Liberian National Union (LINU), by and thru its National Chairman, Aaron Wesseh, and the **National Democratic Party of Liberia (NDPL)** by and thru its Secretary General, all of the City of Monrovia, Liberia 1ST PETITIONERS AND **H. Varney G. Sherman** and **Frederick D. Cherue**, Politicians and Counselors-At-Law of the Supreme Court of Liberia 2ND PETITIONERS VERSUS The **National Elections Commission (NEC)**, by and thru its Chairman, James M. Fromoyan, also of the City of Monrovia, Liberia RESPONDENT

LRSC 32

PETITION FOR A WRIT OF PROHIBITION

Heard: September 14 & 15, 2011 Delivered: September 15, 2011

MR. JUSTICE JA'NEH DISSENTING.

Roughly one hundred forty-five (145) years ago, in 1867, this Court laid the fundamental principle for disposition of every dispute submitted to a judicial forum in this Nation. This Court said it should *'be the practice of every court of law or equity to bring to bear the law points and the equitable subjects of every case. This being done, justice will be meted out in every case, however great and extensive its proportions may be on the one hand, or however small and insignificant on the other.' Harris v. Republic,* 1 L.L.R., 39, 40 (1867).

Bringing to bear the principle of *'law and equity'* in judicial determination of every matter submitted to our nation's highest Alter of Justice, the Supreme Court of Liberia, remains as a challenge today as it was in the 1800's.

Today, the majority of this Court has endorsed and shrouded in the garment of judicial legitimacy, Respondent National Elections Commission's conduct to construct electoral constituencies on the basis of voters registration numbers, in glaring contravention of the Liberian Constitution and the law passed by the Legislature to guide the reapportionment of new electoral constituencies. On today's date, the majority of this Court has declared as *'tenable and in line with Article 80 (d)'* Respondent's action of reapportionment.

Also on this date, the nation's highest tribunal has determined that the Respondent's position to apportion all 73 districts is to *'ensure transparency and fairness in the electoral process.'* Further, this Court as Liberia's highest tribunal of justice has taken the position and announced to the people of this country that the Respondent NEC's reapportionment exercises *'will have no adverse effect on any particular party;* that ongoing reapportionment process will *'ensure that the citizens' representation at the National Legislature based on voters registration'* in each electoral district, will be as close to the same population as possible; [My emphasis]. The majority of this Court has also adopted the Respondent's view that the exercise of reapportionment based on voters' registration is tenable because it is in harmony with *'internationally accepted standards of fairness in such undertaking,* although Respondent provided no explanation for what it called *'internationally accepted standards.'* Today also, the majority of this Court has undertaken to quash the provisional writ of prohibition and rejected any serious consideration to issue the peremptory writ of prohibition, which I believe should have issued in these proceedings.

I have carefully reviewed with diligence and reflected on the matter before us, relative to the arguments put forward by my Distinguished Colleagues in the opinion by Mr. Justice Francis S. Korkpor, Sr., speaking for the majority of this Court. I have absolutely no scintilla of doubt that the majority of this Court has failed to appreciate the law and equity principles upon which this case rests. I believe the legal principles being made to bear on these proceedings, as announced today by the majority, can neither be considered well reasoned nor just.

The reasons by which the majority of this Bench appeared to have been influenced have already been eloquently detailed in the majority opinion. In said opinion, the majority has worked diligently to provide factual and legal basis for quashing the alternative writ of prohibition prayed for by the Petitioner Liberty Party.

While I might understand the majority view in this matter, I disagree with them both as to the facts and the laws applicable thereto. Keeping in mind the law and equity principles urged upon all courts in this jurisdiction by the *Harris* case, referred to earlier, I propose that the fundamental principles of law and equity should be the controlling

consideration in all matters of dispute brought before this Court. Consistent with these principles, practice and procedure held with age in this jurisdiction, the moment is here to explain why I am withholding my signature from signing the judgment concluded by the majority of this Bench.

For the purpose of clarity, first I refer to the case *IN RE: THE PETIOTION FOR DECLARATORY JUDGMENT ON THE CONSTITUTIONALITY OF A JOINT RESOLUTION OF THE LEGISLATURE OF THE REPUBLIC OF LIBERIA, LEG-002(2010) ON THE SETTING OF AN ELECTORAL THRESHOLD FOR THE CONDUCT OF THE 2011 PRESIDENTIAL AND LEGISLATIVE ELECTIONS APPROVED JULY 29, 2010.* [hereafter called, where appropriate, the Threshold case or Threshold Resolution].

This case was decided by this Bench without dissent on October 11, 2010. I filed a concurring opinion in the aforesaid case.

The purpose of referring to the 'Threshold' case is to provide the basis of, and to emphasize the points I find disagreeable in the opinion of my learned jurists and esteemed colleagues. In the exercise I propose to undertake, I will endeavor to conclude my dissenting opinion by suggesting a ruling inspired by and founded on justice and equity principles, which, in my considered opinion, should have been entered by this Bench.

It is important at this juncture to provide some background information to illuminate the issues which appear to have compelled the enactment of the Threshold Resolution. Such an undertaking is critically significant for reason that the controversy before this Court, in my opinion, has been largely triggered by the Threshold Resolution. Background information of this kind would aid in piercing the legislative intent of the Threshold Resolution and the object it was meant to have achieved.

In August, 2010, the National Legislature of Liberia passed 'Joint Resolution LEG - 002 (2010) seeking to set *'an electoral threshold for the conduct of the 2011 Presidential and Legislative elections'*. It was thereafter signed into law by President Ellen Johnson-Sirleaf

and printed into Hand Bill on August 16, 2010 by the Ministry of Foreign Affairs. This sealed the process of lawmaking.

The constitutionality of the Threshold Resolution was promptly raised before this Court by Counselor Marcus R. Jones of the Proposed Victory for Change Party, and other petitioners.

In its petition, the Victory for Change Party substantially submitted that the Honorable Legislature contravened the Liberian Constitution of 1986, when it *'drafted, and passed resolution LEG-002 (2010) ignoring the 2008 National Census results and failing to set a threshold based on the new population of the country, as legally required...'*

According to the petitioner, the Legislature ignored the setting up of the electoral threshold which was required to be done in keeping with population growth and movements as revealed by a National Housing and Population Census. According to the petitioner the conduct of the lawmakers violated the constitution. This Court was asked to declare the Threshold Resolution (LEG -002 (2010), a violation of the Liberian Constitution.

It is most significant to observe that the petitioners in the same petition, specifically urged us to examine the conduct of the Legislature in prescribing *'Special Electoral Threshold for the conduct of the 2011 Presidential and Legislative elections''* while at the same time retaining the *'the sixty-four (64) electoral districts set up and used by the National Elections Commission (NEC) for the conduct of the 2005 Presidential and Legislative elections'.* Also, the petitioners vigorously contested the constitutionality of the Threshold Resolution establishing *'nine (9) additional electoral districts'* thereby creating a total of *'seventy-three (73) electoral districts'.*

To the petitioners, the allotment of additional seats to six (6) named counties, constituted *`an act of usurpation by the Legislature of the constitutional functions and duties of the National Elections Commission in contravention of the clear language of Article 80 (e) of the current Constitution of the Republic.'* The petitioners pleaded with this Court to declare JR LEG -002 (2010) as unconstitutional and deprive it of any legal efficacy.

The respondent, Republic of Liberia along with Counsel for the National Elections Commission, appeared, disclaimed and refuted the veracity of the averments recited in petitioners' petition.

Following entertainment of arguments from the parties, this Court, on October 11, 2010, handed down an opinion without dissent. I delivered a concurrent opinion at the time on the major constitutional questions raised by the petitioner. The opinion of this Court dated October 11, 2010 determined that the questions presented by petitioners' petition were *`matters political'*. Said opinion quoted in part stated:

`The one issue disposition of this case is whether the petition raises matters which are solely political and which should be confined within the realm of politics. We hold that the matters raised in the petition are solely political and should remain within the realm of politics.'

Clearly, this Court relied on the legal principle established in *Massaquoi vs. Republic,* 3 LLR 411, 416 (1933). By this decision, the Lewis Bench in effect declined to address the questions presented, reasoning that *'when a court of law embarks upon such turbulent seas, it immediately loses its office as a judicial tribunal and abdicates its forum where pettifogging politicians resort to ventilate their little minds..." Massaquoi v.* Republic, 3LLR 411, 416 (1933).

As can be so clearly seen, questions regarding the constitutionality of Threshold Resolution, LEG-002 (2010) were determined by this Court as being *'matters political'*. As elaborated in the October 11, 2011 opinion, this Court warned, perhaps a warning to itself also, that the Threshold Resolution was not a subject for constitutional x-ray.

I cannot therefore accept a point of conclusion reached in the majority opinion that this Court *'will not pass on the legality of Joint Resolution LEG-002.'* [My emphasis] In my judgment, the decision by this Court on October 11, 2010, compels the following outcomes and conclusions: (1) that having dismissed the petition questioning the legality of the Threshold Resolution, it follows that LEG 002 (2010) legally remains the legislation in vogue regarding the conduct of the 2011 Presidential and Legislative elections; (2) that thereafter, if any controversy arises in respect to a provision of the

Threshold Resolution, said dispute must be embraced and ought to be decided only within the letter, spirit, and intent of the Legislature.

The *Massaquoi* case relied upon in our October 11, 2010 decision held that the only rule applicable to political questions is *'conciliation and compromise';* and (3) there are, nonetheless, laws, constitutional and statutory, safeguarding certain rights and interests granted to individuals and parties violation of which are measurable under applicable laws and recognizable judicial rules. It therefore goes without saying that where a party, as in the instant case, claims violation of any such rights by an agency allegedly exceeding its authority, or by a state institution disregarding rules which must be followed at all times, this Court must consult the laws, and on its findings, restrain the conduct of the violating agency. By the majority opinion, this Court has regrettably declined to do so in this case. This is a travesty of justice because the referenced decision of October 11, 2010 undoubtedly ratified the Threshold Resolution as the controlling law in the conduct of the 2011 Presidential and General elections. I regret that the majority of this Court has concluded otherwise and woefully disregarded the legal implications of the October 11, 2010 decision.

Having provided an illuminating background, I now take a shot at the proceedings before us. Barely eight (8) months after the handing down of our opinion upholding the Threshold Resolution, as the law regulating the conduct of the 2011 elections, Petitioner Liberty Party, one of the political parties contesting the 2011 Presidential and General Elections in Liberia, filed an eight (8) count petition for a writ of prohibition. The petitioner has contended that the Respondent, National Elections Commission (NEC), has disregarded the actual intent of the Legislature set out in the preamble of Joint Resolution (LEG-002). Petitioner has argued that the Lawmakers were not unmindful of the fact that a threshold of 47,672 was created by implication. Consider the population census figures of 3,476,608 released by the National Housing and Population report of 2008, divided by 73 electoral districts stipulated in the Threshold Resolution. Clearly, application of the threshold figure of 47,672 for the demarcation of electoral district would effectively reduce the existing number of electoral districts of each of the nine small counties: Bomi, Gbarpolu, Grand Cape Mount, Grand Gedeh, Grand Kru, Maryland, Rivercess, Sinoe and River Gee. The

petitioner further claims that the Legislature, having no such intention to reduce the electoral districts of the small counties, instead made a conscious decision that the pre-existing sixty-four (64) electoral districts of 2005 would remain undisturbed.

Petitioner has also contended that the Respondent NEC, consistent with the express intent of the Lawmakers, may properly reapportion and/or demarcate electoral districts of only the six (6) large counties named in the Joint Resolution: Montserrado, Nimba, Bong, Lofa, Grand Bassa and Margibi. Petitioner strongly holds the view that the respondent lacks the legal basis to cancel the 2005 sixty-four (64) existing constituencies and to reapportion/re-demarcate the electoral districts of the nine small counties.

petitioner has planned its campaign strategies and identified Legislative candidates for the nine smaller counties: Grand Gedeh, Bomi, Gbarpolu, Grand Kru, Maryland, Rivercess, Sinoe, Grand Cape Mount, and River Gee; that unless the Respondent NEC is prohibited from proceeding by the wrong rules to demarcate already existing constituencies, contrary to the intent of the Legislature, the Petitioner Liberty Party stands greatly disadvantaged. Further arguing, petitioner has asked why the Legislature resolved that the 64 electoral districts of 2005 remain but at the same time directed that all 64 electoral districts be reapportioned? It was therefore submitted that the reapportionment exercise being undertaken by the respondent was arbitrary; want of legal basis and the respondent now proceeding by the wrong rules should be prohibited.

Countering in an eighteen (18) count returns, the Respondent National Elections Commissions did not deny that it was engaged in the exercise of reapportioning the electoral districts in all fifteen (15) counties. In count fifteen (15), respondent justifies its conduct by citing Article 80 (d) of the 1986 Constitution. As Article 80 (d) is in full force and effect, and pursuant thereto, the Legislature passed the Threshold Resolution, thereby establishing a total of seventy-three (73) electoral districts. It was respondent's submission that the Legislature having so acted, Respondent NEC by virtue of its authority granted under Article 80 (e) may now properly reapportion the seventy-three (73) electoral districts in accordance with the new population figures. Respondent strongly contends that the reapportionment exercise undertaken by it was intended to

ensure that each constituency or electoral district has as similar the same population as possible for equal representation of the electorate in accordance with the new population figures. It also says that the 1986 Constitution granted to NEC the authority to reapportion all of the seventy-three electoral districts provided for under the Joint Resolution, including the sixty four 64 districts and the nine additional electoral districts. Respondent has insisted that the principle of fairness as provided for under Article 80 (d) and (e), which provide that each constituency shall have an approximately equal population, or that every constituency shall have as similar population as possible, as well as the internationally accepted standard of fairness in such an undertaking, require the Respondent NEC to reapportion all seventy-three 73 districts. It is principally argued by Respondent NEC that between the year 2005 election and the last Census, some areas may have grown or decreased in population size, occasioned by the return of refugees, the resettlement of the internally displaced, the reestablishment of economic activities such as mining and logging. These combined factors, according to Respondent NEC, provide compelling need for the reapportionment of electoral districts throughout the country and not just the ones selected by the Threshold Resolution. Respondent has vehemently maintained that its conduct to reapportion and/or demarcate electoral districts is supported by law and therefore should not be prohibited, much more so as the Petitioner Liberty Party has failed to show to the satisfaction of this Honorable Court, any basis for which prohibition shall issue.

Based on the records under review, it appears the parties have not disagreed that the Legislature, in passing J.R. LEG -002 (2010), or the Threshold Resolution, intended to maintain 'the sixty-four (64) electoral districts set up and used by the National Elections Commission (NEC) for the conduct of the 2005 Presidential and Legislative elections'. There is also no apparent dispute between the parties that the Legislature, recognizing the increase in population size of the Republic, provided for the creation of nine (9) additional electoral constituencies in the Threshold Resolution. The parties also perfectly accepted that the Threshold Resolution, the Legislature expressly set no threshold figure, perhaps deliberately, but nevertheless mandated that the *'previous 64 electoral districts established by the NEC during the 2005 elections remain* and have not disputed this. Further, that nine electoral districts be established and allotted by the legislature to six named counties is not in issue between the opposing parties.

However, the parties are irreconciled on the authority of the Respondent NEC to reapportion electoral constituencies for the small nine (9) counties as well as the propriety of using Voters Registration for this purpose. According to the petitioner, the National Legislature intended no reapportionment for the small counties but intended to keep them as they were during the 2005 elections.

It must be emphasized that petitioner has vehemently argued that the Respondent National Elections Commission has disregarded the controlling object and intent of the Legislature so clearly expressed in the preambular clauses of the Threshold Resolution (LEG-002). The National Legislature knew, according to petitioner, that a threshold of 47,672, created by implication (i.e. dividing the Census figures by 73 electoral districts) if applied to demarcate electoral constituency, the existing number of electoral districts of each of the nine small counties would decrease. But having no desire whatsoever to do so, the Legislature deliberately decided that the 2005 pre-existing sixty-four (64) electoral districts remain untouched and undisturbed for the conduct of the 2011 Presidential and Legislative elections. Petitioner Liberty Party has maintained also, that there is no legal basis for reapportionment of the sixty-four 64 preexisting electoral districts more so on Voters Registration figures; that to allow the Respondent NEC to proceed in that manner in not only illegal but that same *'would impose huge burdens, financial, operational and logistical, on the petitioner and as a result 'put the petitioner at huge disadvantage'*.

In justifying its conduct to reapportion all sixty-four (64) districts, Respondent NEC maintains that its object is to ensure that every electoral district has as close the same population as possible; that doing so would ensure equal representation of the electorate.

Given the facts in this case, the arguments advanced by both parties in support of their respective positions and the laws applicable, the sole issue which should have been dispositive of this case is: *whether the 'reapportionment' conduct adopted by the Respondent NEC for the 2011 elections violates the law, and being without the ambit of the political question, a writ of prohibition may properly issue?*

I am in full accord with the majority opinion that the Liberian Constitution expressly grants to the Respondent NEC the authority of reapportionment of electoral constituencies. It is also not my reading that the Petitioner Liberty Party has contested the Respondent's reapportionment authority. It would seem ludicrous for any person or party to argue this point to the contrary in the face of the clear and elaborate expression of Article 80 (e) which speaks the following language:

"Immediately following a national census and before the next elections, the Elections Commission shall reapportion the constituencies in accordance with the new population figures..."

I have duly noted the Respondent NEC's argument regarding its constitutional authority to reapportion electoral constituencies. I have also keenly observed the endorsement the majority opinion accorded this position. In my opinion, this is a valid argument supported by the provision of the Liberian Constitution quoted herein above as well as the letter, intent and the object the Threshold Resolution was enacted to realize.

However, I am amazed nevertheless that the majority elected not to see the Respondent's conduct in its true light, which is glaringly offensive to the clear dictates of the Liberian Constitution. Article 80 (e) of the Constitution, cited herein is clear to the point.

As can be seen, apportionment based on Voters Registration is unsupported by the Constitution of the Republic of Liberia. The genius of the Liberian Constitution by unambiguous expression desired to have every Liberian citizen represented in the National Legislature. Within the embrace of this principle, immaterial it is, in my opinion, whether the individual citizen elected to be a registered voter or not. To achieve this objective, the drafters of our constitution have imposed on the nation state a duty to conduct a national census every ten (10) years. The population figures released from the census is the sole constitutional foundation for redistricting or `reapportionment' of an electoral district in Liberia. This explains the principle reason why the Legislature sought to keep the *'sixty-four (64) electoral districts set up and used by the*

National Elections Commission (NEC) for the conduct of the 2005 Presidential and Legislative elections.'

This Court en *banc* should have therefore declared the reapportionment exercises being undertaken by the Respondent NEC, in so far as they are based on Voters Registration figures, and not population census, a constitutional contravention of grave proportions. In my view, these exercises by the NEC clearly constitute a conduct without the law. Could there be a more compelling situation than the one presented by this case compelling a restraining order? In my view, the extra ordinary province of Writ of Prohibition was precisely created to address this kind of circumstance. The provisional writ of prohibition should have issued promptly followed by the Peremptory Writ of Prohibition.

It is appropriate to remember the October 11, 2010 early decision of this Court. At that time, this Court was presented with questions regarding the constitutionality of Threshold Resolution, LEG-002 (2010). We determined that those were political questions. We dismissed the petition in which those issues were raised referring them as *'matters political'*. Upon dismissal of the petition alleging that LEG -002 (2010) violated the Liberian Constitution, the Threshold Resolution, by implication, stands as the law applicable to all 'Threshold' matters in respect of the 2011 Presidential and Legislative elections. It seems logical that from October 11, 2010, when a matter is raised touching on any conduct the Threshold Resolution sought to redress, said matter should be determined within the provisions of the Threshold Resolution/ Act.

It follows therefore that where a party, as in the instance of the Liberty Party, claims that its rights granted under the Threshold Resolution have been violated and trampled upon, such as to put the petitioning political party at disadvantage, that the supervising Government Agency is exceeding its authority, or that the Agency has elected to disregard the rules which at all times must be followed, the Supreme Court, upon findings, has an avoidable constitutional duty to restrain the conduct of the violating Agency.

It seems to be reasonable proposition that the intent of the Legislature in the passage

of the Threshold Resolution should guide our reading of the mindset of the August Body. It appears that nothing in the records before us is more capturing of the apparent state of mind of the Senate and the House of Representatives of the 52 nd Legislature of the Republic than their own clear expression. This is contained the preambular paragraphs of the Threshold Resolution (LEG -002 (2010) to the effect that: `...*following the 2011 Elections, at which time the conducive environment and condition would have obtained, arrangements will be made for conduct of a National Housing and Population Census which will satisfy the requirements of Articles 13 and 39 of the Constitution, 'the result thereof to be used pursuant to Article 80 (d) and (e).'* [Emphasis supplied]. By its declaration that a National Housing and Population census will be conducted subsequent to the conduct of the 2011 election, and that results therefrom will be used *'pursuant to Article 80 (d) and (e)'*.

From the above review, it is clear that the express legislative desire was not to disturb the pre-existing electoral districts of the smaller counties by any new districting. This is essentially the case as constitutionally, proper reapportionment can only be carried out pursuant to the dictates of Article 80 (e); that *'...the Elections Commission shall reapportion the constituencies in accordance with the new population figures..."* How could it be done without observing the constitutional requirement to reapportion only on population figures?

The Legislature, having not set an express threshold figure, and appreciating the difficulties which obviously could attendant to implementing Threshold Resolution, committed the nation state in following words: '... *following the 2011 Elections, at which time the conducive environment and condition would have obtained, arrangements will be made for conduct of a National Housing and Population Census which will satisfy the requirements of Articles 13 and 39 of the Constitution, the result thereof to be used pursuant to Article 80 (d) and* (e).' It then follows that the Threshold Resolution as the law in vogue, when critically examined through the lenses of a disinterested judicial umpire, lends ample support to one basic conclusion: the deliberate legislative intent was to keep the sixtyfour (64) electoral districts as they were in the 2005 elections. Only one reason could have possibly circumscribed the Lawmakers from expressly prescribing a threshold figure: creation of an electoral constituency is legally done *'in keeping with population growth and movements as revealed by a national census'*. As demanded by Article 80 (d), there is no doubt that

establishment of an electoral district or constituency and/or redistricting is purely based on population as succinctly stated in Article 80(e) quoted herein.

In the case at bar, the petitioner has presented to this Court that the Respondent NEC lacks the legal authority to reapportion electoral districts in all fifteen (15) counties as this was not authorized under J.R. LEG- 002 (2010); that said exercise can only be legally undertaken by strictly following the Threshold Resolution as the law controlling. It has accused the Respondent of putting petitioner at grave disadvantage by reapportioning the entire country and also questioned the legal authority upon which the Respondent NEC has relied to reapportion the fifteen (15) counties predicated exclusively on Voter Registration.

It is petitioner's submission that it has long planned, strategized and identified its candidates for the various electoral districts in the nine smaller counties on the commands of the National Legislature that the sixty- four (64) electoral districts in those nine (9) political subdivisions would remain as they were during the 2005 elections. Petitioner has further sought an answer to the question why the Legislature would expressly resolve that the sixtyfour (64) electoral districts of 2005 remain but at the same time direct that the same sixtyfour (64) electoral districts be reapportioned. Petitioner therefore prayed this Court to restrain the Respondent NEC for want of legal basis.

From all indications, it seems the two parties have not disagreed that the Threshold Resolution was intended to keep *`the sixty-four (64) electoral districts set up and used by the National Elections Commission (NEC) for the conduct of the 2005 Presidential and Legislative elections.* Both the Petitioner and the Respondent have not disputed that the Legislature did recognize the increase in population size of the Republic and as result created nine (9) additional electoral constituencies in the Threshold Resolution. This legislative action increased the electoral districts in Liberia to a grand total of seventy-three (73) for the purpose of the 2011 Presidential and Legislative elections. It appears also that the parties are in perfect agreement that the Threshold Resolution expressly set no threshold figure, perhaps deliberately; that the Legislature notwithstanding mandated that the *`previous 64 electoral districts established by the NEC during the 2005 elections remain.'*

What the parties have found irreconcilable is the authority of the Respondent NEC to reapportion all seventy —three (73) electoral constituencies, including the sixty- four (64) of the small nine (9) counties. The parties have also totally disagreed that the Respondent NEC may exercise its authority to reapportion using Voters Registration statistics.

The petitioner has presented to this Court that the Respondent NEC lacks the legal authority to proceed to reapportion electoral districts in all fifteen (15) counties; that Respondent's conduct is not authorized under J.R. LEG- 002 (2010); that the legal authority upon which the Respondent NEC relied to reapportion the fifteen (15) counties on the basis of Voter Registration infringes on the Liberian Constitution.

Respondent NEC has sought to justify that it is proceeding to reapportion all parts of the country on Voters Registration figures for reason that it has been granted such authority under the Liberian Constitution. However, Respondent lousily neglected and fatally failed to draw the Court's attention to the constitutional provision or any law authorizing that reapportionment of electoral district in this jurisdiction can be properly based on, or drawn from Voters Registration figures. I am in total disagreement with the majority holding that the Respondent NEC's conduct is *'tenable and in line with Article 80 (d).* Article 80 (d) makes no reference, not even fleetingly in dictum, to Voters Registration as the basis for establishing an electoral constituency. Article 80 (d), quoted above is clear in its expression.

I am of the opinion that when a claim of violation of legally establishable rights have been made and placed properly before this Court of Final Arbiter, a judicial scrutiny has been duly invoked as in that case. In every such case, it is my view a duty is then placed on the Supreme Court to make a clear determination on the basis of the laws controlling.

Along this line, I am persuaded to conclude that the conduct of the Respondent NEC to reapportion based on Voters Registration, is not in harmony with constitutional mandate. It is also my considered view that the reapportionment method being

proposed by the Respondent NEC flagrantly mutilates the intent, spirit and letter of the Threshold Resolution.

It is this conduct of the respondent which is said to have violated the rights of the petitioner to fair and equitable treatment under the law. When such grave claims of violation of the electoral process has been lodged before this Court of Final Arbiter, as the petitioner has done, the Supreme Court should have promptly put on its judicial lenses and halted said conduct. However, when the majority opinion disregarded and ignored this important law and equity issue, I refuse to be a part of such decision. Much as LEG 002 was protected by this Court under the shield of political question doctrine, we cannot, by any implications treat the question of constitutional rights of parties lightly. Apportionment or reapportionment is a question of legally established right which any interested or aggrieved party has a constitutional right to invoke the powers of the courts, especially the nation's highest Tribunal of Justice, to protect and safeguard.

The case, *Baker v. Carr.* 369 U.S. 186 (1962) is instructive on rights protection on the question of apportionment. The *Baker* case is being cited because in that case, the United States Supreme Court decided questions of rights violation consequent on *'apportionment.* The case before us bears some similarities to *Baker's* in that respect.

In *Baker,* appellants from cities contended that mal-apportionment of the state legislature denied them equal protection because the weight of their votes would not be equal to those of voters in rural districts.

Appellants in *Baker* were persons who claimed to be qualified to vote for members of the General Assembly of Tennessee representing the counties in which they resided. They brought suit in a Federal District Court in Tennessee under 42 U.S.C. § 1983, on behalf of themselves and others similarly situated, seeking redress to the alleged deprivation of their federal constitutional rights by legislation which classified voters with respect to representation in the General Assembly. As per the 1901 statute of Tennessee, appellants alleged arbitrary and capricious apportioning of the seats in the General Assembly among the State's 95 counties, and stated that a failure to

reapportion the said 95 counties, notwithstanding substantial growth and redistribution of the State's population, would lead to a *"debasement of their votes"* then denied them equal protection of the laws guaranteed them by the Fourteenth Amendment. They sought, *inter alia,* a declaratory judgment in the 1901 statute was unconstitutional and an appellants' injunction restraining certain state officers from conducting any further elections under it. As the majority opinion has done in the case at bar, so also the District Court dismissed the complaint for reason that it lacked jurisdiction of the subject matter and that no claim was stated upon which relief could be granted.

On appeal, the United States Supreme Court held that that the complainant's allegations of a denial of equal protection presented a justiciable constitutional cause of action upon which appellants were entitled to a trial and a decision. The U.S. Supreme Court dismissed any consideration, not even the political question doctrine, barring federal courts from considering an equal protection challenge to a state's voting apportionment structure.

In respect to the case under consideration, which also involves the subject of apportionment and alleged violation thereunder, two of the three issues presented by the Petitioner, Liberty Party, to be passed upon by this Court were, "Whether under the Resolution (Threshold Joint Resolution) the Respondent (NEC) may reapportion the electoral districts of the smaller nine counties of the Republic?" and, "Whether reapportionment of electoral districts by the Respondent may be done based on voters registration, as opposed to population figures?" Regrettably, the Majority has determined that for this Court, the Constitutional Court of Liberia, and affirmed as *'tenable',* the authority of the Respondent NEC, under the Threshold Resolution, to reapportion all electoral districts, in the face of the Respondent NEC admission that Voters Registration figures are those being employed for the reapportionment of the all seventy (74) districts.

Other than fleeting reference to international standards and principle of fairness, which I find to be generally vague, Respondent NEC made no reference or cited no specific provision upon which measurable judicial determination could be made. The eloquent argument before us notwithstanding, the Respondent NEC cited not a single law in

support of apportionment based on Voters Registration.

In the face of these glaring errors and insidious contraventions of the Liberian Constitution and the laws controlling, the Majority has decided that this Court will approbate the conduct of the Respondent NEC and lend support to its illegal conduct. This the majority of this Court has done today when it quashed the alternative writ and refused to order the peremptory writ issued. I just cannot figure out how my distinguished colleagues arrived at such conclusion.

So why is the case at bar treated differently by the Majority? Understandably, the case at bar may be viewed by some as a political case because it involves a political party and the Elections Commission in an election year. But does the question being raised before us, a question squarely based on reported rights violation, one which defies law and equitable determination? I am troubled by the decision of the majority. For today, the Supreme Court of Liberia has been unable to construe the meaning of what J.R. LEG was intended to achieve. We should have been guided in this case by the principle of judicial determination which would avoid injustice, and at the same time declare the intent of legislature, as is so clearly spelled out in the letter, spirit, and the history of Threshold Resolution- LEG 002 (2010). The Supreme Court has also departed from judicial doctrine hoary with age that it is indeed the province of the Court to construe the Constitution and statues of the Republic; I cannot countenance such obvious invasion of the law.

Consequent upon the reasons pointed out herein, I have been unable to agree with majority in this case.

The Clerk of this Court shall file this dissenting opinion in the archives of this Court. And it is so ordered.

Counselor James G. Korkoya appeared for the 1 st petitioners while Counselor H. Vamey G. Sherman and Frederick D. Cherue appeared for the 2nd Petitioners. Joseph N. Blidi, Tiawan S. Gongloe, Othelo S. Payman, 1, and Alexander B. Zoe appeared for the respondent.