

In the Honorable Supreme Court of the Republic of Liberia  
Sitting in its October Term, A.D. 2016

Before His Honor: Francis S. Korkpor, Sr. ....Chief Justice  
 Before His Honor: Kabineh M. Ja’neh.....Associate Justice  
 Before Her Honor: Jamesetta H. Wolokolie.....Associate Justice  
 Before His Honor: Philip A. Z. Banks, III.....Associate Justice  
 Before Her Honor: Sie-A-Nyene G. Yuoh.....Associate Justice

Selena Mappy-Polson, Superintendent of Bong County,	)	
of the City of Gbarnga, Bong County.....PETITIONER	)	<b>PETITION FOR</b>
VERSUS	)	<b>DECLARATORY</b>
The Government of the Republic of Liberia, represented by	)	<b>JUDGMENT</b>
and thru the Ministry of Justice, the Minister of Justice and	)	
all Counsellors and Attorneys of the Ministry of Justice, all	)	
of the City of Monrovia, County of Montserrado, Republic	)	
of Liberia.....RESPONDENT	)	

Appeal from the Ninth Judicial Circuit Court  
For Bong County, Republic of Liberia.

**Heard: July 18, 2016.**

**Decided: March 3, A.D. 2017.**

Counsellors T. Negbalee Warner and Charles D. F. Karmo, II, of Heritage Partners & Associates, Inc., appeared for the petitioner. Counsellors Frederick Doe Cherue, Minister of Justice & Attorney General, Betty Lamin-Blamo, Solicitor General and Augustine C. Fayiah, Assistant Minister for Litigation, Ministry of Justice, appeared for the Government of the Republic, the respondent.

***MR. JUSTICE JA’NEH delivered the opinion of the Court.***

Our forebearers have vested in the Supreme Court of Liberia the colossal power to determine the consistency with the Liberian Constitution, of any Act of the Legislature, any Treaty concluded by the Liberian State, Executive Order issued by the President of Liberia or any traditional custom or regulation; and to declare as **“void and of no legal effect”** any law the Court determines to be in conflict with the Constitution. Chapter I, Article 2, LIB. CONST.

A careful reading of Article 2 of the Liberian Constitution (1986) highlights and decisively settles two major questions, amongst others: (1) the supremacy and fundamentality of the Constitution over and above any national or international

governing instrument; and (2), the forbearers' grant to the Supreme Court the sole authority to say that a law or an Act of the Legislature is offensive to the Liberian Constitution and therefore the same has no force of the law. *Kamara v. Republic*, 23 LLR 329, 344 (1974); *Republic v. Ayika*, Supreme Court Opinion, March Term, A.D. 2013; *Ministry of Lands, Mines & Energy, et al. v. Liberty Gold and Diamond Mining Company, et al.*; Supreme Court Opinion, March Term, A.D. 2013; *Broh v. Honourable Speaker & Members of the Honourable House of Representatives/Ministry of Justice*, Supreme Court Opinion, October Term, A.D. 2013; *Kpaan v. Johnson and the Honourable Speaker & Members of the Honourable House of Representatives*, Supreme Court Opinion, October Term, A.D. 2015; *Messrs. Liberia Mining Corporation (LIMINCO) v. Paye & Messrs. Finance Investment & Development Corporation(FIDC)*, Supreme Court Opinion, October Term, A.D. 2016.

It is appropriate to state at the onset that the parties herein accept that in performance of the duty imposed under Article 90 (c) of the Liberian Constitution (1986), the 53<sup>rd</sup> Legislature, in 2014, enacted "*An Act of the Legislature Prescribing a Code of Conduct For All Public Officials and Employees of The Government of The Republic of Liberia*", herein after referred to as "*the Code of Conduct Act.*" The parties in these proceedings do not disagree that the President of Liberia, following the passage of the Code of Conduct Act signed it into law and that the legislative process was completed with its publication into handbill by the Ministry of Foreign Affairs on June 20, A.D. 2014.

The petition before this Court of *last resort* seeks our declaratory judgment focusing primarily on certain provisions of the Code of Conduct Act. The provisions are:

Part V, Section 5.1 of the Code of Conduct:

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

- a) *engage in political activities, canvass or contest for elected offices*
- b) *use Government facilities, equipment or resources in support of partisan or political activities*

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

1. Part V Section 5.2:

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

- a) *Any Minister, Deputy Minister, Director-General, Managing Director and Superintendent appointed by the President pursuant to article 56(a) of the Constitution and a Managing Director appointed by a Board of Directors, who desires to contest for public elective office shall resign said post at least two (2) years prior to the date of such public elections;*
- b) *Any other official appointed by the President who holds a tenured position and desires to contest for public elective office shall resign said post three (3) years prior to the date of such public elections.*
- c) *However, in the case of impeachment, death, resignation or disability of an elected official, any official listed above, desirous of canvassing or contesting to fill such position must resign said position within thirty days following the declaration by the National Elections Commission of the vacancy."*

3. Sections 14.1 on "Infringement of the Code":

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

4. Section 15.1 providing sanctions for Infringement of the Code of Conduct Act:

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

- a) *Dismissal;*
- b) *Removal from office in public interest;*

- c) Reprimand;*
- d) Fine or making good of the loss or damage of public property/assets;*
- e) Demotion (reduction in ranking);*
- f) Seizure and forfeiture to the State of any property acquired from abuse of office; and*
- g) Interdiction/suspension from duty with half pay."*

It is to these herein above quoted provisions of the Code of Conduct Act, (i. e.; Sections 5.1, 5.2, 14.1 and 15.1) Petitioner Polson-Mappy has drawn this Court's attention. In her petition for declaratory judgment, the petitioner has raised a number of constitutional challenges, contending with forensic eloquence that Section 5.2 of the Code of Conduct Act offends the letter and spirit of the Liberian Constitution. According to the petitioner, the referenced provisions are (a) discriminatory; (b) that they disregard the equal protection clause of the Constitution, and (c) that they are arbitrary, wicked and capricious. Petitioner has further claimed that there is no compelling reason for the Code of Conduct Act grave interference with, and its crushing imposition on free exercise of the fundamental rights of public officials, as the petitioner herein, to canvass and contest for elective public office. Petitioner has strongly urged this Court to particularly declare said Section 5.2 of the Code of Conduct Act unconstitutional and of no legal effect. Further, the petitioner has urged this Court to declare that the sanctions listed under Section 15.1 of the Code of Conduct Act, for breach including violation of Section 5.2, to be complete, exclusive and to further declare that no other penalty would apply to violator beyond the clear legislative language of said section 15.1.

For the purpose of providing an appropriate background, we shall at this juncture visit the records certified to this Court. On October 23, A.D. 2015, the petitioner, Bong County Superintendent Selena Polson- Mappy, filed a nineteen count petition for Declaratory Judgment before His Honour J. Boima Kontoe, Resident Judge of the Ninth Judicial Circuit Court for Bong County, presiding. Petitioner Polson-Mappy pleaded with the Circuit Court to declare certain provisions of the Code of Conduct unconstitutional for reason that they hinder, undermine and violate her (petitioner's) constitutionally protected rights.

For the benefit of this Opinion, we hereunder reproduce, verbatim, Petitioner Polson-Mappy's petition as follows:

- “1. That Petitioner is a natural born Liberian citizen who hails from Bong County and currently serves as the Superintendent of Bong County, Republic of Liberia.
2. That prior to her appointment and at sometimes during her tenure as Superintendent of Bong County, Petitioner entertained the desire to run and, after some consultations and reflections, decided to run for an elective office in Bong County in order to contribute more fully to the advancement of the County. Petitioner says following a period of consultations and reflections, she decided to run and did run, though unsuccessfully, during the last General Elections held in 2011.
3. Petitioner says that in recent times, she has received numerous unsolicited encouragements, petitions and suggestions from citizens of Bong County asking her once again to run for one of the legislative offices of Bong County during the upcoming 2017 General Elections. Petitioner says that she is humbled by the unsolicited petitions and support she is receiving and is beginning to consider to canvass or contest for an elective post in Bong County, except that this time she plans to carefully evaluate her chances of success vis-à-vis known and other potential contenders in the County before making a final decision. Plaintiff says that in order to undertake and complete the sort of reflection and evaluation she envisages, an informed, final decision as to whether she contests or does not contest for an elective post during the ensuing 2017 general elections in Liberia is not likely to be made by Petitioner until late 2016 or early 2017.
4. Petitioner says that as a citizen of Liberia she has the right to desire and/or decide to canvass or contest for any elective office for which she is qualified, and to take as much time as is necessary to make a decision before the deadline published or to be published by the National Elections Commission for declaration of candidacy because the Constitution of Liberia, especially Article 81 thereof, guarantees the Petitioner **“the right to canvass for the votes for any political party or candidate at any election”**, it being obvious that a **“candidate”** may be herself.
5. Further to Count Four (4) of this Petition, Petitioner says that her constitutional rights to **“desire”** and/or **“contest”** any elective post for which

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

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

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

- a) **Any Minister, Deputy Minister, Director-General, Managing Director and Superintendent appointed by the President pursuant to Article 56(a) of the Constitution and a Managing Director appointed by a Board of Directors, who desires to contest for public elective office, shall resign said post at least two (2) years prior to the date of such public elections;**
- b) **Any other official appointed by the President who holds a tenured position and desires to contest for public elective office shall resign said post three (3) years prior to the date of such public elections;**
- c) **However, in the case of impeachment, death, resignation or disability of an elected official, any official listed above, desirous of canvassing or contesting to fill such position must resign said post within thirty days following the declaration by the National Elections Commission of the vacancy.”**

7. *Petitioner says Section 5.1 of the Code of Conduct, which is referenced by and in Section 5.2 of the Code of Conduct, is constitutional and therefore valid because it is made in keeping with Article 90 of the Constitution prohibiting Officials from acts against public policy or constituting conflict of interest and does not discriminate among presidential appointees in violation of the Equal Protection Clause of the Constitution because it clearly applies to “**all Officials appointed by the President**”. Your Honor is respectfully requested to take judicial Notice of Section 5.1 of the Code of Conduct of 2014, stating that “**all Officials appointed by the President of the Republic of Liberia shall not (a) engage in political activities, canvass or contest for elected offices; (b) use government facilities, equipment or resources in support of partisan or political activities; (c) serve on a campaign team of any political party, or the campaign of any independent candidate.**”*
  
8. *Petitioner says that unlike Section 5.1 of the Code of Conduct, Section 5.2 of the Code of Conduct is patently unconstitutional because of many reasons including the following:*
  - a. *It is discriminatory and therefore violative of the equal protection Clause of the Constitution.*
  
  - b. *It is arbitrary and void of any compelling reason for interfering or restricting the fundamental right to canvass or contest for elective public office.*
  
  - c. *It is anti-competitive contrary to the provisions of Article 77 of the Constitution, declaring “**the essence of democracy is free competition of ideas expressed... ..by individuals**” as well as political parties and groups;*
  
  - d. *The Legislature is without Authority to modify the eligibility requirements for elective offices as established by the Constitution for any elective office, bearing in mind that the legislative power to enact the Elections Law is limited by Article 84 of the Constitution, which states that the Elections Laws to be enacted by the legislature “**shall not be inconsistent with any provision of this Constitution.**”*

- e. It is inconsistent with the provision of the Constitution requiring the Legislature to **“enact laws promoting national unification and the encouragement of all citizens to participate in government”** as provided in Article 5(a) of the Constitution;
9. Further to Count Eight (8) of this Petition, Petitioner says that Section 5.2 of the Code of Conduct contravenes and is in violation of the Equal Protection Clause of the Constitution in that it discriminates and establishes differential treatment for government employees of the same class **“presidential appointees”**. Specifically, Petitioner says that while Section 5.2 speaks of a single category of public employees called **“Officials appointed by the President”**, the two-year prior resignation requirement established by the said Section 5.2 excludes Ambassadors, Assistant Ministers, City Mayors, Assistant Superintendents, Commissioners, and other officials **“appointed by the President”** without any conceivable or compelling reasons, apparent or provided. Because of the patent discrimination contained in and represented by the provisions of Sections 5.2 of the Code of Conduct, the said Section of the Code is unconstitutional and invalid and should be so declared by this Court consistent with Article 2 of the Constitution which provides that **“any laws, treaties, statues... found to be inconsistent with it shall, to the extent of the inconsistency, be void and of no legal effect.”**
10. Petitioner further submits that Section 5.2 of the Code of Conduct is unconstitutional in that it is arbitrary, capricious and without any compelling reason(s) for restraining the fundamental rights of Petitioner and others (but not all) presidential appointees to canvass and contest for any public elective office. Petitioner submits that the language and scope of the requirement of Section 5.2 demonstrates no relationship to achieving the expressly stated objective of the Code of Conduct that, according to the sixth preambular paragraph of the said Code of Conduct is **“to set standards of behavior and conduct required of Public Officials and Employees of Government.”** Evidently, the Code of Conduct is focused on conduct and behavior (which are outward/visible), and not unseen desires, thoughts or frame of mind.



*It is therefore inconceivable how the Code of Conduct can seek to regulate inchoate thoughts and desires and/or whether an individual's thought should in fact be a subject of any lawful regulation. Intending to run does not mean deciding to run, being eligible to run or qualified by the election commission to run. Using "desire" to canvass or contest for any public office as trigger to require resignation could therefore force many people out of public office, some of whom may never even run. Of course this irrational requirement should be contrasted with requiring the resignation of presidential appointees who have announced their candidacy and have been vetted by the Elections Commission because many who have intentions to run never ever do run.*

11. *Further to Count (1) hereinabove, Petitioner says that the ills and/or risk of abuse of office or public assets as a result of political activities and ambition of presidential appointees are sufficiently addressed by the categorical prohibition in Section 5.1 of the Code of Conduct, thus obviating the need and any legal purpose for Section 5.2 of the Code. Indeed, the risk of abuse of public office due to a presidential appointee canvassing or contesting does not arise or exist where campaigning has not started or candidates for elections have been qualified by the National Elections Commission.*
12. *That Section 5.2 of the Code of Conduct is contrary to and inconsistent with the provisions of the Constitution (i) guaranteeing the right of every Liberian to vote and, where qualified, be voted for, and (ii) which also expressly provides the sole qualifications for public elective offices. The requirement of Section 5.2 relative to prior resignation for public elective office at least two years before elections is therefore an improper and illegal amendment/modification of the Constitutional provisions on eligibility for each of the elective public offices, and is therefore invalid, and Petitioner prays your honor to so declare.*
13. *That Section 5.2 is unconstitutional because it is anti-competitive and anti-democratic; and runs contrary to the declaration of the Constitution that the essence of democracy is the competition of ideas as expressed by individuals and political parties or groups. Requiring certain but not all presidential appointees such as Petitioner to leave office long before they have made a firm decision to run or qualified by the National Elections Commissions is unheard of in any country and serve no conceivable public purpose, especially in light of other integrity and criminal laws and also the fact that this requirement is not extended to other presidential appointees such as Ambassadors, Assistant Ministers, Ministers, Assistant Superintendents,*

*Commissioners, City Mayors, etc. the only conceivable purpose for such a resignation requirement, particularly the period of time involved, is to put potential opponents of those who made the law to significant disadvantage while benefiting incumbent elected officials who continue to remain in office with continuing stream of secured income. Indeed the net effect of the law is to make those affected thereby financially impotent, thereby making the playing field uneven to the advantage of the incumbent who, incidentally, have no limitation whatsoever on their political and/or campaign activities.*

14. *Petitioner says that while the Honorable Supreme Court of Liberia has held that a statute or a part thereof should not ordinarily be invalidated if it can be sustained on any lawful ground, the patent discriminations, anti-competitive effects and repugnant affront to the Constitution of Liberia as are contained in the Code of Conduct (especially Section 5.2 thereof) are each not redeemable by reference to or based on any rule of law or lawful purpose. The said Section 5.2 of the Code of Conduct is therefore plainly null and void by operation of Article 2 of the Constitution, and Petitioner respectfully prays that Your Honor so declare.*
15. *Petitioner says that in the unlikely event that this honorable Court is reluctant to declare Section 5.2 of the Code unconstitutional (which Petitioner respectfully prays will not be the case), Petitioner submits that the sole consequence for violation of the said Section 5.2 is exclusively contained in the exhaustive range of sanctions enumerated in Section 14.1 and Section 15.1 of the Code of Conduct, the full language of which two (2) Sections of the Code are provided herein below.*

***“14.1           Infringement of the Code***

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

***“15.1           Sanctions for Infringement***

*Sanctions for any breach of this Code of Conduct **shall be those prescribed** by the Standing orders of the Civil Service or any other laws governing the public service.*

*Notwithstanding, depending on the gravity of the offence or misconduct, one or more of the following penalties may apply:*

- a) Dismissal;
- b) Removal from office in public interest;
- c) Reprimand;
- d) Fine or making good of the loss or damage of public property/assets;
- e) Demotion (reduction in ranking);
- f) Seizure and forfeiture to the State of any property acquired from abuse of office; and
- g) Interdiction/suspension from duty with half pay."

It is a settled rule of statutory interpretation that the mentioning of one or more specifics without an accompanying general word implies that the specifics are the limit of the statute's coverage ("**expression Unius est Exclusio Alterius**"). The Supreme Court of Liberia has also held that the "**lawmakers must be said to have intended only what they wrote and nothing more or less; hence, the Court has no alternative but insist upon strict compliance with the law as it was passed.**" *West Africa Trading Corporation vs. Alrine*, 25 LLR 3, 7 (1976). Your Honor is therefore respectfully requested to take judicial notice that Section 15.1 was meant to be and does represent the exhaustive and exclusive sanctions for violation of any provision of the Code of Conduct, including Section 5.2, and Petitioner prays Your Honor to so declare.

16. Petitioner submits that a petition for Declaratory Judgment will lie for this Honorable Court to declare the rights of the Petitioner to canvass and/or contest for any public office without any let or hindrance by any person or statute such as Section 5.2 of the Code of Conduct of 2014 to the extent that it violates the expressed provisions as well as intent and spirit of the Constitution of Liberia.
17. Petitioner says as a citizen of Liberia and a presidential appointee, she is covered and affected by Section 5.2 of the Code of Conduct of 2014 and therefore have standing to seek a declaration of her rights as are presently challenged, undermined and violated by the said section of the Code of Conduct (2014).
18. The Honorable Supreme Court has held that "**one who may be prejudiced or threatened by the enforcement of an Act of the Legislature may question its constitutionality**". *Concerned Sector Youth V. LISGIS et al.* (2010).

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

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

- A. *Declare that Petitioner has and is guaranteed the constitutional right to canvass and contest for any elective public office, subject to only restriction as contained in the Constitution or by a statute not inconsistent with the Constitution;*
- B. *Declare that a Statute which discriminates among people of the same class - such as “Officials appointed by the President” - is in violation of the Equal Protection Clause and therefore patently unconstitutional;*
- C. *Declare that Section 5.2 of the Code of Conduct of 2014 is unconstitutional because it violates many provisions of the Constitution, including the provision of the Constitution dealing with equal protection, fair competition to promote democracy, the right of every mature citizen to vote and be voted for; etc.;*
- D. *Declare that the sanctions for breach of the Code of Conduct of 2014, including Section 5.2 thereof, are detailed in Section 15.1 of the Code of Conduct, and that said sanctions are the exhaustive and exclusive remedies expressly enumerated by the Code of Conduct for breaches/infringements; and*
- E. *Declare such further rights and remedies that the Petitioner is entitled to as a matter of law and equity...”*

This Court has accorded careful review of the 19 (nineteen)-count petition, recited herein above. A meticulous examination of the petition in its entirety tends to reveal to this Court that Petitioner Polson-Mappy concedes (a) the legal propriety of Section 5.1 of the Code of Conduct Act and therefore lawful, and (2) that the Legislature, in enacting the Code of Conduct Act, adopted a language tailored to address what appears to be the increasing abuse of public office, public trust and confidence and related vices, and (3) that the conduct of the Legislature to enact a Code of Conduct, was not inconsistent with the sovereign mandate of the Liberian people, both authorizing and directing the Legislature to prescribe a code of conduct for all public officials and employees of the Liberian Government as an overriding State interest over and above individual citizen’s rights.

Notwithstanding this concession, Petitioner Polson-Mappy has attacked Section 5.2 of the Code of Conduct Act as utterly discriminatory. This is because, according to the petitioner, Section 5.2 slices the rights of political participation of only certain presidential appointees, and not all public officials similarly situated and appointed by the President. Patent discrimination of this nature, the petitioner has contended, runs afoul to the fundamental right of equal protection guaranteed to all persons by Article 11 of the Liberian Constitution (1986).

Responding to the petitioner's petition, the Ministry of Justice as the authorized representative of the Liberian Government, [*Kpaan v. House of Representatives; Supreme Court Opinion, October Term, A.D. 2015; Broh, Supreme Court Opinion, October Term, A.D. 2013*] filed a sixteen (16) count returns for and on behalf of Government. The Justice Ministry defended that the Code of Conduct Act was properly enacted consistent with the dictates of Article 90 (c) of the Liberian Constitution (1986); that Article 90 (c) vests in the Legislature the power to prescribe a Code of Conduct; that it was in obedience to this constitutional dictate the Legislature enacted the Code of Conduct providing therein Sections 5.1 and 5.2. According to the Respondent Liberian Government, the Code of Conduct Act is not rendered unconstitutional for reasons that Section 5.1 places a limit on the political rights of public officials to contest for public offices, and /or that Section 5.2 is directed to only certain categories of presidential appointees, and not all presidential appointees. Respondent has vehemently contended that Section 5.2 is consistent with Article 77 of the Constitution as it not only promotes free and fair competition but the legislation was also primarily designed to address the risk of abuse of public resources for pre-election activities. We herewith reproduce, *verbatim*, the Liberian Government's returns for the benefit of this Court, as stated to wit:

1. *That as to Counts One (1) and Two (2) of the Petition, same present no traversable issue.*
2. *That as to Count Three (3) of the Petition, Respondent says it is without sufficient information to confirm or deny the veracity of the averment contained therein generally, and specifically as to when the Petitioner is likely to make a decision to contest or not to contest the ensuing general elections of 2017.*

3. *That as to Counts Four (4) and Five (5) of the Petition, Respondent says that whilst Article 81 of the Constitution of the Republic of Liberia (1986) guarantees the right of any citizen to canvass for votes, the said provision also expressly provides that a citizen shall exercise that right if he or she is "not otherwise disqualified under the provisions of this Constitution and laws of the land" [ Emphasis supplied] In the instant case, the Petitioner who is the current Superintendent of Bong County, is an official appointed by the President, and as such may be otherwise disqualified if she violates Part V, Sections 5.1 and 5.2 of the Code of Conduct for all Public Official and Employees of the Government of Liberia (2014) which is a part of the body of laws of the land-i.e.-the Republic of Liberia, and which expressly prohibits all officials appointed by the President from engaging in political activities, canvassing, or contesting for elected offices and if, as in the case of Petitioner who is a Superintendent, if she so desires to canvass or contest, she must resign two (2) years prior to the date of such public elections.*
4. *Further to Count Four (4) above, Respondent says virtually all political rights have limits. The constitutional right to contest for public offices does have statutory limits; for example, the requirement to pay fees to be qualified as a candidate in an election is a limitation on a citizen's constitutional right to contest. Therefore, the requirement to resign a post within a stipulated period is also a statutory limit of meeting the just constitutional requirements of morality, public order/policy and the general welfare in a democratic society.*
5. *That as to count Six (6) of the Petition, Respondent says same presents no traversable issue as it is a recital of the Section 5.2 of the Code of Conduct for all Public Officials and Employees of the Government of Liberia (2014).*
6. *That as to count Seven (7) of the Petition, Respondent says, that same also presents no traversable issue as the Petitioner only confirmed and affirmed therein the constitutionality and validity of Section 5.1 of the Code of Conduct for all Public Officials and Employees of the Government of Liberia (2014).*
7. *That as to counts Eight (8) and Nine (9) of the Petition, Respondent submits that Section 5.2 of the Code of Conduct for all Public Officials and Employees of the Government of Liberia (2014), is not discriminatory. The aforesaid sections are directed to Presidential Appointees based on their various categories. The code does not discriminate amongst Presidential appointees in the same category. Like any other*

*law, distinction is drawn based on category. For example, the qualification required to become a member of the House of Representative differs from that required to be President.*

8. *Further to Count Eight above, and further traversing counts eight (8) and nine (9) of the Petition, Respondent says that Section 5.2 of the Code of Conduct for all Public Officials and Employees of the Government of Liberia (2014), is not inconsistent with Article 77 of the Constitution of the Republic of Liberia (1986). Instead, it is in support of that Article which denounces the doctrine of anti-competitiveness and promotes free and fair competition, which is the essence of democracy. Section 5.2 seeks to ensure that persons situated in the category of Heads of Ministries, Agencies, and other Institutions appointed by the President, do not use Government resources subject to their control as institutional heads, to the disadvantage of others. Therefore, a reasonable time limit had to be set, to address the risk of abuse of resources for pre-election activities, including but not limited to such consultative meetings referred to by the Petitioner in Count Two (2) of her Petition.*
9. *That further to Count Nine (9) above; and further traversing Counts eight (8) and Nine (9) of the Petition, Respondents says that Petitioner's arguments are inconsistent as far as the Legislative authority to prescribe requirements for elective offices. On the one hand, the Petitioners argues that it is constitutional for the Legislature to prescribe laws to prohibit all officials appointed by the President from engaging into political activities, canvass, or contest for elected offices, whilst on the other hand, she argues that it is unconstitutional for the Legislature to prescribed requirements for elective offices generally. By prohibiting all officials appointed by the President from engaging into political activities, canvass, or contest for elected offices, the Legislature implicitly made it a requirement that an official appointed by the President should resign if he/she wishes to engage into political activities, canvass, or contest for elected offices. What section 5.1 failed to do was to set a time limit within which the resignation should take place. Section 5.2 on the other hand addressed the issue of time limitation.*
10. *Further to Count Ten (10) above, and further traversing counts eight (8) and nine (9) of the Petition, Respondent says that Section 5.2 of the Code of Conduct for all Public Officials and Employees of the Government of Liberia (2014), is not inconsistent with Article 5 (a) of the Constitution of the Republic of Liberia (1986), which requires the Legislature to enact laws promoting national unification and the encouragement of all*

*citizens to participate in government. Instead Section 5.2 of the Code of Conduct for all Public Officials and Employees of the Government of Liberia (2014), is in furtherance thereof with the objective of ensuring that citizens participate in Government fairly and without possessing undue advantage over others in the process of competing for elected positions in Government.*

11. *That as to counts Ten (10) and Eleven (11) of the Petition, Respondent says that the arguments contained therein are absurd. Respondent says that from the reading of the counts, Petitioner impresses on this court, that until and unless one is qualified by the Elections Commission to run, his/her intent or desire to run which may be expressly or implicitly manifested, should not be a subject of regulation by the Code as it is inchoate. Instead, the appointee should only be regulated if he/she successfully passes the scrutiny of the Elections Commission. For example, the appointee's participation in his/her party's primaries, which may occur one (1) year before elections, should not be regulated because of the possibility that his/her desire to be the party's candidate could likely be thwarted if members of the party do not elect him/her. Therefore, whether or not Government's resources are implored in that process is inconsequential, since the appointee's desire/intent was not realized up to the point of being qualified by the Elections Commission. Petitioner contends in count eleven (11) of her Petition, that the risk of abuse of public office due to presidential appointee canvassing or contesting does not arise or exist where campaigning has not started or candidates for elections have not been qualified by the National Elections Commission. We humbly disagree with the position of the Petitioner. We maintain that abuse of public office due to presidential appointee canvassing or contesting may arise or exist where campaigning has not started or candidates for elections have not been qualified by the National Elections Commission.*
12. *That as to counts twelve (12), thirteen (13) and fourteen (14), of the Petition, Respondent confirms and affirms counts eight (8), nine (9), ten (10) and eleven (11) of these returns.*
13. *That as to counts fifteen (15) and sixteen (16) of the Petition, Respondent says that Presidential appointees are not civil servants and are not subject to disciplinary processes under the Standing Orders of the Civil Service they serve at the will and pleasure of the President. Further, the issue of an appointee's resignation consistent with Section 5.2 of the Code is a matter of choice by the official between maintaining a*



*current appointed position and contesting in future elections. It is a decision by the appointee to either forfeit an appointed position or the right to canvass and/or contest in a future election. The decision by the appointee not to resign or to violate Section 5.2 of the code, does not attract a negative penalty or sanction, but rather is a forfeiture by the appointee which by operation of law will bar the appointee from canvassing or contesting in a future elections within the statutory limits.*

14. *That as to count seventeen (17) of the Petition, Respondent concedes that the Petitioner, the current Superintendent of Bong County, an official appointed by the President of the Republic of Liberia, does have sufficient stake in an otherwise justifiable controversy-i.e. - the constitutionality of Section 5.2, of the Code of Conduct for all Public Officials and Employees of the Government of Liberia (2014), to obtain judicial resolution of that controversy.*
15. *That as to count eighteen (18) of the Petition, Respondent says that whilst it is the law that one who is prejudiced or threatened by the enforcement of an Act of the Legislature may question its constitutionality, the Petitioner in the instant case is in no way prejudiced by the legislation. Chapter 11, Article 90 (c) of the Constitution of the Republic of Liberia (1986), devolves upon the Legislature the duty to ‘ prescribe a Code of Conduct for all public officials and employees, stipulating the acts which constitute conflict of interest or are against public policy, and the penalties for the violation thereof’ Pursuant to this constitutional mandate, the 53<sup>rd</sup> Legislature enacted into law,“ An Act of the Legislature Prescribing a Code of Conduct For All Public Officials and Employees of The Government of The Republic of Liberia” and Section 5.2 being a part thereof, is indeed in the interest of public policy.*
16. *That as to count nineteen (19) of the Petition, Respondent says whilst this court does have jurisdiction to declare rights, status, and other legal relations affected by Statute, this court does not have the power to declare any Statute unconstitutional, as such, powers are reserved to the Supreme Court consistent with Article 2 of the Constitution of the Republic of Liberia (1986).*

*Wherefore and in view of the foregoing, Respondent request court to refuse jurisdiction over the subject matter, deny and dismiss the unmeritorious Petition filed by the Petitioner, and grant unto Respondent any further relief as Your Honour deems just, legal, and equitable in the premises.*

RESPECTFULLY SUBMITTED RESPONDENT/  
REPUBLIC OF LIBERIA BY & THRU  
THE MINISTRY OF JUSTICE  
Cllr. Benedict F. Sannoh  
Minister of Justice & Attorney General

Atty. Lafayette B. Gould, Sr.  
Legal Counsel  
Atty Cornelius Wannah  
County Attorney/Bong County

Cllr. J. Daku Mulbah  
County Attorney/Montserrado County  
Cllr. Augustine C. Fayiah  
Assistant Minister for Litigation

Cllr. Betty Lamin-Blamo  
Solicitor General/Republic of Liberia..”

Let us digress momentarily and revert to the records of the proceedings conducted at the trial court. The records transmitted from the trial court reveal that petitioner, Superintendent Polson-Mappy, on October 23, A.D. 2015, filed a petition for declaratory judgment, containing nineteen (19) counts. The petition was filed at the Ninth Judicial Circuit Court for Bong County, with His Honour J. Boima Kontoe, Resident Judge, presiding. Thereupon Judge Kontoe ordered a writ of summons duly issued on the Respondent, Liberian Government. According to the returns made by the Deputy Sheriff of Bong County, Perry Kennah and Bailiff James Davis of the Sixth Judicial Circuit Court for Montserrado County, the writ was returned served on October 30<sup>th</sup>, A.D. 2015. An amended returns was filed on November 19, A.D. 2015 by the respondent, simultaneously with a three count motion to dismiss the petitioner’s petition.

At the call of the case for hearing on November 23, A.D. 2015, one of counsels for the Ministry of Justice, Attorney Lafayette B. Gould, Sr., in open court, called the court’s attention to the pendency of a motion filed by the Respondent Government of Liberia seeking to dismiss the petition for declaratory judgment. We herewith quote the three count motion as follows:

- “1. *Movant says that **Title 1, Chapter 11, Section 2(a)**, provides that: “Time; grounds; at the time of service of his responsive pleadings, a party may move for judgment dismissing one or more claims for relief asserted against him in a complaint or counterclaim on any of the following grounds:*

*That the court has no jurisdiction over the subject matter of the action.” Movant says that the subject matter of the action is the constitutionality of Section 5.2 of the Code of Conduct for all Public Officials and Employees of the Government of Liberia (2014) and hence this court lacks jurisdiction over the issue of the declaration of the constitutionality of any Statute as it is clearly within the province of the Supreme Court consistent with **Article 2 of the Constitution of the Republic of Liberia (1986)**.*

2. *Movant says that it is the law in this jurisdiction that it is not the caption of the case that determines its subject matter, but it is rather the averments in the pleadings that are determinative of the subject matter.*
3. *Movant says that because the subject matter of these proceedings border on the declaration of the constitutionality of a Statute, this court should refuse jurisdiction over same.*

**WHEREFORE AND IN VIEW OF THE FOREGOING**, *Movant prays Your Honor and this Honorable Court to refuse jurisdiction over the subject matter of these proceedings, deny and dismiss Respondent's Petition in its entirety, and rule costs against Respondent; and grant unto Movant any other just and proper relief deemed.*

*Respectfully submitted: MOVANT  
The Government of the Republic of Liberia  
By and thru  
The Ministry of Justice...."*

As is consistent with practice and procedure hoary with time in our jurisdiction, counsel for respondent requested the trial court to first entertain and dispose of the motion. The respondent having not filed resistance to the Respondent/Ministry's motion to dismiss the petitioner's petition, by leave of court, was permitted to spread its resistance on the minutes of court.

We herewith quote the submission made as follows:

*"Respondent/Petitioner respectfully requests your Honour and this court to deny and dismiss movant's motion for the following legal and factual reasons showeth to wit:*

1. *As to the entire motion, respondent says that it has no basis in law, as evidenced by the movant failure to cite any law requiring that a petition challenging the constitutionality of Acts and Statutes must be filed before the Supreme Court and no other court.*
2. *Further to count one above, respondent says that the Supreme Court has in fact consistently held that petition challenging the constitutionality of any Act or Statute should first be filed before a forum other than the Supreme Court because the said Supreme Court is an appellate court in respect of all cases and controversy except for few cases named/listed in the constitution and which do not include petition for Declaratory judgment. Your Honour is requested to take judicial notice of the case, in re.: Petition of Cox, 36 LLR 837 (1990), syl. 7, 8, 9, and 10.*

3. *Still as to the entire motion, respondent says that not only is a petition for declaratory judgment relative to the constitutionality of Acts only cognizable before lower court but in fact they are required to originate from these courts because the Supreme Court had held that any one challenging the constitutionality of an Act ought to establish standing, and that the proof of standing requires the taking of evidence which can only be done by a lower court and not the Supreme Court.*
4. *And still further to the entire motion, respondent says that the Supreme Court itself had held that the Constitution does not give it exclusive jurisdiction to hear constitutional matter. As to count one of the motion, respondent acknowledges the law cited therein but says that that is inapplicable in the case at bar because this court has jurisdiction to hear the instant petition for declaratory judgment for reasons above stated.*
5. *As to count two of the motion respondents concede the legal principle stated therein. As to count three of the motion, respondent denied same and most respectfully requests your honor to dismiss the said count three and the entire motion for reasons stated above.*

*Wherefore and in view of the foregoing, respondent respectfully requests your Honour to deny and dismiss the motion to dismiss and proceed with the determination of the [petition for] declaratory judgment. And [respondent so] submits."*

In support of its resistance, the Respondent argued citing the following laws:

*"(1). Article 66 of the Liberian Constitution, Chapter 43 of 1LCL Rev. (2). In re.: petition of Benjamin Cox 36 LLR 837 (1990), Syl. 7, 8, 9 and 10. (3). Gonsahn et al. vs. Vintom et al, 37 LLR 47 (1992), Syl. 4; (4) The Center for Law & Human Rights Education, et al. Vs. Monrovia City Corporation, 39 LLR 32 (1998) and (5) William V. Tah et al, Supreme Court Opinion, (2011)."*

The trial court listened to arguments, *pro et con*, on the motion to dismiss and the resistance filed thereto. Judge Kontoe thereafter entered the following ruling:

*"This motion to dismiss petitioner's petition for declaratory judgment grows out of a nineteen count petition that was filed by the petitioner before this court on October 23, 2015. A Writ of Summons was issued and served along with petitioners' petition on the Respondent Government of the Republic of Liberia represented by and thru the Ministry of Justice and the Ministry of Justice filed a responsive pleading on the 9<sup>th</sup> day of November, 2015.*

*The record reveals that on November 19, 2015, Respondent Government of Liberia, by and thru the Ministry of Justice filed a notice of withdrawal of its returns and*

*simultaneously filed a nineteen count amended returns along with a three count motion to dismiss. Consistent with the procedure hoary with age in this jurisdiction, the motion to dismiss as an ancillary action growing out of the petition for declaratory judgment was given preference over the parent case. The Petitioner/Respondent thereupon requested court after notation of representation for permission to spread petitioner's resistance to the motion to dismiss on the minutes of court.*

*The three count motion contends principally that while Article 81 of the Constitution of Liberia guarantees the right of any citizens to canvass for votes, said provision also expressly provide that a citizen shall exercise that right if he or she is not otherwise disqualified under the provision of this Constitution. But in the instant case, movant contends that the petitioner who is current Superintendent of Bong County is an official appointed by the President and as such may be otherwise disqualified if she violates part V, Section 5.1 and 5.2 of the Code of Conduct for All Public Officials and Employees of the Government of Liberia which is a part of the body of laws of the land, that is, the Republic of Liberia which expressly prohibits all officials appointed by the President from engaging in political activities , canvassing or contesting for elected offices and if as in the case of petitioner, who is a County Superintendent if she desires to canvass or contest, she must resign two years prior to the date of such public elections. Movant also averred that it is the law in this jurisdiction that it is not the caption of the case that determines the subject matter, but rather the averments in the pleading are determinative of the subject matter, and because the subject matter of these proceedings borders on the declaration of the constitutionality of the statute, this court lacks jurisdiction and therefore should refuse jurisdiction over the petition for declaratory judgment out of which this motion has grown.*

*Movant therefore prays court to refuse jurisdiction over the subject matter of these proceedings deny and dismiss the Respondent's petition for declaratory judgment in its entirety and rule cost against the respondent petitioner and grant unto movant any other relief deemed just and proper by this court.*

*This three count motion has been countered by counsels for respondent /petitioners. In respondent/petitioners resistance, petitioners/respondent contends that movant/respondent motion had no basis in law as evidenced by movant failure to cite any law to the effect that a petition challenging the constitutionality of an act must be filed before the Supreme Court and no other court. Respondent /petitioner averred that*

*the Hon. Supreme Court of Liberia has consistently held that petition challenging the constitutionality of any Act or Statute should first be filed before a forum other than the Supreme Court of Liberia because the Supreme Court is an appellate court in respect of all cases and controversies except for a few cases listed in the Constitution which are not included in the petition for declaratory judgment. Counsel for petitioner/respondent cited the court to the case: In re: The Petition of Cox, 36 LLR, 837 (1990), syllabi, 7,8,9 and 10 and contended that petitioner's petition for declaratory judgment is cognizable before this [trial] court because it must originate from this court notwithstanding the fact that it raises the constitutionality of an Act as this court must establish the standing of the petitioner to file the petition and proof of standing requires the taking of evidence which can only be done at the lower court and not the Supreme Court. Petitioner/respondent further contends that the Honourable Supreme Court itself had held that the constitution does not give it exclusive jurisdiction to hear constitutional matter. Petitioner/respondent acknowledges the law cited in the motion but contend that it is inapplicable to the case at bar because this court has jurisdiction to hear the instant petition for declaratory judgment for reasons stated in the above resistance. Petitioner/Respondent concedes the principle of laws in count two of movant's motion but requests court to dismiss and deny count three of movant's motion as well as the entire motion.*

### **COURT'S RULING**

*The court having entertained arguments pro et con on the motion to dismiss and the resistance thereto, this court says that the single issue it finds to be dispositive of the motion to dismiss is whether this court lacks jurisdiction to hear petitioner's petition merely because the constitutionality of an act of Legislature is challenged by said Respondent/Petitioner? The Court answers in the negative and says that it has jurisdiction to hear Petitioner's Petition for declaratory judgment as respect the factual issue raised in the pleadings (In re: Petition of Benjamin J. Cox 36LLR, 837, Syllabus 8).*

*In the above case, the petitioner, a US citizen who graduated from the Louis Arthur Grimes School of Law filed a petition for declaratory judgment before the Civil Law Court, Sixth Judicial Circuit Montserrado County challenging the constitutionality of Section 17.1 of the Judicial Law. The Hon. Supreme Court of Liberia held " when a case is brought before a lower court involving factual*

*allegations, the lower court must first take evidence and satisfy itself as to the truthfulness of the factual allegations set out in the pleadings before it refers the matter to the Supreme Court, if indeed referral is appropriate".*

*In the instant case, the petitioner filed a petition for Declaratory Judgment challenging the constitutionality of an Act of Legislature and alleging that she suffers some actual or threatened injury as a result of the subject legislation. The allegations of petitioner's standing to file the petition such as her citizenship, her current position in Government and the threatened injury engender factual allegations that require the taking of evidence and since the Hon. Supreme Court has held that it is not clothed with authority to take evidence in any matter except those involving ambassadors, Ministers and cases in which a county is involved, Movant's motion to dismiss is hereby denied (36LLR, 837syllabus 10).*

*Wherefore and in view of the foregoing, Petitioner's petition is hereby referred to the Hon. Supreme Court of Liberia to determine the constitutionality of sections 5.1 and 5.2 of Code of Conduct of 2014. The clerk of this court is hereby ordered to certify the records to the Hon. Supreme Court of Liberia with immediate effect. And it is hereby so ordered. Matter Suspended.*

Issued under our hands and  
Seal of Court this 23 day of November A.D. 2015  
Cllr. J. Boima Kontoe  
Resident Circuit Judge, Presiding..."

The Respondent Liberian Government excepted to Judge Kontoe's ruling dismissing its motion to dismiss the Respondent/Petitioner's petition. The Respondent therefore announced an appeal to the Honourable Supreme Court of Liberia, the tribunal of final arbiter in the land; hence these proceedings.

With the Supreme Court now ceased of the matter, counsels for both parties filed their respective briefs in accord with practice and procedure in which their adverse positions were fiercely argued. This Court has carefully reviewed Petitioner Polson-Mappy's petition and keenly considered the questions therein advanced. We have also accorded due consideration to the queries submitted by the Liberian Government. In their submissions, the parties have urged this Court to consider a number of important issues including the following:

1. Whether the provisions of the Code of Conduct Act imposing prior resignation on presidential appointees wishing to run as presidential or

legislative candidates, is tantamount to amending the eligibility requirements set by the Liberian Constitution?

2. Assuming without admitting that there is a good-faith basis for the Code of Conduct, is the purpose for the prior resignation requirement a compelling reason to justify the substantial impairment of the fundamental right to vote and be voted for public offices?
3. Does the Code of Conduct Act constitute a broad restraint on political competition that protects those who enacted it and in so doing unjustifiably restricts the options of candidates available to the electorates?
4. Do Section 14.1 and Section 15. 1 of the Code of Conduct Act provide the exclusive and exhaustive range of sanctions for desecration, including the prior resignation provision?
5. Whether Part V, Section 5.2 (a) of “An Act of the Legislature Prescribing a Code of Conduct For All Public Officials and Employees of the Government of the Republic of Liberia” excludes any person/official appointed by the President who does not hold a tenured position-i.e. - Ambassadors, Assistant Ministers, Assistant Superintendents, etc.?
6. Whether Part V, Sections 5.2(a)(b) of “An Act of the Legislature Prescribing a Code of Conduct For All Public Officials and Employees of the Government of the Republic of Liberia” is selectively applied and therefore a violation of Article 11 (c) of the Constitution of the Republic of Liberia (1986)-i.e.-the Equal Protection Clause and other similar provisions of the Constitution?

As can be seen, the legal questions articulated by the parties, no doubt, are constitutionally significant. We are also not oblivious of the profound constitutional ramifications our answers to these issues could have on the governance of the Republic. Be as it may, attending to all these grave questions does not appear to be particularly compelling for the disposition of the case at bar. This Court has said, time without number, that unless dealing with a particular constitutional query is absolutely necessary to the final disposition of the case, though squarely raised, the Supreme Court would decline to deal therewith. *Munah Sieh Brown v. Republic*, Supreme Court Opinion, October Term, 2014; *IN RE: Morris M. Dukuly v. The National Elections Commission*, Supreme Court Opinion,



Special Session, September 21, 2005; *Liberia Bank for Development & Investment v. Lancelot Holder*, 29 LLR 310, 314 (1981).

Accordingly, and consistent with this practice, we will pass only upon the below listed questions which this Court has determined to be germane to the disposition of this case.

The questions are:

1. *Whether Section 5.2 of the Code of Conduct which requires prior resignation of presidential appointees desiring to canvas for elective public offices is an unconstitutional expansion and imposition of eligibility requirement on presidential appointed public officials?*
2. *Whether Section 5.2 of the Code which requires a selected category of presidential appointees, but does not require another category of presidential appointees, to resign prior to contesting elections for public office is discriminatory, and thus violates the Equal Protection Clause of the Liberia Constitution?*
3. *Whether the right to vote or be voted for is a fundamental right that requires compelling reason to justify its impairment; or does the Code of Conduct Act constitute a broad restraint on political competition that restricts the options of candidates available to the electorates?*
4. *Do Sections 14.1 and 15. 1 of the Code provide the exclusive and exhaustive range of sanctions for violation of the Code, including its prior resignation eligibility requirement?*

Does Section 5.2 which requires prior resignation of presidential appointees desirous of canvassing for elective public offices constitute an expansion of the eligibility requirement imposed by the Code of Conduct Act on public officials appointed by the President?

Petitioner Polson-Mappy has submitted that the Liberian Constitution (1986) expressly stipulates the eligibility requirements for elective public offices. To add to the eligibility requirements set forth by the Constitution, or subtract therefrom, can be properly undertaken only by amending the *Liberian Constitution*; that the text of the Constitution of the Republic can be properly and lawfully added to, or subtracted from only when the Legislature acts in strict compliance with the manner and the schedule set forth under Article 91 of the Liberian Constitution (1986).

Petitioner has referenced Article 52 of the Constitution as setting the eligibility requirements for the office of President and Vice President: Those are (a) to be a natural born citizen of Liberia; (b) to attain the age of 35 (thirty five) years, and (c) be the owner of unencumbered real property valued at not less than twenty-five thousand dollars; and (d) be resident in the Republic ten years prior to his/her election.

As for candidates for legislative seats, petitioner has cited and relied on Article 30 of the Constitution. That the eligibility requirements of a candidate for the Senate are: (1) to be a citizen of Liberia who has attained the age of 30 years, and (2) for the House of Representatives, a Liberian citizen of 25 years of age; must have been domiciled in the county or constituency he/she desires to represent for a period not less than one year prior to the time of the election and being a taxpayer. Petitioner has strenuously contended that these eligibility requirements are sovereign expression and cannot be added to or subtracted from except by an exercise ratified by the Liberian citizenry through a national referendum. Petitioner Polson-Mappy has further maintained that no such referendum exercise has been undertaken in the Republic and that it follows as such that the conduct by the Legislature to enlist additional requirements, and imposing same on presidential appointees, is a classic conduct offensive to the sovereign will of the Liberian people and should be declared as unconstitutional.

The crux of petitioner's contentions, articulated in its brief filed with this Court, is captured hereunder to wit:

*"The eligibility requirements for the President and and/or the Vice president of Liberia are stated in Article 52 of the Constitution while those for legislators are stated in Article 30 of the Constitution.*

*Article 52 of the Constitution states the requirement of a president or vice president as being (1) a natural born citizen of Liberia; (b) having not less than 35 years of age; (c) being the owner of unencumbered real property valued at not less twenty-five thousand dollars; and (d) being a resident in the Republic ten years prior to his elections. Regarding eligibility to contest for a legislative position, Article 30 of the Constitution categorically declares as follows:*

*"Citizens of Liberia who meet the following qualifications are eligible to become members of the Legislature:*

- a) *For the Senate, have attained the age of 30 years and for the House of Representatives, have attained the age of 25 years;*

- b) *Be domiciled in the county or constituency to be represented not less than one year prior to the time of the election and be a taxpayer."*

*The foregoing are the only eligibility/qualifications requirements for being a president, vice president or legislator. In fact Article 30 is categorical that all Liberians who meet these requirements "are eligible".*

*The eligibility requirements having been stated in the Constitution, they can only be added to or subtracted from only by amending the Constitution. In other words, given the categorical declaration of Article 30 of the Constitution that those who meet its requirements "are eligible to become members of the Legislature", no body or individual, collectively or individually, can say otherwise, unless Article 30 is amended.*

*The procedures for amending the Constitution are detailed in Article 91 of the Constitution, and they include an amendment by two-thirds membership of both houses of the legislature, which is ratified by 2/3 majority votes of registered voters through a national referendum conducted not sooner than one year. The Code is doubtlessly far from complying with the Article 91 procedures for amending the Constitution.*

*The Code, not being an effective, valid amendment of the Constitution of Liberia, has not, cannot and could not have changed the constitutionally enumerated eligibility requirements for any of the elective offices established by and under the Constitution.*

*To hold otherwise would mean that the legislators can lawfully change the age requirement or create an additional requirement either with respect to educational achievement or level of wealth. With all respect to the law-making power of the Legislature, it has no authority, competency or powers to amend or increase the eligibility requirements set by the Constitution."*

This Court concurs with the petitioner that the Legislature is without authority to amend any provision of the Liberian Constitution by the passage of an Act or a Statute. We also accept that any undertaking intended to amend the Liberian Constitution must adhere to, and be in scrupulous compliance with the steps, procedure and schedule as provided under Article 91 of the Constitution.

The mandatory steps include voting on the proposed amendment by two-thirds membership of both houses of the legislature, and the ratification thereafter in a national referendum by two-thirds votes of the registered voters conducted not sooner than one year after the Legislative action. We fully accept that no such exercise has been undertaken as a matter of public information not a subject of rational debate.

But the germane question here is whether the conduct of the Legislature to enact a Statute which requires prior resignation as an eligibility requirement, as in the instance of the Code of Conduct Act, is tantamount to amending provisions of the Liberian Constitution. An argument of this sort, for all intents and purposes, is hugely ludicrous.

Article 34 of the 1986 Constitution of Liberia unarguably vests in the Liberian Legislature twelve (12) enumerated powers. Amongst these is the power to *“enact the elections law.”* The authority of the Legislature to make laws which affect elections and their conduct is a constitutional derivative. Consider this. Under Chapter VII, Article 77 (b), the Constitution categorically grants every citizen of this Republic, *“not less than 18 years of age” ...“of the right to be registered as a voter and to vote in public elections.* Yet Article 77 (b) of the Constitution similarly further authorizes and empowers the Legislature to make laws *“indicating the category of Liberians who shall not form or become members of political parties.”*

As we see it, the language of Chapter VII, Article 77 (b) of the Liberian Constitution clearly granted extraordinary powers to the Legislature to legislate as to the form and nature political participation and involvement may be permitted for various categories of Liberian citizenry. Notwithstanding the constitutional right granted to every Liberian citizen of age to register and to vote in public elections and referenda, the Legislature has been concurrently directed by the Writers of the Constitution to make laws which may properly exclude some citizens from voting. It is appropriate to do a further reading and more elaborate examination of various provisions of the Liberian Constitution, particularly the powers each of those provisions vests in the Legislature:

- (A) Chapter V, Article 34 (i) of the Liberian Constitution (1986) empowers the Legislature to *“enact the elections laws”;*
- (B) Chapter XI, Article 90 prohibits to the effect that *“(a) No person, whether elected or appointed to any public office, shall engage in any other activity which shall be against public policy, or constitute conflict of interest.”;* that *“(b) No person holding public office shall demand and receive any other perquisites, emoluments or benefits, directly or*

*indirectly, on account of any duty required by Government.”; and the Lawmakers were ordered by specific constitutional language under section (c) of Article 90 as follows: “The Legislature shall, in pursuance of the above provision, prescribe a Code of Conduct for all public officials and employees, stipulating the acts which constitute conflict of interest or are against public policy and the penalties for violation thereof.”; and,*

- (C) Chapter V, Article 34 (L), commonly accepted as the “*Necessary and Proper*” Clause of the Liberian Constitution empowers the Lawmakers, which may not have been unfolded by the national circumstances of the time, “*to make all other laws which shall be necessary and proper for carrying into execution .... all other powers vested by this Constitution in the Government of the Republic, or in any department or officer thereof.*”

A scrupulous review of the Liberian Constitution leaves no shred of uncertainty that the geniuses of the Constitution intended to and clearly granted extraordinary powers to the Legislature to make laws regulating matters of public governance, including elections and referenda. These include the authority to set eligibility requirements for candidates as the Legislature may deem compelling to further overriding State interest and to enhance public policy probity. Under the circumstance, to propose as the petitioner has done, that the Legislature is prohibited from conscripting new and additional eligibility requirements for candidates vying for public offices, or that the Legislature, by inclusion of Section 5.2 in the Code of Conduct Act, amended the Constitution, is absurd. In the light of the broad authority and powers our forbearers and the crafters of the Constitution have vested in the Legislature, this Court, such contention must be rejected.

The Legislature acted properly in exercise of the powers and authority granted to it by inclusion of the prior resignation eligibility requirement. In the wisdom of the Legislature, the inclusion of Sections 5.1 and 5.2 in the Code of Conduct Act were compelling necessity to ensuring curtailment of wanton abuse of public resources and misuse of public offices or positions to acquire undue electoral advantage.

Not having been able to find any law upon which we could rely to question the wisdom of the Legislature in this regard, we hold that the Code of Conduct Act, whether in whole or in part, does not violate the Liberian Constitution. Also, the Code of Conduct neither enlarges nor contracts any constitutionally protected rights. The conduct of the Legislature, to prescribe additional right or to set new eligibility requirements seeking both to enhance protection of, and to prevent abuse and waste of public resources, is a proper exercise of legislative authority, pursuant to Article 90 (c) of the Liberian Constitution. Can this be said not to be a matter of compelling State interest? We see it rather differently. Petitioner says further, and we accept, that it is a settled principle of Constitutional Law adhered to by Common Law Jurisdiction that the Legislature can neither redefine the scope of a constitutional right nor expand or contract the scope of a constitutional guarantee. This principle of law has been upheld and articulated by the United States Supreme Court in the case, *Boerne v. Flores*, 521 U.S. 507 (1997). However, Section 5.2 of the Code of Conduct Act, in our judgment, is not in conflict with this long held constitutional principle. Further, this Court does not in any manner and fashion deem the inclusion of the requirements under Section 5.2 as redefining the scope of constitutional rights or contracting these rights. While the Liberian Constitution does not explicitly authorize the Legislature to require prior resignation by public officials as additional eligibility requirement for contesting elective offices, nowhere in the text of the Constitution is the legislature barred from imposing such additional eligibility requirement against persons wishing to contest for public offices. It is trite law in this jurisdiction that what is not explicitly prohibited by the law is implicitly permissible under the law. [Cite]. This argument by Petitioner Polson-Mappy is therefore dismissed in its entirety.

As we now proceed to consider issues raised as regard equal protection before the law, this Court must emphasize that the Organic Law of this land guarantees equality and equal treatment of all persons under the law. Article 11 (c) of the Liberian Constitution (1986), assuring this sovereign guarantee, speaks the following language: “*All persons are equal before the law and are therefore entitled to the equal protection of the law.*” Article 18 of the Constitution also directs: “*All Liberians citizen shall have equal opportunity for work and employment regardless of sex,*

creed, religion, ethnic background, place of origin, or political affiliation, and shall be entitled to equal pay for equal work". It is this basic constitutional guarantee, Petitioner Polson-Mappy substantially alleges, the Code of Conduct Act, has violated.

Whenever confronted with legal questions of novelty, whether such questions are substantial, procedural or definitional, as in the instant case, Liberia, a common law jurisdiction and under the authority of the Reception Statute [citations], seeks guidance from other Common Law Jurisdictions. In the case, *Republic of Liberia v Leadership of Liberian National Bar Association et al.*, the Supreme Court of Liberia adopted work definitions of "equal protection" from two leading United States Supreme Court cases: "*Kentucky Finance Corp v. Paramount Auto Exch. Corp.*, 262 U.S. 544 (1923) and "*State of Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938).

In harmony with this jurisprudential tradition, we are guided by the definitional standard set by the United States Supreme Court. In the case, *Miller v. Johnson*, 515 U.S. 900 (1995), the United States Supreme Court enunciated that "*basic to the equal protection guarantee is the guiding principle that all persons shall be treated alike under like circumstances and conditions, both in privileges conferred and in the liabilities imposed.*"

In the light of this definitional principle, this Court accepts that a legislation which seeks to apply different treatment to persons similarly situated, "*in privileges conferred and in the liabilities imposed*", would seem to be in conflict with the Liberian Constitution which. Petitioner Polson-Mappy has contended that Section 5.2 of the Code of Conduct Act is discriminatory for reason that it appears to apply differential treatment for people who are similarly situated.

Even though the Code of Conduct Act applies to all public officials appointed by the President, its resignation requirement, the petitioner has argued, affects only certain named and listed Presidential appointees. She has submitted as an example, that while the Code of Conduct Act, on one hand, affects tenured presidential appointees, Ministers, Deputy Ministers, Superintendents, the Code of Conduct Act's resignation requirement, on the other hand, does not list and apply to other public officers appointed by the President pursuant to Article 56 (a) of the Liberian Constitution. Those conspicuously omitted in the language of the Code of Conduct Act include Ambassadors, Assistant Ministers, Assistant Superintendents, etc.

In this connection, Petitioner Polson-Mappy has further claimed that the Code of Conduct Act, by its total disregard of the constitutional inhibition against discrimination, and by being arbitrary, capricious and wicked, is rendered unconstitutional. Further, and even most importantly, the petitioner has attacked the Code of Conduct Act as not providing any compelling reason(s) for restraining petitioner's right to canvass and contest for public elective office, without restraining the rights of other presidential appointees. It is this contention which has triggered the second query: *whether Section 5.2 of the Code of Conduct Act affronts the Equal Protection Clause and related provisions of the Liberian Constitution?*

Let's return to the Code of Conduct Act and carefully examine Section 5.2 of thereof, now under fierce attack. Section 5.2 of the Code of Conduct Act states: *"Wherein, any person in the category stated in Section 5.1 herein above, desires to canvass or contest for an elective public position, the following shall apply:*

- a) *Any Minister, Deputy Minister, Director-General, Managing Director and Superintendent appointed by the President pursuant to article 56(a) of the Constitution and a Managing Director appointed by a Board of Directors, who desires to contest for public elective office shall resign said post at least two (2) years prior to the date of such public elections;*
- b) *Any other official appointed by the President who holds a tenured position and desires to contest for public elective office shall resign said post three (3) years prior to the date of such public elections.*
- c) *However, in the case of impeachment, death, resignation or disability of an elected official, any official listed above, desirous of canvassing or contesting to fill such position must resign said position within thirty days following the declaration by the National Elections Commission of the vacancy."*

It is well to state that the Liberian Constitution unequivocally empowers the President of the Republic to appoint a number of public officials. The set of public officials the Liberian Constitution authorizes the President of Liberia to appoint expressly includes the following:

*"All Cabinet Ministers, Deputy and Assistant Cabinet Ministers, Ambassadors, Ministers and Consuls, Superintendents of Counties, and other government officials, both military and civilian, appointed by the President pursuant to this Constitution...."*



However, Section 5.2 of the Code of Conduct Act, when read juxtaposed with the sovereign language of Article 56 (a) of the Liberian Constitution, excludes clearly, and without a shred of uncertainty, certain public officials who are also appointed by the President of the Republic pursuant to Article 56 (a) of the Liberian Constitution. In seeking to have this Court to declare the Code of Conduct Act unconstitutional, Petitioner Polson-Mappy has structured and embodied her core argument in count 9 (nine) of her petition. We deem it proper to reproduce verbatim the said count as follows:

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

As can be seen, the petitioner has contended that the exclusion of certain public officials listed in the language of Article 56 (a) from prior resignation as an eligibility requirement, tends to expose Section 5.2 of the Code of Conduct Act, if not the entire legislation, to justifiable attack for want of equal treatment under the law. This Court concurs. Clearly, the language of Section 5.2 of the Code of Conduct Act does not appear to expressly measure up to the language and standard of equal protection and equal treatment. This language deficit notwithstanding, the core issue now confronting this Court is two-fold: whether the language of Section 5.2 of the Code of Conduct Act, by which certain public officials appointed by the President are

named pursuant to Article 56 (a) of the Constitution and expressly excluding others similarly situated public officials appointed by the President, discriminates; and if determined as such, whether such apparent discrimination renders the Code of Conduct Act unconstitutional.

This Court accepts that the language of Section 5.2 of the Code of Conduct Act suffers grave language or textual deficit. That is the reason we concur that the language of Section 5.2 of the Code of Conduct Act is troubling. But the equally vital question is whether this deficit in the language of the Code of Conduct Act justifies it being declared as unconstitutional? Petitioner has vehemently urged us to declare the Code of Conduct Act out rightly unconstitutional.

We forcefully reject this call out rightly. A long held constitutional principle of law, by which we have been consistently guided, urges us to make such a declaration with utmost deliberation. *Citizen Solidarity Council v. The Government of Liberia*, Supreme Court Opinion, March Term, delivered June 27, A.D, 2016.

In the case cited, Mr. Chief Justice Francis S. Korkpor, Sr., referred to an earlier Opinion of this Court, *Bryant et al. versus Republic*, reported in 6 LLR 128, 135-6 (1937). In that case, a similar call was made to this Court urging it to declare an Act of the Legislature unconstitutional. Rejecting the call, this is what the Supreme Court said in 1937, some eighty years ago. We quote:

*“...we should here state that while it is an axiomatic principle of the American system of constitutional law which has been incorporated into the body of our laws that the courts have inherent authority to determine whether such laws are not constitutional, courts in exercising this authority should give most careful consideration to questions involving the interpretation and application of the Constitution, and approach constitutional questions with great deliberation exercising their power in this respect with greatest possible caution and even reluctance, and they should never declare a statute void unless its invalidity is, in their judgment, beyond doubt and it has been held that to justify a court in pronouncing a legislative act unconstitutional, the court must be so clear as to be free from doubt, and the conflict of the statute with the Constitution must be irreconcilable.*

*It is a decent respect to the wisdom, the integrity and the patriotism of the legislative body by which all laws are passed to presume in favor of the validity of the law until the contrary is shown beyond reasonable doubt. Therefore in no doubtful case will the Judiciary pronounce a legislative act to be contrary to the Constitution. To doubt the Constitutionality of a law is to resolve the doubt in favor of its validity."*

Guided by this principle, is the "exclusion" made in the Code of Conduct Act of certain Article 56 (a) presidential appointees from the prior resignation as an eligibility requirement to contest in public elections, irreconcilable with the Constitution? We do not believe that this is the case here. And the question is settled in this jurisdiction that the Supreme Court of Liberia cannot and will not declare an Act of the Legislature as unconstitutional unless the Court is convinced beyond the slightest uncertainty that the legislation is patently in conflict with the constitution. Where such is not the case, this Court must refrain from making any such declaration. In taking this position, the case, *Garlawolu et al. v. The Elections Commission et al.*, 41 LLR 377, 385-6 (2003), is indeed instructive.

In the *Garlawolu* case, this Court directed that a law should be construed in light of its purpose and give practical interpretation so that the manifested purpose of the creators are carried out; that the law should be interpreted in light of the entire document. So the question is whether the "exclusion" language contained in the language of the Code of Conduct Act is irreconcilable with the clear text of the Liberian Constitution?

In this regard, we are in perfect accord with the submission made by the Respondent Liberian Government, through its legal Counsel, the Ministry of Justice, in addressing this critical query. Accordingly, we herewith incorporate to form part of this Opinion, the Justice Ministry's response to the petitioner's question thus:

*"It is the law that "in ascertaining whether a statute is constitutional, its various applicable provisions must be considered as a whole. Court will in order to avoid declaring any part of an act unconstitutional, give such a construction as will enable it to take effect in all its parts, since it is their duty, if possible, not only to construe as a whole and harmonize all valid legislation's provisions valid.*

*If a construction which appears reasonable, which is in accord with common sense, and which is fairly within the contemplation of the legislature, constitutionality can be sustained, the statute will not be struck down. And if, by a particular mode of reasoning, the constitutionality of legislation may be sustained, it is irrelevant whether such reasoning in fact underlay the legislative decision as it is also irrelevant that the statute did not extend to all whom the postulated rationale might in logic apply". 16A Am. Jur. 2d, Section 172, page 52 (1998).*

*It is also the law, that "where the validity of statute is assailed and there are two possible interpretations, one by which the statute would be unconstitutional and by the other of which it would be valid, a court should adopt the construction which will uphold it, even though the construction which is adopted does not appear to be as natural as the other.*

*Thus, a reviewing court is barred from lightly choosing the reading of a statute's setting which will render it unconstitutional over that which will save it". Am. Jur. 2d, Vol. 16A, Section 175, page 52(1998)"*

Accordingly, this Court must be guided by the authoritative principles of law governing statutory construction by embracing interpretation of Section 5.1(a) of the Code of Conduct Act which leads to logical and objective conclusion. Consistent herewith, it is our considered opinion, that the intent of the Legislature was not and could not have been to exclude any of the public officials appointed by the President pursuant to Article 56 (a): *"[a]ll Cabinet Ministers, Deputy and Assistant Cabinet Ministers, Ambassadors, Ministers and Consuls, Superintendents of Counties and other government Officials, both military and civilian, pursuant to this Constitution...."* We understand and interpret those named and listed under Article 56 (a) of the Constitution as within the mandatory language and meaning of the Organic Instrument. It is therefore our considered view that no public officials named under Article 56 (a) are excluded. Therefore, to the extent that the "exclusion" language as found in the Code of the Conduct Act is harmonizable in the present case with the mandatory language of the Liberian

Constitution, we see no compelling basis to declare the Code of Conduct Act unconstitutional. To say anything to the contrary would violate the principles of construction to which this Court has adhered from time immemorial.

The third and fourth questions seem interwoven. This Court would endeavor to address the two questions simultaneously. The two queries are *whether the right to vote is a fundamental right that requires compelling reason, under the strict scrutiny standard, to justify its impairment under the strict scrutiny test; and, whether the Code constitutes a broad restraint on political competition that restricts the options of candidates available to the electorates.*

The right of a citizen to vote, no doubt, is essential to a people in any democratic society. It is through voting that citizens choose their leaders and remove them when they fail to listen and account to them. The right of the people to vote and participate in government is so germane and fundamental to liberty and freedom that it is expressly guaranteed in numerous international human rights instruments, to which Liberia is a party. The right to vote is also enshrined in several amendments to the United States Constitution and articulated in numerous Opinions of the United States Supreme Court.

For example, Article 21 of the Universal Declaration of Human Rights, of which Liberia is a State party, states: *"Everyone has the right to take part in the government of his/her country, directly or through freely chosen representatives."* Also, the Fifteenth, Nineteenth, Twenty Fourth and Twenty Sixth Amendments to the United States Constitution recognize and guarantee to Americans the right to vote as untouchable political franchise.

In addition to these textual constitutional provisions, the United States Supreme Court, in a number of landmark cases, *Kramer v. Union Free School Dist.*, 395 U.S. 621, 626 (1969) and *Harper v. Virginia St. Bd. of Elections*, 383 U.S. 663, 666 (1966), has declared the right to vote as a fundamental right protected under the equal protection rights; that the right to vote freely for the candidate of one's choice is of the essence of a democratic society and at the heart of representative government. In the case, *Reynolds v. Sims*, 377 U.S. 533, 555 (1964), the United States Supreme Court frowned on any form of governmental restrictions or legislations to undermine

participation in political affairs and erodes the essence of representative government. Far back in 1886, the United States Supreme Court articulated in the case, *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886), that the right to vote is a fundamental political right that is preservative of all rights, adding, “[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.” This view is further accentuated in a 1964 decided case, *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

Because the right to vote is so fundamental, it has been well established that any government’s action to restrict or curtail this right must be strictly scrutinized. The United States Supreme Court succinctly elucidated this principle, “[e]specially since the right to exercise the franchise in a free and unimpaired manner is preservative of the other basic civil and political rights, any alleged infringement of the rights of the citizen to vote must be carefully and meticulously scrutinized.” *Harper v. Virginia St. Bd. of Elections*, 383 U.S. at 667, (1966). It is held that for the government to be able to interfere with the right to vote, the government is required to demonstrate a COMPELLING government interest; and the means used to achieve that interest must be the LEAST RESTRICTIVE” means of furthering the government interest. The Court has been extremely suspicious and has declared laws that fail to meet the strict scrutiny standard as unconstitutional, and only allow such laws to exist if they are necessary, and the least restrictive way – to achieve an important government purpose. See, *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources*, 504 U.S. 353, 359 (1992); *Maine v. Taylor*, 477 U.S. 131, 138 (1986).

Instructive on this matter are decisions of the United States Supreme Court to provide an insightful guidance for this Court as we attempt to deal with similar query. That is, whether the right to vote is a fundamental right that requires compelling reason, under the strict scrutiny standard, to justify its impairment under the strict scrutiny test? This question can be answered by breaking it down into four important parts. Whether or not, the right to vote is a constitutionally recognized fundamental right in Liberia; whether Section 5.2 of the Code of Conduct violates the right to vote for selected officials of government? If so, whether the government of

Liberia has compelling government interest for the inclusion in the Code of Conduct Act of Section 5.2 ; and whether Section 5.2 is the least restrictive way, or the only reasonable way the government can further and protect compelling State interest. The query essentially is whether Section 5.2 of the Code of Conduct Act in fact violates the right to vote?

To begin with, we ask whether the Liberian Constitution expressly recognizes the “*right to vote*” as a fundamental right. According to the 5<sup>th</sup> Edition of the Black’s Law Dictionary, “*fundamental rights*” are those that have their origin in the expressed terms of the constitution, or which are necessary to be implied from those terms. See: Black’s law dictionary, 5<sup>th</sup> Edition at page 607.

Article 77 (b) of the Liberia Constitution, under Political Parties and Elections, provides that “*...every Liberian citizen not less than 18 years of age, shall have the right to be registered as a voter and to vote in public elections and referenda under this Constitution.*” Article 5 (b) of the Constitution, under the General Principles of National Policy, obliges the Legislature to enact laws that would encourage all citizens to participate in government. From the plain language of the constitution, it is clear that the framers of the Constitution intended to attach great significance of cosmic proportions to the right of people to vote and participate in the formation of government. There can be no question therefore that the right to vote is a basic democratic right that should be practiced by every eligible citizen, promoted widely by the government, and jealously protected without hindrance.

As important as the right to vote is, the Liberian Constitution (1986) does not specifically list the right to vote under those expressly listed as fundamental. This is evidenced by the omission of the right to vote from Chapter 3, Articles 11 – 25 of the Liberian Constitution. Nowhere in the “*Fundamental Rights*” Section of our Constitution is the “*right to vote*” mentioned. This leaves this Court to wonder, as far as Liberian laws are concerned, whether the “*right to vote*” could be a sanctioned fundamental right? By omitting the “*right to vote*” from Chapter III of the Constitution, one may ponder whether the framers of the Constitution intended or did not intend to recognize “*right to vote*” as amongst the fundamental rights in the Republic?

We hasten to mention that though not expressly included as a fundamental right in Chapter III, the “*right to vote*” as a fundamental right can and should be implied from the terms of Article 77 (b), which is consistent with rule in varying common law jurisdictions and enshrined in the International Covenant on Civil and Political Rights, already ratified by Liberia. Hence, we hold that the right to vote is a fundamental right violation of which right requires the strict scrutiny review. In the light of this holding, it behooves this Court to ask whether the government of Liberia, by the enactment of the Code of Conduct, has a compelling State interest to justify government’s interference with the right to vote. In other words, is Section 5.2 of the Code of Conduct Act seeking to achieve a **compelling** public policy interest of the government, and the action of the legislature is the least restrictive means to achieve this State policy interest.

In our opinion, the Government of Liberia has a legitimate, compelling, significant and important State interest (1) to protect the resources of the Liberian State from abuse by public officials desiring to contest in public elections; and (2) to create plain level political field and to seek to prevent the tendency to acquire undue advantage over others ostensibly due to holding of public positions. To occupy certain public offices, no doubt, tends to provide the office holder tremendous access not only to tremendous powers and influences but also, and often times, acquire resources, over and above other contesters. It is our determination that the Government has a compelling interest to prevent Liberia’s competitive politics from unfair advantages – in which public officials in charge of public finances could be preferred by voters by application of the leverages they enjoy, the electoral advantages they tend to acquire as well as their ability to “dish out public money”.

An objective reading of Section 5.2 of the Code of Conduct leaves us with one unavoidable conclusion. The objective function of the law is to divorce the fiduciary duty of trust, integrity and loyalty owed by public officials to the people of Liberia from their personal desires to contest elections at the expense of public resources. This Court sees no other least restrictive means of preventing abuse of public resources by public officials than requiring these officials to relinquish access and control of those resources within a reasonable time period of departure from those public offices as a prior eligibility requirement to contest in public elections.



We hold that the Government has a compelling State interest. This Court accepts that the inclusion by the Legislature of Section 5.2 in the Code of Conduct as the least restrictive means to protect what is seen as overriding State interest. Hence, we have been presented no logical grounds or strong persuasive legal arguments to declare Section 5.2 as unconstitutional.

As regard the issue whether or not Section 5.2 of the Code of Conduct violates the right to vote of selected officials of government, petitioner has argued with piercing intensity that their fundamental right to vote has been violated by Section 5.2. By this argument, Petitioner Polson-Mappy seems to suggest that her right to vote includes her right to be voted for.

This Court is not persuaded by such logical inference. Assuming, *arguendo*, that Section 5.2 violates the right of public officials of political participation and to be voted for, it is also equally important to observe that no public official has right in public employment. Public employment is not a right, but a privilege granted by the State. The right to political participation is separate and distinct from the privilege of employment in public service. One may either choose to forego public employment in order to enjoy the right to political participation as a candidate; or observe the time prescribe the Code of Conduct Act to fulfill the eligibility requirement to enjoy political participation. We also accept that Article 5(a) of the Constitution mandates the Legislature to pass enabling laws with the object of **encouraging all citizens to participate in government**; we also recognize that Article 8 further provides that the *“Republic shall direct its policy towards ensuring for all its citizens, without discrimination, opportunities for employment and livelihood under just and human conditions”*. The equal opportunity for work is also established by Article 18 of the Constitution. There can be no argument that barring some Liberian citizens from employment and/or participation in government **merely on the basis of an intent (not a decision) to run for public office** is discriminatory and a deprivation of a **constitutionally protected “opportunities for employment and livelihood”** as well as substantial impairment of **the right “to participate in government”**. It is the opinion of this Court that while the Constitution of Liberia and various authoritative case laws of the United States Supreme Court recognize the right to vote as a fundamental right, there is no similarly conferred right on any Liberian citizen to be voted to public office.

We hold the right of every qualified Liberian citizen to vote in public office to be a protected by the Constitution while to be voted to public office is, for all intents and purposes, nothing more than a privilege, a bestowal of public honor. We have over and again examined the text of the Liberian and have been unable to find any constitutional provision in support of petitioner's argument in this regard. This argument must therefore crumble.

Lastly, the Code of Conduct Act provides an array of sanctions for violation of the Code of Conduct Act. The Legislature, under Sections 14.1 and 15.1 of the Code of Conduct Act present an interesting reading in this respect.

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

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

Further, the Legislature, in stipulating "sanctions" for persons flouting the Code of Conduct Act, directed under Section 15.1 thereof as follows:

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

*Dismissal;  
Removal from office in public interest;  
Reprimand;  
Fine or making good of the loss or damage of public  
Demotion (reduction in ranking);  
Seizure and forfeiture to the state of any property  
office; and  
Interdiction/suspension from duty with half pay."*

As can be seen, the Legislature has listed the broad range of sanctions under Section 15.1, quoted herein above. The Legislature deliberately and expressly listed various sanctions to be imposed for violation of the Code of Conduct Act. The Legislature having expressly decreed the penalties under Section 15.1, it is Petitioner

Polson-Mappy's submission that breach of, or non-compliance with any provision/s of the Code of Conduct Act, be limited to any of those named and listed by the Legislature. Petitioner has urged this Court to be guided by a settled principle of statutory interpretation. This principle of law instructs that the mentioning of one or more specifics by the law maker without an accompanying general word implies that the specifics are the limit of the statute's coverage ("*expression Unius est Exclusio Alterius*"). The petitioner has also drawn our attention to a holding of this Court in the case, "*West Africa Trading Corporation v. Alrine*, 25 LLR 7 1976). In the West Africa Trading Corporation case, the Supreme Court of Liberia, said: "*lawmakers must be said to have intended only what they wrote and nothing more or nothing less; hence, the Court has no alternative but insist upon strict compliance with the law as it was passed.*"

Concluding her argument on this query, Petitioner Polson-Mappy has maintained that the language of Section 15.1 is meant to be what it expressly states and therefore represents the exhaustive and exclusive sanctions for violation of any and all provision of the Code of Conduct Act. Petitioner has also reminded us of our holding that:

*"The Court's power to construe and interpret statutes does not go beyond giving effect to the words in the text of the particular statute; legislative intent must be gathered from the meaning of the words used. The lawmakers must be said to have intended only what they wrote and nothing more or less; hence, the Court has no alternative but insist upon strict compliance with the law as it was passed."*

See: *West Africa Trading Corporation v. Alrine* 25 LLR 3, 7, (1976).

Petitioner has insisted that a declaration by this Court holding that Sections 14.1 and 15.1 provide the only sanctions for violators of the Code is the only proper and legal path to prevent the Code of Conduct from being declared as unconstitutional.

On its face, the argument advanced by the petitioner in support of the "*exhaustive sanction theory*", is persuasive. Petitioner's contention appears to be persuasive that by devoting Section 15.1 of the Code of Conduct Act and specifically prescribing thereunder a variety of penalties to apply to violators, the Legislature

intended to limit the sanctions to be applied strictly within said Section 15.1. The sanctions applicable to violators under Section 15.1 of the Code of Conduct include dismissal, removal from office in public interest, reprimand, fine, seizure and forfeiture to the State of any property acquired from abuse of office, etc. It is worth noting that intrinsic in petitioner's "*exhaustive sanction theory*" is the plea to preclude application of any penalties and sanctions the Legislature did not expressly list under Section 15 of the Code of Conduct. The interpretation ascribed to this Section 15.1, to say the least, is fundamentally faulty and contradictory. A closer look at Section 14 of the Code of Conduct Act expressly directs the application of sanctions other than those specified by the Legislature under Section 15.1. Section 14.1 speaks to two basic matters: that violation of the Code of Conduct Act would trigger, "*relevant to the office in breach,*" .... "*the disciplinary processes as contained in the Standing Orders of the Civil Service, this Code of Conduct and other relevant rules, regulations and laws in force.*" Emphasis Supplied. The statutory expression "*and other relevant rules, regulations and laws in force*", necessarily implies the application of sanctions not expressly listed under Section 15.1 of the Code of Conduct Act. It follows that the sanction of disqualification from running for elected public office, where egregious violation of the Code of Conduct Act has been established, in our opinion, is amongst those other sanctions that would properly apply "*relevant to the office in breach*". To accept "*the exhaustive sanction theory*" postulated by Petitioner Polson-Mappy renders the Code of Conduct Act grossly meaningless and fundamentally useless.

It was the wisdom of the Legislature that public officials tend to acquire obvious undue advantage over other candidates; that by holding public offices, these officials tend to enjoy tremendous leverages which are often employed for electoral leads over others. In some instances, the sanction applicable to the magnitude or severity of the violation would be nothing other than disqualification of the obtrusive and blatant violator from running for public office. What would be the public policy utility for demonstrated flagrant violation of the Code of Conduct Act if the sanction of disqualification from contesting in public electoral contest is disallowed for reason that same is not expressly listed within the range of sanctions stipulated under Section 15.1? Would dismissal, imposition of fine, removal from office in public interest, or mere reprimand, be considered adequate in such

circumstances? Assuming such path leads to obvious absurdity. If a violator is not disallowed from contesting in public elections, he/she having massively benefitted from access to enormous public resources and attained incalculable leverages over and above all other contenders, then what use is the Code? Would the primary purpose of the Code of Conduct Act to act against the use of public office to access State's resources and employ same to gain electoral leads and advantages be pugnaciously undermined and defeated? This could have never been the legislative contemplation. It is precisely for these reasons we concur with the position assumed by the respondent that inherent in the statute, is the prohibition against participating in elections, in addition to any sanction enumerated in Section 15.1.

We therefore concur with the Respondent Liberian Government's position, and incorporate a substantial part thereof as an integral part of this Opinion:

*"... the purpose and objective of Section 5.2 of the Code, is to ensure that all presidential appointees participate in political activities fairly, and without possessing undue advantage over others in the process of competing for elected positions in Government by using their offices and Government resources in support of partisan activities. That is why a time frame has been set by the Legislature for classes of persons appointed by the President to resign if they intend to participate in politics. It is a rule of construction that statutes must be interpreted so as to best carry out their statutory purposes. It is also a rule, that courts must follow a presumption that the legislature intends reasonable results. In the instant case, what reasonable purpose would be achieved if State resources are allowed to be used and the appointee who violates the code by so doing is allowed to compete against others who were not similarly situated? The courts are to follow the plain meaning of the statutory text, except when the text suggests an absurd result."; that "inherent in the statute, is the prohibition against participating in elections, in addition to any sanction enumerated in Section 15.1."*

With all that we have said, we are compelled to draw attention to Section 12.2 of the Code of Conduct Act. Under this Section, the Legislature duly established the office of Ombudsman. According to this legislation, the purpose for which the office of the Ombudsman was constituted, amongst others, is to receive complaints

regarding the alleged violation of the Code of Conduct Act, investigate and take appropriate action(s). We herewith quote Section 12.2 of the Code of Conduct Act providing as follows:

- 12.1 *“The Office of an Ombudsman is hereby established as an independent autonomous body which shall be responsible for the enforcement, oversight, monitoring and evaluation of the adherence to the Code of Conduct.*
- 12.2 *The Office of Ombudsman shall receive and investigate all complaints, in respect to the adherence to the Code of Conduct and where there is a determination of guilt and violation of the code by private and Public Officials and Employees of Government, said violation shall be submitted by the Ombudsman to the Liberia Anti-Corruption Commission (LACC) or other relevant Agencies of Government. The Office of the Ombudsman shall be responsible to collaborate with the three Branches of Government and Civil Society Organizations in order to develop regulations for the Code of Conduct.”*

Regrettably, this important office, though created by law since June 20, A.D. 2014 (the date of publication of the Code of Conduct Act) is yet to be instituted and made operational. This means that there is at present, no forum of first instance to receive and address complaints of alleged violation of the Code of Conduct Act. This is of critical concern as the law solely vests the office of Ombudsman with original jurisdiction not only to have oversight, monitor, and evaluate adherence to the Code of Conduct Act, but also to receive and investigate all complaints, in respect of adherence thereof. This is critical as the provision by the Legislature of the wide range of sanctions seems to suggest imposition of sanction/s to commensurate with magnitude and severity of the violation measured by the violator’s accessibility to public resource accessibility and acquisition of leverages over other candidates. The work of the Ombudsman and its findings on proven violations of the Code of Conduct Act, in our considered Opinion, provides the logical basis for imposition of sanctions, commensurate with the violation. Disqualification of a violator from vying in public elections is unarguably within the functional meaning of the Code of Conduct Act, contingent on the established severity of the violation.

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

WHEREFORE, with all we have said in this Opinion, the petitioner's petition praying this Court to declare Section 5.2 or certain provisions of the Code of Conduct Act, unconstitutional, same not being basis, both in law and in fact, is hereby denied. The *Petition is dismissed. AND IT IS SO ORDERED.*