, can without the word "amend" actually amend the Act of or enlarge or expand the restrictive sphere of listing of the affected positions stated in the Act. The Court cannot impute to the Legislature words that the Legislature which that Body did not deem fit to state in the Act; it cannot expand the coverage of the Act beyond what the Legislature had prescribe; and it certainly cannot by its expansion of the coverage of the Act amend the Act and hide under the clot of foreign laws when the Liberian laws are quite to the contrary.

The Liberian Constitution is not only differently structured, but while some of its provisions are similar to a few provisions of the Constitution of the United States of America, account must be taken of the historical facts that the provisions of the Liberian Constitution are premised upon a completely different circumstances, experiences and motivations. Hence, the Court must rely on those historical experiences and not seek recourse to what the Courts of the United States have said, especially when doing so runs contrary to what the Liberian Supreme Court has held for more than a century. And while the Legislature has the constitutional authority to confer such powers as it deems fit on the Liberian courts, as long as the conferral does not contravene the Constitution, and the Legislature has done that conferral by the General Construction Law (Reception Statute), that law does not grant to the Liberian courts, including the Supreme Court, the right or the authority to rely on the decisional laws of the United States in preference to the decisional laws of Liberia or in contrast to what the Liberian Supreme Court has decided. Today, my majority colleagues of the Supreme Court have done just that, and I submit that the action does not only violate the General Construction Law but is also in clear violation of the Liberian Constitution.

But the Supreme Court has also consistently, more than just stating that it has no authority to legislate, made it clear that it is not for the Court to probe into the wisdom of any Act of the Legislature and that such "wisdom probing" is vested only in the people. In the case *Woewiyu and Harvey v. The International Trust Company of Liberia, 38 LLR 568 (1998),* and in other cases that "it is not the authority or business of [the Supreme Court , or any of the subordinate courts for that matter, to be concerned with whether a legislation is wise, unwise, oppressive, democratic or undemocratic. Such is the province of the Legislature. "*Id., at 580.* In the instant case, the Code of Conduct Act is not just harsh, unwise, unreasonable, oppressive or undemocratic, which the Supreme Court has said is not of concern to the Court, it is

on its very face and by its plain and unmistakable language, unconstitutional; and in such a case the Court is without the authority to seek to rationalize, restate how the Court believes it should have been stated in the first place, attempt to supply wisdom to it by altering the wording of the Act.

The majority colleagues of the Court admits that the Act goes far beyond a matter of questionable wisdom; that it goes to the core of the Constitution; and that it is a matter of grave concern in regard to its infringement of the Constitution. This is how the majority of the Court puts it:

"The core issue now confronting this Court is two-fold: whether Section 5.2 of the Code of Conduct Act, by naming some public officials appointed by the President pursuant to Article 56 (a) of the Constitution and excluding others similarly expressly under the same constitutional provision, discriminates; and if determined as such, whether such discrimination renders the Code of Conduct Act unconstitutional.

This Court accepts that the language of Section 5.2 of the Code of Conduct Act suffers grave language and legal deficit. We concur that the language of Section 5.2 of the Code of Conduct Act is troubling. This, notwithstanding, the equally vital question is whether this deficit of the Code of Conduct Act justifies it being declared as unconstitutional? Petitioner has vehemently urged us to declare the Code of Conduct Act outrightly unconstitutional.

We reject this call outrightly. A long held constitutional principle of law which has consistently guided this Court inhibits us from making such a declaration but with utmost deliberation. *Citizen Solidarity Council v. The Government of Liberia*, Supreme Court Opinion, March Term, delivered June 27, A.D, 2016.

In the case cited, Mr. Chief Justice Francis S. Korkpor, Sr., referring to an earlier Opinion of this Court, Bryant et al. versus Republic, reported in 6 LLR 128 (1937), a similar request was made. The Court was called to declare an Act of the Legislature unconstitutional. Rejecting the call, this is what the Court said:

"… we should here state that while it is an axiomatic principle of the American system of constitutional law which has been incorporated into the body of our laws that the courts have inherent authority to determine whether such laws are not constitutional, courts in exercising this authority should give most careful consideration to questions involving the interpretation and application of the Constitution, and approach constitutional questions with great deliberation exercising their power in this respect with greatest possible caution and even reluctance, and

they should never declare a statute void unless its invalidity is, in their judgment, beyond doubt and it has been held that to justify a court in pronouncing a legislative act unconstitutional, the court must be so clear as to be free from doubt, and the conflict of the statute with the Constitution must be irreconcilable. It is a decent respect to the wisdom, the integrity and the patriotism of the legislative body by which all laws are passed to presume in favor of the validity of the law until the contrary is shown beyond reasonable doubt. Therefore in no doubtful case will the Judiciary pronounce a legislative act to be contrary to the Constitution. To doubt the Constitutionality of a law is to resolve the doubt in favor of the constitutional validity."

Guided by this principle, is the "exclusion" made in the Code of Conduct Act of certain Article 56 (a) presidential appointees from the prior resignation as an eligibility requirement to contest in public elections, irreconcilable with the Constitution?

We do not think so. Unless upon critical examination this Court is convinced beyond any shred of uncertainty that an Act of the Legislature is patently in conflict with the constitution, this Court must refrain from making such declaration."

A close examination of the quoted portion of the Opinion of the majority readily reveals an admission that the Act has a serious problem. The majority not only refers to the challenged provision as suffering from "grave language and legal deficit", but state that they concur with the petitioner that "the language of section 5.2 of the Code of Conduct is troubling." Yet, and not-withstanding the admission that the Act is discriminatory, characterized as "grave language and legal deficit", the majority colleagues assert that they have the authority not to declare the unconstitutional challenged provisions of the Act as unconstitutional because, as the Court puts it, the discriminatory provision affecting only select presidential appointees can be reconciled with the Constitution. This approach to constitutionalism is not only a new phenomenon which I submit renegades the Article 2 provision of the Constitution, but is made the basis upon which the Court then deliberately proceeds to legislate, holding that even though the Legislature specifically set out in the Code of Conduct that the Act covers only certain persons and certain positions, the Court would expand the list to include every government official within the Executive Branch of the Government. Indeed, the Court does not shy away from admitting that it was expanding the list, but it seeks justification or reliance for its action upon a deliberate misreading of this Court's past opinions that the Court is reluctant to declare Acts of the Legislature unconstitutional and that where it is possible to find alternative

avenues to declaring an Act of the Legislature, the Court will pursue such alternative avenue, leaving out the more cardinal pronouncement of this Court that when the Act is unconstitutional, the Court will not hesitate to make a declaration of unconstitutionality.

I do not deny that the Court has stated in several of its Opinions that the Court will not, in appropriate cases, opt for a declaration of unconstitutionality of an Act of the Legislature where the goals sought by the Act can be achieved without resorting to a declaration of unconstitutionality. *Weasua Air transport Company Ltd. v. The Ministry of Labour, 40 LLR 225 (2000).* However, in all of those cases, the Court has said that the Act must not be so blatantly violative of the Constitution, as we have in the instant case, or promotes such extensive injustice as is manifested in the Code of Conduct Act. In all of such instances, the Court has declared the specific provision of the Act unconstitutional.

I believe that it is on account of the foregoing that the public officials identified by the Act have determined to act in disobedience of the Act and to openly defy the Act. It is also no secret that some of the highest placed officials of the Executive are not only members of political parties, but that they campaigned for and were elected as officials of political parties even though the Act bans them from such conduct. Indeed, it is a matter of the public notice that even the highest state prosecuting agent, who at the same time of appearing in court to defend the constitutionality of the Act was attending upon political leadership election and political strategies. This clearly brings into question the commitment to enactment of a Code of Conduct that is meaningful and enforceable.

But the Act generates even more confusion not just by depriving a great segment of the population of the right to participate in the political process (canvassing, campaigning, support of political candidates, registering to vote, voting, etc.), but also by requiring that a person who is an official of the Executive Government, must look into the future and determine whether two or three years later, he or she may develop political ambition, seek to participate in the political process, or seek political public elective office. The Act disregards the reality that no one can readily predict the future political process or course since the choice of whether to participate in a political process is dependent on how events unfold. To tell such a person who may at the moment have no political inclination that unless you predict that you will develop such inclination in the future, you will be barred from participating in the process is nonsensical and utterly illegal. Such a course further defies the Elections Law which

not only does not impose any such requirement, but which sets completely different requirements for participation in the political elective process. Yet, the majority seemed to have deliberately determined to ignore the inconsistency between the Code and the Elections Law or to even explore the possibility of reconciliation, especially where the Code on its face is in contravention of the Constitution.

Given all of the foregoing, my majority Colleagues today still tell us that the Liberian Constitution is the highest law of the land and that there can be no other law, statutory, case or common that can compete with the dictates, directives and mandates of that sacred document; but that notwithstanding that proclamation, the Legislature, a Body sworn to respect the Constitution, has the authority to disagree with the Constitution and to decide to the contrary, in utter defiance of the Constitution, the same as the Court today has done in legislating or amending an Act of the Legislature by its expansion of the persons or position covered by the Code of Conduct Act.

The Court also seeks further to justify the view expressed by taking recourse to several provisions of the Constitution. "It is appropriate" the Court states, "to do a further reading and more elaborate examination of various provisions of the Liberian Constitution, particularly the powers each of those provisions vests in the Legislature" which the Court enumerates as:

(A) Chapter V, Article 34 (i) of the Liberian Constitution (1986) empowers the Legislature to "enact the elections laws";

(B) Chapter XI, Article 90 prohibits to the effect that "(a) No person, whether elected or appointed to any public office, shall engage in any other activity which shall be against public policy, or constitute conflict of interest."; that "(b) No person holding public office shall demand and receive any other perquisites, emoluments or benefits, directly or indirectly, on account of any duty required by Government."; and the Lawmakers were ordered by specific constitutional language provided under section (c) of Article 90 as follows: "The Legislature shall, in pursuance of the above provision, prescribe a Code of Conduct for all public officials and employees, stipulating the acts which constitute conflict of interest or are against public policy and the penalties for violation thereof; and,

(C) Chapter V, Article 34 (L), commonly accepted as the "Necessary and Proper" Clause of the Liberian Constitution empowers the Lawmakers, which may not have been unfolded by the national circumstances of the time, "to make all other laws

which shall be necessary and proper for carrying into execution …. all other powers vested by this Constitution in the Government of the Republic, or in any department or officer thereof."

The Court then concludes:

"A scrupulous review of the Liberian Constitution leaves no shred of uncertainty that the geniuses of the Constitution intended to and clearly granted extraordinary powers to the Legislature to make laws regulating matters of public elections and referenda. These include the authority to set eligibility requirements for candidates as the Legislature may deem compelling to further overriding State interest and to enhance public policy objective. To propose that the Legislature is prohibited from conscripting new and additional eligibility requirements for candidates vying for public offices, or that the Legislature, by inclusion of Section 5.2 in the Code of Conduct Act, amended the Constitution, is simply ludicrous.

This Court wonders how a rational mind could conceive the argument mounted by the petitioner in the light of the broad authority and powers our forbearers and the crafters of the Constitution have vested in the Legislature.

The Legislature acted properly in exercise of these powers and authority by inclusion of the prior resignation eligibility requirement sanguine in their belief that Sections 5.1 and 5.2 were compelling necessity to ensuring curtailment of wanton abuse of public resources and misuse of official positions to acquire undue advantage. We have found no law upon which we could rely in questioning this legislative wisdom. We hold that an Act of the Legislature does not violate the constitution so long the Statute neither enlarges nor contracts specifically constitutionally protect-ted and designated rights. The conduct of the Legislature, to pre-scribe additional right or to set new eligibility requirements so as to enhance compelling State interest and to prevent waste of public resources, is a proper exercise of legislative authority. This Court declines to strike down any such legislation as unconstitutional."

I am taken aback not only at the Court's misreading of the Constitution, but even more troubling is its reference to powers which the majority state the Constitution confers on the legislature, quite contrary to the provisions and the intent of the provisions referred to. Let me make is abundantly clear that the "geniuses" of the Constitution, as the majority has chosen to characterize the framers of the Constitution, that there would be an unfettered, uncontrolled and unreasonable exercise of the powers conferred on the Legislature by the Constitution. If that were

the case, as the majority seems to infer by the sweeping statements made in the Opinion and referenced above, then what is the essence or utility of Article 2 of the Constitution which vests in the Supreme Court the power to declare any Act of the Legislature, inconsistent with the Constitution unconstitutional and void. Indeed, it was the recognition of the geniuses of the Constitution that the legislature did not have uncontrolled and unlimited powers by the grants made to that Body under the Constitution, that they vested in the Supreme Court the power and the authority to declared as unconstitutional and void Act passed by the Legislature when that Body exceeds the powers granted it and contemplated by the Constitution.

The Court's Opinion generates a further confusion by failing to distinguish between the Code of Conduct and the Elections Law. It states that the constitution grants to the Legislature the power to promulgate the Elections Law. I do not believe that anyone disputes that fact. However, the Code is not the Elections Law, it is the Code of Conduct of all public official and employees of the Government. The fact that the legislature confuses the code with the Elections Law provides no justification for the Court to indulge similarly in that confusion, for much more is expected of the Court. I am of the strong view that in such a case, where the Code is in conflict with the Elections Law, that the Elections Law supersedes the Code in respect of the conflict. This is a basic constitutional law principle, where the general succumbs to or is superseded by the specific on the particular subject. The matter of who qualifies for public elective office is a matter of and for the Elections Law. Indeed, the Legislature must in fact justify not only reasons for developing in the Code provisions that are more appropriately for the Elections Law but the basis for enacting a law that is clearly in conflict with the Elections Law. But more importantly, justification must be given for the clear derogation of the constitutional provisions setting the criteria for elective public offices. No such justification is provided, either by the Legislature or by the Court for this contravention or to even seek to rationalize the legal or substantive justifiable need for such departure that is embedded in discrimination.

I submit that where the Constitution clearly vest the right to participate in the political process, the right to equal protection of the law, the right to vote and to determine upon the leadership of the country, the Legislature is without the authority, whether under the guise of protecting the public resources or any other guise to restrict the right, absence a state of emergency, simply to suit a legislative pursuit or to ensure that only a member of the Legislature is elected President in the 2017 Presidential and General Elections.

It was for the many reasons stated above and others that the petitioner, believing that section 5.2 of the Code of Conduct Act, by structure and wording, affected not only the core of the Constitution itself and the principles referenced herein before, but also the rights conferred upon and guaranteed her thereunder, especially the right to participate in the political process, support a political candidate, seek political elective office, and protect the right to vote, decided to seek refuge in the court, challenge the said section of the Code of Conduct and implore the court, the forum constitutionally vested with the power to adjudicate constitutional challenges and provide protection against the deprivations or constitutional rights, to declare that she was not and could not be deprived of her constitutional rights in that respect. Thus, on October 23, 2015, the petitioner filed with the Circuit Court for the Ninth Judicial Circuit, Bong County, a nineteen-count petition seeking from the said Court a declaration that the Section of the Act is unconstitutional and that the court should so declare.

"Selena Mappy-Polson, Superintendent of Bong County and Petitioner in the above entitled cause of action, most respectfully prays Your Honor and this Honourable Court to declare and protect her constitutional right to canvass and contest for any elective public position she is otherwise qualified for in the ensuing 2017 General Elections and all other, subsequent elections in the Republic of Liberia and, in so doing, to declare as unconstitutional certain provisions of the Code of Conduct of 2014 which challenge, hinder, undermine and violate her afore-mentioned rights, and for reasons showeth the following to wit:

1. That Petitioner is a natural born Liberian citizen who hails from Bong County and currently serves as the Superintendent of Bong County, Republic of Liberia.'

2. That prior to her appointment and at sometimes during her tenure as Superintendent of Bong County, Petitioner entertained the desire to run and, after some consultations and reflections, decided to run for an elective office in Bong County in order to contribute more fully to the advancement of the County. Petitioner says following a period of consultations and reflections, she decided to run and did run, though unsuccessfully, during the last General Elections held in 2011.

3. Petitioner says that in recent time she has received numerous unsolicited encouragements, petitions and suggestions from citizens of Bong County asking her once again to run for one of the legislative offices of Bong County during the upcoming 2017 General Elections.

Petitioner say 4 at she is humbled by the unsolicited petitions and support she is receiving and is beginning to consider to canvass of contest for an elective post in Bong County, except that this time she plans to carefully evaluate her chances of success vis-a-vis known and other potential contenders in the County before making a final decision. Plaintiff says that in order to undertake and complete the sort of reflection and evaluation she envisages, an informed, final decision as to whether she contests or does not contest for an elective post during the ensuing 2017 general elections in Liberia is not likely to be made by Petitioner until late 2016 or early 2017.

4. Petitioner says that as Citizen of Liberia she has the right to desire and/or decide to canvass or contest for any elective office for which she is qualified, and to take as much time as is necessary to make a decision before the deadline published or to be published by the National Elections Commission for declaration of candidacy because the Constitution of Liberia, especially Article 81 thereof, guarantees the Petitioner "the right to canvass for the votes for any political party or candidate at any election", it being obvious that a "candidate" may be herself.

5. Further to Count Four (4) of this Petition, Petitioner says that her constitutional rights to "desire" and/or "contest" any elective post for which she is otherwise qualified and also "to canvass for the votes for any political party or candidate at any election" are challenged, undermined and violated by Sections 5.2, 14.1 and 15.1 of the Code of Conduct of 2014, which arbitrarily and discriminatorily requires, contrary to the guarantee, letter and spirit of the Constitution, that (i) Petitioner, as a presidential appointee, to resign her office and employment "at least two (2) years prior to the date of the 2017 General Elections and any subsequent elections once the Petitioner "desires to canvass or contest for an elective public position" during said public elections; and (ii) impose specific sanctions including dismissal for infringement of the said requirement to resign.

6. Further to Count Five (5) of this Petition and for easy review, determination and declaration of their unconstitutionality, Petitioner respectfully requests Your Honor to take judicial notice of the language/letter of the said Section 5.2 of the Code of Conduct of 2014, which is stated verbatim herein below:

5.2 Wherein, any person in the category stated in Section 5.1 herein above, desires to canvass or contest for an elective public position, the following shall apply:

a) Any Minister, Deputy Minister, Director-general, managing Director and Superintendent appointed by the President pursuant to Article 56(a) of the

Constitution and a Managing Director appointed by a Board of Directors, who desires to contest for public elective office shall resign said post at least two (2) years prior to the date of such public elections;

b) Any other official appointed by the President who holds a tenured position and desires to contest for public elective office shall resign said post three (3) years prior to the date of such public elections;

c) However, in the case of impeachment, death, resignation or disability of an elected official, any official listed above, desirous of canvassing or contesting to fill such position must resign said post within thirty days following the declaration by the National Elections Commission of the vacancy."

7. Petitioner says Section 5.1 of the Code of Conduct, which is referenced by and in Section 5.2 of the Code of Conduct, is constitutional and therefore valid because it is made in keeping with Article 90 of the Constitution prohibiting Officials from acts against public policy or constituting conflict of interest and does not discriminate among presidential appointees in violation of the Equal Protection Clause of the Constitution because it clearly applies to "all Officials appointed by the President". Your Honor is respectfully requested to take judicial Notice of Section 5.1 of the Code of Conduct of 2014, stating that "all Officials appointed by the President of the Republic of Liberia shall not (a) engage in political activities, canvass or contest for elected offices; (b) use government facilities, equipment or resources in support of partisan or political activities; (c) serve on a campaign team of any political party, or the campaign of any independent candidate."

The purpose of Section 5.1, as stated earlier is very clear and lawful, and its language is tailored to address the problem of abuse of office and related vices, which is consistent with a clear authorizing or enabling constitutional provision for such restriction on rights. Further, the said Section 5.1 of the Code of Conduct is not discriminatory in the sense of being applicable to only certain presidential appointees, which would have run afoul of the fundamental right of equal protection established and guaranteed by Article II of the Constitution.

8. Petitioner says that unlike Section 5.1 of the Code of Conduct, Section 5.2 of the Code of Conduct is patently unconstitutional because of many reasons including the following:

a. It is discriminatory and therefore violative of the equal protection Clause of the Constitution;

b. It is arbitrary and void of any compelling reason for interfering or restricting the fundamental right to canvass or contest for elective public office:

c. It is anti-competitive contrary to the provisions of Article 77 of the Constitution, declaring "the essence of democracy is free competition of ideas expressed… by individuals" as well as political parties and groups;

d. The Legislature is without Authority to modify the eligibility requirements for elective offices as established by the Constitution for any elective office, bearing in mind that the legislative power to enact the Elections Law is limited by Article 84 of the Constitution, which states that the Elections Laws to be enacted by the legislature "shall not be inconsistent with any provision of this Constitution."

e. It is inconsistent with the provision of the Constitution requiring the Legislature to "enact laws promoting national unification and the encouragement of all citizens to participate in government" as provided in Article 5(a) of the Constitution;

9. Further to Count Eight (8) of this Petition, Petitioner says that Section 5.2 of the Code of Conduct contravenes and is in violation of the Equal Protection Clause of the Constitution in that it discriminates and establishes differential treatment for government employees of the same class "presidential appointees". Specifically, Petitioner says' that while Section 5.2 speaks of a single category of public employees called "Officials appointed by the President", the two-year prior resignation requirement established by the said Section 5.2 excludes Ambassadors, Assistant Ministers, City mayors, Assistant Superintendents, Commissioners, and other officials "appointed by the President" without any conceivable or compelling reasons, apparent or provided. Because of the patent discrimination contained in and represented by the provisions of Section 5.2 of the Code of Conduct, the said Section of the Code is unconstitutional and invalid and should be so declared by this Court Consistent with Article 2 of the Constitution which provides that any laws, treaties, statutes…. found to be inconsistent with it shall, to the extent of the inconsistency, be void and of no legal effect"

10. Petitioner further submits that Section 5.2 of the Code of Conduct is unconstitutional in that it is arbitrary, capricious and without any compelling reason(s) for restraining the fundamental rights of Petitioner and others (but not all) presidential appointees to canvass and contest for any public elective office. Petitioner submits that the language and scope of the requirement of Section 5.2 demonstrates no relationship to achieving the expressly stated objective of the Code of Conduct

that, according to the sixth preambular paragraph of the said Code of Conduct is "to set standards of behavior and conduct required of Public Officials and Employees of Government." Evidently, the Code of Conduct is focused on conduct and behavior (which are outward/visible), and not unseen desires, thoughts or frame of mind. It is therefore inconceivable how the Code of Conduct can seek to regulate inchoate thoughts and desires and/or whether an individual's thought should in fact be a subject of any lawful regulation. Intending to run does not mean deciding to run, being eligible to run or qualified by the election commission to run. Using "desire" to canvass or contest for any public office as a trigger to require resignation could therefore force many people out of public office, some of whom may never even run, Of course this irrational requirement should be contrasted with requiring the resignation of presidential appointees who have announced their candidacy and have been vetted by the election commission because many who have intentions to run never ever do run

11. Further to Count (10) hereinabove, Petitioner says that the ills and/or risk of abuse of office or public assets as a result of political activities and ambition of presidential appointees are sufficiently addressed by the categorical prohibition in Section 5.1 of the Code of Conduct, thus obviating the need and any legal purpose for Section 5.2 of the Code. Indeed, the risk of abuse of public office due to a presidential appointee canvassing or contesting does not arise or exist where campaigning has not started, or candidates for elections have been qualified by the National Elections Commission.

12. That Section 5.2 of the Code of Conduct is contrary to and inconsistent with the provisions of the Constitution (i) guaranteeing the right of every Liberian to vote and, where qualified, be voted for, and (ii) which also expressly provides the sole qualifications for public elective offices. The requirement of Section 5.2 relative to prior resignation for public elective office at least two years before elections is therefore an improper and illegal amendment/ modification of the Constitutional provisions on eligibility for each of the elective public offices, and is therefore invalid, and petitioner prays your honor to so declare.

13. That Section 5.2 is unconstitutional because it is anti-competitive and. anti-democratic; and runs contrary to the declaration of the Constitution that the essence of democracy is the competition of ideas as expressed by individuals and political parties or groups. Requiring certain but not all presidential appointees such as Petitioner to leave office long before they have made a firm decision to run or

qualified by the National Elections Commissions is unheard of in any country and serves no conceivable public purpose, especially in light of other integrity and criminal laws and also the fact that this requirement is not extended to other presidential appointees such as Ambassadors, Assistant Ministers, Assistant Superintendents, Commissioners, City mayors, etc. The only conceivable purpose for such a resignation requirement, particularly the period of time involved, is to put potential opponents of those who made the law to significant disadvantage while benefiting incumbent elected officials who continue to remain in office with continuing stream of secured income. Indeed the net effect of the law is make those affected thereby financially impotent, thereby making the playing field uneven to the advantage of the incumbent who, incidentally, have no limitation whatsoever on their political and/or campaign activities.

14. Petitioner says that while the Honorable Supreme Court of Liberia has held that a statute or a part thereof should not ordinarily be invalidated if it can be sustained on any lawful ground, the patent discriminations, anti-competitive effects and repugnant affront to the Constitution of Liberia as are contained in the Code of Conduct (especially Section 5.2 thereof) are each not redeemable by reference to or based on any rule of law or lawful purpose. The said Section 5,2 of the Code of Conduct is therefore plainly null and void by operation of Article 2 of the Constitution, and Petitioner respectfully prays that your Honor so declare.

15. Petitioner says that in the unlikely event that this Honorable Court is reluctant to declare Section 5.2 of the Code unconstitutional (which Petitioner respectfully prays will not be the case), Petitioner submits that the sole consequence for violation of the said Section 5.2 is exclusively contained the exhaustive range of sanctions enumerated in Section 14.1 and Section 15.1 of the Code of Conduct, the full language of which two (2) Sections of the Code are provided herein below.

"14.1 Infringement of the Code

A breach of the this Code of Conduct shall evoke, relevant to -the particular officer, the disciplinary processes as contained in the Standing Orders of the Civil Service, this Code of Conduct and other relevant rules, regulations and laws in force."

"15.1 Sanctions for Infringement Sanctions for any breach of this Code of Conduct shall be those prescribed by the Standing orders of the Civil Service or any other laws governing the public service. Notwithstanding, depending on the gravity of the offence or misconduct, one or more of the following penalties may apply:

a) Dismissal;

b) Removal from office in public interest;

c) Reprimand;

d) Fine or making good of the loss or damage of public property/assets;

e) Demotion (reduction in ranking);

f) Seizure and forfeiture to the state of any property acquired from abuse of office; and

g) Interdiction/suspension from duty with half pay."

It is a settled rule of statutory interpretation that the mentioning of one or more specifics without an accompanying general word implies that the specifics are the limit of the statute's coverage ("expression UniusestExclusioAlterius"). The Supreme Court of Liberia has also held that the "lawmakers must be said to have intended only what they wrote and nothing more o nothing less; hence, the Court has no alternative but insist upon strict compliance with the law as it was passed." West Africa Trading Corporation v. Alrine, 25 LLR 7 (1976).Your Honor is therefore respectfully requested to take judicial notice that Section 15.1 was meant to be and does represent the exhaustive and exclusive sanctions for violation of any provision of the Code of Conduct, including Section 5.2, and Petitioner prays your Honor to so declare.

16. Petitioner submits that a petition for Declaratory Judgment will he for this Honorable Court to declare the rights of the Petitioner to canvass and/or contest for any public office without any let or hindrance by any person or statute such as Section 5.2 of the Code of Conduct of 2014, including declaring as unconstitutional Section 5.2 of the Code of Conduct of 2014 to the extent that it violates the expressed provisions as well as intent and spirit of the Constitution of Liberia.

17. Petitioner says as a citizen of Liberia and a presidential appointee, she is covered and affected by Section 5.2 of the Code of Conduct of 2014 and therefore have standing to seek a declaration of her rights as are presently challenged, undermined and violated by the said section of the Code of Conduct of 2014.

18. The Honorable Supreme Court has held that "one who may be prejudiced or threatened by the enforcement of an act of the Legislature may question its constitutionality". Concerned Sector Youth v. LISGIS et al 2010).

19. Petitioner says that under our laws, this Honorable Court, like all courts of records, have jurisdiction to declare rights, status and other legal relations "affected by a statute" such as in the instance, case where Section 5.2 of the Code of Conduct Act of 2014 is affecting the rights of Petitioner.

WHEREFORE AND IN VIEW OF THE FOREGOING, Petitioner prays Your Honor to:

A. Declare that Petitioner has and is guarantee the constitutional right to canvass and contest for any elective public office, subject to only restriction as contained in the Constitution or by a statute not inconstant with the Constitution;

B. Declare that a statute which discriminates among people of the same class-such as "Officials appointed by the President" is in violation of the Equal protection Clause and therefore patently unconstitutional;

C. Declare that Section 5.2 of the Code of Conduct of 2014 is unconstitutional because it violates many provisions of the Constitution, including the provision of the Constitution dealing with equal protection, fair competition to promote democracy, the right of every mature citizen to vote and be voted for; etc.;

D. Declare that the sanctions for *reach of the Code of Conduct of 2014, including Section 5.2 thereof, are detailed in Section 15.1 of the Code of Conduct, and that said sanctions are the exhaustive and exclusive remedies expressly enumerated by the Code of Conduct for breaches/infringements; and

E. Declare such further rights and remedies that the Petitioner is entitle to as a matter of law and equity."

The main question posed from examination of the above is whether sections 5.1 and 5.2 of the Code of Conduct Act of 2014 conformed to the standard and the mandate stated in Article 90 or departed from the standard and mandate. Here is how the Legislature, in carrying out the constitutional mandate, devised sections 5.1 and 5.2 of the Act, the Code of Conduct which it was required to pass into law:

"5.1 All officials appointed by the President of the Republic of Liberia shall not:

a) engage in political activities, canvass or contest for elected offices;

b) use Government facilities, equipment or resources in support of partisan or political activities;

c) serve on a campaign team of any political party, or the campaign of any independent candidate;

5.2 Wherein, any person in the category stated in section 5.1 herein above, desires to canvass or contest for an elective public position, the following shall apply;

a) Any Minister, Deputy Minister, Director-General, Managing Director and Superintendent appointed by the President pursuant to article 56(a) of the Constitution and a Managing Director appointed by a Board of Directors, who desires to contest for public elective office shall resign said post at least two (2) years prior to the date of such public elections;

b) Any other official appointed by the President who holds a tenured position and desires to contest for public elective office shall resign said post three (3) years prior to the date of such public elections;

c) However, in the case of impeachment, death, resignation disability of an elected official, any official listed above desirous of canvassing or contesting to fill such position must resign said position within thirty days following the declaration of the National Elections Commission of the vacancy."

The above formed the full attack on section 5.2 and by necessary implication, section 5.1 of the Code of Conduct since section 5.2 is the direct outgrowth of section 5.1. This point is conceded by the majority although the argument is made, I believe rather unsuccessfully, that because the petitioner states that section 5.1 is constitutional, that renders the section constitutional. This Court has held that it is not bound by the positions asserted by the parties but rather by the clear meaning and wording of the law. Thus, even if the petitioner mistakenly believed and asserted that section 5.1 is constitutional, that does not in and of itself render the section constitutional; nor does it preclude the Court from declaring the provision unconstitutional where the provisions clearly on its face indicate that it is unconstitutional. So, with the premise, let us review the provisions in question, sections 5.1 and 5.2 of the Code of Conduct. This is what the sections say:

"Part V, Section 5.1 of the Code of Conduct:

5.1 All Officials appointed by the President of the Republic of Liberia shall not:

a) engage in political activities, canvass or contest for elected offices

b) use Government facilities, equipment or resources in support of partisan or political activities

c) serve on a campaign team of any political party, or the campaign of any independent candidate."

Part V Section 5.2:

"5.2. Wherein, any person in the category stated in Section 5.1 herein above, desires to canvass or contest for an elective public position, the following shall apply:

a) Any Minister, Deputy Minister, Director-General, Managing Director and Superintendent appointed by the President pursuant to article 56(a) of the Constitution and a Managing Director appointed by a Board of Directors, who desires to contest for public elective office shall resign said post at least two (2) years prior to the date of such public elections;

b) Any other official appointed by the President who holds a tenured position and desires to contest for public elective office shall resign said post three (3) years prior to the date of such public elections.

c) However, in the case of impeachment, death, resignation or disability of an elected official, any official listed above, desirous of canvassing or contesting to fill such position must resign said position within thirty days following the declaration by the National Elections Commission of the vacancy."

Let us dissect the sections quoted above. In regard to section 5.1, the first noticeable feature is that it applies only to persons appointed by the President. It does not apply to the President, the Vice President and Members of the Legislature. The second noticeable feature of the section is that it prohibits only persons appointed by the President from (a) engaging in any political activities; (b) canvassing or contesting for public elective office; (c) using government facilities, equipment or resources for partisan or political activities; and (d) serving on the campaign team of any political party or the campaign of any political candidate. Note particularly that the prohibition in the Act does not just reference a quest for elective public office. It extends to any form of political activities, canvassing for another person, speaking for and on behalf of any person interested in seeking elective public office, any right of association with a political party of advocacy institution.

With regards to section 5.2, the first noticeable feature of the provision is that the two-year resignation requirement of sub-section (a) applies to only ministers, deputy

ministers, directors-general, managing directors and superintendents appointed by the President and to managing directors appointed by the board of directors of public entities. No mention is made of assistant ministers, advisors (such as political, legal, etc.) to the President and the Vice President; no mention is made of assistant superintendents and any other persons appointed by the President but not specifically mentioned in the section. Applying the canon of construction, *expression uniusest exclusion alterius*, adopted by this Court in the case Roberts et al. v. Roberts, 7 LLR 358 (1942), which literally translates to "the express mention of one thing excludes all others", implicitly leads to the conclusion, that all of the positions not mentioned, although political positions, are not subject to the resignation requirement. The second noticeable feature of the section is that the three year resignation requirement applies to tenured officials appointed by the President and to no other persons or positions. The third noticeable aspect of the section is that neither the President and Vice President nor the members of the Legislature or the Judiciary are covered by the resignation requirement.

As the provisions of the Code clearly indicate, rather than seeking to create a "leveled plain field", as the majority asserts, seems specifically designed to alter the political landscape, discriminate against persons holding certain positions within the Executive Government, create an uneven political field, illegally discourage strong challenges or perceived opponents, and infringe on the right of the people to decide upon their political leadership, while at the same time favoring an incumbent President, the Vice President and Members of the Legislature, key staff and those perceived to be aligned with persons holding those positions. I do not believe that this was the intent of the framers of the Constitution and I am not prepared to ascribe such intent to them.

The discrimination was clearly demonstrated in 2014 when, even as there was an earlier petition challenging the very sections pending disposition by the lower court, members of the legislature of both Houses, the Senate and the House of Representative, were engaged openly in canvassing and campaigning for persons seeking senatorial positions in the Special Senatorial Elections, using every government facilities and resources available, including using the government offices as platforms and government vehicles as a communication deck, using government fuel and personnel for the promotion of candidates. All of these were and remain a matter of historical public records and information. Yet, our majority colleagues say that no one can challenge such use of the government resources because unless you are directly affected, you have no standing.

Thus, in addition to the fact that the imposition and the exclusions made absolutely no sense, are clearly discriminatory and seemed designed to target a particular group of persons whom the Legislature and the Executive deemed to be desirous of contesting certain political elective public offices and believe that the discrimination contained in the Act will have that desired effect, the sections find no justification in Article 90 of the Constitution. This discriminatory posture of sections 5.1 and 5.2 of the Code of Conduct Act clearly was not the intent of Article 90, which states unambiguously that the provisions of the Code of Conduct should be applicable to "all" public officials and employees, whether elected or appointed. Nowhere in Article 90 of the Constitution do we find any indication that the code of conduct would apply to only certain categories of public officials while other categories of public officials should be exempt from its application. The Article is quite categorical in its coverage. The wording states unequivocally and unambiguously that all public officials, not some public officials, whether elected or appointed, are forbidden from engaging and indulging in certain conduct, and it imposes on the Legislature the mandate to enact a code of conduct that would apply to all public officials, appointed and elected, and not to just some public officials or to only certain categories of appointed public officials.

The further net effect of the sections is that they deprive the nation, not the individuals, of the contributions of some of its most educated and productive citizens, for if, by a citizen holding political ambition or wanting to canvass for another person or organization whom he believes present the best options for the nation, or wanting to make a contribution to a particular candidate, he is deprived of making a development contribution to the nation or providing service to the nation, the nation, already suffering a brain drain, could suffer even greater brain drain and a deprivation of some of its best minds. And while this may not go to the legal consideration, it certainly addresses policy consideration, which the majority states is part of the basis for the Code of Conduct Act.

But even more important are the negative implications and impact on a number of provisions of the Constitution which the challenged two sections of the Code of Conduct Act clearly contravene. It is those contraventions that, under Article 26, provide the basis for challenge to the sections and given standing to a challenger, whether personally or directly affected by the sections. Here are a few of the constitutional contraventions.

Firstly, there is Article 77(a) of the Constitution which states: *"Since the essence of democracy is free competition of ideas expressed by political parties and political groups as well as by individuals*, parties may freely be established to advocate the political opinions of the people. Laws, regulations, decrees or measures which might have the effect of creating a one-party state shall be declared unconstitutional." LIB. CONST, Art. 77(a)(1986). Thus, while this provision of the Constitution grants the right to citizens to advocate the political opinions of the people, Section 5.1, sub-sections (a) and (c) prohibit any person appointed by the President from "engaging in political activities, canvassing or contesting for elective office". How does one advocate for the political opinions of the people where, by section 5.1 (a), he is prohibited from engaging in political activities. How does a person advocate for the political opinions of the people where, by Section 5.1(c) he is prohibited from serving on any campaign team of a political party or the campaign of an independent candidate? By what right does the Legislature have to deprive a people, an entire people, from and of the benefit a person championing their political opinions if he is a member of the Government? And what right does the Legislature have, under the specific mandate of enacting a Code of Conduct for public officials and employees to demand that a person must make a choice between serving his government and serving his people if he is in the Executive, but at the same time ensuring that they, the members of the Legislature, the President and Vice President, and their staff are not subjected to that choice; or stated more appropriately, that the Legislature, the President and Vice President and their staff have the right, while giving service to the government to also give service to their people but that persons appointed by the President into certain categories of the Executive cannot have the benefit of serving the government and at the same time seeking to serve the people. Certainly, if the Legislature desire that such must be the choice of whether to serve the government or serve the people, then Article 90 which vest the power to enact the Code of Conduct prescribes that the choice must affect all public officials, appointed and elected. To decide otherwise is clearly in contravention of Article 90 of the Constitution and provides a basis for a constitutional challenge.

The same can be said of Section 5.2, sub-section (a) and (b), for the sub-sections clearly state in effect that if persons in categories selected by the Legislature wish or desire to advocate the political opinions of their people, those persons must resign their public positions two or three years before the process in which they desire to advocate the political views for their people. And, as with section 5.1 members of the Legislature are exempt from the demand for resignation. Clearly, the sections not only violate Article 90 of the Constitution which vest the right in the Legislature to enact a

Code of Conduct consistent with the mandate, the prescription and the coverage of Article 90, but they also violate Article 77 of the Constitution.

Further, Article 78 states: *"As used in this Chapter, unless the context otherwise requires, an "association" means a body of persons, corporate or other, which acts together for a common purpose, and includes a group of people organized for any ethnic, social, cultural, occupational or religious objectives*; a "political party" shall be an association with a membership of not less than five hundred qualified voters in each of at least six counties, whose activities include canvassing for votes on any public issue or in support of a candidate for elective public office; and an "independent candidate" shall be a person seeking electoral post or office with or without his own organization, acting independently of a political party.

Additionally, Article 81 of the Constitution states: *"Any citizen, political party, organization or association, being resident in Liberia, of Liberian nationality or origin, and not otherwise disqualified under the provisions of this Constitution and laws of the land, shall have the right to canvass for the votes for any political party or candidate at any election*, provided that corporate and business organizations and labor unions are excluded from so canvassing directly or indirectly in whatsoever form."

Yet, notwithstanding the right granted by the above Article to every citizen to canvass for the votes for any political party or candidate in any election for public office, Sections 5.1 and 5.2 of the Code of Conduct Act prohibits any such canvassing as long as you are the holder of a presidential appointed to certain designated positions. Under the rubric of the Code, a person holding a particular position within the Executive Branch cannot even canvass for a relative or a community or a group, but the President and her staff, the Vice President and his staff, and members of the Legislature and their staff retain the right to engage in such canvassing, just as occurred in the senatorial elections in 2014, after the passage of the Code. Indeed, under the challenged sections, a person is precluded from even belonging to an organization that engages in canvassing or advocating for persons desirous of contesting for elective public offices, unless two or three years prior to the election date, the officials resign their position in the Executive Government or in State parastatals or state owned corporations. Such challenge by the Act to the clear provisions of the Constitution provides the basis for a constitutional challenge to the Act.

In that respect, we see in the challenged sections, 5.1 and 5.2, of the Code of Conduct Act the repercussion of direct infringements on the exercise of the right accorded

citizens of Liberia by the Constitution not only to freely associate for the purpose of deciding on and electing the leadership of the nation but also on the equally substantial interrelated right to vote and decide on who will be the leaders of Liberia, and titling the balance in favour of one set of citizens against another set of citizens in regard to the rights of association and the right to vote. The coverage of the sections is beyond the mere right to hold a public office. They touch the very core of the right vested in every Liberian citizen to engage in activities critical to the political elective process, such as the right to campaign for a party or candidate of one's choice; the right to contribute to the funding of a party or candidate of one's choice; the right to attend the political meeting and rallies of a candidate of one's choice; the right to support, in any other form legal under the Constitution, a candidate or political party of one's choice; the right to serve in and with any organization whose aims and objectives are to support good governance and thus candidates who are perceived to have the qualities of good governance, none of any of these activities involving the use of government time, equipment, resources and the like. And if the fear is that such persons would share confidential information with a particular political party or candidate, then such a person could be placed under a confidential pact the violation of which could result in the termination of the person's employment with the government. But this is quite different than what is provided in the current sections, subject of the constitutional challenge. Moreover, such a pact would be across the board and not single out any particular person or position.

Then there is Article 82(a) of the Constitution which states: "Any citizen or citizens, political party, association or organization, being of Liberian nationality or origin, shall have the right to contribute to the funds or election expenses of any political party or candidate; provided that corporate and business organizations and labor unions shall be excluded from making any contribution to the funds or expenses of any political party. The Legislature shall by law prescribe the guidelines under which such contributions may be made and the maximum amount which may be contributed." The Code of Conduct similarly violates this Article, for any contribution of funds made to a person seeking elective public office is a part of canvassing and campaigning for such person, under the challenged sections of the Act, one is prohibited from making such contribution, and if one desires to make such contribution, he or she must resign his or her position at least two or three years prior to the date of the elections in which he or she desires to make the financial contribution to the fund of the person seeking the elective public office.

It is those features of the Code of Conduct, identified above, that, amongst other things, formed the basis for the petitioner's assault on the constitutionality of the sections on the ground, firstly, that the sections of the Act are discriminatory and hence unconstitutional.

The State, upon receipt of the petition with accompanying documents, including a judge's order instructing the issuance of the writ of citation upon the respondent, the State filed first a general returns which was subsequently withdrawn and replaced by an amended returns traversing the several issues raised in the petition. Of particular importance for the respondent were arguments favoring a declaration of the constitutionality of the Act, justification for asserting that the Act was constitutional, and praying the denial and dismissal of the petition. I believe that it is important to capture the full essence of the State's returns so that a whole picture is presented in regard to the position and the thought process of the State. The nineteen-count returns is accordingly quoted herein below, as follows to wit:

1. "That as to counts one (1) and two (2) of the petition, same present no traversable issue.

2. That as to count three (3) of the petition, respondent says it is without sufficient information to confirm or deny the veracity of the averment contained therein generally, and specifically as to when the Petitioner is likely to make a decision to contest or not to contest the ensuing general elections of 2017.

3. That as to counts four (4) and five (5) of the petition, respondent says that whilst Article 81 of the Constitution of the Republic of Liberia (1986) guarantees the right of any citizen to canvass for votes, the said provision also expressly provides that a citizen shall exercise that right if he or she is "not otherwise disqualified under the provisions of this Constitution and laws of the land".[Emphasis supplied] In the instant case, the petitioner who is the current Superintendent of Bong County, – is an official appointed by the President, and as such may be otherwise disqualified if she violates PartV, Sections 5.1 and 5.2 of the Code of Conduct for all Public Officials and Employees of the Government of Liberia(2014) which is a part of the body of laws of the land-i.e.-the Republic of Liberia, and which expressly prohibits all officials appointed by the President from engaging in political activities, canvassing, or contesting for elected offices and if as in the case of petitioner who is a Superintendent if she so desires to canvass or contest she must resign two (2) years prior to the date of such public elections.

4. Further to count four (4) above, respondent says virtually all political rights have limits. The constitutional right to contest for public offices does have statutory limits; for example, the requirement to pay fees to be qualified as a candidate in an election is a limitation on a citizen's constitutional right to contest Therefore, the requirement to resign a post within a stipulated period is also a statutory limit of meeting the just constitutional requirements of morality, public order/policy and the general welfare in a democratic society.

5. That as to count Six (6) of the petition, respondent says same presents no traversable issue as it is recital of the Section 52 of the Code of Conduct for all Public Officials and Employees of the Government of Liberia (2014).

6. That as to count seven (7) of the petition, respondent says, that same also presents no traversable issue as the Petitioner only confirmed and affirmed therein the constitutionality and validity of Section 5.1 of the Code of Conduct for all Public Officials and Employees of the Government of Liberia (2014).

7. That as to counts eight (8) and nine (9) of the petition, respondent submits that Section 5.2 of the Code of Conduct for all Public Officials and Employees of the Government of Liberia (2014), is not discriminatory. The aforesaid sections are directed to Presidential appointees based on their various categories. The code does not discriminate amongst Presidential appointees in the same category. Like any other law, distinction is drawn based on cate-gory. For example, the qualification required to become a member of the House of Representative differs from that required to be President.

8. Further to count eight above, and further traversing counts eight (8) and nine (9) of the petition, respondent says that Section 5.2 of the Code of Conduct for all Public Officials and Employees of the Government of Liberia (2014), is not inconsistent with Article 77 of the Constitution of the Republic of Liberia (1986). Instead, it is in support of that Article which denounces the doctrine of anti-competitiveness and promotes free and fair competition, which is the essence of democracy. Section 5.2 seeks to ensure that persons situated in the category of Heads of Ministries, Agencies, and other Institutions appointed by the President, do not use Government resources subject to their control as institutional heads, to the disadvantage of others. Therefore, a reasonable time limit had to be set, to address the risk of abuse of resources for pre-election activities, including but not limited to such consultative meetings referred to by the petitioner in count two (2) of her petition.

9. That further to count nine (9) above, and further traversing counts eight (8) and Nine (9) of the petition. Respondent says that petitioner's arguments are inconsistent as far as the Legislative authority to prescribed requirements for elective offices. On the one hand the petitioners argues that it is constitutional for the Legislature to prescribe laws to prohibit all officials appointed by the President from engaging into political activities, canvass, or contest for elected offices, whilst on the other hand she argues that it is unconstitutional for the Legislature to prescribed requirements for elective offices generally. By prohibiting all official appointed by the President from engaging into political activities, canvass, or contest for elected offices, the Legislature implicitly made it a requirement that an official appointed by the President should resign if he/she wishes to engage into political activities, canvass, or contest for elected offices. What section 5.1 failed to do was to set a time limit within which the resignation should take place. Section 5.2 on the other hand addressed the issue of time limitation.

10. Further to count ten (10) above, and further traversing counts eight (8) and nine (9) of the petition. Respondent says that Section 5.2 of the Code of Conduct for all Public Officials and Employees of the Government of Liberia (2014), is not inconsistent with Article 5(a) of the Constitution of the Republic of Liberia (1986), which requires the Legislature to enact laws promoting national unification and the encouragement of all citizens to participate in government. Instead Section 5.2 of the Code of Conduct for all Public Officials and Employees of the Government of Liberia (2014), is in furtherance thereof with the objective of ensuring that citizens participate in Government fairly and without possessing undue advantage over others in the process of competing for elected positions in Government.

11. That as to counts ten (10) and eleven (11) of the petition, respondent says that the arguments contained therein are absurd. Respondent says that from the reading of the counts, Petitioner impresses on this court, that until and unless one is qualified by the Elections Commission to run, his/her intent or desire to run which may be expressly or implicitly manifested, should not be a subject of regulation by the code as it is inchoate.

Instead, the appointee should only be regulated if he/she successfully passes the scrutiny of the Elections Commission. For example, the appointee's participation in his/her party's primaries, which may occur one (1) year before elections, should not be regulated because of the possibility that his/her desire to be the party's candidate could likely be thwarted if members of the party do not elect him/her. Therefore,

whether or not Government's resources are implored in that process is inconsequential, since the appointee's desire/intent was not realized up to the point of being qualified by the Elections Commission. Petitioner contends in count eleven (11) of her petition, that the risk of abuse of public office due to presidential appointee canvassing or contesting does not arise or exist where campaigning has not started or candidates for elections have not been qualified by the National Elections Commission. We humbly disagree with the position of the petitioner. We maintain that abuse of public office due to presidential appointee canvassing or contesting may arise or exist where campaigning has not started or candidates for elections have not been qualified by the National Elections Commission.

12. That as to counts twelve (12), thirteen (13) and fourteen (14), of the petition, respondent confirms and affirms counts eight (8), nine (9), ten (10) and eleven (I1) of these returns.

13. That as to counts fifteen (15) and sixteen (16) of the petition, respondent says that presidential appointees are of civil servants and are not subject to disciplinary processes under the Standing Orders of the Civil Service. They serve at the will and pleasure of the President. Further, the issue of an appointee's resignation consistent with Section 5.2 of the Code is a matter of a choice by the official between maintaining a current appointed position and contesting in future elections. It is a decision by the appointee to either forfeit an appointed position or the right to canvass and/or contest in a future election. The decision by the appointee not to resign or to violate Section 5.2 of the code, does not attract a negative penalty or sanction, but rather is a forfeiture by the appointee which by operation of law will bar the appointee from canvassing or contesting in a future elections within the statutory limits.

14. That as to count seventeen (17) of the petition, respondent concedes that the petitioner, the current Superintendent of Bong County, an official appointed by the President of the Republic of Liberia does have sufficient stake in an otherwise justifiable controversy-i.e. – the constitutionality of Section 5.2 of the Code of Conduct for all Public Officials and Employees of the Government of Liberia (2014), to obtain judicial resolution of that controversy.

15. That as to count eighteen (18) of the petition, respondent says that whilst it is the law that one who is prejudiced or threatened by the enforcement of an act of the Legislature may question its constitutionality, the petitioner in the instant case is in no way prejudiced by the legislation. Chapter 11, Article 90 (c) of the ,Constitution of the

Republic of Liberia (1986), devolves upon the Legislature the duty to "prescribe a Code of Conduct for all public officials and employees, stipulating the acts which constitute conflict of interest or are against public policy, and the penalties for the violation thereof" Pursuant to this constitutional mandate, the 53rd Legislature enacted into law, "An Act of the Legislature Prescribing a Code of Conduct For All Public Officials and Employees of The Government of The Republic of Liberia" and Section 5.2 being a part thereof is indeed in the interest of public policy.

16. That as to count nineteen (19) of the petition, respondent says whilst this court does have jurisdiction to declare rights, status, and other legal relations affected by statue, this court does not have the power to declare any statue unconstitutional, as such, powers are reserved to the Supreme Court consistent with Article 2 of the Constitution of the Republic of Liberia (1986).

17. Wherefore and in view of the foregoing, respondent request court to refuse jurisdiction over the subject matter, deny and dismiss the unmeritorious petition filed by the petitioner, and grant unto respondent any further relief as Your Honour deems just, legal, and equitable in the premises."

The above constituted the defense by the State to the challenge to the problematic sections of the Code of Conduct Act. The basic position of the State can be summarized thus: The respondent maintains that the object of the prohibition contained in sections 5.1 and 5.2 of the Code of Conduct Act is to ensure that the facilities and resources of the government are not used for any partisan purpose, and therefore that the government is not used or seen to be used, by the use of its facilities (offices, houses, etc.), equipment (vehicles, computers, printers, copiers, etc.) and resources (funds, and the like), to support any political party or candidates at the expense of the Government and to the detriment of the people. But if the object sought to be achieved by the sections is as contended by the respondent, then what was the rationale for the exemption of the President, the Vice President, and members of the Legislature and other political appointees of the President, both of lower or equivalent ranks as cabinet ministers? Is the President or the Vice President not better positioned to inflict greater harm, if they so desire, than the officials appointed by the President or Vice President since they have the unusual command and control of both the facilities, equipment and resources of the government as well as personnel of the government than any officials appointed by the President? How in fact could the public officials holding higher positions in the Government and having

greater access to the national resources require that persons holding much lesser positions be held to a higher standard?

I emphasize that just as the courts, in according interpretation to a statute, must look to the entire statute and decipher the intent of the framers of the statute so that the true meaning can be given to the statute and to the aims which the framers desired to accomplish by passage of the statute, so too it is incumbent on the Legislature, in passing a statute in obedience to a specific mandate imposed by the Constitution, in addition to the general powers to enact laws, to seek out, as that Body had a legal duty to do, the specific intent of the framers of the Constitution and the objective sought to be achieved by the specific conferral of the power and the mandate, so that in passing the statute the object is achieved and the Legislature does not deviate from that objective. This is why the Court should not relinquish its responsibility, as it has done in the instant case, in the construction or interpretation of Article 90, to carefully explore and ascertain if the Legislature fulfilled the mandate imposed upon it to enact a Code of Conduct, and in making that judicial determination, to take resort to what the framers intended and what was sought to be achieved, the mischief that framers intended or desired to be cured, and whether the Act meets that objective. This is where in my view my majority colleagues have failed in that constitutional and judicial responsibility. But let us go back to the proceedings as they unfolded before the lower court.

Pleadings having been exchanged and the parties having made arguments before the lower court, the presiding judge, believing that it was the prerogative of the Supreme Court to decide upon constitutional challenges to Acts of the legislature, forwarded the case to the Supreme Court for its determination. It is in respect of the background provided above that the majority colleagues of the Court declare, firstly, that the act, although discriminatory, is nevertheless constitutional, and secondly, that the section is constitutional but worthless and unenforceable, at least for the moment.

One of the first conclusions, that is the discriminatory element of the Act and the infringements of multiple constitutional provisions and rights, I have spoken lengthily on the issue. But because the issue is core to the challenge, and at the risk of repeating myself, I venture to advance the further following expose on the issue.

The respondent, as indicated before, reject the discriminatory arguments advanced by the petitioners, referring to the elements of the provisions not as discrimination but as "distinctions" between categories of positions. Under this argument, the respondent asserts that the only thing that the sections do is draw a distinction, like any other law,

based on the categories of the various public positions. The respondent equates the challenged provisions to the different distinctive qualification requirements for the election of members of the Legislature and the election of a President. The sections excluding occupants of certain appointed positions from engaging in political activities and using government facilities, equipment and resources and from seeking elective public offices unless they resign their current positions two and three years respectively prior to the dates of the elections, the respondent states, is merely an imposition of a statutory limit aimed at meeting the just constitutional requirement of protecting the public resources.

I see the argument of the respondent, in justifying the discrimination of the statute, not only as flimsy but supporting of the petitioner's position that the statute is discriminatory rather than a showing that the statute is not discriminatory. Firstly, nowhere in Article 90 of the Constitution is there any indication that the code of conduct would apply to only certain categories of public officials while other categories of public officials should be exempt from its application. The Article is quite categorical in its coverage. It was designed to protect the totality of the State from the menace which the framers had identified and which the military had indicated was a core reason for the coup. It was not designed to protect only a part of the State while sacrificing other parts of the State. It certainly was not designed to grant unto the Legislature, in seeking to protect the State, the right to destroy core fabrics of the Constitution or the State. It most definitely was not designed, as culled from its very language, to authorize the Legislature to infuse discrimination at the very heart of the new democratic sphere of the nation or to revert to strategies which the nation had experienced in past times and which had served to shatter the ideals upon which the State was founded. The wording of the Article, the pronounced basis for the military action against the elected government, and the nuisance that was said to be at the front of the turmoil that engulfed the nation, clearly evidence the intent of the framers and of the mandate. The wording states unequivocally and unambiguously that all public officials, not some public officials, whether elected or appointed, are forbidden from engaging and indulging in certain conduct, and it imposes on the Legislature the mandate to enact a code of conduct that would apply to all public officials, appointed and elected, and not to just some public officials or to only certain categories of appointed public officials. To even contemplate that the framers intended such to be the case is to assert that certain categories of public officials (cabinets ministers, deputy cabinet ministers, managing directors, director generals, superintendents and others named in the challenged sections are dishonest while

other public officials (the President, Vice President and their staff; members of the Legislature and their staff; assistant ministers and assistant superintendents, and like persons) are honest people and therefore should not be held to the accountable standard stipulated in the sections for the named positions.

The respondent contends that the discrimination evidenced by the Act is not discrimination in the true sense of the word because the positions or persons affected fall within the same category rather than amongst different categories. The argument is seriously flawed and a misrepresentation of the plain and unambiguous wording of the sections. Are the ministers and deputy ministers in a category different from the assistant minister? How does one arrive at the conclusions that the ministers and deputy ministers are in a category separate from the assistant ministers? Are they not the same political appointees? Are they not subject to the same confirmation by the Senate? Does the Senate use a different yardstick in consenting to the appointment of ministers and deputy ministers than it does in consenting to the appointment of assistant ministers? Are the ministers and deputy ministers more prone to committing the acts (conflicts of interest, and acts against public policy) which the framers of Article 90 of the Constitution sought to prevent or alleviate ministers, than are assistant ministers? Do the assistant ministers not present much of the same menace as the ministers and deputy ministers? Is there a history that assistant ministers do not engage in the conduct forbidden by Article 90 of the Constitution such that they are excluded by section 5.2 from the coverage of the prohibition contained in the section? But more importantly, did the framers intend that the menace they sought to cure should apply to only certain persons or positions and not to others? So what then is the basis or the justification for such exclusion or more appropriately, for the discrimination?

It cannot be, as the respondent impressed upon this Court, that certain of the excluded public officials are elected rather than appointed and hence that they cannot be held to the same standard as appointed officials, for to sustain such argument, and the majority of the Court unfortunately fell into the trap, would defeat the wording, the spirit and the intent of the Article 90 of the Constitution since the Article specifically extends coverage of the accountability standard to both appointed and elected officials. How does one account for the imposition upon a deputy minister of the prohibition contained in the Act but exempts an assistant minister, the political and legal advisors of the President and others of such ranks from the imposition or prohibition? Certainly the sections give the feeling that certain officials of the government are better or more preferred than others and hence the standard of

honesty should not apply to them the same as it applies to others. Such thought means that it is alright for members of the Legislature or the President or the Vice President or other excluded officials of government (assistant ministers, assistant superintendents, advisors to the President, high ranking staff of the President and Vice President and members of the Legislature) to have a conflict of interest and to flaunt the public order or misuse and abuse the public resources for personal political benefit, but that members of the cabinet, superintendents and like persons are forbidden from indulging in similar or the same acts of conflict of interest or flaunting of public abuse, order, policy and morals. The majority admits to the flaw in the Act and indirectly as to its unconstitutionality, but they rationalize that there is a public interest served that justifies the constitutional violation. In my view, in addition to being unconstitutional, the Act defeats rather than promote the ills which Article 90 of the Constitution sought to address. If the object sought to be achieved by the sections is as contended by the respondent, then what was the rationale for the exemption of the President, the Vice President, and members of the Legislature and other political appointees of the President, both of lower or equivalent ranks as cabinet ministers? Are the Presidents, Vice President and members of the Legislature not better positioned to inflict greater harm on the resources of the nation, if they so desire, than the officials appointed by the President or Vice President since the former have an unusual command and control of both the facilities, equipment and resources of the government as well as personnel of the government than any officials appointed by them? How in fact could the public officials holding higher positions in the Government and having greater access to the national resources require that persons holding much lesser positions be held to a higher standard while they are held to no standard?

Even more troubling is that the discrimination seems to be specifically designed to alter the political landscape, illegally discourage strong challenges or perceived opponents, and infringe on the right of the people to decide upon their political leadership, while at the same time favoring the incumbent President, the Vice President and Members of the Legislature, key staff and those perceived to be aligned with persons holding those positions. I strongly do not believe that this was the intent of the framers of the Constitution and I am not prepared to ascribe such intent to them. It is therefore my view that the provisions are discriminatory and contravenes the mandate of Article 90(c).

The respondent further state that in declaring Sections 5.1 and 5.2 constitutional, although only Section 5.2 was challenged, the public officials prohibited thereunder

must adhere to the provisions of the section. This had to be a massive joke for even as they professed to be making a case for the constitutionality of the Act, they and their bosses were amongst the biggest violators of the Code, attending political conventions and meeting, seeking and winning political offices, and using the resources of the Government in the process. Moreover, the position asserted by the respondent, in my view, means that the public officials working within the Executive Branch, appointed by the President, and being the positions specifically stated in the sections, must have resigned the public offices held by them within the period declared by the Section of the Act or forfeit the right to run for any elective public office. This is precisely what section 5.2 states. Yet, only a few insignificant numbers of public officials have adhered to the mandate of the Code. The majority, however, deliberately determined to ignore this factual reality and to encourage the violation by the manner in which it has made the pronouncement today.

Moreover, the majority, again contrary to and in complete violation of the law and the principles governing statutory interpretation, in giving positive sanctioning to the conduct of the violating public officials, state that the exclusion provision of the Code is not the only provision governing sanctions for violation of the law. They quote sections 14.1 and 15.1 as relevant to determining the sanction to be meted against the officials declared to have violated the Code of Conduct. Here is how the majority deals with the issue:

Regarding "infringement of the Code of Conduct Act, Section 14.1 stipulates:

"A breach of the this Code of Conduct shall evoke, relevant to the particular officer, the disciplinary processes as contained in the Standing Orders of the Civil Service, this Code of Conduct and other relevant rules, regulations and laws in force."

In stipulating "sanctions" for flouting the Code of Conduct Act, Section 15.1 of the law stipulates as follows:

"Sanctions for any breach of this Code of Conduct shall be those prescribed by the Standing orders of the Civil Service or any other laws governing the public service. Notwithstanding, depending on the gravity of the offence or misconduct, one or more of the following penalties may apply:

Dismissal;

Removal from office in public interest;

Reprimand;

Fine or making good of the loss or damage of public demotion (reduction in ranking)

Seizure and forfeiture to the state of any property office; an

Interdiction/suspension from duty with half pay."

The majority having laid out what they believed to be the wide range of possible penalties that could be imposed for violation of the Code, set out the reasons why although they have declared that the Code of Conduct is constitutional, believe that the Code is unenforceable. Let us focus on the reasoning of the majority:

"In our opinion, what seems as the" exhaustive sanction theory" subscribed to and advanced by Petitioner Polson-Mappy on this question is hugely flawed. The language of Section 15.1 of the Code of Conduct Act, it is our considered Opinion, demonstrates the intent of the Legislature to direct the imposition of not one but a range of penalties to persons in breach of the Code of Conduct Act. We have determined that the primary object of the Code of Conduct Act is to afford all Liberians a plain level field in public electoral competitions and ultimately disqualify from running for elected public offices, public officials appointed by the President pursuant to Article 56 (a) of the Liberian Constitution. It was the wisdom of the Legislature that by their occupation of these public offices, those officials tend to acquire obvious undue advantage over other candidates which leverage is employed for electoral leads over others. To accept "the exhaustive sanction theory" being proposed by Petitioner Polson-Mappy, renders the Code of Conduct Act grossly meaningless and fundamentally ineffectual. If the sanction of disqualification of a violator from public electoral contest as the ultimate sanction for reason that same is not expressly listed amongst the range of sanctions Section 15.1 stipulates, what would be the public policy utility for demonstrated egregious violation of the Code of Conduct Act? Would imposition of fines, or mere reprimand be considered adequately comparable? That would lead to absurdity as would be offenders would have already massively benefitted from access to enormous public resources and attained innumerable leverages literally over all other contenders.

Wouldn't the primary purpose of undermining the tendency of using public offices to access State's resources and employing same to gain electoral leads and advantages be pugnaciously abused, undermined and defeated? This could have never been the legislative contemplation.

Having said this, we are compelled to draw attention to Section 12.2 of the Code of Conduct Act. Under this Section, the Legislature duly established the office of

Ombudsman. According to this legislation, the purpose for which the office of the Ombudsman was constituted, amongst others, is to receive complaints regarding the alleged violation of the Code of Conduct Act, investigate and take appropriate action(s). We herewith quote Section 12.2 of the Code of Conduct Act providing as follows:

12.1 "The Office of an Ombudsman is hereby established as an independent autonomous body which shall be responsible for the enforcement, oversight, monitoring and evaluation of the adherence to the Code of Conduct.

12.2 The Office of Ombudsman shall receive and investigate all complaints, in respect to the adherence to the Code of Conduct and where there is a determination of guilt and violation of the code by private and Public Officials and Employees of Government, said violation shall be submitted by the Ombudsman to the Liberia Anti-Corruption Commission (LACC) or other relevant Agencies of Government. The Office of the Ombudsman shall be responsible to collaborate with the three Branches of Government and Civil Society Organizations in order to develop regulations for the Code of Conduct.

Regrettably, this important office, though created by law since June 20, A.D. 2014 (the date of publication of the Code of Conduct Act) is yet to be instituted and made operational. This means that there is at present, no forum of first instance to receive and address complaints of alleged violation of the Code of Conduct Act. This is of critical concern as the law solely vests the office of Ombudsman with original jurisdiction not only to have oversight, monitor, and evaluate adherence to the Code of Conduct Act, but also to receive and investigate all complaints, in respect of adherence thereof.

This is critical as the provision by the Legislature of the wide range of sanctions seems to suggest imposition of sanction/s to commensurate with magnitude and severity of the violation measured by the violator's accessibility to public resource accessibility and acquisition of leverages over other candidates. The work of the Ombudsman and its findings on proven violations of the Code of Conduct Act, in our considered Opinion, provides the logical basis for imposition of sanctions, commensurate with the violation. Disqualification of a violator from vying in public elections is unarguably within the functional meaning of the Code of Conduct Act, contingent on the established severity of the violation.

Now, electoral matters are considered special proceedings to be handled expeditiously within prescribed constitutional timelines. (See Chapter VII, Article 83 ©, LIB.CONST.) Consistent herewith, we hold that all appeals from decisions/rulings entered by the Ombudsman on questions of eligibility, imposition of sanctions, etc., arising from the Code of Conduct Act, shall lie before this Court en banc for hearing and determination as required by law."

The first problem with the majority position is that it again deliberately ignores the principles governing statutory interpretation. It is true that Sections 14.1 and 15.1 deal with possible sanctions that could be meted out for violation of the Code. But I submit that the provisions of Sections 14.1 and 15.1 do not apply to the violations referenced in section 5.2, if one uses the basic tenets of legislative interpretation. Sections 14.1 and 15.1 apply to general violations of the Code, and particularly where violations are stated but no sanction is mentioned as applicable for such violations. Moreover, the violations to which the sections 14.1 and 15.1 have reference are violations that are applicable to every public officials and employees who are deemed to have violated in the general terms the provisions of the Code. In the instant case, however, the provision in question that is challenged, section 5.2, is quite plain on its face. The only sanction that can be applied, which is automatic by its very words, is disbarment by the violators from participation in the ensuing political process that falls within the timeframe stated by the Section. This means that any persons falling into the first category stated in the section who did not resign his or her position at least two years prior to the date of the ensuing election can be challenged as not qualified to contest the said position. Similarly, persons who fall within the second category who did not resign their public offices at least three years prior to the date of the ensuing elections, do not qualify and can be challenged on that ground if he or she seeks elective public office in the face of that impediment.

Yet, the way the majority seeks to alter the Code, in effect amend the Code, is to state that the sanction stipulated in section 5.2 is not the only penalty that can be imposed; that in fact the sanction stated in the section is only one of the possible sanctions that can be imposed; that in fact although the Code establishes an ombudsman office, no sanction can be imposed or adjudged against any violator of section 5.2 until an ombudsman is appointed. But it isn't even that person or that office that would have the authority to impose the sanction. This is because although the ombudsman or that office that is vested with the authority to investigate violations and determine upon the penalty, neither the office nor the ombudsman has the authority to impose. According to the majority and the Code, the authority of the ombudsman is limited

only to investigation and recommendation, unless as the Court has done numerously in its Opinion today, it decides to further amend the Code and vest sanctioning powers in the ombudsman. Thus, the net effect of the holding of the Court is to state to the nation that although the Legislature passed an Act that is clearly on its face unconstitutional, the Court will accord it constitutionality but render it completely unenforceable and meaningless.

Even more disturbing is that the Code directs that the ombudsman, upon investigation and determination that a violation has been committed, the report of the violation shall be submitted to the Liberia Anti-Corruption Commission (LACC) or other relevant agencies of the Government, regardless of whether the violation is a crime or not or whether under the Act establishing the Liberia Anti-Corruption Commission, the agency is vested with powers to deal with the issue and in what manner. I submit that all of these clearly show that the violations stated in Sections 5.1 and 5.2 were never intended to be subject to the sanctions stated in sections 14.1 and 15.1, and that this is why the sections 5.1 and 5.2 provisions stated separate sanctions or penalties for violators. This is more the reason for rendering the sections unconstitutional. How could one public official be held accountable and sanctioned for violations by conduct identical to the conduct of another official but the latter official cannot be held similarly accountable and sanctioned for the identical conduct.

But more than that, the Court is clear that the Act can only become enforceable after the President appoints an ombudsman. To date, after almost three years after the passage of the Act, no ombudsman has been appointed and no office to perform those functions attributed to that office has been set up. Thus, for as long as the President refuses to set up the office, the Court says, the Act remains basically ineffective and unenforceable, not only regarding persons seeking political elective offices, whether members of the Legislature or members of the Executive Branch, but also every other employees of the public sector, whether they have political desires or not. In short, under the decision of the Court today, no public employee can be held accountable under the Act since there is no office of the ombudsman set up at this time.

An even further complication is that if the current President does not appoint an ombudsman and the elections go on and persons who are deemed in violation of the Code are elected to public elective offices, and an ombudsman is appointed by the next President of the nation, who then recommends that certain elected officials, because of their violation of sections 5.1 and 5.2 of the Code were not qualified to

contest for the offices, will those persons be asked to resign their newly elected positions? One can therefore easily see the complications which the majority has brought upon the political and legal system of the nation, and indeed upon the future of the nation, when by a simple declaration of unconstitutionality of the sections, which indeed they were from every reading of the sections, the nation could be freed and released of the pains which is being inflicted by the decision of the Court today.

Additionally, if the Court believes that the sanction provisions of sections 14.1 and 15.1 are applicable and can be utilized for violations of section 5.1 and 5.2, how, for example, does one dismiss a person from the public office who has already resigned the position in order to contest the elective position? Or should such sanction apply to the elective position so that a person elected can then be dismissed from the position to which he or she was elected since a part of the sanction is dismissal from office? Or would the Government act constitutionally in seizure of the property of the violator(s)? Again, one can easily see the complications and pains which the Court's decision today has inflicted on the nation and the people.

Most disturbing, however, as stated before, is that none of the officials affected by the Act, and who appeared before the Court to defend the Act, believed in the Act or demonstrated any concern for the Act. Indeed, even as the Government, through the Executive, and specifically the Ministry of Justice, was arguing that the Act was constitutional, leading one to believe that the Act was therefore binding on all officials of the Executive Government, or that at least the Executive Government believed in the Act, officials of the highest ranks of the Executive Government were not only openly engaged in political activities, seeking and winning political offices in political parties, openly switching allegiance from one political party to another, and announcing that they were running for elective political offices. This was most disingenuous and gives the impression quite contrary to what was being argued before this Court. Yet, the majority chose to blind their eyes to these unfolding events which were a matter of the public information and the public records.

As I noted at the onset of this Opinion, because the opinion deprives Liberians of many of the fundamental rights granted by the Constitution and presents a recipe for future disaster, and given the many other flaws identified both in the Act and the Opinion, I am not prepared to affix my signature to the Judgment of this Court. Hence, I herewith register my dissent and instruct the Clerk of this Court to accordingly file same to form a part of the annals of this noble institution.