

**The Congress for Democratic Change (CDC) and Prof. Ansu D. Sonii**, of the Cities of Monrovia and Kakata, PETITIONERS, **Alhaji Dr. Fodee Kromah** of Cape Mount County, Liberia, PETITIONER VERSUS **The National Elections Commission (NEC)**, by and thru its Chairman, Cllr. Jerome G. Korkoyah the Board of Commissioners and all other relevant authority of said Commission, of 9th Street/ Sinkor, Monrovia, Republic of Liberia, 1ST RESPONDENT AND **Jim Womba Tornonlah**, of People Unification Party, (PUP), also of Margibi County, Republic of Liberia, 2ND RESPONDENT, **H. Varney Gbotonambi Sherman** of Grand Cape Mount County, 2ND RESPONDENT

## LRSC 14

### PETITION FOR WRIT OF PROHIBITION

#### DISSENTING OPINION

Heard: January 16, 2014 Decided: February 17, 2015

On January 2, 2015, two political parties and individual candidates who participated in the elections of December 20, 2014, filed a petition for a writ of prohibition before the Justice in Chambers, Justice Philip A.Z. Banks, III, against the NEC and certain declared winners of the election, praying the Court to prohibit the NEC from certifying those declared winners and to de-certify those already certified. They alleged in their petitions that they had filed complaints of certain elections irregularities before the board of NEC in fulfillment of the constitutional requirement that any party or candidate who complains about the manner in which the elections were conducted or who challenges the results shall have the right to file a complaint with the NEC not later than seven days after the announcement of the results of the elections. The petitioners contended that despite the complaints not having been heard and disposed of, the NEC had proceeded to certify the winners so declared. Petitioners prayed that the NEC be prohibited from certifying the winners so declared, and for those already certified, the NEC be made to de-certify them until the petitioners' complaints filed are heard and finally disposed of.

Upon filing of petitions by Alhaji Dr. Fodee Kromah, the National Patriotic Party (NPP) and The Congress for Democratic Change (CDC) and its candidate, Professor Ansu D. Sonii, on January 2, 2015, a day before the certification by the NEC of declared winners of the election, the Justice in Chambers cited the parties to a conference on January 5, 2015, but in the meantime, mandated the NEC to stay the certification of Counsellor Varney G. Sherman of Grand Cape Mount County, Morris Saytumah of Bomi County, and Jim Womba Tornonlah of Margibi County, pending the outcome of the conference. J. Gbleh-Bo Brown and Commany B. Wesseh, declared winners of Maryland County and River Gee County respectively, being shortly certified before the petitioners' petition contesting their election were filed, Justice in chambers also invited them to conference but declined to send an order to the NEC to have them de-certified. Thereafter, there began an influx of petitions praying for decertification of declared winners of the elections which this time the Justice refused to consider.

The scheduled conferences with the six petitioners and respondents thereto were held. The Chambers Justice thereafter issued the alternative writ with instruction to the respondents to file their returns. Subsequently, he forwarded the matter to the full bench.

Our Constitution, Article 83 (a) mandates that elections for President, Vice President, members of the Senate and House of Representatives be conducted throughout the Republic on the second Tuesday in October of each election year. Article 89 establishes the Elections Commission as an autonomous public commission and gives the Legislature the authority to enact law for the governance of the commission. In performance of its obligations under the constitution, the Legislature enacted the New Elections Law in 1986. It was amended on January 29, 2003 and again on December 23, 2004.

In furtherance of Article 83 (a) of the Constitution, October 14, 2014 was set as the date in which the Special Senatorial Election was to be held for the election of a Senator from each of the fifteen political sub-divisions.

As already narrated in the majority opinion, the Special Senatorial Election could not be held as provided for by the Constitution because of the deadly ebola virus disease which invaded our Country and which led to our President, Madam Ellen Johnson Sirleaf's declaration of a state of emergency and thereby suspending certain rights and privileges under the Constitution which included the suspension of the Special Senatorial Elections of October 14, 2014.

Subsequently, the political entities clothed with the power to set a new election date agreed to hold the election in December 2014, and on December 20, 2014, the Special Senatorial Election was conducted throughout the country.

In accordance with the Constitution that the returns of the election be declared not later than fifteen days after the casting of votes, the NEC on December 27, 2014, declared fifteen candidates who took part in the election as winners of their respective counties. Thereafter, it set January 3, 2015, the fourteenth day after the election as a date for the certification of those so declared as winners of the election.

For the purpose of this dissent, my colleague and I have deemed it necessary to restate the contentions of the parties as succinctly outlined in the majority opinion which we hereby include verbatim:

"Co-respondent National Elections Commission set forth the contentions: (a) That co-respondent National Elections Commission had the authority, constitutionally and statutorily, to conduct public elections in the Republic of Liberia, which it had done consistent with its mandate; (b) that Article 83(c) of the Constitution mandates and imposes on co-respondent National Elections Commission the legal duty to declare the results of any public elections conducted by the said co-respondent not later than fifteen (15) days following the casting of ballots; (c) that as the declaration of the results in the 2014 Special Senatorial Election and the decision to award certificates evidencing said declaration did not offend Article 83(c) of the Constitution, did not exceed the legal duty imposed upon it, and was not tantamount to an assumption of jurisdiction not granted the Commission by law, prohibition will not lie; and (d) that the declaration of a candidate as winner is not absolute since the losing candidate not only has the right to file a complaint which must be investigated by the Commission, and is appealable to the Supreme Court, but also that under Section 6.2 of the Elections Law the Commission has the power to nullify any declaration made by it as to a winner even where the declared winner had assumed office, in which case the person who had assumed the office would cease to hold such office.

As for the other co-respondents, political parties and declared winning candidates, they set forth the following contentions: (a) that co-respondent National Elections Commission acted pursuant to the mandate granted it by the Constitution and the Elections Law in the conduct of the 2014 Special Senatorial Elections, including the conduct of the voting, the counting of the votes, the declaration of the results of the elections and the certification of the declared winning candidates; (b) that the writ of prohibition cannot be granted against an administrative agency which has not exceeded its jurisdiction or proceeded by any wrong rules in the conduct of its legal duty; (c) that consistent with the Constitution, the Elections Law and the Rules and Regulations of co-respondent National Elections Commission, the Commission had commenced investigating the complaint filed by the petitioners, in some of which the Commission had already made conclusions and results handed down without any remedial steps being taken by the petitioners, and that proceeding to certificate the declared winning candidates was therefore not in violation of any of the mentioned laws rules and regulations; (d) that Article 83(c) of the Constitution requires that "the returns of the elections shall be declared by the Elections Commission not later than fifteen days after the casting of ballots", meaning that as the declaration of the results of the December 20, 2014 Special Senatorial Elections made on January 3, 2015, one day before the deadline required by the constitution, was not and, is not illegal, but a lawful act of constitutional compliance which cannot be a basis for the issuance of the writ of prohibition; (e) that prohibition will not lie since co-respondent has jurisdiction over elections matters, that the exercise of those powers by the said co-respondent is authorized by law, and that its exercise will not result to any injury for which there is no other adequate remedy at law, that remedy being provided for in Section 6.2(c) of the Elections Law, as amended; (f) that the petitioners had not exhausted all of the required administrative procedures, a pre-requisite to seeking judicial remedy, absent any illegality; (g) that the filing of a complaint with the co-respondent National Elections Commission in respect of any election or the filing of an appeal with the Commission does not by itself operate as a stay on further action by the NEC, the assertion being supported by the unambiguous language of Article 83(c) of the Constitution, which allows complaints to be filed during and after the casting of ballots; (h) that the Constitution clearly provided for the

exercise of due process by any losing candidate and that co-respondent National Elections Commission had done nothing by its declaration of the results and certification of the winning candidates to deprive the petitioners of the due process of law right granted by the Constitution, since the declaration and the seating can be nullified by the Supreme Court after a hearing and appeal taken to the Court; (i) that there is no law, constitutional, statutory or case, which vests in the petitioners the right to seek to undo and revoke the certification of a declared winning candidate, especially as the certification of a candidate is not a separate and independent act from the constitutionally required declaration of results of elections; (j) that as neither the Liberian Constitution nor the Elections Law mandates certification of candidates, as distinct from declaration of results and winners, and as certification is equated to or used interchangeably with declaration, the certification undertaken by co-respondent National Elections Commission cannot form the basis for prohibition; (k) that an order from the Supreme Court in an appeal case to named parties does not constitute law and hence cannot form the basis for the issuance of the writ of prohibition; (l) that the failure by the petitioner to take advantage of the remedy provided for by the Constitution and the Elections Law renders the petition defective and dismissible as a matter of law; (m) that since the declaration of the results of an election is a mandate imposed on co-respondent National Elections Commission by the Constitution and therefore cannot be prohibited by a writ of prohibition, it follows that the issuance of a certificate can also not be prohibited; and (n) that as the declared winners have been announced as winners of the elections, they are thereby vested with the right to be certificated and to be seated, subject to destruction only where an adverse decision is made by the Commission and affirmed on appeal, as provided in Section 6.2 of the Elections Law, and hence, that prohibition will not lie to prevent the announcement of the result or the certification of the declared winners."

From the contentions outlined above, we have raised two issues which will determine whether or not prohibition will lie.

1) Whether the NEC proceeded by wrong rules when it certificated the declared winners of the Special Senatorial Elections in the face of complaints pending before it and;

2) Whether Section 6. 2.2 (a) of the Elections Law which stipulates that the National Elections Commission may invalidate the election of a declared winning candidate who has already assumed office and that the said official should then give up the office is in violation of the Constitution?

This brings us to the issues raised by the majority, culled from the contentions raised by the parties, and the majority conclusions growing out of these contentions which Justice Yuoh and I disagree with and hence, our dissent.

We shall proceed forthwith in discussion of the issues raised and advance our reasons for dissenting with our distinguished majority.

As to the first issue raised herein, which is, whether the NEC proceeded by wrong rules when it certificated the declared winners of the Special Senatorial Elections in the face of complaints pending before it; our distinguish majority colleagues have held in the affirmative. According to our majority colleagues, the NEC cannot proceed further to certificate the declared winner and facilitate the seating of the declared winner in the face of pending complaints before the NEC. Our distinguished majority colleagues are of the opinion that the declarations of the electoral results and the certifications of the declared winners are not only distinct but are also legally binding on NEC, after declaring a winner cannot proceed to certificate and to facilitate the seating of the winner in the face of pending complaints.

In answering the first issue, the majority firstly delved into the issue raised by the parties of the fundamental reason of the NEC's certification of a candidate.

NEC argued that the Constitution, Article 83 (c) gave the Commission the right to declare the winner of a political election. NEC maintains that its declaration is sanctioned by the Constitution and certification of declared winners is not required by law but its NEC's way of confirming that a candidate so declared has won the election and so NEC may choose or may not choose to certify these declared winners as it is not a requirement under the law. That the certification on the fourteenth day was in consonance with the Constitution which gives the NEC the right to declare the winners of an election in fifteen days, and its certification of declared winners was confirmation of the said declaration provided for by the Constitution.

The other respondents on the other hand maintained that certification by the NEC is synonymous to declaration and can be used interchangeably. They argued that you can certificate the winner or declare the winner and either amounts to a statement by NEC of who the winner of the election is as the Constitution requires.

Our distinguished majority colleagues are of the opinion that the declarations of the electoral results and the certifications of the declared winners are not only distinct but are also legally binding on the NEC and that the NEC, after declaring a winner cannot proceed to certificate and to an extent facilitate the seating of the winner in the face of pending complaints.

The majority disagrees with the NEC that there exist no legal duty or obligation on the NEC to certificate any winner since there exist a legal duty imposed by law based on the Senate's rules that unless a winning candidate presents a certificate evidencing that he/she is the one declared by NEC to be the winning candidate, he or she will not be seated as a member of the Senate.

This is what the Senate Rule 1, section 1 stipulates: "the presentation of credentials of senators-elect shall be on the first day of attendance at the session following their election. Such credential shall include the presentation of the "Certificate of the Election" duly issued and signed by the National Elections Commission. The is nowhere in the 1986 Constitution or the New Elections Laws mandates the certification of a declared winner; there is nothing on the pages of our legislative history that compels or obligates the NEC to issue certificate to declared winners; ours laws are completely silent on the issuance of certificate to declared winners. Notwithstanding, it is unfortunate to note that our distinguished majority colleagues are of the view and have opined in great analytical depth, that in keeping with Rule 1, Section 1 of the Senate Rules, the NEC is legally bound to issue certificates to declared winners. We wonder when did the Rules of the Senate or the Rules of the House of Representatives become binding laws on the Republic, the Government or its agencies; when did the rules of these both houses become hand bills or legislative enactment contemplated by the framers of the 1986 Constitution? The standing rules of the Senate are the procedures adopted by the Liberian Senate to govern its procedure. Accordingly, the Senate could easily change its rules which require a declared winner to present a certificate.

We do agree however that it is logical that one appearing before the Senate to be seated as the winning candidate in an election must show evidence from the NEC which declared him or her the winner. What if NEC declares a John Kollie as winner of the election in Bong County, is it sufficient for a John Kollie to show up at the Senate as the winner so declared? What if several John Kollies took part in the elections? Certainly, a certificate from the NEC would set out to the Legislature which of the John Kollies won the election.

Where certificates are not issue the declared candidates upon their seating and it is so required by the Senate, the winning candidates would then proceed to the NEC to certificate them confirming them as the declared winners, and where the NEC refuses to present them said certificate, a peremptory writ of mandamus compelling the NEC to issue said certificates to the declared winners would be proper.

However, what we see here as an issue and for which we are dissenting is not the fact that a winning candidate should or should not be certificated by NEC as it is the Senate rules which places an obligation on the NEC to certificate those it declares to be the winners of an election in accordance with the Senate rules, and as far as we are concerned, the certification can be done on the day of the declaration of the winners since there is no law indicating when a candidate can be certificated, once it is done to ensure that the declare winners are able to take their seats as declared. What is in issue here is the rationale the petitioners and the majority have attached to the certification of NEC declared winners in relation to Article 83(c) of the Constitution.

Article 83(c) of the Constitution reads as follows:

(c) The returns of the elections shall be declared by the Elections Commission not later than fifteen days after the casting of ballots. Any party or candidate who complains about the manner in which the elections were conducted or who challenges the results thereof shall have the right to file a complaint with the Elections Commission. Such complaint must be filed not later than seven days after the announcement of the elections.

The Elections Commission shall, within thirty days of the receipt of the complaint, conduct an impartial investigation and render a decision which may involve a dismissal of the complaint or a nullification of the election

of a candidate. Any political party or independent candidate affected by such decision shall not later than seven days appeal against it to the Supreme Court.

The Elections Commission shall within seven days of receipt of the notice of appeal; forward all the records in the case to the Supreme Court, which not later than seven days thereafter, shall hear and make its determination. If the Supreme Court nullifies or sustains the nullification of the election of any candidate, for whatever reasons, the Elections Commission shall within sixty days of the decision of the Court conduct new elections to fill the vacancy. If the court sustains the election of a candidate, the Elections Commission shall act to effectuate the mandate of the Court.

The petitioners and the majority contend that the framers of the Constitution had reasons for the holding of political elections in October when the elected candidates are due to be seated in January. Article 83 (c) they say was written with the view that election complaints filed with the NEC would be heard and decided before the seating of candidates as it would confirm or nullify those previously declared and allow for only those duly elected to be certificated and occupy their political seats. The time set by this provision of constitution, the majority believe, was considered by the framers of the Constitution as adequate for settlement of all elections dispute arising from the elections. Unfortunately, the delay in the Special Senatorial Election of 2014, because of the Ebola, posed a challenge for the timely hearing of election complaints before the assemble of the Senate on the second Monday in January, but this did not warrant the disregard for the Constitution. For the NEC to certificate those declared without first disposing of complaints against the results, the majority say, was wrong and is against Article 83 (c) of the Constitution which requires that complaints be heard before certification.

Let us go through this scenario regarding the election if it were held under normal condition and as the majority say was contemplated by the framers of the Constitution as adequate period for hearing of complaints and disposing of them before the seating of duly elected candidates.

If the 2014 Special Senatorial Elections were held under normal condition and the date of the election had not been changed because of the evading presence of the Ebola Virus, as already narrated in the majority opinion, the Special Senatorial Election would have been held on October 14, 2014; According to Article 83 (c), NEC had up to October 29th 2014, fifteen days to declare the winners of the election; a candidate dissatisfied with the election results had up to November 5, 2014, seven days to file his/her complaint; NEC had up to December 5, 2014, thirty days, to hear the complaint filed before it and make a ruling; the candidate if dissatisfied with the ruling of NEC had up to December 12, 2014, that is seven days to appeal NEC's ruling to the Supreme Court; NEC then had up to seven days, that is December 19, 2014, to send up the records of the hearing to the Supreme Court; the 19<sup>th</sup> of December 2014, being on a Friday, the Supreme Court because of the exigency attached to elections matter may have assigned- the matter for hearing at most on Wednesday, December 24, 2014, giving the parties ample time to file their brief. Thereafter, the Supreme Court had up to December 31, 2014, to render its decision on the matter; that is seven days after hearing. With this ideal situation, NEC Could then have safely certificate the winning candidate a week before the Legislature assembled in regular session on the second working Monday in January; that is, January 12, 2015.

Does this provision of the Constitution mandate non-certification of a candidate who has been declared the winner of a legislative election from taking seat until the complaints filed against the elections result which declares him the winner by NEC is heard?

My colleague and I emphatically say "no". This provision of Article 83 (c) of the Constitution, as we see it, though clearly seek to set out the speedy determination of election's complaints, with the hope that only those confirmed as elected are seated at the Legislature, the framers deliberate did not include what would happen if the hearing was not disposed of, leaving that decision with the Legislature discretion to legislate based on custom and practices of other countries and to ensure that there be no future stagnation in the operation of the Government by the in-operation of a branch. It is best to have a temporary de facto representation of the people then no representation at all.

The Constitution differs from a statute in that a statute ordinarily provides some details of the subject of which it treats whereas a constitution usually states broad general principles and builds the substantial foundation and general framework of the law and the government. 16 Am Jur 2d Constitutional Law, Section 2. For example, the 1986 Liberian Constitution, Article 34 (i) and Article 84 authorize and delegate unto the National

Legislature the responsibility to enact elections laws which is a clear manifestation that the constitutional provisions are not self-executing but rather dependent on the legislature putting into place mechanisms and processes that would give orderliness to the exercise of the rights granted by the

Constitution. *Vergas v. Reeves* 39LLR 368, 377 (1998), *Toe v. Frontpage Africa Newspaper*, Supreme Court Opinion, March Term A.D 2013.

The Supreme Court which is clothed with the authority to interpret the Constitution and say what the law is, has recognized that the Constitution cannot provide for every single scenario or possibility or transaction; the Court also recognized that statutory enactments are intended to give life and meaning to constitutional principles and that said enactment must be strictly observed. *Id.* The Supreme Court in several opinions have held that it will not pass upon a constitutional question although properly presented, if there is also present, some other grounds upon which the case may be disposed of. In other words, "if a case can be decided on either of the two grounds, one involving a constitutional question, the other question of a statutory or general rule, the court will decide on the latter." *Republic v. Kaba*, Supreme Court Opinion, October Term A.D 2014.

It is however unfortunate to note that in the present case now before us, our distinguish majority, in flexing their constitutional muscle of judicial review has invalidated a legislative enactment by isolating the provisions of the Constitution in bits and pieces. In rendering section 6.2 of the New Elections Laws invalid, our distinguished majority colleagues ignored basic constitutional interpretation espoused by the Supreme Court when it held that "the Constitution must be interpreted in light of the entire document rather than a sequestered pronouncement, because every provision is of equal importance and even where there is apparent discrepancy between different provisions, the Court should harmonize them if possible. *Garlawolo et al. v. NEC*, 41LLR, 377, 384-386(2003), *the Liberia Institute of Certified Public Accountants v. Ministry of Finance, et al.*, 38LLR 657 (1998), *The Estate of Frank Tolbert v. Gibson-Sonpon*, 37 LLR 113 (1993),.

We believe the framers of our Constitution would never put a provision in the Constitution that would most likely cause a discontinuity or an imbalance in the running of our Government, or set the stage for what could lead to a practical none functioning of a branch of our Government because of the lack of a quorum to operate. The framers, realizing the importance of ensuring the functioning of both Houses of the Legislature, required in Article 40 of the Constitution that neither House shall adjourn for more than ten days without the consent of the other, and both Houses should sit in the same city. We are convinced that the framers of our Constitution would only set out laws that would provide the stability of our Country and ensure it proper running, and that is why they in preparation of a sustained and operative government allowed in the Constitution for the Legislature to enact elections laws which would fill in gaps to govern future political developments relating to elections and to facilitate smooth political transition that would fill up vacancies in political branches of Government. The framers view the occupation of various political offices as cardinal to the proper functioning and operation of the Government and Country. They left the enactment of elections law with the Legislature which should not be in conflict with the Constitution but in furtherance of the intent of the Constitution which is to ensure the continuity and smooth running of Government, as in this case where the Ebola outbreak was not anticipated.

The Legislature in furtherance of Article 83 (c), provided for the gap that was not dealt with in this Article of the Constitution, that is, if an election complaint is not concluded before the sitting of the Legislature on the second Monday in January, as the case is, what should occur. The Legislature seeing the wisdom to have seated in the Legislature those who are declared winners when complaints against them are not heard and disposed of before the taking of office expounded on Article 83 (c) of the Constitution on a contested election. In Chapter 6 of the New Elections Law, the Legislature provided answer for such situation where a complaint file with N EC is not finally disposed of before the Legislature assembles. Sections 6.1 and 6.2.2 of the Elections Law read thus:

#### § 6.1: Filing a Complaint with the Commission

Any political party or candidate who has justifiable reasons to believe that the elections were not impartially conducted and not in keeping with the election Law, which resulted in his defeat or the defeat of a candidate shall have the right to file a complaint with the commission; such complaint must be filed not later than seven (7) days after the announcement of the results of the elections.

#### § 6.2: Investigation and Decision

(1) Time schedule. The commission upon receipt of the complaint of the contestant shall within thirty (30) days cite the parties; conduct an impartial investigation and render a determination as provided for in paragraph 2 of this section. The determination shall be accompanied by a summary of the investigation and the reason for it.

(2) Effect of determination. The decision of the commission shall have the following effects:

(a) If any person returned is declared not to be duly elected, but has already assumed such office, shall cease to hold such office;

(b) If any person not returned is declared duly elected to an office, he/she shall assume such office; and

(c) If any election is declared void, a new election shall be held.

We agree with the argument put forth by the NEC, if the framers of the Constitution wanted complaints to be heard before the seating of candidates they would not have required the NEC to declare the winners of the election in fifteen days and further require the Commission to hear election complaints within thirty days? We are of the strong conviction that the framers contemplated no such action by the NEC as the majority wants us to believe.

Let us ask, what if a participating candidate in the recent election of all the fifteen counties had filed complaints with the NEC against the elections result in these counties and we were to go along with the majority that none of them could be seated until complaints brought against the election results were heard and disposed of, could the final determination of these matters have been made before the assemble of the Legislature on January 12, 2015? How many of the complaints brought before NEC since its declaration on December 27, 2014, have finally been disposed of?

We can name one or two which include the complaint from Grand Cape Mount County filed by Alhaji Dr. Fodee Kromah who decided not to contest the ruling of the Commission made against him and in which case NEC filed a bill of information before the Supreme Court requesting the lifting of the stay order placed on it refraining the NEC from certificating Counsellor Sherman as the winner of the Special Senatorial Election in Grand Cape Mount County. With the new assertiveness by our citizens in resorting to legal redress in every and any perceives election's wrong so that we now have an overwhelming number of complaints being put forward to the NEC after its declaration of winners of an election, could these framers, who though hoped for as many election contestation to be disposed of in the shortest possible time, have required that such number of complaints be disposed of between the holding of elections and the seating of winning candidates?

Altering the existing law could unnecessarily burden NEC and the Supreme Court, since multiple lawsuits could be filed exhausting the limited human and financial resources available to handle the already resulting large caseload.

Additionally, given the degree of uncertainty already arising with the prohibition against the certification of three Senators-elect in this Special Senatorial Election, there is a potential for chaos when elections are held to fill more than 15 seats. For example, in the forthcoming General Election scheduled for 2017, seventy three (73) seats in the House of Representatives will be determined. In the case of two complaints against each of these Representatives elected by any of the losing candidates, the NEC will need to process 146 complaints within 30 days. Should these complainants also feel encouraged to petition the Supreme Court to prevent these Representatives-elect from being certificated and seated, there will be a significant level of uncertainty across Liberia over the status of the election.

It is colleagues interpretation, insisting that Article 83 (c) requires that only those candidates whose elections are not contested or who have had complaints against their elections as winners heard and decided can be certificated to take political office; this, we say, is a misinterpretation of this provision of the Constitution and will be a recipe for disaster.

We believe and must state here that though the law sets no time for certification of candidates elected, the Commission should, in line with previous practice, certificate elected candidates as closely as it can to the date of their seating, seeking to speedily dispose of elections complaints as contemplated by 83 (c) of the Constitution as

the certification will set out those duly elected and will eradicate or minimize nullification of those declared and seated.

Interestingly, the petitioners and the majority are of the view that it would be difficult if not impossible to remove a declared candidate who is certificated and seated than staying his certification and have him seated only until after the challenge to his election results is finally disposed of and he is found to be duly elected.

The hypothetical scenario advanced by our distinguished majority colleagues reads thus:

“take for example a scenario that involves the presidency. The National Elections Commission announces the results of the elections conducted for the presidency of the nation. It declares that Mr. or Mrs. X was the winner of the elections. The results and the declaration of Mr. or Mrs. X as the winner are contested and a complaint is filed with the Commission requesting an investigation into the matter. The Commission decides that notwithstanding the complaint that is before it, undetermined and no decision made in respect thereto, it would proceed to certificate the declared winner. This certification facilitates the declared winner being inaugurated as President. The President proceeds to (a) take charge of the military as Commander-In-Chief; (b) organized or reorganized the entire security apparatus with the appointments of persons loyal to the President; (c) appoint the cabinet, including the Minister of Defense, all of whom immediately begin to reorganize the government; and (d) implement an entirely new set of policy framework and directions. Assuming that several months thereafter, following a final decision by the National Elections Commission that the inaugurated President did not actually win the elections, or that there were such irregularities that the conduct of new elections are warranted, and the matter is appealed to the Supreme Court which sustains the position of the Commission. How then is the President removed from office? How could chaos be averted in such a situation”?

Given the scenario quoted supra, we are of the belief that there can be no chaos or difficulty if the elected-president is a law abiding citizen. We believe, and our distinguished majority colleagues will concede, that a law abiding citizen will respect the rule of law and give up every emoluments assigned to the office of the president if his declaration or certification is destroyed by an adverse judgment. However, it should be quickly noted that if the elected-president is a political recalcitrant and a deviant, then even under the cloak of a legal and uncontested declaration there will still be cyclone and turbulence for the State; for such a soul shall never cease to devise evil schemes under the guise of the law, and this too shall be catastrophic.

We must say that the majority fear is engendered by those who feel that Liberia is a country of men and not law; and it is unfortunate that we of the Judiciary would promote such misgivings when we are the ones looked upon

To ensure that citizens abide by the law and that no one is seen as being above the law.

Let's dispel this fear of the petitioners and the majority by referencing a factual, not hypothetical case that occurred in our sister nation, the Federal Republic of Nigeria.

In April 2007, Governor Olagunsoye Oyinlola a member of the ruling People's Democratic Party (PDP) was declared re-elected as Governor of Osun State and Engineer Rauf Aregbesola, a Nigerian politician who ran against Oyinlola for the governorship filed a petition with the Independent National Electoral Commission, (INEC) contesting Governor Olagunsoye Oyinlola's victory. The tribunal denied his petition. Aregbesola appealed the decision, leading to a de novo hearing in June 2009. On 26 November 2010, Justices of the Federal Appeal Court sitting in Ibadan, Oyo State, Nigeria, finally declared Aregbesola as the winner of the 2007 election, ordering that he be sworn in as Governor by noon on 27 November 2010. After nearly three years in office Governor Olagunsoye Oyinlola ceased to hold office as Governor of Osun State, Nigeria. ([www.wikipedia/wiki/Rauf\\_Aregbesola](http://www.wikipedia/wiki/Rauf_Aregbesola)).

Our Colleague would say that Governor Olagunsoye Oyinlola occupied the office wrongfully and so the decisions made and actions taken by him when he was in Office were improper or invalid. But this case took three and a half years to be decided going through all the legal rudiments. Would we say that it was better for the State of Osun to have gone without an elected Governor for three and a half years until the case was decided? Was it not better to have a Governor in office conducting the affairs of the State who had the mandate from some voters, if not the majority, than to have the Office vacant or man by someone who had absolutely no consideration or mandate from the people to act in said political position?

Let us ask, is the majority implying that unlike other countries in Africa, for example Nigeria, whose Governor under the same legislation had to cease to hold office after his elections result was nullified based on a complaint filed, has a legal enforcement mechanism more trustworthy and assertive so that declarations made by a judicial body is adhere to? How do we by this argument interpret our enforcement of the rule of law?

This Court has held that "courts are not at liberty to declare statutes invalid although they may be harsh, unfair, or may afford an opportunity for abuse in the manner of application, may create hardships or inconvenience, or maybe oppressive, mischievous in their effects, burdensome on the people, and of doubtful propriety"; *LWSC v. John Kollie et al.*, 37 LLR 239, 244 (1993). This Court has held that "the fact that the true construction of a statute may generate harsh consequences cannot be the basis for influencing the courts in administering the law. The responsibility for the justice or wisdom of legislation rest with the Legislature; it is the province of the courts only to construe"; *Kasaykro Corp. v. Stewart and Winter Reisner and Company* 30 LLR 164 173 (1982).

With respect to the second contention, the majority is of the opinion that Section 6.2. (2) (a) that allows certification of the declared winning candidates in face of a pending complaint violates Article 20(a) and (b) of the Constitution. NEC's action, the majority says, denies the petitioners of the due process of law.

The New Elections Law § 6.2(2)(a) provides:

"Effect of determination. The decision of the Commission shall have the following effects:

(a) If any person returned is declared not to be duly elected, but has already assumed such office, shall cease to hold such office"

Article 20(a) and (b) of the Constitution states that that "no person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with the due process of law..."; and "the right of appeal from a judgment, decree, decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolable..."

The co-respondents and the NEC reject the petitioners' contention and state that in fact, due process right is accorded the petitioners since they in accordance with the Constitution have been given the right to file their complaint, and where filed, investigations have already commenced by the NEC into some of the complaints, while others are in the process of being commenced, following which the Commission will give its decision thereon and the parties if dissatisfied will be accorded the opportunity to appeal.

The majority in support of the petitioners' contention state that adherence to the due process, means that once complaints are filed with the Commission, the Commission will withhold any certification of the winners affected by the complaints pending the final decision of the Commission and the Supreme Court, if an appeal is taken.

The majority has cited and emphasized the principle of due process in the case *Wolo v. Wolo* 5 LLR 423 (1973). We do not see how this is applicable in the defense of the petitioners since in this case, the Legislature issued a decree of divorce against Mrs. Juah Wolo, depriving her of her rights and privileges as a married woman without due process of law in violation of the constitutional inhibition, and Chief Justice Louis Arthur Grimes speaking for the Supreme Court wrote that due process is "a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only upon trial."

If we should accept the view of our colleagues and their citation of Chief Justice Grimes' definition of due process, than his assertion would be more in favour and applicable to the co-respondents whom the NEC in consonance with the law declared winners and some of whom were prevented from being certificated to sit in the Senate based on complaints not substantiated by a hearing and declared otherwise. This action of attempt by the petitioners to stay the certification of declared winners in an Special Senatorial Election can be equated to the case decided by this Court, *Brown v. Henries and General Construction, Inc.* 41 LLR 221 (2002). In this case, a dispute arose over the lease of a disputed parcel of land. The appellee filed a petition for declaratory judgment before the Sixth Judicial Circuit, Montserrado County praying the court to declare the status and right of the parties to the lease agreement. The appellee also filed a motion for preliminary injunction. The trial judge granted the motion for preliminary injunction. On appeal, the Supreme Court held that the trial Judge had acted improperly and irregularly in granting a preliminary injunction to prevent the appellant collection of rent, when in fact the declaratory

judgment filed by the appellee was for the purpose of determining the rights and status of the parties. In the same vein should a NEC declared winner be prohibited from assuming office when a hearing has not been disposed of nullifying the elections result?

Our salient question is, should a declared winner be condemned before a hearing and a decision made? What if the accusations on its face are merely speculative based on suspicion, or based purely on vindictiveness with no tangible evidence presented? Is the majority promulgating that the right of the declared winning candidate to be seated be suspended until any and all complaints brought however trivial are heard and decided? What if the hearing on its face presents no justiciable issue? What if the petitioner's own poll watcher signed the record count?

Again, what if the complaint filed by a petitioner is finally heard and is decided in the declared winner's favour? Do we realize the disservice of this to the declared winner who is prevented from carrying out the mandate of his people to represent them? Wouldn't this be an ideal case of what Chief Justice Grimes spoke about: to condemn before hearing? Wouldn't the majority stance encourage an influx of unmeritorious complaints?

The majority has also relied on the cases *Dorbor v. NEC*, and *Saydee v. NEC*, Supreme Court opinions October Term, A.D. 2011. It should be noted here that though we concur with previous opinions of the Honourable Supreme Court on the principles and aspirations of due process, we however cannot ascribe that the *Dorbor* and *Saydee* cases are precedents that support our distinguished colleagues decision to strike Section 6.2 (2)(a) of the New Elections Laws as unconstitutional. To the contrary, these cases aforementioned did not delve into the constitutionality of the act neither did the Court back then declare the certification of declared winners without disposing of complaints against their election's results as a violation of the due process clause. A thorough review of these cases show that the issue of certification was never raised before the Court and the Court did not pass on it.

This is what the Court said in *Dorbor v. NEC* that the majority has relied on:

"The National Elections Commission shall conduct an immediate investigation into this matter. In the interim, and until a final decision is made by the hearing officer in the new investigation, and an appeal, if any, is taken therefrom to this Court and a final judgment made thereon, the National Elections Commission shall not certify nor declare any winner. In the instance where the National Elections Commission has already certified a candidate, it shall proceed forthwith to set aside the certificate pending the final outcome of the matter. It was an affront to the dignity of this Court for the National Elections Commissions to certificate any candidate as winner while an appeal was pending before this Court." [Emphasis Ours]

From the *Dorbor* case, it is clear that the Honourable Supreme Court in concluding its decision frowned upon the act of the NEC for certifying a candidate while an appeal was pending before it, one which is supported by the law which requires that with a few exceptions, and an election matter not being one, an appeal to the Supreme Court operates as a stay to a ruling or judgment. The Court's instruction to the NEC then, did not invalidate Section 6.2.2(2)(a). Nowhere in the *Dorbor* case did the Supreme Court opined or held that the NEC should stay certification or decertified declared winners because its action violates the due process clause. It is our distinguished majority colleagues that are now setting a new precedent in our electoral jurisprudence.

As stated earlier, our distinguished majority colleagues have also advanced the case *Saydee v. National Elections Commission* Supreme Court Opinion, October Term A.D 2011, as another precedent for which this Court must strike down Section 6.2(2)(a) of the electoral statute as unconstitutional. In this case the final count showed Saydee as the winner of the elections. Subsequently upon a complaint of Barlue, a recount was done and Barlue was declared the winner. Saydee contested that he was not represented at the recount and that the recount showed an extra 57 ballots aside from the number of previous counted ballots.

Again this case like the *Dorbor* case renders no support to our distinguished colleagues neither did the Court back then pass on the issue of certification or the constitutionality of Section 6.2(2)(a). We herein quote the relevant excerpt of the *Saydee* case that our distinguished colleagues have relied on. The excerpt reads thus:

"we hold therefore that it was error for a recount to have been ordered done outside of the provisions set out in NEC's Guidelines, without an investigation first being held into the allegation and a showing by evidence gathered by an investigation, the basis for a decision to recount. Indeed we gather from the records that the lack

of an investigation and the failure to accord due process before the decision for a recount were the prime bases for the complaint filed by the appellant against the National Elections Commissions.

Notwithstanding the forgoing, to ensure fair play under these circumstances, and accord all of the parties due process, as our law dictates, we mandate that the Elections Commission conduct a recount of the vote from district No. 3 Maryland County and that all interested parties including local and international observers, be invited and be present to observed the recount and a winner declared therefrom. The Commission must also insure that the recount is conducted by persons deemed by the parties to be credible and that the results from the recount tally with the total number of votes said to have been cast or credible explanation be provided as to what accounts for the difference.

In the main time, the NEC shall proceed to set aside the certification of Mr. Isaac Blalue pending the final outcome of the recount."

The above quoted excerpts from the Saydee case reveal that the Court disapproved of the NEC methodology in conducting a recount without first holding an investigation which was also in violation of the NEC own standing Guidelines. It was this methodology (not the law) that the Court found to be in violation of the due process clause. Also, the Court, as stated earlier did not opine on the issue of certification and its violation in face of a pending appeal. The Court rather gave an 'instruction' to the NEC to set aside the certificate of a candidate until the final outcome of the recount, a specific order as to the facts in this case and which this court is clothed under the law to do, since the Supreme Court can review, modify and set aside actions or ruling of courts of records, administrative agencies, autonomous agencies or any other authorities.

These two cases, Dorbor and Saydee, that were advanced by our distinguished colleagues only strengthen and solidify our dissent which is, that Section 6.2(2)(a) of the New Elections Laws does not violate the due process clause and as such it is in conformity with Article 20(b) and Article 83(c) of the Constitution. The fact that the Court in these two cases reversed the decision of the NEC and the NEC was compelled to comply, demonstrates that due process is accorded in keeping with Section 6.2(2)(a) and Section 6.9 of the elections statute. The New Elections Law provides that

"If the Supreme Court sustains the decision of the Commission, the Commission shall act to effectuate the mandate of the Court. If the Supreme Court reverses the decision of the Commission for whatever reason, the Commission shall within the sixty (60) days, after the judgment of the Court, execute the mandate of the Supreme Court accordingly."The New Elections Laws, Section 6.9.

This provision of the elections statute quoted supra compliments § 6.2(2)(a) of the elections law and the adherence to due process. Notwithstanding our distinguished majority colleagues are of the view that electoral complaint must travel and reach its apex of determination before due process is accorded, and any attempt to certificate a declared winner during the process the due process clause would be abridged. And for which we disagree.

The exercise of the right and power of judicial tribunals to declare whether enactments of the legislature exceed constitutional limitations and are invalid is one of the highest functions and authorities of the courts. It involves a grave responsibility and a solemn duty, and is at all times a matter of much delicacy. Courts have a solemn duty to avoid passing upon the constitutionality of any law unless compelled to do so by an issue squarely presented to and confronting the court in a particular case. Thus courts should endeavor to implement the legislative intent of statutes and should avoid constitutional issues wherever possible. 16 Am. Jur. 2d Constitutional Law, Section 112.

The Court exercises its power to declare legislation unconstitutional with great restraint. The Court invariably give the 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 the greatest possible caution and even reluctance. The Court's power to declare a statute or ordinance unconstitutional is tempered by the Court's respect for the legislative process and the fact that such approach is only applied as last resort. Id. 113.

In the spirit of the constitutional principles stated supra and the reasons aforementioned, we are convince that Section 6.2(2)(a) of the New Elections Law is in conformity with the Article 20(b) as such does not violate the due process clause espoused therein. We are also convinced that the two cases Dorbor and Saydee render no

support in terms of precedents to declare Section 6.2(2)(a) unconstitutional and that the our distinguished colleagues overlooked the constitutional principles of law quoted herein when they declared § 6.2(2)(a) unconstitutional.

We shall now turn to the cardinal issue in this matter and which the majority has transitorily mentioned, that is, whether prohibition will lie to prevent the NEC from proceeding to certificate the declared winners of an election based on a complaints that the elections was irregularity conducted? We say an emphatic "No!"

Prohibition as defined by statute is a special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding specified therein. Civil Procedure Law Chapter 16, Section 16.21.3.

This Court in interpreting the province of this remedial writ has held that, in general, three things are necessary to justify the issuance of a writ of prohibition. The court, officer or person against whom it is directed has or is about to exercise judicial or quasi-judicial power; that the exercise of such power by such court, officer, or person is unauthorized by law; and that it will result in injury for which there is no other adequate remedy. “Doe et al. v. Ash-Thompson; The Proposed Liberia Action Party; 33 LLR 251, 269-70 (1985); therefore, this Court has held that prohibition will not lie where the act complained of is not wrong or illegal, and is within the scope of authority of the person or office complained against. *Komai v. The Ministers of Justice and Public Works*, 36 LLR 518, 522 (1989) *Brown-Bull v. Reconciliation Commission*, Supreme Court Opinion, October Term, 2008; the Court has also held that prohibition will also not lie or be disallowed where it is shown that the alternative writ is intended to prevent, prohibit or obstruct an administrative agency of government from exercising its lawful and administrative duties and responsibilities. *Wesseh v. Tubman*, 28 LLR 3, 12 (1979); *Monrovia Breweries, Inc v. Karpeh*, 37LLR 288(1993); *Brown-Bull v. Reconciliation Commission*, Supreme Court Opinion, October Term, 2008. *Meridian Biao Bank Liberia Limited vs. Andrews et al.*; 40 LLR 111(2000). *Ware v. RL*, Supreme Court Opinion, March Term 2012.

The NEC and the other co-respondents have argued vehemently that the NEC did no wrong to warrant the issuance of the alternative writ of prohibition and that prohibition will not lie; that the NEC acted within the purview of both the Constitution and law when it declared the winners of the Special Senatorial elections, and it violated no law when it proceeded to certificate the declared winners as an affirmation of its declaration.

Recognizing the constitutional provision and the Elections Law granting NEC the authority to hear elections complaints, petitioners had filed their complaints with NEC which they should have pursued and where they were dissatisfied with NEC's decision they had remedy at law based on their right to appeal the decision to the Supreme Court which may nullify the elections of a candidate and order new elections within sixty (60) days. Article 83 (c) makes it clear that declaration of a winner and certification evidencing said declaration are not absolute, and the petitioners have adequate remedy under the Constitution of Liberia.

The majority has based its issuance of the peremptory writ of prohibition on the fact that NEC had proceeded by wrong rules when it certified declared winners of the election while the complaints were pending undetermined and is contrary to the intent of Article 83 (c) of the Constitution.

The majority in its opinion writes and we quote:

“the position taken by the respondents presents a real legal danger to the principle and to the enjoyment of the right guaranteed by the Constitution as far as the electoral process is concerned, the correspondent National elections Commission is the institution charged with the responsibility to conduct public elections; the Commission is similarly charged with the responsibility to count and tabulate the votes; the Commission and only the commission is clothed with the authority to declare the results of the votes, the counts and the winning candidates. It is only before the Commission that a complaint challenging the results and the declaration of winners

is filed; it is only before the Commission that irregularities committed by the Commission and its personnel are complaint of; it is only the Commission that can investigate those complaints, being in control of the records and all of the communications connected with the conduct of the elections; it is only the Commission that can declare that irregularities were committed by it or that it erred in declaring the results of the elections or the winners thereof. In other words, the Commission is the regulator, the conductor of the elections, the referee in the process, the investigator of complaint of its actions, and the judge who determines if the Commission erred or if the results should be changed. This in and of itself creates opportunities for misgivings and avenues for doubt and apprehension by political parties and candidates, especially where the Commission comprises personnel appointed not by any independent body but by the government in existence.

Yet the Commission would have us believe that in addition to all of the powers specified above, it also has the authority, or was so vested therewith by the framers of the Constitution, such that after it has declared a winner, it could proceed to have the declared winners certificated and inducted into Office notwithstanding complaints challenging the elections, the process and the declaration of a winner were filed with the Commission and remained undetermined by the Commission; that it has the power to determine at what stage of the process a person is or should be afforded the opportunity to the enjoyment of his or her constitutionally guaranteed right to due process of law; or that it has the right to effectively suspend the operations of the right of due process of law.

Section 6.2 by its words, clearly anticipates that a declared winner of a senatorial, or any other rare for that matter, for public elective office, can be certificated by the Commission and thereby on the strength of that certification be seated and assume the office, and that if subsequently any determination is made by the National Elections Commission or the Supreme Court, if the decision of the Commission, adverse to the declared winner, is appealed, the prior declared winner must give up the office or position which he or she was allowed to hold. As the section runs contrary to both Article 83(c) and Article 20(a) of the Constitution, we hold that to the extent of the inconsistency, the provision is unconstitutional. As noted before, the National Elections Commission cannot certificate a declared winner and thereby facilitate his or her seating to the declared winning position whilst the complaint regarding its declaration of the winner and the manner in which the elections were conducted remained unresolved and pending before the Commission or the Supreme Court, for such action would clearly deprive a challenging candidate of the right to due process of law. Hence, Section 6 of the Elections Law stating that a person could be seated and subsequently removed from office if the National Elections Commission or the Supreme Court declares that he or she did not win the elections, not being in conformity with the Constitution, is declared unconstitutional and therefore null and void.

We also see that the section herein declared unconstitutional has a number of other problems. One cannot therefore not see, as the complainants have argued], that the complainants would have reservations as to whether under the circumstances the Commission, having proceeded to certificate a declared winner and thereby effectively facilitate the seating and assumption of office by the declared winner, will see fit to admit that it erred. To the contrary, the petitioners have argued that they feel strongly that the Commission is more likely than not seek to affirm or confirm its initial decision at all costs and by all means, not because it believes itself to be right but because it has an interest in the outcome or that it does not wish to expose itself to public ridicule.

We are in agreement with the petitioners that in the circumstances narrated herein, they have genuine concerns that their right to due process have been and are being transgressed and denied by the National Elections Commission's certification of the declared winning candidate. We endorse the petitioners' argument that the certification of the declared winner, a final act of the Commission, was tantamount to a rendition of a final judgment by the Commission even though the complaint filed before the Commission was still awaiting disposition by the Commission. This is like a judge who, while presiding over an action of ejectment and while the matter is still pending, puts one party in possession of the disputed property even though the case has is still being attended to and is still awaiting disposition by the court. Not only is this a deprivation of due process, it is a travesty of due process and an abuse of the authority vested in the Commission, the same as it would be in the instance of a judge. We do not believe that the framers of our Constitution countenanced or anticipated such a course or result in the electoral process, a cardinal part of the new quest for democratic order and elective governance.

We believe that had the framers of the Constitution intended that the course advocated by the respondents, a clear and obvious departure from the constitutionally guaranteed enshrined due process of law, should obtain, they would have specifically stated in the document that the position, as advocated by the respondents, constitutes an exception to the due process guarantee.

We hold therefore that while the National Elections Commission has the authority to declare a winner, it is without the authority to certificate winners if in the particular cases complaints have been filed before it within the period specified by the Constitution challenging the manner in which the elections were conducted, or against the results announced or declared by the Commission, and/or against the declaration of winners, and it, the Commission, has not disposed of the complaint as at the time of the certification of the declared winning candidate. We hold further that any such action by the Commission is tantamount to a denial of due process of law, and thereby rendering the certification illegal and null and void *ad initio*."

We've found it necessary to quote this portion of the majority's ruling to show that the granting of the peremptory writ of prohibition is based not on what the law is but what the majority perceive should obtain as an ideal situation if transparency of the elections process must prevail. Unfortunately it is not of the court to say what the law should be, whether it is just or unjust, it is for the people who through a referendum should amend the Constitution to remove such unjust provisions, or to mandate that their representatives, the Legislature, amend or repeal statutes enacted that are found to be unjust. Each branch of the Government has its function defined under the Constitution and the function of the Judiciary is not to make law but to interpret the law as is when it is clear on its face.

Let us reiterate the Supreme Court holdings in this regard. This Court held in the case *Williams v. Inter-Con*, 3BLLR 414 423 (1997); *LWSC v. Kollie et al.*, 37LLR 193 (1993), that courts are not at liberty to declare statutes invalid though they may be harsh, unfair, abused and misused, may afford an opportunity for abuse in the manner of application, may create hardships or inconvenience, may be oppressive or mischievous in their effects, burdensome on the people and of doubtful propriety. The Courts are not the guardians of the rights of the people against oppressive legislation which does not violate the provisions of the Constitution. The protection against such burdensome laws is by an appeal to the justice and patriotism of the people themselves or their legislative representatives."

In its opinion, the majority writes that they have difficulty believing that the men and women who served on the National Constitution Commission, who had personal experience, directly and/or indirectly, the trauma of the failing of the exercise or enjoyment of the right of due process of the law, would have countenanced or envisioned that the due process principle would take a course similar to what prevailed prior to the drafting of the their precious handiwork, the new Constitution of 1986.

We must add that more so, those clothed with the authority to draft the Constitution were also learned men who would have clearly crafted out their intent of the provisions of the Constitution so that it would not be left for speculation and with this Court to interpret, in which case it may not do justice as to intent of the drafters as the majority in our view has done. We believe these men had the ability to say clearly what they wanted seen in this sacred document.

We believe these learned men and women studied and saw into the future and decided not to extend Article 83 (c) beyond encouraging the speedy hearing of elections complaints so as to have those declared as persons duly elected and seated. It was not their intent to prohibit candidates declared as winners from taking seats until complaints against them are heard since that would likely bring about stagnation in our governing system and cause a constitutional crisis. If it were the wish of these learned men and women to have all elections complaints heard before the affected winning candidates are seated, a simple sentence expanding this provision of 83 (c) would have been included. They left it to the Legislature and the courts to decide what would happen if one who took seat was not duly elected, and the Legislature carried out its constitutional authority when it legislate Section 6.(2) (2) (a) of the New Elections Law.

By National Elections Commission's declaration and certification of winning candidates for the Special Senatorial Election, it did not exceed its jurisdiction nor proceed by wrong rule for which prohibition will lie; *Commercial Bank of Liberia v. Stewart*, 30 LLR 364, 367-8 (1982); *Brown- Bull v. Reconciliation Commission*, Supreme Court Opinion, October Term, 2008. We uphold the Supreme Court's ruling in the case, *In re Ibrahim*

et al. v. Paye et al., Supreme Court Opinion, March Term 2006, and reiterated that the writ of prohibition is not the cure for all judicial misfortunes or ills. The writ of prohibition cannot be used in place of an appeal; for, the writ of prohibition has a clearly defined role; it is used to stop a judicial or quasi-judicial actor from proceeding when he/it has no jurisdiction and if he/it has jurisdiction is proceeding by wrong rule which we say the NEC has not done and therefore prohibition will not lie.

The number of arguments being made about the Elections Commission conducting an election and at the same time designated by law to hear complaints about the irregularity of the elections, we feel, goes to the same framers of the Constitution and their wisdom at the time this provision of the Constitution was made. The law being cleared on its face, we of the Judiciary are in no position to change or interpret it otherwise, and the NEC, acting in accordance with the Constitution and the Elections Law as is, did not violate any or proceed wrongly for which prohibition will lie.

In consequence of all that we have articulated and the fact that posterity will judge us in time, we are unable to agree with our distinguished majority colleagues and hence have withheld our signatures to the majority opinion.

The Clerk of this Court shall file this dissenting opinion in the archives of this Court.

[Please see pdf file for signatures]

