

Liberty Party PETITIONER VERSUS **The National Election Commission**
RESPONDENT

PETITION FOR A WRIT OF PROHIBITION

LRSC 13

HEARD: May 30, 2011 DECIDED: June 14, 2011

JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

In accordance with the Constitution of Liberia (1986) the Legislature is empowered to enact law setting a threshold. It is public knowledge that for more than two years following the conduct of the 2008 National Population and Housing Census, the 52nd Legislature of Liberia attempted to set a threshold to enable the National Elections Commission reapportion electoral constituencies for the conduct of the ensuing 2011 general and presidential elections, but to no avail. The Legislature twice passed threshold bills which were sent to the President, but the bills were vetoed. It appeared that the Legislature could not muster enough votes to override the President's veto in keeping with law.

On August 12, 2010, the Legislature passed "Joint Resolution LEG-002."

On August 4, 2010 about a week before the passage of Joint Resolution LEG-002, a group of petitioners, led by Counsellor Marcus R. Jones, filed a petition before this Court challenging the constitutionality of Joint Resolution LEG-002. When the petition was called for hearing, Counsellor Marcus Jones was the only party recognized as being properly before the Court. The petition was heard and this Court, speaking through Chief Justice Johnnie N. Lewis held that issues raised in the petition were solely political and should be confined within the realm of politics. The petition was dismissed.

Another action is before us bordering on Joint Resolution LEG-002. This time, we are called upon to interpret and pass upon Joint Resolution LEG-002 in relation to the role of the National Elections Commission. We will not pass on the legality of Joint

Resolution LEG-002.

On May 6, 2010, the Liberty Party, petitioner, filed an eight-count petition for the writ of prohibition before the Justice presiding in Chambers against the National Elections Commission, respondent. The Chambers Justice ordered the Clerk of this Court to issue the alternative writ and venue the petition before the Court *en banc* for hearing and determination.

We quote the petition:

"1. Pursuant to Article 80 of the Constitution of the Republic, the Legislature adopted a Threshold Joint Resolution (the "Threshold Resolution"), which was signed into law by the President of Liberia, providing,

"a. That 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 shall remain (emphasis ours); and nine (9) additional electoral districts are hereby prescribed and established, for a total of seventy-three (73) electoral districts. The NEC shall reapportion the districts accordingly."

"2. The Preambular Section of the Threshold Resolution acknowledges growth in the population of Liberia since the last census. The Threshold Resolution provides:

"Acknowledging that the result of the 2008 National Housing and Population Census of Liberia did reveal a growth in the immediate post-war population of the Country; and, observing that, the population is still in transition;"

"The Preambular Section of the Threshold Resolution also recites Article 80 (d) of the Constitution which provides that,

"Each constituency shall have an approximately equal population of 20,000, or such number of citizens as the Legislature shall prescribe in keeping with population growth and movements as revealed by a national census; provided that the total number of

electoral constituencies in the Republic shall not exceed one hundred."

"3. The Threshold Resolution did not expressly establish a "threshold," but did so by implication. The Threshold Resolution took cognizance of the growth in population. And according to the 2008 Census, the total population of Liberia is 3,476,608. The Threshold resolution also established nine additional electoral districts, making a total of seventy three electoral districts in Liberia. Therefore, dividing the total population of the country by the seventy three electoral district results into a threshold of about 47,624."

"4. The Legislature being mindful of the fact that a Threshold of 47,624 would cause a reduction in the existing number of electoral districts of each of the nine smaller counties--Bomi, Gbarpolu, Grand Cape Mount, Grand Gedeh, Grand Kru, Maryland, River Cess, and River Gee—resolved that the pre-existing sixty-four (64) electoral districts would remain undisturbed. Therefore, only the electoral districts of the six (6) big counties—Bong, Grand Bassa, Lofa, Margibi, Montserrado, and Nimba—which are likely to be awarded additional districts are to be reapportioned and/or demarcated."

"5. The above counts of this petition notwithstanding, the respondent has announced that all Electoral Districts are cancelled, and that it will reapportion and/or demarcate every constituency in the country. Pursuant to the decision of the respondent to proceed with demarcation of all constituencies in the country, contrary to the law controlling, on April 26, 2011, the respondent wrote to the petitioner inviting it to a meeting to discuss, among other things, "Electoral Boundary Delineation." Copy of the letter is hereto attached as Exhibit "A".

"6. Predicated on the Threshold Resolution, the petitioner has planned its campaign strategies and identified most of its legislative candidates for the nine smaller counties. Therefore, unless the respondent is prohibited, it will reapportion and/or demarcate constituencies that already exist, contrary to the dictate of the Threshold Resolution, thereby allowing the respondent to proceed by the wrong rule, breach the law controlling, violate the rights of the petitioner, and greatly disadvantaged your humble

petitioner."

"7. The respondent lacks the legal basis and/or authority to cancel the sixty-four existing constituencies, reapportion and/or demarcate electoral districts of the nine smaller counties. Any reapportionment and/or demarcation of the nine smaller counties would not only be illegal, but would also be a waste of scarce resources and man-hours that could be employed in making the electoral process fairer for the benefit of all Liberians. The action of the respondent is arbitrary, without the support of law, and should therefore be prohibited, and the petitioner so prays."

"8. Prohibition is the proper remedial process to restrain an inferior court or administrative tribunal from taking action in matters over which it has no jurisdiction or where it acts beyond its jurisdiction or attempts to proceed by rules different from those which ought to be observed at all times. Prohibition will also lie when the petitioner's right are adversely affected; or whenever a subordinate court or administrative agency proceeds by rules contrary to known and accepted practice."

On May 28, 2010, the respondent filed its returns consisting of 18 counts; we quote counts 2, 3, 4, 5, 9, 10, 11, 12, 13, 14 &15 of the respondent's returns:

"2. Respondent says the petition should be denied and dismissed in its entirety because it seeks to prevent respondent from performing a duly conferred on it by law and it is proceeding by rules and standards governing the delineation/reapportionment of electoral districts that are acceptable in this jurisdiction and in all other jurisdictions where free, fair and transparent democratic elections are conducted.

"3. Also, respondent says that the fact that delineation/reapportionment of electoral districts takes place before elections are held is based on the fact that populations change over the years from one election to another which population change could lead to a gain in one geographic area and a loss in another thereby creating the need for reapportionment of constituencies and electoral districts on the basis of common standards of equity and fairness. Consequently, a petition that seeks to prohibit the performance of the reapportionment of the electoral districts affecting the general

population of Liberia is legally untenable because it seeks to prevent respondent from performing a constitutional and statutory duty and should be denied and dismissed.

"4. Further, respondent says that the petition should be dismissed because it was filed in bad faith in that (a) the reapportionment of electoral districts is a process that will have equal impact on all political parties and independent candidates; hence, it is by no stretch of imagination an action against petitioner or a wrong process or procedure; (b) the petitioner is aware that an electoral process is time bound and that in the case of the ensuing electoral process the delay by the legislature in passing the threshold bill has created a virtual emergency that makes the remaining months, weeks, days, hours, minutes and seconds prior to the holding of the 2011 election important for the smooth and timely administration of the electoral process and the petitioner is aware that the staying of any essential aspect of the electoral process by respondent bears the potential of delaying the entire electoral process, against the peace, stability and security of Liberia and the general good of the country; (c) as indicated by petitioner's Exhibit "A" respondent has at all times held consultations with all political parties, including petitioner on all essential steps of the electoral process for both information sharing and consensus-building on the process, thereby providing an adequate opportunity for petitioner to make its input or state its disagreement with any proposed procedure, rule or activity or action. Petitioner has not shown that it brought to the attention of respondent, in any form or manner, its suggestion on how the electoral districts should be reapportioned before proceeding to this Honourable Court; hence, the bad faith clearly shown by petitioner.

"5. Furthermore, respondent says that the petition is premature because the delineation/reapportionment of electoral districts, the drawing and production of final maps with boundaries are stated to be presented on June 25, 2011 and the nomination of candidates by political parties is scheduled to take place from July 20 to August 15, 2011, a period of nearly one month between the delineation of electoral districts and the beginning of the period of nomination of candidates; hence, the petition should be denied and dismissed.

"9. That as to count 4 of petitioner's petition, respondent says that petitioner's

reference to 47,624 to be a threshold that would be applied in the reapportionment/delineation process is a demonstration that petitioner is not familiar with the technical mechanism which is being applied to the reapportionment exercise. In count 4, petitioner gives the impression that by stating that the 64 Electoral Districts of 2005 should remain, there should be no reapportionment of boundaries in the 64 districts referred to. Respondent says if the respondent was to proceed in this manner, the universally accepted principle of fairness provided for under Article 80 (d) and (e) of the Constitution which states in part, "...so that every constituency shall have as close to the same population as possible" would be undermined and render the election of members of the House of Representatives unfair."

"10. Also as to count 4 of petitioner's petition, respondent says that Liberia is a member of the comity of nations and as such it adheres to international laws and practices. Hence, the principle of fairness in terms of voters having equally weighted votes in election of their representatives and that districts should be such that every constituency or district shall have as close to the same population as possible is provided for under Article 80 (d and e) of the 1986 Liberian Constitution."

"11. Further as to count 4, the need for reapportioning all the 73 districts is further necessitated by the fact that the electoral districts of 2005 have no boundaries. They are simply the amalgamation of voting places and precincts and registrants, and the main reason for this is that in 2005 there were no clearly known administrative boundaries."

"12. Further to count 4, a typical example of the increment in population is Grand Kru County where between the years 2005 and 2011 the number of voters increased by 50.1%. In other words, the total number of registered voters was 18,904 in 2005 and the number of registered voters in 2011 increased to 28,393 as reflected in the table shown in Exhibit R/1 in bulk hereto attached to form cogent part of these returns. Respondent respectfully requests court to take judicial notice of all the explanations contained in Exhibit R/1 in bulk."

"13. That as to count 5 of petitioner's petition, respondent says that to leave the

electoral districts/constituencies as they are will lead to a situation of unfair representation whereby two electoral districts will have a huge disparity or representation in which, for example, one district may have 30,000 and another in the same district may have 15,000 or less. In other words, the constitutional and international requirement for fairness hereinabove referred to may be violated and the entire elections [could] be declared unfair. Hence, count 5 of petitioner's petition should therefore be denied and dismissed."

"14. That as to count 6 of petitioner's petition, wherein petitioner asserts that it has planned its campaign strategy and identified most of its candidates for the nine smaller counties, respondent confirms and affirms count 1 of its returns hereinabove and adds that under procedures of the electoral process each political party is to hold convention usually on the local level to select its legislative candidates. This has not been done by the petitioner as far as the respondent is aware. So, to have identified legislative candidates for the nine smaller counties before the holding of petitioner's local conventions and reapportioning of electoral districts is a violation of the procedures and assumption of risk on the part of the petitioner. Hence, count 6 of petitioner's petition should be dismissed."

"15. That as to count 7, respondent says that Article 80(d) of the 1986 Constitution, which was suspended for the conduct of the 2005 elections, has been restored in its totality, thereby giving the authority to the Legislature to pass the Joint Resolution LEG 002(2010), which established a total of seventy-three (73) electoral districts. Pursuant to Article 80(d), the authority of the Legislature is only to determine the number of seats in electoral districts, and the total number not to exceed one-hundred (100). Accordingly, respondent by virtue of Article 80(e) of the Constitution, has the authority to reapportion the seven-thirty (73) electoral districts in accordance with the new population figures to ensure that each constituency or electoral district has as close to the same population as possible for equal representation of the electorate. The action of respondent to reapportion and/or demarcate electoral districts is supported by law and therefore respondent should not be prohibited to carry out the reapportionment since in fact and indeed the petitioner has not shown to the satisfaction of this Honourable Court, the basis for which prohibition should lie."

The parties have joined issue basically on the interpretation of Joint Resolution LEG-002. The petitioner has contended that the Legislature being mindful not to cause a reduction in the existing number of electoral districts of each of the nine smaller counties--Bomi, Gbarpolu, Grand Cape Mount, Grand Gedeh, Grand Kru, Maryland, River Cess, and River Gee— resolved that the pre-existing sixty-four (64) electoral districts would remain undisturbed. Therefore, only the electoral districts of the six (6) big counties—Bong, Grand Bassa, Lofa, Margibi, Montserrado, and Nimba which are likely to be awarded additional districts are to be reapportioned and/or demarcated.

The respondent, on the other hand, has contended that both the Joint Resolution LEG-002 and the Constitution of Liberia (1986) confer upon the respondent the authority to reapportion all of the seventy three (73) electoral districts provided for under Joint Resolution LEG-002, which include the original sixty-four (64) districts and the nine (9) additional electoral districts.

In deciding this prohibition matter, two salient issues must be addressed:

1. Whether under Joint Resolution LEG-002 the respondent is authorized to reapportion the entire (73) electoral districts?
2. Whether prohibition will lie under the facts and circumstances of this case?

After carefully reviewing Joint Resolution LEG-002 and the contentions of the parties, it is our opinion that the respondent has the authority to reapportion all of the seventy-three (73) electoral districts provided for under Joint Resolution LEG-002, which include the original sixty-four (64) districts and the nine (9) additional electoral districts.

We quote Joint Resolution LEG-002:

"JOINT RESOLUTION LEG-002 (2010) OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE 52ND LEGISLATURE OF THE REPUBLIC OF LIBERIA ON THE SETTING OF AN ELECTORAL THRESHOLD FOR

THE CONDUCT OF THE 2011 PRESIDENTIAL AND LEGISLATIVE
ELECTIONS IN LIBERIA

"NOTING THAT, more than twenty (20) years of civil unrest, violence and war caused the destruction of all critical and key infrastructural facilities of the country; dislocation and displacement of the people within and without the Republic, and the intermittent suspensions of the Constitution; and

WHEREAS, IN May 2007, immediately following the civil war and the restoration of constitutional rule in Liberia, the Legislature authorized the conduct of a National Housing and Population Census to provide much-needed post conflict data, for, among other things, development, planning and national socio-economic policies, strategies, and programs; and

ACKNOWLEDGING THAT, the result of the 2008 National Housing and Population Census of Liberia did reveal a growth in the immediate post-war population of the Country; and

OBSERVING THAT, the population is still in transition; and

REALIZING THAT, Article 80(d) of the 1986 Constitution of Liberia requires that "Each constituency shall have an approximately equal population of 20,000, or such number of citizens as the Legislature shall prescribe in keeping with population growth and movements as revealed by a national census; provided that the total number of electoral constituencies in the Republic shall not exceed one hundred;" and

CONCLUDING THAT, the current political realities of the population make necessary an increase in the number of electoral districts;

NOW THEREFORE:

It is hereby resolved by the Senate and the House of Representatives of the 52 nd Legislature of the Republic of Liberia in Legislature Assembled:

1. That immediately upon the adoption and passage of this Joint Resolution LEG-002 (2010), a Special Electoral Threshold for the conduct of the 2011 Presidential and Legislative elections is hereby prescribed as set forth herein:

a. That 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 shall remain; and nine (9) additional electoral districts are hereby prescribed and established, for a total of seventy-three (73) electoral districts. The NEC shall reapportion the districts accordingly.

b. That the Legislature hereby resolved 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).

2. This Joint Resolution shall take effect immediately upon publication into handbill.

ANY LAW TO THE CONTRARY NOT WITHSTANDING

DONE AT THE CAPITOL BUILDING, CAPITOL HILL, MONROVIA, LIBERIA
THIS 22ND DAY OF JULY, A.D. 2010 AND OF THE 163 RD YEAR OF THE
REPUBLIC"

Joint Resolution LEG-002 is clear on its face. This Court has held that where the statute is clear on its face, it needs no further construction or interpretation. *Freeman vs. Lewis*, 40LLR, 103 (2000).

The Supreme Court can do nothing but to uphold the statute when it is clear and unambiguous. *Woewiyu & Harvey vs. International Trust Company of Liberia* 38LLR 568 (1998).

The rule is that the clear and unambiguous language of the statute may not be evaded by any administrative body or a court under the guise of construction; in such circumstances, there is no room for judicial interpretation, and the language should

generally be given effect without resort to extrinsic guides to construction. In this regard it has been said that the starting point in statutory interpretation is the language of the statute itself, and that when the terms of a statute are clear and unambiguous, the judicial inquiry is complete, except in rare and exceptional circumstances, such as a clearly expressed legislative intention to the contrary." 73 *AMJUR 2d, Section 113, Necessity of Ambiguity.*

Section 1 (a) of Joint Resolution LEG-002 is written in plain language without any ambiguity, it says: "... [T]hat 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 shall remain; and nine (9) additional electoral districts are hereby prescribed and established, for a total of seventy-three (73) electoral districts. The NEC shall reapportion the districts accordingly." (Emphasis supplied.)

Under Joint Resolution LEG-002, the Legislature maintained the sixty-four (64) electoral districts used during the 2005 elections; the Legislature also prescribed and established nine (9) additional electoral districts, making a total of seventy-three (73) electoral districts. The Legislature then authorized that "[T]he NEC shall reapportion the districts accordingly." There is no expressed legislative intention to the contrary in Joint Resolution LEG-002 so as to subject it to other means of statutory construction. We therefore interpret the language of Joint Resolution LEG-002 to mean that the National Elections Commission shall reapportion the seventy-three (73) electoral districts, and not only the nine (9) additional districts as contented by the petitioner. And the use of the word "accordingly," in Joint Resolution LEG-002, means that NEC shall reapportion the seventy-three (73) districts "appropriately" and "correspondingly" in keeping with its authority as provided by law.

Moreover, we believe that the word "reapportion" was purposely and intentionally used by the Honorable men and women of the Legislature when passing Joint Resolution LEG-002. And we agree with the respondent that "reapportion", as used in Joint Resolution LEG-002 applies more to the sixty-four (64) electoral districts which had been previously apportioned than the nine (9) new electoral districts. The reason is simple; one can not reapportion unless apportionment has previously occurred. Thus,

the use of the word "reapportion" means that the Legislature intended the National Elections Commission to apportion again, the sixty-four (64) electoral districts which had been apportioned before. We note that the petitioner has no qualm with the "reapportionment" of the nine (9) new districts by the National Elections Commission.

The authority to reapportion electoral districts/constituencies is conferred on the respondent by the Constitution. *Article 80(e) of the Constitution of Liberia (1986)* provides:

"Immediately following a national census and before the next elections, the Elections Commission shall reapportion the constituencies in accordance with the new population figures so that every constituency shall have as close to the same population as possible; provided, however, that a constituency must be solely within a county."

We can not imagine how this authority, which is expressly given to the respondent by the highest law of the land, could have been taken away by Joint Resolution LEG-002 as the petitioner suggests. But this was not the case; Joint Resolution LEG-002 did not take away the authority of the respondent. The Legislature, being mindful of the constitutional authority of the respondent to carry out reapportionment, retained that power in the respondent not only to reapportion the nine (9) new electoral districts, but the entire seventy-three (73) electoral districts prescribed and established by Joint Resolution LEG-002.

Article 80(d) of the Constitution of Liberia (1986) provides:

"Each constituency shall have an approximately equal population of 20,000, or such number of citizens as the Legislature shall prescribe in keeping with population growth and movements as revealed by national census; provided that the total number of electoral constituencies in the Republic shall not exceed one hundred".

The respondent's position is that the reapportionment of all the seventy-three (73) districts is intended to ensure transparency and fairness in the electoral process; that reapportionment will have no adverse effect on any party, particularly, no county will lose a seat in the Legislature; that the process will ensure that citizens' representation

at the Legislature based on voters registration in each electoral district will be as close to the same population as possible, and that the process will conform to internationally acceptable standards of fairness in such undertaking. The respondent also maintains that the need for reapportioning all the seventy-three (73) districts is necessitated by the fact that the electoral districts of 2005 have no boundaries; they are simply the amalgamation of voting places, precincts and registrants, the reason being that in 2005 there were no clearly known administrative boundaries. The respondent further contends that even where the number of seats remain the same in the counties, reapportionment is still required as a standard districting practice the world over for free and fair elections.

In our opinion, the position of the respondent is tenable and in line with Article 80(d) of the Liberian Constitution (1986). It must be noted that the entire country has experienced significant population growth and movement since the conduct of the last elections, thereby necessitating the reapportionment of constituencies and districts before the conduct of the ensuing elections. Developments like the return of refugees, the resettlement of internally displaced, and the resumption of academic activities, etc., have impacted population change from one geographic location to another. Population change did not only affect the nine (9) new counties in which the petitioner has no qualm with reapportionment. We hold, therefore, that the reapportionment of the entire 73 districts embraces the principle of transparency which is *sine qua non* for free and fair election.

Concerning the issue whether prohibition will lie in this case, we hold that prohibition will not lie. As we have said, the authority to reapportion all electoral constituencies /districts is conferred upon the respondent by both the Constitution and Joint Resolution LEG-002. By carrying out reapportionment in the seventy three electoral districts, the respondent was proceeding within the scope of its authority. The writ of prohibition will not lie where the act complained of is neither wrong, nor illegal, but rather within the scope of the authority of the person or office complained against. *Komai vs. the Ministries of Justice & Public Works et al*, 36 LLR 518 (1989.)

WHEREFORE, the alternative writ of prohibition issued is ordered quashed and the

stay order placed on the respondent restraining it from carrying out reapportionment is ordered lifted. The peremptory writ of prohibition is hereby denied. It is so ordered.

Petition denied.

COUNSELLOR CHARLES WALKER BRUMSKINE APPEARED FOR THE PETITIONER.

COUNSELLORS TIAWAN S. GONGLOE AND JOSEPH N. BLIDI APPEARED FOR THE RESPONDENT.