IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, 2007

PRESENT: HIS HONOR JOHNNIE N. LEWIS ..... CHIEF JUSTICE
PRESENT: HIS HONOR FRANCIS KORKPOR, SR. ..... ASSOCIATE JUSTICE
PRESENT: HER HONOR GLADYS K. JOHNSON ..... ASSOCIATE JUSTICE
PRESENT: HIS HONOR KABINEH M. JA'NEH ..... ASSOCIATE JUSTICE
PRESENT: HER HONOR JAMESETTA H. WOLOKOLIE ..... ASSOCIATE JUSTICE

The Congress for Democratic Change (CDC), by and thru its Secretary-General, Eugene Lenn Nagbe, and the Liberty Party (LP), by and thru its Chairman, Israel Akinsanya, all of the City of Monrovia, Liberia ..... Petitioners)
)
versus)
) PETITION FOR THE WRIT
The Executive Branch of the Government of the) OF PROHIBITION
Republic of Liberia, by and thru the Minister of)
Justice, the Minister of Internal Affairs and all)
those operating under their command, also of)
the City of Monrovia ..... Respondent)

PETITION FOR THE WRIT OF PROHIBITION DENIED.

Heard: December 4, 2007 **Decided: January 11, 2008**

MR. CHIEF JUSTICE LEWIS delivered the opinion of the Court.

The President of the Republic of Liberia, Her Excellency Madam Ellen Johnson-Sirleaf, on October 14, 2007, appointed Mrs. Betty Breeze Doe Acting Mayor of the City of Zwedru, Grand Gedeh County.

On October 23, 2007, the Congress for Democratic Change (CDC), by and thru its Secretary-General, Eugene Lenn Nagbe, and the Liberty Party (LP), by and thru its Chairman, Israel Akinsanya, petitioners, representing themselves to be natural persons and political parties duly registered and certified to engage in political activities within the Republic of Liberia, filed a ten-count petition for the writ of prohibition against "The Executive Branch of the Government of the Republic of Liberia, by and thru the Minister of Justice, the Minister of Internal Affairs and all those operating under their command," respondent, praying that this Court will order the issuance of the alternative writ of prohibition requiring the respondent to "undo" the appointment of Mrs. Betty Breeze Doe Acting Mayor of the City of Zwedru, to prevent further appointments of city mayors by the President, and following a hearing, that the peremptory writ of prohibition be granted.

The petitioners, in their petition, claim that they have a vested interest in the political process of Grand Gedeh County, specifically the appointment of the Mayor of the City of Zwedru, and that by law, they have the right to field candidates for election to this position. In making this claim, the petitioners rely on "An Act Regulating the Time of Election of City Mayors throughout the Republic," approved August 9, 1979 and published August 20, 1979; the Elections Law of the Republic of Liberia, 3 Liberian Codes Revised, § 2.9(q) (1986); and a Conference Resolution by the Consultative Roundtable Conference on the Holding of Chieftaincy and Municipal Elections, dated October 14, 2006, held in Lower Buchanan, Grand Bassa County.

On October 26, 2007, His Honor Kabineh M. Ja'Neh, Justice presiding in Chambers, ordered the issuance of the alternative writ, and commanded the respondent to file its returns in the office of the Clerk of the Supreme Court on or before November 7, 2007. In view of the constitutional issue raised in the petition, that the appointment by the President of Mrs. Doe as Acting Mayor of the City of Zwedru, was unconstitutional, Justice Ja'Neh ordered the petition forwarded to the Bench *en banc.*

On November 7, 2007, the respondent filed returns consisting of twenty-nine counts in which it raised, *inter alia,* the following issues: that the petitioners do not have standing to petition for the writ of prohibition; that the petitioners have failed to demonstrate by clear and convincing evidence that they have a vested interest in the political process in Grand Gedeh County, specifically the appointment by the President of an Acting Mayor of the City of Zwedru; that the 1979 Act Regulating the Time of Election of City Mayors throughout the Republic is inconsistent with the Liberian Constitution (1986); that § 2.9(q) of the Elections Law of the Republic of Liberia (1986) is not determinative of the issue raised by the petitioners that the appointment by the President of Mrs. Doe as Acting Mayor of the City of Zwedru is unconstitutional; that the resolution of the Conference Resolution of the Consultative Roundtable Conference on the Holding of Chieftaincy and Municipal Elections has no relevance to the determination of this matter; that the authority of making appointments is, by the Constitution of Liberia, vested in the President except in five instances expressly stated in the Liberian Constitution (1986).

We proceed, without deciding, that the petitioners have standing to institute the petition for the writ of prohibition.

The one issue determinative of this petition is whether the Act Regulating the Time and Election of City Mayors throughout the Republic of Liberia, approved August 9, 1979 and published August 20, 1979, violates any provision of the Liberian Constitution (1986), and therefore is unconstitutional.

The petitioners have submitted that the Act is not inconsistent with any provision of the Liberian Constitution (1986), and therefore has effect and force for all intents and purposes. We disagree.

We quote the Act.

> "It is enacted by the Senate and House of Representatives of the Republic of Liberia, in Legislature Assembled:
>
> "Section 1. That from and immediately after the passage of this Act, all city mayors throughout the Republic shall be elected quadrennially on the second Tuesday in November and shall serve for four years from the time of their election; and all elections held for city mayors under the respective charters of the cities shall be valid for, extend to and include the second Tuesday in November, 1979.
>
> "Section 2. This Act shall take effect immediately upon publication in handbills.
>
> "Any law to the contrary notwithstanding."

We observe, at the outset, that the Act was approved August 9, 1979, and published August 20, 1979. Upon publication by the Ministry of Foreign Affairs on August 20, 1979, the Act became enforceable. Executive Law, 2 L.C.L., tit. 20, § 15 (1956). The Act was enacted, however, prior to the adoption of the Liberian Constitution (1986) in 1984, and its effective date of January 6, 1986.

We hold that any provision of the Act, which is opposed to the plain terms of any provision of the Liberian Constitution (1986), was repealed by implication at the adoption of the Liberian Constitution (1986), and its effective date of January 6, 1986.

Article 54 of the Liberian Constitution [1986] provides:

> "The President shall nominate and, with the consent of the Senate, appoint and commission:
>
> "(a) cabinet ministers, deputy and assistant cabinet ministers;
> "(b) ambassadors, ministers, consuls;
> "(c) the Chief Justice and Associate Justices of the Supreme Court and judges of subordinate courts;
> "(d) superintendents, *other county officials and officials of other political subdivisions;*
> "(e) members of the military from the rank of lieutenant or its equivalent and above; and
> "(f) marshals, deputy marshals, and sheriffs" (emphasis supplied).

Appearing before this Court, counsel for the petitioners contended that *"other political subdivisions,"* referred to in Article 54 of the Liberian Constitution (1986), and

which we have emphasized, refer to districts and not cities. He has provided no legal citation in support of this position.

We have legal authority, however, which defines a city as "[a] political entity or subdivision for local governmental purposes, commonly headed by a mayor, and governed by a city council." *Black's Law Dictionary, City,* 444 (5th ed. 1979).

We have legal authority, also, which defines "political subdivision" as "a division of a state that exists primarily to discharge some function of local government." *Black's Law Dictionary, Political Subdivision,* 1197 (8th ed. 2004).

Finally, we have legal authority which defines a "municipal corporation" as a *"city, town, or other local political* entity formed by charter from the state and having the autonomous authority to administer the state's local affairs" (emphasis supplied). *Black's Law Dictionary, Municipal Corporation,* 1042 (8th ed. 2004).

With these legal definitions, we hold that under Article 54(d) of the Liberian Constitution (1986) *"other political subdivisions"* includes, among others, all cities throughout the Republic of Liberia, and that *"officials of other political subdivisions"* includes, among others, all city mayors throughout the Republic of Liberia. These officials are subject to appointment by the President, with the consent of the Senate. Any other interpretation of *"other political subdivisions"* would be absurd.

> "It is the general rule that a statute existing at the adoption of a state constitution cannot be upheld if it is opposed to the plain terms of the constitution. If there is a conflict between a statute and such a constitutional provision, the former must give way, since all statutes which are actually inconsistent with a new constitution are repealed by implication, unless they constitute contracts within the meaning of the provision prohibiting an impairment of the obligation of contracts.
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> . . .
>
> "Of course, a new constitution or a constitutional amendment may expressly provide for the repeal of inconsistent statutes. A provision saving all consistent statutes is also a basis for holding that inconsistent statutes are repealed, but, as noted above, it is also established that the same result would ensue by implication if there had been no such provision." 16 Am Jur 2d *Constitutional Law,* § 68.

We hold that the Act Regulating the Time of Election of City Mayors Throughout the Republic is opposed to the plain terms of Article 54(d) of the Liberian Constitution (1986), and is unconstitutional. We hold, also, that any provision of any Act of the National Legislature creating any city, prior to the adoption of the Liberian Constitution (1986) in 1984, and its effective date of January 6, 1986, providing that the city mayor

shall be elected was repealed by implication at the Constitution's adoption and effective date of January 6, 1986. We hold, further, that any provision of any Act of the National Legislature creating cities after the adoption of the Liberian Constitution (1986) in 1984, and its effective date of January 6, 1986, providing that the city mayor shall be elected is unconstitutional.

This holding does not apply to paramount, clan and town chiefs; for Article 56(b) of the Liberian Constitution (1986) provides for the election of paramount, clan and town chiefs. We quote Article 56(b) of the Liberian Constitution (1986).

> "There shall be elections of paramount, clan and town chiefs by the registered voters in their respective localities, to serve for a term of six years. They may be re-elected and may be removed only by the President for proved misconduct. The Legislature shall enact laws to provide for their qualifications as may be required."

We note that except for Article 50 of the Liberian Constitution (1986) which provides that the "President [of the Republic of Liberia] shall be elected by universal sufferage of registered voters in the Republic," Article 51 of the Liberian Constitution (1986) which provides that the "Vice President [of the Republic of Liberia] shall be elected on the same political ticket as the President," Article 45 of the Liberian Constitution (1986) which provides that the "Senate shall be composed of Senators elected for a term of nine years by registered voters in each of the counties," and Article 48 of the Liberian Constitution (1986) which provides that the "House of Representatives shall be composed of members elected for a term of six years by the registered voters in each of the legislative constituencies of the counties," the only other article of the Liberian Constitution (1986) on the election of officials is Article 56(b) providing for the elections of paramount, clan and town chiefs.

It is a principle of constitutional law that what a constitution does not grant, it withholds.

> "Although it has been said that the maxim 'expressio unius est exclusio alteries' does not apply with the same force to a constitution as to a statute, and that it should be used sparingly, there is authority to the effect that in construing a construction, resort may be had to the maxim, and the expression of one thing in a constitution may necessarily involve the exclusion of other things not expressed. Thus, when a constitutional provision assumes to point out certain exceptions to one of its own general rules, a court may not say that other exceptions were intended though not mentioned. . . ." 16 Am Jur 2d *Constitutional Law,* § 108.

The Liberian Constitution (1986) having not provided for the election of city mayors, it has not only withheld that city mayors shall be elected, but Article 54 has explicitly provided that the President shall nominate, with the consent of the Senate,

appoint and commission *"officials of other political sub-divisions."* The National Legislature may therefore enact no law in derogation of Article 54 of the Liberian Constitution (1986), otherwise, this Court, in exercise of its constitutional power to "say what the law is," shall declare unconstitutional any such law. Liberian Constitution (1986), Article 2; *Catholic Justice and Peace Commission v. The Republic of Liberia,* Opinion of the Supreme Court, March Term, 2006; *Snowe v. Some Members of the House of Representatives,* Opinion of the Supreme Court, October Term, 2006.

The petitioners have relied, also, on the Elections Law of the Republic of Liberia, 3 Liberian Codes Revised, § 2.9(q) (1986). We quote the section.

> "The Elections Commission, [as] an autonomous agency of Government, independent of any branch of the Government, shall have the following powers and duties:
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> . . .
>
> "Be the sole judge of all contests relating to the election results, and the accreditation of all successful members who have been duly elected as President, Vice President, Members of the National Legislature, paramount, clan and town chiefs, and *city mayors* with their common councilmen. Appeal from the decision of the Commission in any election contest shall lie before the Supreme Court taken in accordance with the provisions of this title relating to election contests" (emphasis supplied).

We have emphasized the words "city mayors," which we take are the specific words of § 2.9(q) of the Elections Law (1986) which the petitioners rely on.

The petitioners cannot rely on any provision of the Elections Law of the Republic of Liberia (1986) which is inconsistent with any provision of the Liberian Constitution (1986). We quote Article 2 of the Liberian Constitution (1986).

> "This Constitution is the supreme and fundamental law of Liberia and its provisions shall have binding force and effect on all authorities and persons throughout the Republic.
>
> "Any *laws,* treaties, *statutes,* decrees, customs and *regulations* found to be inconsistent with it shall, to the extent of the inconsistency, be void and of no legal effect. The Supreme Court, pursuant to its power of judicial review, is empowered to declare any inconsistent laws unconstitutional" (emphasis supplied).

We hold that the provision of § 2.9(q) of the Elections Law of the Republic of Liberia, 3 Liberian Codes Revised (1986), granting unto the Elections Commission "the powers and duties" to "be the sole judge of all contests relating to the elections results, and the accreditation of all successful members who have been duly elected as . . . city mayors . . ." is inconsistent with Article 54(d) of the Liberian Constitution (1986), and

pursuant to this Court's power of judicial review, declare it unconstitutional. The National Elections Commission does not have the authority to conduct elections for city mayors in the Republic of Liberia.

The petitioners have relied, lastly, on a Conference Resolution of the Consultative Roundtable Conference on the Holding of Chieftaincy and Municipal Elections dated October 13, 2006. We quote the Conference Resolution.

Consultative Roundtable Conference on the Holding of Chieftaincy and Municipal Elections

Unification Pavilion
Grand Bassa County
October 13-14, 2006

Conference Resolution

Whereas, on October 13-14, 2006, the National Elections Commission (NEC), in compliance with count 15 of the Resolution of a Two-day National Stakeholders Consultative Conference on the Timely Conduct of the Chieftaincy and Municipal Elections: Challenges and the Way Forward, held July 21-22, 2006 at the Saint Theresa Convent Pastoral Retreat Center in Monrovia, did organize and conduct the Consultative Roundtable [Conference] called for in said count, bringing together, in particular, the following stakeholders:

The Senate Standing Committee on Internal Affairs and Reconciliation;
The Senate Standing Committee on Elections and Inauguration;
The House Standing Committee on Internal Affairs;
Leaders of Political Parties;
Representatives of Civil Society;
Representatives of the donor communities; and
The Presidency; and

Whereas, the NEC submitted two primary working documents to the Roundtable Conference: (1) copy of the Resolution from the July 21-22, 2006 Saint Theresa Convent Consultative Conference; and (2) the Tentative Electoral Timetable outlining key electoral dates for the holding of the pending Chieftaincy and Municipal elections; and

Whereas, statements emphasizing issues and concerns about the holding of the local elections were presented to the stakeholders attending the Roundtable [Conference]; and

Whereas, the participants constituted themselves into three working groups including a Special Road Map Committee to analyze and rationalize all the concerns raised pertaining to the holding of the elections; and

Whereas, the political parties attending the Roundtable Conference made a special statement as to their collective thinking and position on all issues and concerns relating to the holding of the elections; and

Whereas, the working groups and political parties debated and deliberated extensively on all presentations and comments made at the Roundtable [Conference]; and

Whereas, following the deliberations, consultations, review and analysis of the presentations and comments made at the Roundtable Conference, the participants concluded that:

1. For the purposes of the pending chieftaincy and municipal elections, articles of constitutional nature should not be tempered *(sic)* with; and

2. In continuance of the consensus-building process, counts 1, 5, 6, 7, 8, 9, and 11 of the July 21-22, 2006, [of the] Two-day National Stakeholders Consultative Conference on the Timely Conduct of Chieftaincy and Municipal Elections in Liberia, shall be upheld and implemented by the NEC;

3. Although the chieftaincy and municipal elections are to be held as required by Article 56(b) of the Constitution and section 2.9 of the 1986 new Elections Law of Liberia, there are too many chiefdoms and municipalities in Liberia, and this reality is counter-productive to the development of the country;

4. Because there is confusion of authority and responsibility in the present local governance structure of Liberia, manifested by territorial overlap and reference for accountability, there is a need to review the legal status of the chiefdoms and municipalities in the country, with the intention of rectifying all technical and legal errors that may be responsible for the confusion;

5. It is clear that the process of demarcation/delimitation by which chiefdoms and municipalities were established in the past did not follow a standardized and consistent method or approach;

6. *The appointing power of the President does not extend to positions which, by law, are subject to elections. Accordingly, holders of chieftaincy and municipal positions are to maintain their positions until their successors are duly elected and inducted into office.*

7. The statutes creating cities are being violated by both the central Government and by officials of the municipalities. For example, (a) cities are not raising their own fees; (b) employees of cities are on the central Government payroll; and (c) cities are controlled by the central Government.

Now, therefore, it is hereby resolved:

1. That those currently holding chieftaincy and municipal positions must remain in office until their successors are duly elected and inducted into office. Any vacancy occurring in the current structure of the chiefdoms and municipalities should be filled by the next in line of succession of the office concerned.

2. That for the purposes of conduction the pending chieftaincy and municipal elections, articles of constitutional nature are not to be tempered *(sic)* with.

3. That counts 1, 5, 6, 7, 8, 9 and 11 of the July 21-22, 2006, Two-day National Stakeholders Consultative Conference on the Timely Conduct of Chieftaincy and Municipal Elections in Liberia be upheld and be implemented by the NEC to complete the formation of the post-war democratic government of Liberia, it being expected that the Government will engage the international community to assist with technical and financial support for the process.

4. That a Special Joint Stakeholder Collaborative Committee (SJSCC) on delimitation and demarcation of chiefdoms and municipalities in Liberia is hereby constituted to review the legal status of the current chiefdoms and municipalities, and prepare a draft legislation to the National Legislature for the repeal and/or enactment of legislation which will ensure the timely holding of the pending chieftaincy and municipal elections.

5. Mandate. That the SJSCC will organize and conduct consultative town meetings and/or consensus-building workshops with officials, opinion leaders, and residents of chiefdoms and municipalities across the country with the intent to:

   (a) Determine the appropriate legal steps that may be necessary for correcting any technical or legal deficiency in the legal status of the chiefdoms or municipalities; i.e. territorial jurisdiction, overlapping of authority, self-sustaining capacity, etc.

   (b) Evolve standardized criteria and guidelines for the creation of a chiefdom or a municipality in Liberia; and

   (c) Prepare and submit draft bills to the Legislature for repeal of any chiefdom or municipal Act which is found to be technically faulty, as well as for the enactment of new laws which will enhance the conduct of the pending chiefdom and municipal elections.

6. That the SJSCC formed by this Conference be composed of technicians from the Ministry of Internal Affairs (MIA), the Ministry of Planning and Economic Affairs (MPEA), the Ministry of Lands, Mines and Energy (MLME), the National Legislature, the Liberian National Bar Association (LNBA), Political Parties, Civil Society Organizations, Donor Organizations and the Governance Reform Commission (GRC). The NEC shall serve as an advisory observer with the hope that it will assist in any way possible.

7. That the SJSCC shall be coordinated by the MIA with direct technical and logistical assistance from MPEA and MLME, UNDP, UNMIL, IFES and other partners (local and international). Any proposed legislation arising from the work of this committee shall be presented to the National Legislature as an Executive Bill.

8. That the work of the committee, in a draft bill form, shall be submitted to the National Legislature not later than March 31, 2007 for legislative consideration.

9. That it is expected that the Legislature will consider the draft bill and take a decision on said draft bill on or before April 30, 2007.

10. That the electoral timetable proposed by the NEC is hereby upheld, but to commence after April 30, 2007.

11. That without affecting the schedule for the pending chieftaincy and municipal elections, the Governance Reform Commission (GRC) is expected to include in its comprehensive governance reform review exercises, discussions regarding the expediency of conducting local elections before national legislative and presidential elections in the future.

Done this 14th day of October, 2006, in the City of Buchanan, Grand Bassa County, Republic of Liberia.

Signed. Special Road Map Committee

Name	Organization
1. Hon. Hannah Brent	Liberian Senate
2. Hon. Ranney B. Jackson	Superintendent, Bong County
3. Hon. Galakpai W. Kortimai	Superintendent, Lofa County
4. Hon. Moses S. Tandanpolie, Sr.	House of Representatives
5. Senesee G. Freeman	IFES
6. Thomas Du	NDI
7. Hon. Victoria Lynch	House of Representatives
8. Hon. Blamoh Nelson	Liberian Senate
9. George Barrolle	LCC-GGC
10. Joshua Sackie, Jr.	CDC
11. Urias The Pour	CEDE
12. Samuel G. Reeves	Ministry of Internal Affairs
13. Alfred M. T. Pinneh	Ministry of Internal Affairs
14. Toga Gayewea McIntosh	Minister/MPEA
15. J. Africanus Gabriel	LAP/Political Parties

Note. The various participating institutions/organizations including political parties, civil society organizations, the House of Representatives, the Liberian Senate, international organizations, the Superintendents' Council and Line Ministries nominated two representatives each to the membership of the Special Road Map Committee (emphasis supplied).

We have emphasized count six of the conclusions of the Conference:

> "Whereas, following the deliberations, consultations, review and analysis of the presentations and comments made at the Roundtable Conference, the participants concluded that:
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> . . .
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> 6. *The appointing power of the President does not extend to positions which, by law, are subject to elections. Accordingly, holders of chieftaincy and municipal positions are to maintain their positions until their successors are duly elected and inducted into office.*

We hold that this document has no relevance to the determination of the issue raised by the petitioners whether the President had the constitutional authority to appoint Mrs. Betty Breeze Doe Acting Mayor of the City of Zwedru. The document would only be relevant if the President did not have that constitutional authority. We have decided that the President has that constitutional authority, under Article 54(d) of the Liberian Constitution (1986), to nominate and, with the consent of the Senate, appoint and commission, all city mayors within the Republic of Liberia.

It is unfortunate that the National Elections Commission got drawn into and participated in a Two-day National Stakeholders Consultative Conference on the Timely Conduct of the Chieftaincy and Municipal Elections: Challenges and the Way Forward, held July 21-22, 2006 at the Saint Theresa Convent Pastoral Retreat Center in Monrovia. It is equally unfortunate that the Elections Commission subsequently organized and conducted the Consultative Roundtable Conference on the Holding of

Chieftaincy and Municipal Elections which convened in Grand Bassa County on October 13-14, 2006, and subscribed to count six of the Conference's resolution. The National Elections Commission should have known that it was unconstitutional to conduct elections for city mayors in the Republic of Liberia, and should neither have participated in the Two-day National Stakeholders Consultative Conference, nor organize and conduct the Consultative Roundtable Conference in so far as it related to the election of city mayors. The resolutions of both the Two-day National Stakeholders Consultative Conference and the Consultative Roundtable Conference, as they relate to the elections of city mayors, were unconstitutional, and we hold that they are unconstitutional.

We confirm this Court's holding in *Catholic Justice and Peace Commission v. The Republic of Liberia,* Opinion of the Supreme Court, March Term, 2006.

. . .

> "In the performance of assigned constitutional duties each branch of the Government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the others. . . . Many decisions of this Court, however, have unequivocally reaffirmed the holding of *Marbury v. Madison,* that '[i]t is emphatically the province and duty of the judicial branch to say what the law is.'
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> "Our system of government 'requires that federal courts on occasion interpret the Constitution in a manner at variance with the construction given the document by another branch.' . . . And in *Baker v. Carr,* 369 U.S., at 211, the Court stated:
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> > "'Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution'."

The United States Supreme Court held further:

> "Notwithstanding the deference each branch must accord the others, the 'judicial power of the United States' vested in the federal courts by Art. III, Sec. 1 of the Constitution can no more be shared by the executive branch than the Chief Executive, for example, can share with the Judiciary the veto power, or the Congress share with the Judiciary the power to override a presidential veto. Any other conclusion would be contrary to the basic concept of separation of powers and the checks and balances that flow from the scheme of the tripartite government. . . . We therefore affirm that it is the province and duty of this Court "to say what the law is" with respect to the claim of privilege presented in this case. *Marbury v. Madison,* supra."

We hold that notwithstanding the deference each branch must accord the others, the judicial power of the Supreme Court by Article 2 of the Liberian Constitution (1986)

can no more be shared by the executive branch than the Chief Executive, for example, can share with the Judiciary the veto power, or the Congress share with the Judiciary the power to override a presidential veto. Any other conclusion would be contrary to the basic concept of separation of powers and the checks and balances that flow from the scheme of the tripartite government. We therefore affirm the judicial power of the Supreme Court of Liberia "to say what the law is" with respect to "any laws, treaties, statutes, decrees, customs and regulations found to be inconsistent with the [Constitution]," and to declare any inconsistent laws unconstitutional.

In view of the foregoing, the alternative writ of prohibition is hereby quashed, and the peremptory writ is denied. Costs are ruled against the petitioners. It is so ordered.

Prohibition denied.

Our colleague, Mr. Justice Francis K. Korkpor, with whom Mr. Justice Kabineh M. Ja'Neh concurs, having disagreed with the majority opinion, has filed and will read a dissenting opinion.

COUNSELOR THEOPHILUS C. GOULD OF KEMP AND ASSOCIATES LEGAL CONSULTANCY CHAMBERS APPEARED FOR THE PETITIONERS.

THE SOLICITOR GENERAL, COUNSELOR TIAWON S. GONGLO, APPEARED FOR THE RESPONDENT.

MR. JUSTICE KORKPOR, WITH WHOM MR. JUSTICE JA'NEH CONCURS, DISSENTS

From the earliest history of Liberia, cities have been established as bodies corporate, with powers to own real and personal properties in their own names, to sue and be sued in their own names, to impose and raise taxes, and to be headed and governed by mayors and councilmen elected by the people of the city. This is the current trend of municipal formation and governance throughout the world, particularly in the western countries. But the majority opinion today declares city charters in our Country unconstitutional, and by the stroke of their pens, my Colleagues have decided that the Liberian people will no longer have direct participation in the governance of their cities through the election of their mayors and common councilmen. I believe this was not the intent of the framers of our Constitution; for this reason, I dissent.

The facts, as stated in the majority opinion are not in dispute. The central issue which this case presents is, whether or not the President of Liberia has the power and authority to appoint mayors of the city corporations of Liberia? The petitioners say no, the President has no power to appoint city mayors and they rely on the Act Regulating the Time of Election of City Mayors throughout the Republic approved August 9, 1979, and published August 20, 1979, as well as the Elections Law of 1986 in support of their contention. The respondent, on the other hand, argues that Article 54(d) of the Constitution of 1986 gives power to the President of Liberia to appoint city mayors.

This Court has held in many opinions that when interpreting the Constitution, it should put itself in the position of the framers of the Constitution and gather their intent, not only from the letter of the Constitution, but also from the spirit, and that the Constitution should be interpreted in light of the entire document rather than a sequestrated pronouncement, as every provision is of equal importance. ***Garlawolu et al. vs. The Elections Commission et al.*** 41LLR 277 (2002). This Honorable Court has also held that the Constitution must be construed in light of its purpose and given practical interpretation to manifest that purpose. ***The Institute of Certified Public Accounts of Liberia v. The Ministry of Finance et al***, 38LLR 657 (1998); ***Estate of The Late Frank E. Tolbert v. Gibson-Sonpon***, 37LLR 113 (1993).

It is proper to apply these canons of constitutional law in determining whether the legislative charters creating cities in Liberia with power vested in the people to elect their mayors and common councilmen are so repugnant to the Constitution of 1986 as to make them null and void.

Article 2 of the 1986 Constitution of Liberia gives supremacy of the Constitution over all laws. It states:

> ***"This Constitution is the supreme and fundamental law of Liberia and its provision shall have binding force and effect on all authorities and persons throughout the Republic."***

"Any laws, treaties, decrees, customs, and regulations found to be inconsistent with it shall, to the extent of the inconsistency, be void and of no legal effect. The Supreme Court, pursuant to its power of judicial review, is empowered to declare any inconsistent laws unconstitutional."

In line with Article 2 of the Constitution this Court has held that ["when] a case arises for judicial determination and the decision depends on the alleged inconsistency of a legislative decision with the fundamental law [the Constitution] it is the duty of court to compare the law with the Constitution, and if they are irreconcilable, to give effect to the Constitution rather than the statute." (Emphasis supplied). So, it is settled law in our jurisdiction and also in many other jurisdictions, that whenever a statute is in violation of the Constitution, the Constitution will prevail. ***Harmon et al. v. Republic***, 2LLR 480 (1924), the ***Management of B.A.O. v. Mulbah and Sikeley***, 35LLR 584 (1988).

It must be noted, however, that unless an act of the Legislature clearly violates and transcends limits imposed by the Constitution, the Supreme Court will not declare the act unconstitutional. This Supreme Court has therefore always exercised due diligence and the utmost caution when requested to declare an act of the Legislature unconstitutional.

In an early case: ***Bryant et al. v. Republic***, 6LLR 128 (1937), Mr. Justice Tubman, speaking for the Court said the following on the issue of declaring an act of the National Legislature unconstitutional:

"...we should here state that while it is an axiomatic principle of the American system of constitutional law which has been incorporated into the body of our law that the courts have inherent authority to determine whether statutes enacted by the Legislature transcend the limits imposed by the Constitution and to determine whether such laws are not

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

More recent opinions of this Court in the case, ***Morris vs. Reeves & Morris***, 27LLR 334 (1978); and in the case, ***Monrovia Breweries, Inc. v. Karpeh***, 37LLR 288 (191993) have all confirmed and upheld the position in the Bryant case quoted above.

I see that the Act of the National Legislature (a Statute) passed in 1979 regulating the time of election of city mayors throughout this Country and Article 54 of the 1986 Constitution, particularly sub-paragraph (d) thereof, are at the core of this case. The Act is said to be repugnant to and not in harmony with the Constitution. I will therefore compare the said Act and Article 54 of the Constitution in order to make a determination whether the Act is in violation of any right granted the President by the Constitution to appoint city mayors as contended by the respondent.

I quote the Act.

> *"It is enacted by the Senate and the House of Representatives of the Republic of Liberia, in Legislature Assembled.*
>
> *Section 1. That from and immediately after the passage of this Act all city mayors throughout the Republic shall be elected quadrennially on the second Tuesday in November and shall serve for four years from the time of their election; and all elections held for city mayors under the respective charters of the cities shall be valid for, extend to and include the second Tuesday in November, 1979.*
>
> *Section 2. This Act shall take effect immediately upon publication in handbills.*
>
> *Any law to the contrary notwithstanding."*

Article 54 of the Liberian Constitution [1986] provides:

> *"The President shall nominate and, with the consent of the Senate, appoint and commission:*
>
> *"(a) cabinet ministers, deputy and assistant cabinet ministers;*
> *"(b) ambassadors, ministers, consuls; and*
> *"(c) the Chief Justice and Associate Justices of the Supreme Court and judges of subordinate courts;*
> *"(d) superintendents, other county officials and officials of Other political sub-divisions;*
> *"(e) members of the military from the rank of lieutenant or its equivalent and above and*
> *"(f) marshals, deputy marshals, and sheriffs" (emphasis supplied).*

A careful review of the two instruments quoted above does not show that the Act of 1979 is in clear and direct conflict with Article 54 of the Constitution. Thus, this is not a case where the Constitution unequivocally provides for the appointment of city mayors and in contrast thereto, the legislative enactment provides for the election of city mayors. Had the Constitution provided that the President shall nominate and, with the consent of the Senate, appoint and commission City Mayors as done in the case of Cabinet Ministers, Ambassadors, Ministers, Consuls, the Chief Justice, and Associate Justices, etc., then it would have been clear that the 1979 Act, which calls for the election of Mayors runs contrary to, and is in direct conflict with the Constitution. But Article 54 of the Constitution does not expressly provide and no other provision of the 1986 Constitution provides for the appointment of City Mayors. In fact, Article 54 of the Constitution does not even mention the words "city mayors."

While the Supreme Court is, no doubt, vested with the power and authority to declare unconstitutional, null and void any law that is contrary to and inconsistent with the Constitution, that power and authority must be exercised with great deliberation, caution and even reluctance; a statute should never be declared unconstitutional unless its invalidity is beyond all reasonable doubt and the conflict with the Constitution is irreconcilable, and where there is a doubt about the constitutionality of a law the doubt should be resolved in favour of the law. This is the standard which this Court has followed in many cases including the **Bryant case** quoted about. The majority opinion, in my view, departs from this standard because the Constitution of 1986 does not expressly authorize the President to appoint city mayors and councilmen, neither does it forbid the election of city mayors and councilmen.

The respondent contends, in its brief filed with this Court and argued before us, that Article 54(d) of the Constitution is a "catchall" provision which grants the President the power to appoint city mayors, since other executive positions subject to appointment by the President were not mentioned in the 1986 Constitution; that Article 54(d) provides that the "President shall nominate and, with the advice and

consent of the Senate, appoint ... officials of other political sub-divisions;" and that city mayors are officials of other political sub-divisions, therefore, the President has power granted by the Constitution to appoint city mayors. We must say that by this argument, the respondent concedes the point that Article 54(d) of the Constitution does not expressly grant power to the President to appoint city mayors. And since city mayors were not even mentioned in the 1986 Constitution, as the respondent concedes, the respondent relies on the common law definition of "political sub-division" taken from Black's Law Dictionary, Eight Edition, in order to make the connection and include city mayors as "officials of other political sub- divisions."

I do not agree, because under our law, courts will not seek the aid of foreign law or the common law in deciding a matter, when Liberian law speaks to the issue. In harmony with this rule, our decisional laws have consistently held that the statute takes precedence over the common law. Thus, ["where] the statute provides remedy, the common law must remain silent. In such cases, it is unnecessary for the court to go outside the statute to adjudicate a matter." **Attia vs. Summerville, 1 LLR, 215 (1888); National Milling Company of Liberia vs. Miatta Family Center, 34 LLR, 467 (1987).**

In the case at bar, the Legislature of Liberia, vested with authority under Article 34 of the 1986 Constitution to make laws, passed an act in 1979 entitled: ***An Act Regulating the Time of Election of City Mayors throughout the Republic.*** That Act provides for the election of all City Mayors throughout the Republic. The Legislature also passed the Elections Law of 1986; section 2.9(q) of which law provides:

> ***"The Election Commission, an autonomous agency of Government, independent of any branch of Government ...shall [be] the sole judge of all contests relating to the election results, and the accreditation of all successful members who have been duly elected as President, Vice President, Members of the National Legislature, Paramount, Clan, and Town Chiefs, and City Mayors with their Common Councilmen..."***

Since Article 54 does not expressly provide for the appointment of City Mayors by the President, the point was made clear by the Legislative Act of 1979 and the Elections Law of 1986 calling for the election of all City Mayors. I hold, therefore, that the Act of 1979 and the Elections Law of 1986 having provided for the election of City Mayors throughout Liberia, it is not necessary to look to the common law to adjudicate this matter on this point.

History tells us that our first Constitution of 1847 as amended through 1972 was suspended when the Military Government took over on April 12, 1980. A Constitution Drafting Commission was established which drafted the 1986 Constitution. The Draft Constitution was forwarded to the Constitutional Advisory Assembly for review. For the sake of history, it should be noted that the Chairman of the Constitution Drafting Commission, Professor Amos Sawyer, was himself a candidate for election of the City of Monrovia in 1979 or thereabout.

That was the state of the Liberian law, which provided for the election of City Mayors when the military took over on April 12, 1980. It is well known that no elections were held during the years of military reign; in fact, elections were forbidden. The only election that was held during the military regime was the October 1985 general elections held for President and members of the Legislature, pursuant to **The People's Redemption Council (PRC) Decree No. 85 (Elections Law) 1984**. When the civilian government was inaugurated on January 6, 1986, the Constitution took effect and shortly thereafter, **PRC Decree No. 85** was repealed, substituting therefore the **New Elections Law** approved **September 29, 1986,** which provides for the election of city mayors and common councilmen.

The National Legislature which enacted the **Elections law of 1986** had, as some of its prominent members, persons who were also members of the Constitutional Advisory Assembly. Two of such persons were the late John G. Rancy who was President Pro Tempore of the Senate, and the late Professor Tuan Wreh, former Dean of the Louis Arthur Grimes School of Law. Could these

distinguished personalities, as framers of the 1986 Constitution have intended that City Mayors and their councilmen should be appointed by the President and yet would enact an election law which calls for the election of city mayors, and their common councilmen? The majority appears to think so. But I do not think so.

I take note that the 1979 Act was passed into law long before the adoption of the 1986 Constitution. But the framers of the Constitution intended that certain laws in existence before the coming into force of the new Constitution of 1986 remain in force and effect because they continued to be good for our Country. So they provided Article 95(a) of the 1986 Constitution which states:

> ***"a) The Constitution of the Republic of Liberia which came into force on the 26th day of July 1847, which was suspended on the 12th day of April 1980, is hereby abrogated. Notwithstanding this abrogation, however, any enactment or rule of law in existence immediately before the coming into force of this Constitution, whether derived from the abrogated Constitution or from any other source shall, in so far as it is not inconsistent with any provision of this Constitution, continue in force as if enacted, issued or made under the authority of this Constitution.***

To me, unless a law prior to the 1986 Constitution clearly violates and transcends limits imposed by the Constitution, the Supreme Court should not declare it unconstitutional. To do otherwise would be to disregard the expressed intention of the framers of the Constitution in Article 95(a) quoted above. I have not found the Act of 1979, the Elections Law of 1986 and the charters creating cities throughout this Country inconsistent with any provision of the Constitution. I hold, therefore, that these instruments shall "continue in force as if enacted, issued or made under the authority of [the 1986] Constitution" until amended or repealed by the Legislature.

The respondent also contends in its brief that ".... until 1979, when an attempt was made to have City Mayors elected, which elections were eventually cancelled,

the position of City Mayor had historically been an appointive position. Hence, the framers of the 1986 Constitution (one of whom was a candidate in 1979 mayoral elections) deemed it necessary to have the position remain an appointive position as opposed to an elective one."

This contention of the respondent cannot be true, because in the case: **Green vs. Brumskine, 2 LLR 202 (1915)** it is reported that as far back as January, 1914 a municipal election for the City Mayor and Common Councilmen of the City of Buchanan, Grand Bassa County, took place. At the end of that election, each side claimed victory. An attempt by one contesting side to administer the affairs of the City of Buchanan caused the other side to file an action in court and the matter traveled to the Supreme Court. Chief Justice Dossen who delivered the opinion of the Court in that case said the following:

> "***By enactment of the Legislature of Liberia the ward of Buchanan was created a city with perpetual succession of officers; and, with certain privileges and immunity contained in its charter and amendment thereto. Among these privileges are the rights to hold elections of officers and to prescribe the manner how and the person who shall be eligible to vote at such elections; to declare, by its legislative body, the Common Council, the person duly elected at any such elections who are further authorized to administer the oath of office to such persons as that body shall declare duly elected as Mayor...***
>
> ***Said corporation was further invested with powers to raise revenues and to appropriate same to the use and benefit of the corporation. Subsequent enactment conferred upon this corporation in common with other municipal corporations of Liberia, the monies arising from commercial licenses within their limits and from other sources of revenue which previously were paid into the Government, to assist and enable the corporation to carry out the object for which it was created.***

These rights privileges and franchises once conferred could not be recalled or abrogated except at the instance of the Government, and, if the question of revocation was to be made the subject of the judicial inquiry and determination, only by a tribunal vested with power to adjudicate such questions."

In years following, other cities were created and granted charters, rights and privileges like those given the City of Buchanan. Among the rights granted in all of the charters, was the right of the city governments to elect their officers, which included the post of mayor.

For example, in 1973, *an* act was passed by the National Legislature and published into law by the Ministry of Foreign Affairs on August 6, 1973 creating the Nation's largest city and seat of Government, the City of Monrovia, as a municipal body. The Act is entitled: ***AN ACT TO REPEAL THE ACT CREATING THE COMMONWEALTH DISTRICT OF MONROVIA AND TO CREATE IN LIEU THEREOF THE CITY OF MONROVIA, COUNTY OF MONTSERRADO AND TO GRANT IT A CHARTER.***

Sections 5 & 6 of the Act creating the City of Monrovia provide:

Section 5. ***"The City of Monrovia shall have full power and authority to make and fulfill contracts, take and hold real and personal estate to the value of ten million dollars. Subject to the approval of the President, it shall pass all necessary municipal laws and ordinances and levy all such taxes as may be necessary for city purposes; and shall perform all other necessary acts not incompatible with the general laws of this Republic."***

Section 6. ***"The Mayor and Councilmen shall hold their offices for a period of four years and their election shall be held quadrennially on the third Tuesday in October. The inauguration***

of the Mayor-Elect shall be held on the third Monday in February of the year following the election."

A cardinal principle of representative democracy, such as ours, is that the power to tax shall be exercised by the people through their direct representatives. The source of this is the ***Magna Carta*** of 1215. Similarly in our Constitution of 1847, as amended and the new Constitution of 1986 the power of taxation is vested in the direct representatives of the people. City charters granted corporations the power to tax because the tax was levied by the direct elected representatives of the residents of the city-the mayor and the common councilmen. If the mayor and his common councilmen are appointed by the President, they cannot constitutionally exercise the power to tax; and this would be taking away from a city corporation one of its fundamental attributes; it would be destroying the very essence of chartering a city as a corporation.

It is my considered opinion that if the framers of the 1986 Constitution "had deemed it necessary to have the position of city mayor appointive..."as claimed by the respondent, they would have clearly stated this in the new Constitution of 1986. Having omitted to expressly provide for the appointment of City mayors, even though all of the framers of the 1986 Constitution were aware that mayors and common councilmen were elected pursuant to charters from the National Legislature, I hold that they intended to maintain the status quo. If the policy had changed, it is for the political departments of the Government (the Executive and the Legislature) to amend or repeal those charters, not for the Supreme Court to declare them unconstitutional, null and void.

WHEREFORE, I withhold my signature from the majority opinion. Mr. Justice Ja'Neh, being in full agreement also withholds his signature from the majority opinion.