

MR. JUSTICE BANKS delivered the Opinion of the Court.

The Liberian Constitution (1986) states, at Article 1, that “All power is inherent in the people. All free governments are instituted by their authority and for their benefit and they have the right to alter and reform the same when their safety and happiness so require. In order to ensure democratic government which responds to the wishes of the governed, the people shall have the right at such period, and in such manner as provided for under this Constitution, to cause their public servants to leave office and to fill vacancies by regular elections and appointments.” LIB. CONST., ART 1, (1986). [Emphasis Ours]

Probing the intent of the framers of that most sacred document and one of the most profound provisions of the document, quoted above, we believe that they clearly intended to make unmistakably clear that the ultimate power of the State is in the people and that in the face of that reality, governments that are established to undertake the affairs of the State are instituted only and solely by the will and at the instance of the people; and that it is the people, not the governments nor the institutions or agencies of governments, that have the authority to remove elected persons serving the governments or institutions of the governments, and to do so primarily by the process of periodical uniform public elections, at which the people determine, by their votes, who will take the reign of the government or the elective public offices of the government.

In order that the will of the people are never thwarted, by any subordinate authority established by the Constitution, the document makes it abundantly clear that “This Constitution is the supreme and fundamental law of Liberia and its provisions shall have binding force and effect on all authorities and persons throughout the Republic.” [Emphasis supplied] LIB. CONST., ART. 2, (1986).

It is to ensure and assure that the will of the people is fully manifested that the Constitution also sets out the process and the mechanism through which that will can and should be channeled. The Instrument allows for no deviations or violations that would dilute the will of the people in determining the government that would govern the nation and the

expectation is that the institutions that are set up to superintend the process through which the will of the people are expressed, will similarly not deviate in any manner as would dilute the expression of the people's will. It provides, firstly, at Article 34(c) that the Legislature, the Body elected by the people to give expression to their aspirations, will enact the Elections Law, the enabling law that should govern, in more detail than expressed in the Constitution, but subject to the strict dictates and mandate of the Constitution, the process and the mechanisms by which and through which public officials are or should be elected. LIB. CONST., ART 34(e) (1986).

Yet, notwithstanding the delegation of authority to the Legislature to enact the Elections Law of the country, all laws, whether legislative enactments, executive decrees, etc., must always be subordinated to and in consonance with the Constitution, the supreme law of the land and that no deviations can or will be tolerated. This is clearly expressed in the second paragraph of Article 2 of the Constitution, which states that that "Any laws, treaties, statutes, decrees, customs and regulations found to be inconsistent with it shall, to the extent of the inconsistency, be void and of no legal effect." *Ibid.* By the foregoing pronouncement, the Constitution makes it clear that even when it delegates authority from the people to a subordinate body or institution, the expectation is that they will act in accordance with and in conformity with the mindset that their actions, including and particularly in election matters, must conform to the wording and intent of the Constitution and reflect the will of the people; otherwise, their actions are illegal and must be so declared.

As a means of effectuating the process and structuring the mechanism for achieving the goal of honoring the will of the people, the Constitution, at Article 89(B), specifically creates an Elections Commission. And whilst the provision does not outline the structure, authority and precise functions and activities of the Commission, certain of the authority and powers of the Commission are stated in other Articles of the Constitution, while other Articles, such as Article 89(B) specifically, vest in the Legislature, perhaps in further clarity of the powers of the Legislature in respect to electoral

matters, the power and mandate to “enact laws for the governance of [the] Commission.” LIB. CONST., ART 89(B) (1986).

As a means of further ensuring that, although the Legislature had been given the authority to enact the Elections Law, that Body is guided and that the laws enacted by it reflect and manifest the broad will of the people, the Constitution, at Articles 77 to 84 set out the broad framework of the electoral process [from the definition and creation of political parties; to the eligibility of voters and rights of voters; to the manner, periods and timeframe for holding elections; to the hearing and appeal of electoral disputes, etc.] and the perimeters of the laws enacted by the legislature so that they do not transcend the permissible bounds of the statutory realm, as would be infringed upon the Constitution and the will of the people. As part of the broad framework set for the conduct of public elections, the Constitution mandates that elections “for the President, Vice-President, members of the Senate and members of the House of Representatives shall be conducted throughout the Republic on the second Tuesday in October of each election year.” LIB. CONST., ART. 83(a) (1986).

Further, the Constitution, apparently for the purpose of further clarity, and to minimize avenues for deviations or departures from the strict will of the people, and to ensure a stern and firm adherence to the will of the people, couched in various Articles in that sacred instrument, referenced herein, expressly mandates the Legislature, in enacting the Elections Law, pursuant to the mandate contained in Article 34(i), to “provide penalties for any violations of the relevant provisions of this Chapter VIII of the Constitution which specifically deals with political parties and elections], and shall enact laws and regulations in furtherance thereof not later than 1986; provided that such penalties, laws or regulations shall not be inconsistent with any provisions of this Constitution.” LIB. CONST., ART. 84 (1986).

We should note that in furtherance of the constitutional mandate granted the Legislature to enact the Elections Law, a New Elections Law was enacted in 2006, and subsequently amended to reflect new and unfolding developments in the country.

This is the backdrop to which, under the constitutional authority and mandate, the Presidential and Representatives Elections of 2017 were expected to be planned and conducted by the National Elections Commission (NEC). It was on the strength of the foregoing and the constitutional, statutory and regulatory mandates that the NEC planned and conducted the referenced elections on October 10, 2017. We take note, as it is a matter of public records and this Court has the statutory right and obligation, as a part of its constitutional duty and responsibility as the final arbiter of disputes in the nation, that seventeen (17) political parties and three (3) independent candidates participated in the elections; that a total of 984 candidates, including independent candidates, contested for the seventy-three (73) seats provided for in the House of Representatives; that a total of 20 candidates contested for the presidency and 20 for the vice presidency.

The records certified to this Court revealed that the elections mentioned herein, having been conducted by the NEC, the results were announced incrementally by the NEC, through its Chairman, Counsellor Jerome G. Korkoya, on a timetable set by the NEC; and that the process culminated in the announcement of the final results on October 20, 2017, ten (10) days after the elections were held. In the announcement of the Final Results, the NEC indicated that the Coalition for Democratic Change (CDC), which fielded George Manneh Weah as its presidential candidate and Jewel Howard Taylor as its vice presidential candidate, had massed the highest number of votes, being five hundred ninety-six thousand thirty-seven (596,037.37) votes or 38.4 percent (38.4%) of the total valid votes cast, while the Unity Party (UP), which fielded Joseph Nyumah Boakai as its presidential candidate and Emmanuel N. Nuquay as its vice presidential candidate, had massed the second highest number of votes, being four hundred forty-six thousand seven hundred sixteen (446,716) votes or 28.8 percent (28.8%) of the total valid votes cast. The Liberty Party (LP), which fielded Charles Walker Brumskine as its presidential candidate and Harrison S. Karnwea as its vice presidential candidate, was said to have massed one hundred forty-nine thousand four hundred ninety-five (149,495) votes, being 9.6 percent (9.6%) of the total valid votes cast. We take note, as we are legally obliged to do,

that the NEC, in announcing the results of the elections, made the specific notation that out of the two million one hundred thousand plus registered voters, a total of one million seven hundred thousand or 74.5 percent (74.5%) of the total number of registered voters had actually voted in the elections and, further, that a total of eighty-eight thousand five hundred seventy-four (88,574) votes were declared as invalid votes.

Simultaneously with the announcement of the Final Results of the elections, and because none of the presidential candidates had attained an absolute majority of the valid votes cast, the NEC announced, through its Chairman, Cllr. Jerome Korkoya, that a run-off election would be held on November 7, 2017 for the presidential and vice presidential race and would involve the candidates of the two political parties (the Coalition for Democratic Change and the Unity Party) that had the highest votes in the October 10, 2017 elections.

Presidential candidate Charles Walker Brumskine and vice presidential candidate Harrison S. Karnwea of the Liberty Party, and all Liberty Party candidates for the House of Representatives, as well as the Liberty Party itself, not being satisfied with the Final Results announced by the NEC, and believing that the manner in which the elections were conducted was in violation of the Constitution and Elections Law, as well as the Rules and Regulations of the NEC, including the deprivation of the rights of voters, and that the process was tainted with gross irregularities and fraud, challenged the results announced by the NEC, sought the cancellation by the NEC of the elections and prayed the NEC conduct a rerun of the elections. In their thirty-eight (38) count complaint, filed with the NEC on October 23, 2017, the complainants outlined what they said were specific incidents which supported their claims of the constitutional violations, irregularities and fraud of the election. In order that there is a full appreciation of the claims and contentions of the complainants, an assessment of the magnitude of the claims in relation to the prayer made, and for the benefit of the analysis which we shall make later in this Opinion, we quote verbatim the said complaint as follows, to wit:

“THE COMPLAINT

Complainants file this complaint under the authority of Article 83(c) of the Liberian Constitution which states: "...Any party or candidate who complains about the manner in which the elections were conducted or who challenges the results thereof shall have the right to file a complaint with the Elections Commission. Such complaint must be filed not later than seven days after the announcement of the results of the elections; and pursuant to Section 6.1 of the Elections Law of Liberia which states that: "Any political party or candidate who has justifiable reasons to believe. that the elections were not impartially conducted and not in keeping with the Elections Law, which resulted in his defeat or the defeat of a candidate shall have the right to file a complaint with the Commission; such complaint must be filed not later than seven (7) days after the announcement of the results of the elections"—and showeth the following, to wit:

1. Violation of the Constitution of Liberia, Elections Law and regulations/ Disenfranchisement. Complainants say that Articles 77(b) and 80(c) of the Constitution provide, *inter alia*, that every Liberian Citizen, not less than 18 years of age shall have the right to be registered in a constituency, and vote in public elections in such constituency within which he or she is registered, and to do so by secret ballot. Complainants, say that this is consistent with and in furtherance of Article 1 of the Constitution which states that: "All power is inherent in the people. All free governments are instituted by their authority and for their benefit and they have the right to alter and reform the same when their safety and happiness so require. In order to ensure democratic government which responds to the wishes of the governed, the people shall have the right at such period, and in such manner as provided under this Constitution, to cause their public servants to leave office and to fill vacancies by regular elections and appointments. Complainants submit that under the mandate of the constitutional provisions referenced herein, as well as Article 34(i) of the Constitution, the Elections Law, enacted by the Legislature under authority of the Constitution, imposes upon the NEC the duty and the obligation not only to conduct public elections, but importantly to ensure that the electoral process is fair, is transparent, and is not tainted with any semblance of malpractice or fraud, that the actual valid votes cast by the electorate are counted and that the results thereof reflect the aspirations and will of the electorate. Complainants say that not only were these laws violated by the NEC, but that the violations substantially and effectively deprived voters of their constitutional right to vote, and that not all voters were afforded the equal opportunity and equal protection guaranteed under the Constitution and law. Complainants particularly reference the following:

Late Opening of Polls

(a) That notwithstanding, pursuant to Articles 77(b) and 80(c) of the Constitution, Section 4.8(2) of the enabling Elections Law, Article 6 of the Regulation on Polling and Counting provide that voting shall commence at 8:00 a.m. and close at 6 p.m., provided that the last person in queue at 6:00 p.m. shall be permitted to vote, the NEC failed to adhere to the said Regulation and in many instances the polls were opened late, and in some

cases, as late as 3:00 p.m., clearly to the detriment of the registered voters, many of them members of Liberty Party, who had shown up to exercise their constitutional right and political franchise. The consequence of the late opening of polls by the National Election Commission was that most voters, especially the elderly, disabled, and infirm, after having stood in line for hours, were effectively deprived of their constitutional right to vote, as they were constrained to leave the polling places, believing not only that such polling places would not be opened, or that the location of the polling places had been changed, as was done in other cases, but also that such act by the NEC, may have created or could have created health problems for them. The Commissioners are requested to take judicial notice of the fact of the late opening of the polls in certain areas of the country, which was common knowledge and which the Commission itself acknowledged. Copies of the EU Observation Report and Carter Center Preliminary Statement on Liberia Election are hereto attached together, as Complainants' Exhibit "A." See EU Observation Report that, "Undue aggravations in finding their polling place ultimately resulted in frustration and tension." See also Carter Center Statement that "However, observers across most counties reported difficulty in locating voters on the Final Registration Roll in some polling places."

"In what appeared to be a related problem, observers reported that ineffective queue management, mainly in large precincts, affected the orderly flow of the polling, creating confusion among voters and long lines throughout the day." Carter Center Issues Preliminary Statement on Liberia Election, October 12, 2017.

(b) The opening of the polls at various times, some at 8:00 a.m., others at 1:30 p.m., and yet others at 2:30 p.m. at various locations in the country, deprived voters who were registered to vote in such locations of equal protection under the law. For example, the polls opened at 1:30 p.m. at the Joel High School, Tusa Field, District 13, Precinct #30237, Montserrado County; and in Saygbeken, Electoral District 2, Sinoe County, opened after 2:30 p.m. on Election Day. Complainants submit that in those polling places where there were delays in the opening of the voting stations, the time should have been extended by the same number of hours as had been lost because of the lateness of the opening of the polling stations. By the same token, the stations should have been fully equipped to ensure that the ballots were not exposed to mistakes being made because of the darkness or to rigging of the votes by those who were counting the votes. But because these steps were not taken, not only were many voters deprived of the equal protection of the law and the right to vote, but the process was exposed to high prospects of vote manipulation. Notice is given that affidavits in support of these assertions, and others, shall be provided during the hearing.

(c) Late opening of some polls, without ensuring that late opening polls remained opened for at least 10 hours, as required by law, with sufficient lighting and adequate security, deprived voters who were registered at such polling places of equal protection under the law, in addition to depriving them of the right to vote and exposing the polling places to the danger of vote fixing.

Change of Polling Stations.

(a) Pursuant to Articles 77(b) and 80(c) of the Constitution, Section 4.2(1) of the enabling Elections Law, as amended, and Article 4.3 of the enabling Regulation on Polling and Counting provides that a location of a polling place may be changed by the NEC, if it determines that same is necessary, but the NEC is required to notify the voters and post signs showing the new location at least a week before polling, emergency excepted. Complainants aver that on the day of election, with no emergency, voters discovered that some polling places were not at the locations that had been previously published by the NEC, thus depriving them of their constitutional right to vote. One of such examples is the location of a polling place in Precinct Center #6171, District# 7, Fuama, Bong County, which was changed, without the required notice, from Korniekawoejaito Camp America, about six-hour walk, resulting in many not voting, thus depriving such voters of the constitutional right to vote. Complainants request the NEC to take judicial notice of the number of voters at that particular precinct to determine how many persons of that precinct were deprived of the right to vote as well as many others who, not entitled to vote, may have been allowed to vote since at such center the requisite observers could not be present. Notice is given that affidavits in support of these assertions, and others, shall be provided during the hearing.

3. Names of voters not listed on the FRR.

(a) The NEC is both constitutionally and statutorily obliged to maintain an accurate Voters Registration List at each polling place of those registered at such voter registration center to expedite the voting process, ensuring that votes counted from every polling place are votes of only legitimate voters, and that the results thereof reflect the aspirations of only those who were registered and who voted at the polling place. Complainants hereby give notice that during the hearing [they] will produce copies of affidavits and Voter Registration Cards of individuals who were not allowed to vote because their names were not on the Final Registration Roll (FRR).

(b) The process, as outlined in (a) above, was not implemented by the NEC, giving rise to two problems. (i) Many voters arrived at the polling places where they had registered only to be told that they were not eligible to vote because their names were not on the FRR, thus depriving such voters of their constitutional right to vote. For example, Stanley Carter, Liberty Party Representative for District #1, Sinoe County, was told by the Presiding Officer that he could not vote because his name was not on the FRR. It was only after he requested the Presiding Officer to look of the ballot paper, carrying his name and photo, was he allowed to vote. Many voters who were similarly situated and who were disenfranchised because their names were not on the FRR, will never be known under the circumstances. Copy of a sworn statement of Stanley Carter is hereto attached as Exhibit `B." Complainants also give notice that during trial, affidavits of some of these voters shall be produced in support of this averment.

(c) Then during the afternoon of Elections Day, after most voters had already been turned away, the NEC announced that all persons carrying "valid Registration Cards" should be allowed to vote. The Commissioners are requested to take judicial notice of the announcements made by the NEC over ELBS and other radio stations. However, Section 3.2 of the enabling

Regulation on Polling and Counting provides that "If a person has a valid Registration Card marked for a precinct, but whose name cannot be found on the voter registration roll for the precinct, subject to paragraph 3, the presiding officer shall permit the person to vote, if the person's registration card is verified through the SMS verification system managed by the NEC."

(d) The Carter Center reported that "Observers reported that the SMS system for verifying voter registration data was not being widely used when voters were not found on the list. Further, although the NEC established a hotline for presiding officers to check voter data, this fact was not sufficiently disseminated and observers did not see it being used."

(e) But allowing individuals carrying "valid Registration Cards," whose names are not found in the Voter Registration Roll, is subject to two conditions: (i) the Registration Card should be verified through the SMS verification system managed by the NEC. This was not done! (ii) If the person carrying such "Registration Card" is on the list of persons provided by the NEC who have been removed from the Registration Roll, either because of double registrations, or because such persons [are] underage, such persons should not be allowed to vote. Again, the verification was never done by the NEC! Now, whether those who left the polling places prior to the NEC's announcement, allowing every person carrying a voter registration card to vote, were legitimate voters deprived of their constitutional right to vote; or, those who voted, following the NEC announcement, were individuals who should not have been allowed to vote are questions the answers to which will never be known because of the failure of the NEC to perform the statutorily required verifications. The failure by the NEC to comply with the mandatory statutory requirements put into doubt the legitimacy of the elections and creates a cloud of doubt over the elections, warranting a rerun of the elections, and the complainants so pray.

(f) Paragraph (d) above notwithstanding, the question remains as to how many persons heard the NEC radio announcement. The presumption is that not many, as those who were not allowed to vote were commuting away from polling places without access to radio at the time of the announcement. Complainants submit that the wrongful and illegal acts on the part of the election officials should not be permitted to disenfranchise voters, as the voter cannot and should not be called upon to police the actions of election officials. As examples of some individuals who were turned away because their names were said not to be on the FRR, complainants give notice that during the trial they will produce copies of voters ID cards of such individuals, and/or their affidavits.

4. The Presiding Officer's Worksheet of the NEC

(a) The Presiding Officer's Worksheet of the NEC was not used by the NEC at the various polling places. Among other things, the Presiding Officer's Worksheet would have indicated the starting and ending serial numbers of ballots used at a polling place, making it difficult for ballots in the ballot boxes to be replaced while in transit from the polling place to the magistrate. And the Presiding Officer's Worksheet would have been signed by party agents. In the absence of serial numbers, there is no way of knowing whether the ballots in the ballot boxes were those that were either cast at a polling place, assigned and delivered to the polling places, or ballots that

were surreptitiously stuffed in the ballot boxes after polling had closed. The above notwithstanding, [the] absence of the Presiding Officer's Worksheet takes a whole new dimension, knowing that information such as "Number of ballot papers that should be in the ballot box," "Number of the ballot papers taken from the ballot box," among others, are all said to have been copied from Presiding Officer's Worksheet, to the Record of Count. This cast a cloud of doubt over the elections warranting a rerun of the elections, and the complainants so pray. Copies of the Presiding Officer's Worksheet and the Record of Count are hereto attached together, as complainants' Exhibit "C."

(b) Strangely enough, the complainants have not noticed any ballot used in the October 10, 2017 [elections], that has serial number. The complainants attached hereto, in bulk, copies of ballots used during the elections, evidencing the absence of serial numbers, as Exhibit "CI. Complainants challenge the NEC to produce the ballots used during the elections that carry serial numbers. The complainants submit that the design of the ballots without serial numbers was a calculated means of ensuring massive fraud, as was conducted during the elections. This alone warrants a rerun of the elections, and the complainants so pray.

(c) Because the ballots did not have serial numbers or the serial numbers, [and the] ballots used in the October 10, 2017 elections remain unknown, the NEC officials and others were at liberty to change and replace ballots at will. Seals on ballot boxes were broken after the voters had voted, polls were closed, and the ballot boxes were sealed.

5. The absence of Queue Controllers.

At most of the polling places there was no Queue Controller to ensure that voters were queuing on the right line. This frustrated many voters who stood many hours on the line to exercise their franchise, only to be told that they were on the wrong line. Many such voters left the polling place unable to find the right line, and without being able to vote, thus being deprived of their constitutional right to vote. (In the past elections, 2005 and 2011, the polling places were labeled in series with the voting numbers. So, when a person came to vote at a polling place, s/he knew exactly what line to stand on). Because there was no Queue Controller to assist persons with disabilities, the elderly, and infirm, the polling officers could not give preference to such persons at the polling place, as required by law. As examples of some individuals who were told that they were on the wrong line after queuing for several hours, [they] left the polling place out of frustration. Complainants give notice that during the trial they will produce copies of the Voters ID Cards of such individuals, and/or their affidavits.

II. Fraudulent Acts

The complainants submit that the entire election was characterized by fraud, evident by the analyses of some of the Record of Counts, which are hereto attached in bulk and marked complainants' Exhibit "D," in substantiation of this averment to form a cogent part of complainants' complaint. Notice is given that during the hearing, the supporting Record of Counts will be produced. We also provide other specific incidents of fraud herein below.

1. After voting ended at Precinct #30073, Barnersville Public School, Polling Place #3, Montserrado County, the ballot box was sealed with the following numbers, (a) Pre-046330 —front (b) Pre-046324 — right, (c) Pre-046335— left, and party representatives left the polling place. Unfortunately for the Presiding Officer, a poll watcher returned to the polling place only to find the Presiding Officer's hand in the ballot box, having broken the seals. The numbers of the second set of seals that was placed on the ballot box are (a) Pre— 046324, (b) Pre-027338, (c) Pre-027323, and (d) Pre— 046336. Complainants give notice that they will produce an affidavit of the poll watcher in support of this averment during the hearing. Complainants say that this incident clearly suggests that in many of the places where pool watchers or observers did not return to the place where the ballot boxes were held, the Presiding Officers could have engaged in such similar conduct and manipulated the votes. Complainants submit that this clearly places the elections in doubt and deprived it of legitimacy, requiring a re-run; and the Complainants so pray.

2. An NEC Presiding Officer, Josephus Cooper, of Electoral District #3, Nimba County, was arrested with pre-marked ballots in his possession, some of which he had already deposited in the ballot box. Complainants attached hereto a photograph of the Presiding Officer, when he was arrested, marked as complainants' Exhibit "E."

3. In Zota, Polling Place #3, Precinct Code #06102, Shankpallai Town, District #4, Bong County, following the close of the polls and counting of ballots, on Wednesday morning, October 11, 2017, it was noticed that the NEC Presiding Officer, Joseph Karlon, was carrying a presidential ballot box on a bike. When confronted and interviewed, the Presiding Officer stated that the ballot box was left behind and that he had gone alone, unaccompanied by a Police Officer, to pick it up on a bike; use of an NEC vehicle was evidently avoided. A transcript of a voice recording of the Presiding Officer's interview with a local journalist is hereto attached as complainants Exhibit "F." If need be, the recording will be played during the hearing, and the local journalist will be subpoenaed as a witness.

4. At voting Precinct #30121, Polling Place #3, Paynesville Community School, Montserrado County, the Presiding Officer, Moses Cooper, forwarded report to the Collation Center at SKD Stadium that the Liberty Party Representative Candidate, Kwisi Johnson, received no vote. When questioned at Collation Center, he stated that the Record of Count from the Polling Place was missing. When the ballots were recounted, the LP candidate in fact had 28 votes, and not zero, as reported by the Presiding Officer. How many of such fraud was committed around the country will never be known under the circumstances. What is important is that it shows a consistent pattern on the part of presiding officers at committing fraud in the elections, which could not have been done alone but with the connivance of elections officials. Copies of the self-made record of count of the Presiding Officer, LP's Complaint, and the Record of Count of October 17, 2017, from the Collation Center are hereto attached in bulk, as complainant's Exhibit "G".

5. At the Collation Center, at SKD Stadium, it was also observed that in Precinct #30171, Polling Place 3, District 12, Montserrado County, Liberty Party, Charles W. Brumskine obtained 205 votes. Regrettably, the Presiding Officer elected to cancel same and allotted 26 votes. Attached is a copy of the Presidential Records of Count from District #12, as the Complainants' Exhibit "H."

6. In Margibi County, Dwazon, District #1, Voting Precinct #24105, Polling Place #4, the Presidential Record of the Count shows that there were 2550, as "Total of unused, spoiled and discarded ballot papers," although there should not have been more than 550 ballots at any Polling Place. Copy of the Record of Count is hereto attached, as Complainants' Exhibit "I."

7. In Bong County, Tokpaipolu Public School, District #6, Voting Precinct #06113, Polling Place #1, the Presidential Record of the Count shows that there were 1,109 ballots cast in favour of George Weah, Presidential Candidate of the CDC, although there should not have been more than 550 ballots at any Polling Place. Copy of the Record of Count is hereto attached, as complainants' Exhibit "J." Complainants challenge the NEC to produce all of the remaining (unused or otherwise) ballots to determine precisely the total number of ballots issued by the NEC on Elections Day, how many were released to each voting center, how many were actually used, and how many were returned by each voting center.

8. In Cinta Township, Margibi County, between the hours of 9:00 p.m. and 10:00 p.m., it was observed that an NEC pick-up was parked on the side of the road, and the occupants thereof had opened a ballot box, and when an alarm was raised by a resident of the Township, the vehicle with the occupants fled the scene, inadvertently dropping the top/cover of the ballot box. The top has a single seal thereon, number Pre-043875. A photo of the top of the ballot box is hereto attached as complainants' Exhibit "K." Notice is given that during the hearing, the top of the ballot box will be displayed, if necessary, and an affidavit of the individual who witnessed the fraud may also be produced. Again, this shows a consistent pattern rather than just an isolated incident, and point to a conspiracy by the NEC or certain officials of the NEC to rig the elections.

9. In Bong County, Electoral District #4, Shankpalli 1, Voting Precinct #06102, Polling Place #1, the number of the ballot papers taken from the ballot box was 177, but candidate Robert Womba got 246. Copy of the Record of Count is hereto attached, as complainants' Exhibit "L."

10. The Voter Registration Card system employs a nine-digit numbering system beginning with the number seven (7) and ending with the number seven (7), creating the possibility of printing 10,000,000 ballots for a country with a total population of about 4.5 million and a "voter registration list" of only 2,100,000. What was the intended use of the capacity to print about 7,000,000 more voter registration cards? Complainants say the capacity to produce the extra and outrageous quantity of voter registration cards could only have been intended to provide room for fraud, and which actually

allowed fraud in the electoral process. A case in point is the fraud perpetrated by a staff of President Ellen Johnson Sirleaf, Amos Siebo, who was arrested as part of an illegal voter registration ring at his private home in Johnsonville, outside Monrovia. The ring was busted with an assortment of National Elections Commission voter registration materials, including cameras, blank voter cards, forms and printers. How a staff of the President's office got possession of elections materials remains unknown. Mr. Siebo was arrested, but later released, and has not been prosecuted. This is yet another example of the fraud that has characterized the entire electoral process. Copy of the FPA press clipping on the voter registration fraud is hereto attached, as complainants' Exhibit "M." Was this a part of a larger scheme of fraud—Presiding Officers breaking seals on ballot boxes after the polls were closed; removing the ballots that were cast, and replacing them with strange ballots; ballot boxes being transported by unaccompanied individuals, among others?

11. Gross Irregularities. Gross irregularities were pervasive throughout the electoral process, which contravenes the constitutional, statutory, and regulatory requirements of ensuring transparency and fairness in the electoral process.

1. There was no verification of the number of ballot papers at polling places prior to the commencement of voting—the starting and ending serial numbers of ballot papers were never recorded and attested to by party representatives. As a result, many Records of Count show that ballots at polling places just do not add up. For instance, the NEC had published that there would not be more than 550 voters at each polling place. Regrettably, however, records of count from some of the polling places in and around the country are more than 550.

2. Verifying and recording the number of ballot papers at polling places prior to the commencement of voting, evidencing the starting and ending serial numbers of ballot papers, attested to by all party representatives are of critical importance. The absence of this has demonstrated a deliberate and calculated conduct on the part of the NEC to compromise the credibility of the entire electoral process, creating the opportunity for fraud. For the electoral process to have been credible, fair, and transparent, and perceived as such, the starting and ending serial numbers of the ballots used at every polling place should have been recorded and attested to by party/candidate agents prior to the commencement of voting. Pursuant thereto, the NEC prepared and published the "Polling And Counting Manual For Staff, Presidential And Representatives Elections 2017," which contains the Presiding Officer's Worksheet. The Presiding Officer's Worksheet was designed to record the starting and ending serial numbers of the ballots, among other things, with provisions for the signature of party/candidate agents.

3. The primary purpose of the verification exercise was not only to ensure accountability of the ballots, but also to expose attempts, calculated as they may be, to engage in vote rigging and vote padding. Failure to use the Presiding Officer's Worksheet prevented the process of reconciling the number of ballot papers brought to each center, the numbers of ballot

papers cast, (including valid and invalid, replaced, spoiled, unused) at the close of the voting exercise. Regrettably, this very critical requirement that would have ensured accountability and credibility was deliberately disregarded by the NEC. Under these circumstances, it can never be determined, with any legal or rational certainty the number of ballot papers properly used, [or] probably stuffed, when there is no verifiable reference basis in terms of the number of ballot papers actually introduced by the NEC at each polling place. The entire electoral process was therefore compromised, warranting a rerun of the elections, and the complainants so pray.

4. In Margibi County, Precinct #24180, Polling Place #1, Liberty Party Poll Watcher noticed that around 6:30 p.m., after the Presiding Officer had notified them that the Polling Place was closed, and the ballot box had been sealed with seal numbers Pre-056965 and Pre-056961, a group of persons were noticed coming from the rear of the building. Surprisingly, the seals on the closed ballot box were broken, and those individuals were allowed to vote. The Poll Watcher requested for and was given a complaint form and a formal complaint was filed. Attached is a copy of the ruling of the Magistrate, which, among other things, confirmed the irregularity, marked as complainants' Exhibit "N." Again, this shows a consistent pattern rather than just an isolated incident, and point to a conspiracy by the NEC or certain officials of the NEC.

5. In Bongaplay, District #4, Nimba County, the NEC had only three polling places, when there should have been four. The voters who were being deprived of their constitutional right to vote took matters into their own hands, and disrupted the voting.

6. In Lofa County, Precinct #21128, a Liberty Party Poll Watcher was tied, beaten, and bruised by a Police Officer, Jefferson Togbah, on orders of the Presiding Officer, because he had continuously raised issues of counting irregularities—ballots that should have been counted in favor of Liberty Party, Charles W. Brumskine and Harrison Karnwea, was said to have been counted in favor of the Unity Party. Attached is the photo of the wounded Liberty Party Poll Watcher, as complainants' Exhibit "O."

7. Two young men, who do not appear to be NEC officials, but in any case unaccompanied by a Police Officer, are [seen] wading in a body of water with sealed ballot boxes on their heads. Attached is a copy of the photo of the two young men with the ballot boxes marked as complainants' Exhibits "P."

8. Individuals, whether they are NEC officials or not, in a canoe carrying ballot boxes, are unaccompanied by a Police Officer, as shown in a photo, which is hereto attached as complainants' Exhibits "Q".

9. In District #4, Klein Town, Polling Center # 09085, Polling Place #1 in Grand Bassa County, ballots were cast in a bathing tub, instead of a sealed ballot box. The Presiding Officer, Mary Yarkpawolo, admits that a sealed ballot box was not used, but claims that what she used was an unsealed "Polling kit" and not a bathing tub. She claimed that a ballot box is not

"sensitive material." Attached hereto is copy of a transcript of a recording by a local journalist who interviewed a Party Supervisor during the voting, as complainants' Exhibit "R." If need be, the local journalist will be subpoenaed during the hearing. Also, attached hereto is copy of the Minutes of a Magistrate hearing, during which the Presiding Officer confirms that she did not use a sealed ballot box, as complainants' Exhibit "S."

10. In District #4, Kennedy Town, Polling Precinct 09039, Polling Place #2 in Grand Bassa County, ballots were cast in a carton box, instead of a sealed ballot box. The Presiding Officer, Patrick K. Ninwillay, admits that a sealed ballot box was not used, but claims that what he used was an unsealed "Polling kit" and not a carton. Attached hereto as Complainants' Exhibit "T" are copies of the minutes of the hearing of the candidate's complaint, during which the Presiding Officer confirmed using an unsealed "Polling kit."

11. In District #13, Montserrado County, voters cast their votes in a box that was not one of the regular ballot boxes. But what is of greater significance is that the box was open while voters cast their votes. Copies of the photos of the box are hereto attached as complainants' Exhibit "U".

12. Because of the high percentage of invalid ballots, complainants hereby gives notice that during the hearing they will require a review of all invalid ballots. 88,400 votes have been declared invalid, constituting about 5.4% of the votes cast. This, petitioner says, among others, significantly impacted the election results.

13. Complainants say that numerous other incidents occurred which violated the constitutional rights of the voters, and which have also been reported by independent and credible election observers, such as the European Union Election Observation Mission, referenced in in Count 1.1(a) above, and the Women's Situation Room. Complainants hereby pray that judicial notice be taken of the public statement issued by the Women's Situation Room (a non-partisan and neutral based forum organized pursuant to UNSCR 1325), issued on October 16, 2017, and entitled "Statement by the Women's Situation Room — Liberia on the Conduct of the October 10, 2017 Presidential and Representative Election in Liberia." The relevant portion of said statement is quoted verbatim below:

"However, reports from our observers across the country as well as data received from the public via the 1010 short code in our Call Centres pointed to some deficiencies on polling day. As at yesterday Sunday, 15th October, 2017 our two Call Centres received a total of 1086 incident reports. 784 of these incidents were NEC related while 302 were security related. ... The NEC related calls were on issues of identification of voters polling places (voters who could not identify where they [are] supposed to vote), NEC changing precinct locations, thereby confusing voters with large number of invalid votes ..., many of the polling precincts were in schools which were inaccessible to the physically challenged and the elderly, the late arrival of ballot boxes and voting materials in some"

14. It is rather strange, and unlawful that although the NEC is said to have quarantined 14 ballot boxes, meaning that the ballots of many voters have not yet been counted, the NEC has announced the final results of the

Elections. In addition to the other reasons herein stated, complainants also challenge the results of the election on that basis.

The October 10 elections did not pass the minimum standards required for free, fair, and transparent elections. These elections were characterized by gross irregularities and fraud, which undermined the integrity of the elections and deprived thousands of Liberians of their constitutional right to vote. The violation of the Constitution and laws of Liberia, and the pervasiveness of the fraud and gross irregularities throughout the electoral process warrant a rerun of the Elections, and the complainants so pray.

WHEREFORE AND IN VIEW OF THE FOREGOING, complainants pray that the results of the October 10, 2017 Elections be annulled, and a rerun be ordered, in order to ensure that fair and transparent elections are held in accordance with the Constitution, Elections, and other laws of Liberia, and that the Board of Commissioners will stay the Second Round/Run-off, as announced by the National Elections Commission, and grant unto complainants such other and further reliefs, as may be provided in law and equity.

RESPECTFULLY SUBMITTED:

Complainants, by and thru his Legal Counsel,
Dated this 23rd day of October, A. D. 2017.”

The document quoted above constituted the complaint filed with the NEC by Brumskine, Karnwea, the representative candidates fielded by Liberty Party and Liberty Party itself. The thrust of the complaint, upon which the complainants sought effectively the nullification of the October 10, 2017 elections and upon which they prayed the NEC to conduct a re-run of the said elections, is three-fold: (a) that the electoral process and the acts of the NEC and/or its representatives violated the constitutional and statutory rights of voters and deprived them of the right to vote; (b) that there was massive fraud perpetrated by the NEC and/or its representatives in the conduct of the elections; and (c) that there were gross irregularities committed in the course of the conduct of the elections. The contentions can be summarized as follows: (a) With respect to the first contention that the electoral process and acts of the NEC and/or its representatives violated the constitutional and statutory rights of voters to vote in the mentioned elections, first appellants cited (i) instances of the late opening of some polling places without the corresponding extension of the closing time to compensate for the late opening, which had the effect of depriving some voters of the opportunity to vote as some believed that the polling center

would not have been opened and others, especially the elderly, disabled, and infirmed having to return home because they could not, for health reasons, withstand the long wait; (ii) change of some polling places from one locale to another without the required notice being provided to the affected registered voters being informed of the change, especially in the absence of any emergency warranting the change or for the lack of the required notice, which caused voters to return to their homes, and hence not being able to vote; (iii) absence of the names of voters from the Final Registration Roll (FRR) which had the effect of some voters being declared ineligible to vote and turned away, while others, later in the day, returned when informed of the NEC's decision that voters whose names did not appear on the FRR should be allowed to vote if they had valid registration cards, verified through an SMS verification system but which NEC announcement many voters were unaware of as it was not widely used, or by way of the NEC hotline for presiding officers but which many voters did not know of since they had no access to radio at the time of the announcement; (iv) allowing voters whose names did not appear on the FRR to vote with their names being placed on extra sheets, without proper verification, and which could have had persons vote who should not have voted; (v) non-use of the Presiding Officer Worksheet at various polling places which rendered polling places unaccountable and exposed the ballot boxes to possible surreptitious stuffing after polling had closed; (vi) lack of serial numbers on the ballots which was a calculated means of ensuring the commission of massive fraud and which could have allowed NEC officials and others to change and replace ballots at will; (vii) absence of Queue Controller to direct voters to the correct line where they were told that they were on the wrong line.

(b) With respect to the second set of allegations that the electoral process was tainted with massive fraud, the complaint cited (i) incorrect record of count; (ii) a presiding officer being found with hand in the ballot box, he having allegedly broken the seal after the poll watchers had departed; (iii) arrest of a presiding officer found with pre-marked ballots in his possession; (iv) seeing an NEC presiding officer carrying a ballot box on a bike unaccompanied by any police officer; (v) report of a NEC presiding

officer that the Liberty Party presidential candidate had received zero vote at a polling center when the subsequent count showed that he had received 28 votes; (vi) a presiding officer had changed the Liberty Party presidential candidate vote from 205 votes to 26 votes; (vii) at a polling center the presidential record of counts showed that there were 2,550 as total unused, spoiled and discarded ballot papers when there should not have been more than 550 ballots at that center; (viii) at a polling place, the presidential record of counts showed that 1,109 ballots were cast in favor of the CDC presidential candidate when there should not have been more than 550 ballots at the center; (ix) a NEC pick-up was seen in a town with the occupants having opened a ballot box; (x) at a voting place, although the number of ballot papers taken from the ballot box was 177, yet one representative candidate was said to have received 246 votes; and (xii) that the voter registration card system employed a nine digit numbering system beginning and ending with the number 7, which created the possibility of 10,000,000 ballots for a country with a populace of only 4.5 million, the intent being to provide room for fraud.

(c) With respect to the third set of allegations that there were gross irregularities, the complaint cited (i) the lack of verification of the number of ballot papers at polling places with the starting and ending numbers not being recorded and attested to by party representatives, which was a calculated conduct on the part of the NEC to compromise the credibility of the entire electoral process; (ii) failure to use presiding officer worksheet which prevented reconciling the number of ballot papers brought to each center and the number of ballots cast; (iii) at a polling place, because a number of persons were noticed coming from the rear of the building after the polls had closed and the ballot box sealed, the presiding office proceeded to break the seal of the ballot box and to allow new persons to vote; (iv) at a district in Nimba County, there were only three polling places when there should have been four; (v) at a polling center in Lofa County, a Liberty party poll watcher was tied, beaten and bruised by a police officer on the instructions of the presiding officer because the poll watcher had continuously raised issue of counting irregularities; (vi) two persons were

seen in a body of water with sealed ballot boxes on their heads; (vii) certain individuals were seen in a canoe carrying ballot boxes unaccompanied by any police officer; (viii) at a particular polling center, ballots were cast in a bath tub; (ix) at a polling center, ballots were cast in a carton box instead of a sealed ballot box; (x) that because 88,400 votes, constituting 5.4% of total votes, were declared as invalid, this significantly impacted the election results; (xi) that independent and credible elections observers basically agreed or admitted to deficiencies in the elections on polling day; (xii) that although the NEC had quarantined 14 ballot boxes and which therefore had not yet been counted, the NEC proceeded to announce the final results of the elections; and that given all of the above, the October 10, 2017 elections had failed to meet the minimum standards required for free, fair and transparent elections.

The foregoing was the case set forth by the complainants in the complaint filed with the NEC. The Chairman of the NEC, upon the NEC's receipt of the complaint, forwarded same to the Chief Dispute Hearing Officer (CDHO) for investigation. The records do not show that the NEC, against whom the complaint had been lodged, filed any returns or answer to the allegations levied in the complaint. What the records do reveal is that the CDHO, upon receiving the complaint and directive of the Chairman of the NEC, proceeded, on October 24, 2017, to cite the complainants to appear on October 27, 2017, for commencement of the investigation into the complaint. It is worth noting that although the complainants had prayed that the run-off election announced by the NEC to occur on November 7, 2017, be postponed until ruling was made on the complaint by the NEC, the latter made no response to the prayer. Instead, the investigation was commenced on October 27, 2017, as scheduled, with the production of oral, written and electronic evidence seeking to substantiate the allegations made in the complaint. Thus, even while the complaint into the allegations of violations by the NEC of the Constitution, Elections Law and Elections regulations and guidelines, fraud and electoral irregularities, all levied against the NEC, were being investigated, the NEC proceeded with arrangements for the holding of the announced November 7, 2017 run-off election between the CDC and UP

presidential and vice presidential candidates. This prompted the 1st appellants to file a petition for a writ of prohibition before the Justice in Chambers of the Supreme Court. The alternative writ having been issued, the case was referred to the full bench for hearing, given the constitutional issues presented in the petition and the fact that it concerned an election matter, considered to be of urgency. A hearing was expeditiously had before the Supreme Court and an Opinion delivered granting the peremptory writ directing that the November 7, 2017 run-off not be proceeded with until the NEC had disposed of the complaint before it, and as necessary, any appeal to the Supreme Court had also been determined. However, as neither the petition nor decision of the Supreme Court affected the proceedings being conducted before the CDHO, the investigations already commenced by the CDHO were continued.

At the mentioned investigation before the CDHO, the complainants produced a total of twelve (12) witnesses, all of whom testified to various aspects of the allegations levied in the complaint. However, upon the complainants resting evidence but before the defendant, NEC, was opportuned to commence the production of its evidence, the presidential and vice presidential candidates of the Unity Party, Joseph N. Boakai and Emmanuel Nuquay, respectively, as well as the Unity Party, filed a motion to intervene in the proceedings, simultaneously with a complaint, also against the NEC. Whereupon, the CDHO suspended further proceeding with the investigation until the motion to intervene had been disposed of.

On October 31, 2017, following resistance filed by the NEC to the motion to intervene and the entertaining of arguments by the parties before the CDHO, the CDHO ruled denying the motion. On appeal to the Board of Commissioners of the NEC, the Board reversed the ruling of the CDHO and allowed the intervention sought by the intervenors, co-appellants herein. The granting of the motion by the NEC Board of Commissioners thereby allowed the complaint filed by the intervenors to become a part of the ongoing proceedings and rendered the intervenors positioned to present oral and written evidence in support of the allegations made by the new co-complainants/ intervenors. For the benefit of this Opinion and to fully dissect

the allegations made in the complaint by the intervenors, we quote the said complaint as follows, to wit:

“INTERVERNORS' COMPLAINT

INTERVENORS named above most respectfully complain against the Defendants and sayeth the following, to wit:

1. That Intervenors have filed a Motion to Intervene contemporaneously with the filing of this Intervenors' Complaint and Intervenors pray the National Elections Commission (NEC) to take administrative notice thereof.

2. That Intervenors say that the law provides that on timely application a person may be allowed to intervene in an action or proceeding when the representation of the applicant's interest by existing parties may be inadequate and the applicant is or may be bound by a judgment/decision in the action/proceeding. Civil Procedure Law, Section 5.61(b). The law also provides that a person may be allowed to intervene in an action or proceeding when the applicant's claim or defense and the main action/proceeding have a question of law and fact in common. Civil Procedure Law, Section 5.62(b). On the basis of these two provisions of law, the Intervenors file the Motion to Intervene.

3. That Intervenors also say that Joseph Nyumah Boakai and James Emmanuel Nuquay, Co-Intervenors, were candidates for President and Vice President, respectively, of Liberia at the October 10, 2017 elections and that they contested on the ticket of the Unity Party, also a Co-Intervenor. Intervenors pray the NEC to take administrative notice of this fact.

4. That Intervenors further pray the NEC to take administrative notice of the fact that on October 23, 2017, Charles Walker Brumskine and Harrison S. Karnwea, Presidential and Vice Presidential candidates at the October 10, 2017 elections, all Representative Candidates of the Liberty Party and the Liberty Party itself, 2nd Defendants herein (as Complainants therein), filed with the NEC, 1st Defendant, a complaint alleging that during the course of the October 10, 2017 elections and the activities leading thereto the Constitution and Elections Law were violated and fraudulent acts and gross irregularities were committed; and for these reasons, 2nd Defendants prayed that the October 10, 2017 elections be cancelled/annulled and new elections be held/conducted.

5. That Intervenors pray the NEC to also further take administrative notice that the Complaint filed by the 2nd Defendants (as Complainants therein) prayed "... that the results of the October 10, 2017 elections be annulled and a rerun be ordered, in order to ensure that fair and transparent elections are held in accordance with the Constitution, Elections and other laws of Liberia, and that the Board of Commissioner will stay the Second Round/Run-off, as announced by the National Elections Commission...".

6. That Intervenors says that they are individually and collectively parties of interest in the main proceeding but were never named as party defendants/respondents, no papers were served on them by Complainant or

Defendants in the main proceeding and they were never cited to participate in the main proceeding. And because Intervenors are parties of interest, individually and collectively, Intervenors say that it was gross error that they were not served with any paper or cited to participate in the main proceeding and would consequently be denied due process as provided for by the Constitution. And as such, Intervenors have the right to intervene in the main proceeding; and Intervenors so pray.

7. That Intervenors also say that they will be affected and bound by any decision that is made by the NEC in the main proceeding. Intervenors further say that 2 Defendants' claims are similar to theirs as is evidenced by the copy of a letter submitted by Unity Party, one of Intervenors, to the NEC, dated October 23, 2017 and submitted on the same October 23, 2017. Copy of the aforesaid letter is attached hereto as Exhibit "UP-I". And as such, Intervenors have the right, pursuant to the laws cited in Count Two (2) above, to intervene in the main proceeding; and Intervenors so pray.

8. That Intervenors further say that their claim have questions of law and fact in common with the claims of 2nd Defendants in the main proceeding; and as such and in keeping with the laws cited in count two (2) above, Intervenors have the right to intervene in the main proceeding; and Intervenors so pray.

9. That as to its specific complaint against the October 10, 2017 elections, Intervenors pray the NEC to take administrative notice that the Complaint filed by 2nd Defendants has three (3) main parts; Part 1 being entitled "Violation of the Constitution of Liberia, Elections Law and Regulations/Disenfranchisement"; Part II being entitled "Fraudulent Acts"; and Part III being entitled "Gross Irregularities". Intervenors pray the NEC to take administrative notice that Part I of the Complaint filed by 2nd Defendants (Complainants therein) has five (5) sub-sections, as follows: 1. Late Opening of Polls; 2. Change of Polling Stations; 3. Names of Voters Not Listed on the FRR; 4. The Presiding Officers' Worksheet of the NEC; and 5. Absence of Queue Controllers. Intervenors confirm the facts alleged in the entire Part I of the Complaint and the principles of law and regulations thereon relied in support of these averments of fact.

10. That Intervenors also pray the NEC to take administrative notice that Part II of the Complaint filed by 2nd Defendants (Complainants therein) has ten (10) sub-sections, as follows: Subsection 1 being complaint at Precinct #30073; Subsection 2 being complaint against Presiding Officer, Josephus Cooper; Subsection 3 being complaint at Polling Place #3, Precinct Code #06102; Subsection 4 being complaint at Precinct #30121, Polling Place #3; Subsection 5 being complaint against activities at the Collation Center at the SKD Stadium; Subsection 6 being complaint against activities at Dwazon, Margibi County, Polling Place #4, Precinct #24105; Subsection 7 being complaint against activities at Tokpaipolu Public School, Bong County, District #6, Precinct #06113; Subsection 8 being complaint against activities at Cinta Township, Margibi County; Subsection 9 being complaint against activities at District #4, Precinct #06102, Shankpali, Bong County; Section 9

being complaint against the voter registration card system. Intervenors confirm the allegations of fact stated in Part 11 of the aforesaid Complaint the principles of law and regulations thereon relied in support of these averments of fact.

11. That Intervenors pray the NFC to take administrative notice that Part III (Gross Irregularities) of the Complaint filed by 2nd Defendants (Complainants therein) has fourteen (14) subsections, as follows: Subsection 1 being complaint against verification of the number of ballot papers at polling places prior to commencement of voting; Subsection 2 being complaint against verification and recording of ballot papers at polling places prior to the commencement of voting, evidencing the starting and ending serial numbers of ballot papers; Subsection 4 being complaint at Polling Place #1, Precinct Code #24180 in Margibi County; Subsection 5 being complaint against activities at District #4, Nimba County; Subsection 7 being complaint against activities of two young men (not staff of the NEC), unaccompanied by security officers, carrying ballot boxes on their heads and wading in it body of water; Subsection 8 being complaint against activities of individuals, unaccompanied by security officers, in a canoe carrying ballot papers; Subsection 9 being complaint against activities at District #4, Polling Center #09085, Polling Place #1, Klein Town, Grand Bassa County; Subsection 10 being complaint against activities at Polling Precinct #09039, Polling Place #2, Kennedy Town, Grand Bassa County; Subsection 11 being complaint against activities at District #13, Montserrado County; Subsection 12 being complaint against the high percentage of invalid votes (11,400), constituting approximately 5.4% of all votes casts; and Subsection 14 being complaint against the quarantine of 14 ballot boxes by the NEC, which were not accounted for by the time that the NEC announced the results of the elections. Intervenors confirm and affirm the allegations of fact contained in Part III of the Complaint aforesaid and the principles of law and regulations thereon relied in support of these averments of fact.

12. Intervenors say that the law is that the NEC shall maintain a register of qualified voters. New Elections Law, Section 2.9(k). "I he law also is that the NEC shall carry out voter registration of eligible citizens and carry out voter registration update periodically. New Elections Law, Section 2.9(k). Then the law requires that general registration roll for each registration center must be kept for public inspection at the office of the magistrate of elections and must be kept at such other public places for public inspection. New Elections Law, Section 3.6. Intervenors acknowledge that the NEC did conduct voter register exercise but Intervenors complain that the Final Registration Roll (FRR) was never published by the NEC contrary to law; and for which failure to publish, international election observers and political parties complained to the NEC, but the NEC never published the aforesaid Final Registration Roll. Intervenors give notice that at the hearing, if necessary, they shall present newspaper publications of complaints of international observers and political parties to the NEC to publish the FRR.

13. Intervenors say that the provisions of law relied upon and cited in Count Twelve (12) above are even better articulated by regulations of the NEC by

the requirement that the NEC shall certify the voter registration roll and cause it to be printed and bound separately in respect of each polling place and that the NEC shall publish the certified voter registration roll. Voter Registration Regulations, Sections 29(1) & 30. Intervenors submit that the failure of the NEC to complete the Final Registration Roll and publish it is a violation of its own regulation and undermines free, fair and transparent elections. And for this reason, Intervenors pray that before a run-off election is held (if such run-off election is ever held) and before any elections are held hereafter the NEC should publish the Final Registration Roll (ERR) and allow time for challenge to it.

13. Intervenors also say that in the absence of the publication of the ERR in keeping with law, free, fair and transparent elections could not have been held on October 10, 2017; but more than this, the fact is that the NEC could not publish and did not publish the ERR because it discovered very late that records for thousands and thousands of voters had been misplaced. That is, a voter was registered at one center and his records were at a completely different center, often times at a center in a completely different county. And because of that thousands and thousands of voters were denied voting even though they had valid voter registration cards and even though it is provided by regulation that when a person has a valid voter registration card but his/her records can't be found at the place where he/she registered, that person may vote if two (2) other persons who have voter registration cards at the same precinct and have already voted certify that they know the person whose name is not on the voter roll at the precinct or polling place. NEC Regulation on Polling and Counting, Art. 3(2). The presiding officers and polling staff simply rejected those who had valid registration cards but whose names were not on the voter rolls at the precinct or polling places where they registered; they selectively allowed certain other persons similarly situated to vote. This conduct obviously disenfranchised thousands and thousands of voters and denied to them their constitutional right to vote in the October 10, 2017 elections.

14. At many polling places, to perpetuate fraud, the presiding officers and polling staff created addenda to the voter roll on which they included the names of persons who allegedly had voter's card but whose names were not on the voter roll at the precincts or polling places where they registered to vote. Copies of these addenda were not made available to poll observers for political parties and independent candidates and as such, presiding officers and polling staff were able to fraudulently list names and voter registration card information on these addenda and allowed voting for persons who had not registered to vote or who had registered to vote and did not appear to vote.

15. That the facts alleged in Counts Thirteen (13) and Fourteen (14) above are responsible for the high number (almost one-third) of registered voters who did not vote in the October 10, 2017 J elections and these anomalies undermined free, fair and transparent elections. And for these reasons, Intervenors demand that before the run-off election is conducted (if such run-off election is ever conducted) and before any new elections are

conducted in Liberia, the ERR should be published as provided by law and regulation.

16. Intervenors attach hereto as Exhibit "UP-2" the record (4 pages) for voter registration for Nimba County, which the NEC used for elections on October 12, 2017, which shows discrepancies between the number of actual registered voters and the number of voters the NEC subsequently deemed to have registered. Intervenors also attach hereto as Exhibit "EJP-3" the record (3 pages) for voter registration for Gbarpolu County, which the NEC used for elections on October 12, 2017, which shows discrepancies between the number of actual registered voters and the number of voters the NEC subsequently deemed to have registered. Similar discrepancies are found in voter registration records for all the counties. And without the publication of the Final Registration Roll and the opportunity to challenge the information contained therein, the voter registration roll used by the NEC was prone to manipulation and fraud, and thereby removing all fairness and transparency from the entire voting process.

17. Intervenors say that the importance and relevance to the timely publication of a Final Voter Roll was highlighted in a Position Statement dated 15 June 2017, issued by Hon. Jonathan Weeder, who is and has been an NEC Commissioner since 2004 and had therefore had the experience with the 2005 elections and the 2011 elections. Notwithstanding his alarm that free, fair and transparent elections could not be held in 2017 without timely publication of the Final Registration Role, the NEC ignored him and proceeded with conducting the October 10, 2017 elections without publication of the Final Registration Role and with all the inconsistencies and omissions and confusions of the names and other information about voters. Copy of Honorable Weedor's Press Statement is attached hereto as Exhibit "UP-4".

18. Intervenors say that the law is that every person, especially political parties and independent candidates at any election, has the right to inspect the voter registration roll. New Elections Law, Section 3.11(2)(a). The law also provides that the voter registration roll shall not be altered, except as provided for by law. New Elections Law, Section 3.19 & 3.20. So, the addenda created by the presiding officers and polling staff at the polling places on October 10, 2017 during elections, without the participation of contestants at the elections or their poll observers, constitute an alteration of the voter roll without compliance with law. And Intervenors submit that this was an irregularity which made it possible for frauds to be committed.

19. Intervenors also say that the law is that during voting persons with disability should get preference to vote. New Elections Law, Section 4.2(1)(6). Intervenors submit that this means not only persons with physical disability, but it also applies to aged persons, pregnant women and women with children. Intervenors say that no such required courtesies were accorded to "persons with disability" and as such thousands and thousands of such "persons with disability" got tired standing in long queues and went home without voting, and were thereby effectively disenfranchised.

20. That Intervenors also say that several Records of Counts (tally sheets) show that the Coalition for Democratic Change (CDC) got in excess of 1,000 votes at several polling places, when the standing regulation of the NEC is that each polling place shall have a maximum of 500 registered voters to vote thereat and only a maximum of 550 ballots shall be at each polling place. At the hearing, Intervenors shall present copies of these records of counts in support of the averments contained herein.

21. That Intervenors say that the handwritten record of count (tally sheets) for several polling places show that Intervenors got a higher percentage of votes than what was later typewritten at the Collation Center and formed a part of the election results announced. This was a reduction of the number of votes for Joseph Nyumah Boakai and James Emmanuel Nuquay, Co-Intervenors. And in support of these allegations, Intervenors submit herewith in bulk two (2) of said records of count (tally sheets) as Exhibit "UP-5" and further say that at the hearing they shall present additional copies of the records of count (tally sheets) in more substantiation of these allegations.

22. That Intervenors also say that on Friday, October 27, 2017, it was announced on public radio and video tapping was conducted and placed on social media (e.g. Facebook) as evidence thereof that several ballot papers which show high votes for Joseph Nyumah Boakai and James Emmanuel Nuquay, Co-Intervenors, were found buried in Grand Gedeh County and were never part of the election results which were announced by the NEC. Intervenors give notice that at the hearing, Intervenors shall present the video recordings and public radio broadcasts in substantiation of the averments herein contained.

WHEREFORE and in view of the foregoing, Intervenors pray the NEC as follows:

1. To, in view of the gross frauds and irregularities, annul the results of the presidential election of October 10, 2017 and order a re-run of that election at a date determined and set by the NEC but such new date be set so that election will be held and the inauguration of a president-elect and vice president-elect will be on the third working Monday of January (January 15, 2018) in compliance with the Constitution. A new election is allowed to be held within sixty (60) days after the NEC or the Supreme Court annuls an election. The Constitution, Art. 83(e).

2. To, if the NEC determines that the irregularities and frauds do not rise to the level to cause a cancellation of the presidential election, cancel the re-run of the presidential election on November 7, 2017 and institute corrective measures in compliance with law and internationally acceptable standards and acceptable to Intervenors, such as but not limited to publication of a final voter registration roll and the correction of all the irregularities identified and described in this Complaint. AND,

3. To set a new date, other than November 7, 2017, for the re-run of the presidential election, but that the aforesaid re-run date be such that

inauguration of a president-elect and vice president-elect will take place on January 15, 2018 (the third working Monday of that month) in compliance with the Constitution; and

4. To grant unto intervenors any other and further relief as is made and provided by law.

REPECTFULLY SUBMITTED:
Joseph Nyumah Boakai and James
Emmanuel Nuquay, Presidential and
Vice Presidential Candidates at the
October 10, 2017 Elections and the
Unity Party, all of Liberia....MOVANTS”

As we did earlier in this Opinion with regard to summarizing the essence of the first complainants’ complaint, we herewith similarly summarize the basic thrust of the second complainants’ complaint. Basically, the intervenors/co-complainants set forth and endorsed the allegations made by the first complainants but added thereto additional allegations and claims. Further, however, while they endorsed the prayer for a re-run of the October 10, 2017 elections, they prayed in the alternative that in the event a re-run was not granted that the run-off be undertaken only after the NEC had put into place certain safeguards that would ensure that the run-off election was free, fair, transparent and credible.

Upon the appearance of the Intervenors as parties to the ongoing electoral challenge proceedings before the CDHO, they filed a motion containing seven applications for the issuance of writs of subpoenas duces tecum and subpoenas ad testificandum, stating that the evidence sought by the applications was crucial to proving the case against the NEC, especially in respect to the allegations of violations of the Constitution, fraud and irregularities in the electoral process attributed to the NEC. The CDHO, having entertained arguments on the motion, granted only two of the applications made in the motion and denied the remaining five applications. The intervenors noted exceptions to the decision and appealed the matter to the Board of Commissioners of the NEC. The Board of Commissioners heard the matter but was not forthcoming for several days in rendering a decision in respect of the appeal. Whereupon, the intervenors filed a bill of information before the full bench of the Supreme Court, alleging that the failure or refusal of the Board of Commissioners to expeditiously rule on the

appeal before it was not only a violation of the mandate of the Supreme Court handed down in the case *Charles Walker Brumskine et al. v. NEC* on November 6, 2017, but that said failure or refusal by the Board to hand down a ruling on the appeal was prejudicial to the intervenors since the effect was to have the intervenors proceed with its case against the NEC without the documents requested by the intervenors to support the allegations levied against the NEC in their complaint.

The Supreme Court, upon conducting a hearing into the bill of information, denied same on grounds that the Supreme Court could not set a date for the NEC to hand down its ruling on the appeal before it filed by the informant since the date set by the Constitution for the NEC to dispose of a case had not yet expired and that in any event the NEC had handed down a ruling in the appeal before it, thereby rendering the information before the Supreme Court moot. Whereupon, the intervenors proceeded to have witnesses, including the Executive Director of the NEC, testify in an attempt to verify or authenticate the allegations and claims made by the intervenors in their complaint. In all, the intervenors produced eleven (11) witnesses who testified in their behalf, following which the intervenors rested evidence, oral and written.

For its part, the NEC produced two witnesses, in persons of its Executive Director, Mr. C. A. Lamin Lighe, and Director of political Affairs, Mr. Joseph A. Yarsiah. Upon concluding of testimonies by the two witnesses and admission into evidence of certain documents and electronic evidence, the NEC rested evidence. The CDHO, having entertained arguments from the two parties, entered a ruling dismissing the complaints of the first complainants and the second complainants. It is worth noting that although the CDHO held that the complainants had not presented sufficient evidence as met the required burden of proof to substantiate their claims against the NEC, or to show that the fraud alleged changed the true results of the elections, he did order at the end of his ruling that the NEC “is mandated to correct all what they alluded to as difficulties and challenges before any future election.” The final ruling of the CDHO is hereunder reproduced verbatim, in total, as follows:

“THE HEARING OFFICER'S FINAL RULING:

The Complainants, Charles Walker Brumskine, Harrison Karnwea and all Representative Candidates of the Liberty Party, and the Liberty Party on October 23 2017 filed with the Commission a post elections complaint under the authority of Article 83(c) of the 1986 Constitution of Liberia. The Complainants alleged that gross irregularities, including the late opening of polls, the changing of polling places, names of voters not listed in the FRR, Presiding Officer's worksheets and the absence of Queue Controllers. The Complainants named several polling places where they claimed these alleged irregularities occurred. The Complainants also claimed that fraudulent acts occurred during the conduct of the October 10, 2017 elections and has named several precincts and polling places where they alleged these fraudulent acts occurred. The Complainants pray that the Commission nullifies the results of the October 10, 2017 elections and order a re-run. The Complainants asked the Commission to stay all activities leading to the Run-off.

Hearings into this case was slated for October 27, 2017 and when the parties appeared, the Complainants were presented by Cllr. Charles W. Brumskine, Cllr. Powo C. Hilton, Cllr. James Inns and Atty. Morris N. Kabah while the Respondent was presented by Cllr. Joseph N. Blidi, Cllr. F. Musa Dean and Cllr. C. Alexander Zoe.

The Complainants presented twelve witnesses who were all qualified and the first Complainant witness to take the stand was Musa Hassan Bility who testified to the following; that at 90% of the polling places voting did not start by mid-day; that there were no queue controller; that in Grand Gedeh County, ballots were dumped and discovered by people; that in Grand Gedeh and Nimba Counties, polling staff were arrested with pre-marked ballot papers; that ballot papers did not have serial numbers; that there was no worksheet; that more people voted at polling places than the number of people registered; that at some polling places 850 ballot papers were brought; that there was 1109 votes giving to a candidate at a single polling place; that the voting card numbers of voters start with seven and end with seven; that during the election process some persons were caught With voting machine; that 2000 ballot papers were reported at a particular place; that candidate Brumskine of the Liberty Party got 247 votes at a particular place but the number was changed to 9 votes and the balance was giving to another candidate; that there were areas where people were allowed to vote after polls were closed; that people voted in tubs and opened ballot boxes.

The Complainant second witness was Benjamin Sanvee the National Chairman of the Liberty Party, he provided the following; that polling centers opened late; that there were no queue controllers; that people could not fine their places to vote and they could not also fine their names in the registration roll; that there were no presiding officer worksheet; that there were no serial numbers on the ballots; that the record of count shows that Mr. Kwasi Johnson obtained zero vote and after a recount he got 26 votes; that candidate Brumskine had an amount of votes that were later taken and

given to another candidate; that the ballot boxes carried in canoes and on the head of people were unaccompanied by security officer; that Mr. Amos Seeboe was arrested with voter ID machine making VR cards; that the CDC candidate was giving 1109 votes at a particular polling center; that the NEC officer put 2550 ballot as the amount of ballots recorded at a particular polling center; that in Grand Gedeh County ballot papers were discovered thrown in the water.

The Complainant third witness was Foday Fahnbulleh a candidate on the Liberty Party's ticket who testified to the following; that he registered in Volocawhen Town District #7 Bong County, that on Election Day, the ballot boxes were taken to Camp America instead of Volocawhen Town.

The Complainant fourth witness was Darling Clinton, a Liberty Party observer who provides that she saw the Presiding Officer broke the seals and put his hand in the ballot box.

Complainant fifth witness was Paul Wehyee who told the Hearing that he got report from the Nimba County tally center that show variances in the results; that at three polling places, the ballots were in excess of 178, 294 and 176; that 14 of such occurred in Nimba County.

The Complainant sixth witness was Debora Harris, a Liberty Party poll observer who told the Hearing that she registered to the precinct at which she was assigned but when she went to vote her name was not found in the FRR.

The Complainant seventh witness was Victoria Koffa who told the Hearing that she went to vote and visited from room 1 to 7 and they said her head was not in the book and so she did not vote. The Complainant eighth witness was Yah Golden, Chairlady of the Liberty Party at LAC Rubber Plantation. Witness Golden spoke to the following; that she went to vote but her name was not found in the FRR and the ES Doyen Moore told her to give LD150 before she can vote; that she gave the ES Moore the LD150 and her name was written in a black copy book and she voted.

The Complainant ninth witness was Mark he testified to the following; that he was at the SKD tally center when the ballots from PCS precinct code 30121 polling place #3 was brought for recounting; that before the counting the LP candidate had zero vote but after the recounting the LP candidate had 28 vote.

The Complainant tenth witness is Jurah Sanoë who provided the he saw people with voter cards that were denied the right to vote; that the voting process was disorganized because there were no queue controllers.

The Complainant eleventh witness is Jefferson Gbadyquille who told the Hearing that he went to the Suakoko Central High School from morning to 7:00 PM moving from one line to another and did not vote because his name was not found in the book. The Complainant twelfth witness is Omaru Kamara an LP poll observer in Lofa County who told the Hearing that during the counting at Yallahhun Town, District #2, that on two occasions ballots belonging to the LP candidate was giving to the UP candidate, that when he

insisted and it was corrected; that an invalid ballot was given to the UP candidate, and when he insisted, he was told to take a complaint form.

At the close of the Complainants' evidence, the Complainants submitted for admission into evidence Hearing marked instrument C/1-C/23. The Complainants' instruments were duly admitted into evidence.

The Unity Party's Presidential and Vice Presidential candidates were made parties to the action filed by the Liberty Party and its candidates through the reversion of the Hearing Officer's ruling denying them the right to intervene. The Intervenor/Complainants in their complaint confirmed all of the allegations raised in Liberty Party's complaint but pray that the Commission set a new date, other than November 7, 2017, for the re-run of the presidential election, but that the aforesaid re-run date be such that inauguration of a president-elect and vice president—elect will take place on January 15, 2018. After the granting of this intervention by the Board of Commissioners on their first appearance file before the Hearing Officer an Affidavit for the Subpoena of the following Individuals and materials to prove their complaint, copy of the final registration roll and addendum to the roll, copies of presiding officer work sheet and several others. The Hearing Officer entertained argument on this application and granted those that are logical, reasonable and practical and denied those that are either criminal or irrelevant to the Intervenor/Complainant's case.

On the Intervenor/Complainants' second appearance, they filed a Motion for Compulsory Joinder of all other Presidential candidates and political parties that participated in the 2017 Presidential and Representative Elections. This motion was argued and denied.

At the November 11th sitting of the Hearing, the Intervenor/Complainants made an opening statement summarizing their allegations after which they presented a list of sixteen witnesses to prove their case. Of the sixteen witnesses, the Intervenor/Complainants only presented witness Wilmot Paye who took the stand after qualification and provided the following testimonies; that long before the elections, the Commission had admitted to difficulties and challenges but informed the political parties that those were simple issues that could be addressed; that the NEC did not publish the Final Registration Roll; that he registered but when he went to vote, his name was not found in the FRR and the Staff wrote down his name and allowed him to vote; that hundreds of his supporters were angry because they were denied their right to vote; that the Registration Roll that was presented to political parties were completely different from what the NEC had.

On 13th November 2017, the Intervenor/Complainants had augmented their list of witnesses to 20 and of the twenty they presented 14 witnesses for qualification. The Intervenor/Complainant's second witness was J. Cole Bangalu who testified to the following; that the provisional roll was not published; that when the final roll was released there were discrepancies like individual names not matching pictures; that the Chairman announced that those holding voter cards will vote even if their names were not found in the FRR; that the UP raised concern and a Commissioner at the NEC disagreed

with the Chairman statement and the untimely publication of the FRR; that on September 23, 2017 seven political parties were given the FRR on a flash drive; that the NEC had a SMS system which the UP believe is an alteration of the FRR which amounts to fraud; that group of people were disenfranchised of their right to vote; that voters voted more than once; that the ballots discovered in Grand Gedeh County were not know your candidate papers.

The Complainant/Intervenors' third witness is Josiah Flomo Joekai, who informed the Hearing of the following: that occurrences were orchestrated by the leadership of Chairman Korkoya that led to inefficiency and incapacity at the Commission; that the Voter Registration process started in a disorderly manner; that the provisional registration roll was characterized by lots of omissions; that he was a candidate in the elections but his name was not found in the provisional voter roll; that Chairman Korkoya told the Liberian Senate that there were only 13,000 omissions in the provisional registration roll; that it was anti-democratic for Chairman Korkoya to announce that those with voter cards will vote even if their particulars were not found in the FRR; that he indicated that we were not going to have a credible voter roll; that he voted illegally on elections day because his name was not found in the FRR; that the SMS system by which his particulars were identified is also an illegal process; that culprits were apprehended processing illegal voter registration cards; that people who voted in the FRR identities were being merged with the wrong people; that separate voter roll was created that subordinated the FRR.

The Intervenor/Complainants' fourth witness was Ottos Saye Bliton from Grand Gedeh County who testified to the following; that the Town Chief daughter in Glay Town discovered ballot papers when she went to take bath in a bambo bathroom; that the ballots were the Presidential ballot papers with red strips and Representative ballots with green strips; that they were instructed by an NEC official to take a police officer with them on the scene; that the police officer took the ballot papers and reported them to the NEC local office; that he took photos and videos of the ballot papers.

The Intervenor/Complainants fifth witness was Youdy Bella from Grand Gedeh County, summary of his testimonies is here below; that he saw ballot papers being rooted from a bathroom in Glay Town; that the ballot papers were turned over to a police officer called Weah who took the papers to the NEC Zwedru office; that the ballot papers were received by an NEC officer called Mr. Donald.

The Intervenor/Complainants sixth witness is a subpoena witness the Executive Director of the NEC who was called to present and testify to the used Presidential ballot paper, the used Representative ballot paper and the Know-Your-Candidate poster and the flash drive containing the FRR.

The witness presented the flash drive and confirmed that it is the flash drive that was distributed to political parties in September 2017. The witness presented the used Presidential ballot paper and confirmed that it has a red strip on the back. The witness presented the used Representative ballot paper and confirmed that it has a green strip on the back. The witness

presented the ballot paper stub and testified that the serial number is found on the stub and not on the ballot itself.

The witness also presented the 'Know-Your-Candidate' posters and confirmed that it was the poster used in the 2017 elections.

The Intervenor/Complainants seventh witness was Jeff Blibo a special witness who analyzed and testified to two flash drives as follows; that the flash drive that was given to the Unity Party in September had less data than the one subpoena; that a total of 79 polling places were missing across 10 precinct not recorded on the previous drive and 31 precincts with one or more missing from the data that was given prior; that the missing polling places amount to 35,267 registered voters with 10 duplicated ID numbers assigned to voters; that the FRR is different from the online system and the flash drives that was given to him.

The complainants eighth witness, Frances Johnson-Allison, the witness provided the below testimonies; that she heard of the irregularities and the fraud and was alarmed about the kinds of things that she heard; that we went to the October 10, 2017 polls without a Final Registration Roll; that the Final Registration Roll shows the number of registered voters; that the Final Registration Roll was not published; that the Final Registration Roll is published by placing it at various precincts and polling places.

The Intervenor/Complainants ninth witness was David Menyongai, a former Commissioner of the NEC. The witness testified to the below testimonies that the provisional listing must be published at all registration centers while the final registration roll must be made available for inspection at the local offices of NEC. As to other matters, he could not remember since, he left the Commission 7 years ago.

The Intervenor/Complainants tenth witness was Dennis Saah Popay, a resident of Duazon, Margibi County. The witness provided as follows; that he went to vote at the Rock International and his name was not found in the FRR and his name was written on an addendum and allowed to vote.

The Intervenor/Complainants eleventh witness is Nou Kenneh a resident of Jacob Town District #2, Montserrado County. Witness Kenneh testify as follows; that after he voted at the Muslim Solidarity Elementary and Junior High School, he came out and saw the people crying with their voter cards in their hands 'we want vote' 'we want vote' he took out his phone and took a photo; that Hon. Sekou Kenneh told him to go in the Community and fine out those who did not vote because their names were not in the FRR; that they went in the community and collected voter cards from people and some people refused to give their cards. The Intervenor/Complainants' counsel thereafter presented 182 voter cards for identification, marking and admission into evidence. An objection to this application was sustained on ground that the witness did not establish any authority between him and the owners of the 182 voter cards. The Intervenor/Complainants rested with the production of evidence after the testimonies of witness Kenneh and presented for admission into evidence Hearing marked Instruments C/1 to

C/22. The Intervenor/Complainant's materials and documentary evidence were duly admitted into evidence.

The Defendant National Elections Commission took the witness and presented four witnesses for qualification and sequestration. The Defendant witnesses included C. A. Lamin Lighe, Joseph A. Yarsiah, Deddeh Buway-Pusah and Floyd Sayor. The first of Defendant witnesses to take the witness stand was C. A. Lamin Lighe, the Executive Director of the NEC. Witness Lighe testified to the following; that the elections were free, fair and transparent; that it is the first in our election history that the polling staff met the voters in the queue as early as 4:00 A. M. making it difficult for the queue controller to place voters in their proper queue to vote; that there were challenges in the recruitment of competent polling staff; that the Commission has earlier requested professional institutions to offer professionals to serve as polling staff but only one institution responded; that the staff were challenged in finding the names of voters on the FRR even though their names were on the FRR; that there were witnesses of the Complainant who testified that their names were not on the FRR but witness Lihge demonstrated in showing witness Josiah Joekai and witness Wilmot Paye being on the FRR; that there is no addendum to the FRR but the procedure allow for addition to the FRR which was done in 2005, 2011, 2014 and 2017; that the ballot paper has a serial number on the stub; that at the Tokpa Polu Public School, the Presiding Officer erroneously wrote 1109 in favor of candidate on the CDC ticket, but the error was corrected and only 110 votes were processed in favor of the CDC.

The Defendant second and final witness was Joseph A. Yarsiah the Director of Political Affairs. Witness Yarsiah testified to the following; that all political Parties including the Complainants were informed of all major activities of the Commission through the IPCC meetings; that the political parties were informed of and taught how to use the SMS system and that Cole Bangalu phone number was used during the demonstration; that he informed the political parties of the preparation for the run-off; that the Unity Party and the Coalition for Democratic Change have agreed to go to run-off; that both the CDC and UP have asked and the Commission has accepted that two party observers be allowed in the polling place during the run-off; that the Commission disallowed the voting of party observer where they are assigned but not registered; that few polling places opened late in Sinoe County due to the overflowing of the river. Witness Yarsiah testified to difficulties and challenges poll workers faced in getting materials to certain polling places. The Witness demonstrated a video recording of polling workers when log has fallen on the road leading to a Precinct.

At the close of oral evidence, the Defendant also submitted for admission into evidence document testified to, marked D/1—D/12 and confirmed. The Defendant documentary and material evidence were duly admitted in to evidence.

It is important that the Hearing Officer state the laws that govern this election contestation before making any determination on the evidence

presented to him. The laws which the Hearing Officer determine to govern this proceeding are as follows:

1. The burden of proof in an election contestation rests on the contestant. Thus, it is incumbent on the contestant to rebut the prima facie evidence made by the returns and certificate, and he is not relieved of that burden even where the proof connects the contestee with spoliation of poll books 26 Am Jur 2d, Election, Section 342;

2. An issue of actual fraud is wholly unstained by evidence of mere irregularities unaccompanied by fraudulent intent, or by proof of fraudulent intent without action to carry such intent into force. 26 Am Jur 2d, Elections Section 342;

3. Fraud includes the intentional employment of trick, deception or artifice designed to cheat or mislead another. *Kontar v. Mouwaffak*, 17 LLR 446; *Monrovia Construction Company v. Wazami*, 23 LLR 58;

4. It is not sufficient to merely allege fraud as a basis for relief, it must be established by proof. *Massaquoi v. Massaquoi*, 35LLR 508;

5. The law forbids the proving of fraud by testimony of witnesses based on presumptions, hypothesis and deductions. *Intrusco Corporation Osseily*, 32 LLR 558.

6. An election will not be invalidated by irregularities unless the irregularities materially affected the result of the election. *Andrew v. Blackman*, Supreme of the State of Louisiana, 59, 50 769.

Based on the evidence adduced orally, documentarily and demonstratively, the Hearing Officer has determined that the below single issue is determinative of the controversies raised in this complaint.

ISSUE: Has the Complainants provided evidence sufficient to prove irregularities and fraud to warrant the re-run of the October 10, 2017 election?

The Complainants, all of whom participated in the October 10, 2017 election have raised several issues in their separate complaints that the elections were marked by irregularities and fraud, therefore the entire elections must be re-run. The first Complainant and the Intervenor are alleging that the Final Registration Roll used during the elections was not published according to Statute, and also that said document was altered by addition made to it during the elections. The first Complainant and the Intervenor also alleged that the ballot papers used during the elections had no serial number and that the Defendant had done so with the intent to cheat. The first Complainants and the Intervenor alleged further that on the day of voting several polling places opened late and that voting materials taken to some polling places were unaccompanied by security officer. Both the first Complainant and the Intervenor informed the Hearing Officer that ballot papers were discovered in Glay Town, Grand Gedeh County. The Intervenor/Complainants have presented through a demonstration by one of it

witnesses on two flash drives containing the Final Registration Roll that there were a total of 79 polling places missing across 10 precincts, and the missing polling places amounts to 35,267 registered voters. The first Complainant alleged that at Tokpa Polu Public School polling place #1, the Defendant gave candidate of the CDC total of 1109 votes far exceeding the total of registered voters at that center.

In rebutting the testimonies of the first Complainants and the Intervenor/Complainant's witnesses, the Defendant first witness, C. A. Lamin Lighe presented that the ballot papers used during election had serial numbers on the stub of the ballot papers. The witness testified to and presented both the Presidential and Representative ballot papers having serial number on the ballot stub, these instruments were marked and admitted into evidence. The Defendant witness provided that contrary to the Complainant claim that the final registration roll was not published, the roll was indeed published and made available at all of its local offices for inspection by the public. That one of Intervenor/Complainants witnesses, Josiah Joekai admitted at the Hearing that the roll was published and made available to political parties. On the issues of the missing polling places claimed by the Complainants, witness Lighe informed the Hearing Officer that during the conversion of the data by the Intervenor/Complainants' witness, data were lost and some were corrupted during the process. The Complainants claimed that at Tokpa Polu Public School, the CDC candidate was given 1109 votes in excess of the required registered voters at the center. On this claim, witness Lighe provided that it was an error on the part of the Presiding Officer, but that said error was corrected at the Tally Center and only 110 votes was processed in favor of the CDC candidate, they submitted the corrected record of count and it was admitted into evidence. The first Complainant and the Intervenor/Complainants said that ballot papers were discovered in Grand Gedeh County after the elections and admitted into evidence photograph and video recording. On this claim witness Lighe told the Hearing Officer that the posters were 'Know Your Candidate posters that were altered and used in the process.

Further to Intervenor/ Complainants' claim that the Defendant is maintaining more than one voter roll and that the addition to the roll on the day of election amount to an alteration of the roll, in a violation of the law. On this allegation witness Lighe provided that the addition to the voter roll is a procedure that is allowed as provided for in the Polling and Counting Procedure Manual promulgated by the NEC. The Witness presented into evidence the Polling and Counting Manual for 2005, 2011 and 2017 all of which has provisions that allow polling staff, security officer who are not registered at a center but assigned there on elections day to vote and to be added on a space at the back of the final registration roll. And also that the Commission maintains only one roll, that which was distributed to the political parties. As to the Complainant's claim that polling places were change without notice to the voters, this claim was rebutted by the testimony of witness, that the public was given sufficient notice as to the change of any polling place during the election period.

The two witnesses of the Defendant testified to difficulties and challenges faced by the Defendant during the conduct of the October 10, 2017 elections. The witnesses informed the Hearing Officer that polling staff could not identify voters in the Final Registration Roll even though the voters were registered and had their particulars in the roll. This was established during the hearing when Complainant witnesses Wilmot Paye and Josiah Joekai who earlier testified that on the day of election, their particulars were not found in the FRR but were added and allowed to vote. The Defendant witness Lighe demonstrated the FRR for the centers where the witnesses registered and it was indeed established that the two witnesses though added to the roll yet their photos and other particulars were in the FRR. On the day of election, voters arrived at most polling places before the queue controller and arranged their own queue making it difficult to redirect the voters to their proper rooms. The Defendant witnesses testified to difficulties that impeded the timely opening of some of the polls, some due to the over flooding of rivers where the polling staff had to carry the materials in canoes and that some due to long distances were the polling staff having carry the materials on their heads. The Hearing Officer is not convinced that these challenges and difficulties alluded to by the Defendant during the hearing of this complaint amount to fraud. Like the issue in Nimba County where the Complainants alleged that a presiding Officer was found with pre-marked ballots, though it was not established that the ballots indeed entered the ballot box, the NEC quarantined and have re-run of the elections in that polling place.

The Hearing Officer have not seen from the records or the evidence presented by the first Complainant and the Intervenor/Complainants that fraud has occurred and that because of such fraud a determination of the true will of the 1.7 million voters who participated in the October 10, 2017 elections is impossible. The Complainants have the burden of establishing that, because of the fraud shown by them, the true result of the election was changed. The mandate of a successful challenge must prove that the irregularities changed the result of the election or resulted from fraud. Fraud is never presumed but must be proven by preponderance of evidence which the complainants have failed to do.

WHEREFORE AND IN VIEW OF ALL I HAVE SAID ABOVE, the National Elections Commission is mandated to take the necessary steps to correct all what they alluded to as difficulties and challenges before any future election.

The first Complainant and the Intervenor/Complainants having failed to prove allegations of irregularities and fraud, that would warrant the re-run of the October 10, 2017 elections, said complaints are hereby denied and dismissed.

GIVEN UNDER MY HAND THIS 20TH DAY OF NOVEMBER, A. D. 2017
 Muana S. Ville (Cllr.)
 CHIEF DISPUTE HEARING OFFICER DISPUTE HEARING OFFICE/
 NEC”

From the ruling quoted above, the first and second complainants noted exceptions and announced an appeal to the Board of Commissioners of the NEC. All of the conditions for the completion of the appeal having been complied with, including the filing with the Board of bills of exceptions duly approved by the CDHO, and the Board of Commissioners of the NEC having thereby acquired jurisdiction of the case, assigned same for hearing on November 23, 2017. We shall not quote the extensive bill of exceptions filed against the ruling of the CDHO, but we shall refer to various portions of same where they bear relevance to particular issues and contentions advanced by the parties on the appeal taken to this Court and which we feel the need to address. What is important for these proceedings as it featured prominently in the bill of exceptions filed against the final ruling of the Board of Commissioners of the NEC, is that upon the parties appearing for hearing of the appeal before the Board of Commissioners of the NEC, the Board was notified that the appellants had jointly filed a motion before the Board for the recusal of the Chairman of the Board and the NEC. As the said motion to recuse is addressed in this Opinion, we deem it important that the said motion be reflected in its totality so that the background to the direction of this Court is captured. Accordingly, we quote verbatim the motion to recuse, filed before the Board, as follows, to wit:

“MOTION TO RECUSE

And now comes Appellants and most respectfully moves this Honorable Board of Commissioners of the National Elections Commission (NEC) as follows to wit:

1. That on October 23, 2017, 1st Appellants filed a Complaint with the NEC alleging violations of the Constitution, Elections Law, fraudulent acts and gross irregularities during the conduct of the October 10, 2017 Presidential and Representatives Elections.
2. That on October 29, 2017, the Appellee filed its Answer to Complaint of 1st Appellants
3. That 1st Appellants subsequently took the stand and presented evidence in support of its Complaint, and rested with the production of evidence.
4. That thereafter 2nd Appellants filed a Motion to Intervene. Following denial of the Motion to Intervene by the Hearing Officer, same was granted on appeal, by the Board of Commissioners.

5. That surprisingly, and to the utmost shock of the Appellants, the Chairman of the Board of Commissioners of the NEC, Cllr. Jerome Korkoya, at several press briefings, made public statements that reveals that he, the Chairman, cannot serve as an impartial judge in the matter when it is heard before the Board of Commissioners on Appeal. In substantiation of this allegation Appellants showeth the following:

(a) The Frontpage Africa, November 3, 2017 edition carries that "In an attempt to discredit the Commission, these political parties are all out to just fabricate. They took "Know your candidates' ballot papers" we gave to everybody-political parties, civil society groups, they cut it and because it carries pictures, they put it on social media and said they found ballot papers buried in septic tank. -Cllr. Jerome Korkoya, Chairman, National Elections Commission".

The paper went further to report that, "Contrary to claims being made by some political parties that October 10 elections had many flaws and irregularities that put its integrity to question. Chairman Korkoya said the Commission stands by the election results published." Copy of the Newspaper is hereto attached, as Appellants' Exhibit "A."

(b) The Daily Observer Newspaper, Thursday, November 9, 2017, edition reports that, "Amid growing concerns of alleged irregularities and frauds emanating from the October 10 polls, the Chairman of the National Elections Commission (NEC), Cllr. Jerome George Korkoya, has termed the allegations as "politically motivated." Copy of the Newspaper is hereto attached, as Appellants' Exhibit `B."

(c) The FrontPage Newspaper Thursday, November 9, 2017, edition similarly reports that "Cllr. Jerome Korkoya, Chairman of the National Elections Commission (NEC) has termed as politically motivated allegations of electoral fraud made by some political parties..." Copy of the Newspaper is hereto attached, as Appellants' Exhibit "C."

(d) The Inquirer Newspaper, Thursday, November 9, 2017, edition reports that, "The Chairman of the National Elections Commission is calling on the public and the international communities to be aware of the delay-tactics political parties are playing in the adjudicatory process of cases pending before the hearing officer at the National Elections Commission." Cllr. Korkoya based his remarks on the fact that the political parties have filed and/or interpose no objection to intervention and joining of other political parties to ensure that justice is accorded all political parties, and that adjudication of the claim of violation of the constitution and elections law, fraud, and gross irregularities are not adjudicated in piece-meal. Copy of the Newspaper is hereto attached, as Appellants' Exhibit "D."

(e) The New Democrat, Friday, November 10, 2017, edition reports that, "The National Elections Commission's Chairman said it lacks the needed resources and mandate to response to all of the allegations emanating from political actors here."

"NEC Boss Jerome Korkoya addressing media Wednesday, disclosed that the barrage of allegations emanating from complaints filed against the results

that were held October 10, 2017 are all politically motivated. Cllr. Korkoya reiterated that there were no frauds as claimed but acknowledged misbehaviors of some of the commission's workers at some polling places." The paper continued that the NEC Chair said that, "So we just want to let you know that the commission is not situated interns of the resources, interns of mandate to response to political pronouncements and allegations made by politicians intended to influence or mislead the public". Copy of the Newspaper is hereto attached, as Appellants' Exhibit "E."

6. That 2nd Appellants, and the Appellee presented their respective side of the case and rested evidence.

7. That the practice of the NEC is that a ruling by a Hearing Officer of the NEC against a party-complainant may be appealed to the Board of Commissioners of the NEC. Hence, the Board of Commissioners of the NEC in that respect serves as an appellate forum.

8. That as a result of the position taken by the Chairman of the Board of Commissioners, Appellants will be unable to obtain an impartial and unbiased review of its case before the Board of Commissioners of the NEC, with Chairman Korkoya presiding. Therefore, Appellants respectfully request that in accordance with the mandatory statutory and decisional laws of this Republic, the Chairman of the Board of Commissioners of the NEC, Cllr. Jerome Korkoya, be recused from hearing the Appeal.

9. That not only the Appellants are requesting Chairman Korkoya to recuse himself from presiding over the appeal from the Hearing Officer of the NEC, but also prominent religious leaders in our country, Dr. Olu Menjay, President, Liberia Baptist Convention, and Sheikh Ali Krayee, Chairman of the Council of Imams, Republic of Liberia, are also calling on Chairman Korkoya to recuse himself from presiding over all election cases, including that of the Appellants. And a major newspaper, Daily Observer, in its Editorial of November 21, 2017, has called upon Chairman Korkoya to resign or be removed by President Ellen Johnson Sirleaf. Copies of the newspapers, reporting the call of the religious leaders and the editorial are hereto attached together, the Appellants' Exhibit "F."

10. That the decisional laws of our jurisdiction and other common law countries have held that impartiality is a cardinal virtue of a judge. It is, therefore, improper for a judge to comment on matters that are before him or that may come before him for review or other adjudication.

WHEREFORE, and in view of the foregoing, Appellants respectfully pray the Honorable Chairman of the Board of Commissioners of the NEC, Cllr. Jerome Korkoya, to recuse himself from hearing the Appellants' Appeal, and that the Board of Commissioners grants unto the Appellants such other relief as the law provides.

Respectfully submitted the above named Appellants by and thru their Legal Counsel:

FOR 1ST APPELLANTS:

N. Oswald Tweh
COUNSELLOR-AT-LAW

Morris A. Kaba

ATTORNEY-AT-LAW

FOR 2ND APPELLANTS:

H. Varney G. Sherman

COUNSELLOR-AT-LAW

J. Laveli Supuwood

COUNSELLOR-AT-LAW

DATED NOVEMBER 21, 2017”

Powo C. Hilton, Jr.

COUNSELLOR-AT-LAW

Kuku Y. Dorbor

COUNSELLOR-AT-LAW

Benedict F. Sannoh

COUNSELLOR-AT-LAW

Samuel Kofi Wood, II

ATTORNEY-AT-LAW

We note from the motion to recuse filed against the Chairman of NEC and of the Board of Commissioners before whom the appeal from the CDHO was venued, that the Chairman had made statements and utterances which clearly showed and demonstrated that he could not render an impartial judgment in the matter since he had already taken a position on the claims and the allegations made by the appellants in their complaints even as the matter was still pending before the CDHO for investigation and not yet before the Board on appeal. The motion was resisted by the NEC on a number of grounds, which we believe there is need to equally reference as we have done with the motion. Here, therefore is how the NEC, on the Minutes of the Investigation before the CDHO, resisted the motion:

“At this stage, Counsel for Respondent says he has received the Motion to Recuse, served on yesterday evening and in the interest of time we respectfully request the Board to allow him spread his resistance on the minutes. And respectfully submits.

Counsel for respondent in the above entitled proceedings respectfully request the Board to deny and dismiss the motion to recuse for the following factual and legal reasons to wit:-

1. That the said motion is filed in bad faith intended the delay and baffle these proceedings;

2. That the New Elections Law Section 2.10(a), (b) (Duties of Chairman and Co-Chairman) says "that, the Chairman shall be the official head and Spokesman of the Commission; He shall provide over all meetings and hearings of elections contests ". These duties having devoid on the Chairman by statute cannot be denied or refused;

3. Counsel for Respondent says and urges the hearing to take judicial notice of the exhibits attached to the motion to recuse which are newspapers clippings revealing that the Chairman played his role as the Chairman and giving updates on the elections and standing by the elections results. Counsel says in the case "Kuku Dorbor vs. The National Elections Commissions decided June 2012, the Supreme Court held that elections results are

considered valid and should be treated as valid until contrary evidence or prove is provided. The Chairman was therefore within the pile of the law when he declared that the election results are valid and that the Commission stands by those result. Moreover, in the case *In Re: C. Abayomi Cassell* 28LLR, pg. 107, Syl. 1 & 2 the Supreme Court held "in the absence of any statute in the contrary, it is fairly well settled that a Judge is not disqualified because of unfavorable comment or an expression of opinion as to the guilt or innocence of an accused" and also "the mere opinion expressed by a Judge which can be removed by evidenced is insufficient to disqualified a judge from sitting on a case".

4. Counsel says that the motion is self-serving because on the 6th Day of November following arguments on the refusal to admit the Unity Party as an intervener they appealed to the Board and the Board made two decisions in their favor. (1) Granting the Intervention and (2) Denying our objections against the appeal when they did not announce appeal. So those were two decisions that were made, in their favor even after the newspaper clippings that they are complaining of has started running and the Chairman presided over those sessions, and we didn't see any motion.

WHEREFORE, AND IN VIEW OF THE FOREGOING, Counsel for Respondent prays the Board to deny and dismiss the motion and order the proceedings continue. And submits."

The Board, knowing that it could only legally proceed with the appeal before it upon first disposing of the motion to recuse, on November 23, 2017, entertained arguments on the said motion and the resistance thereto. Almost immediately following arguments by the parties, the Board, on the same date of November 23, 2017, handed down its ruling on the motion, denying the motion, sustaining the resistance, and ordering that the main appeal case before it be proceeded with. Here is how the Board rationalized its denial of the motion:

FINAL RULING OF THE BOARD OF COMMISSIONERS
COMMISSIONER DUKULY SPOKE FOR THE BOARD.

Heard: November 23, 2017. Decided: November 23, 2017

On November 22, 2017, 1st and 2nd Appellants filed with the Board of Commissioners a motion to recuse, requesting the Chairman of the National Elections Commission, Cllr. Jerome G. Korkoya, to recuse himself from hearing their appeal. Appellants aver that Chairman Korkoya made public statements at several press briefings and that such statements reveal that Chairman Korkoya will be biased in hearing Appellants' appeal. For the benefit of this decision, we herein produce Appellants' motion:

[THE BOARD THEN QUOTED VARBATIM THE APPELLANTS' NINE-COUNT MOTION TO RECUSE AND THEREAFTER CONTINUED WITH ITS RULING]

Having heard arguments from the parties and considered the matter, we have concluded that the below listed is the only issue determinative of this

appeal: (1) Assuming that the statements quoted in Appellants' motion are true, do such statements reveal that Chairman Korkoya will be biased in hearing Appellants' appeal?

Section 2.10(a) of the New Elections Law provides that the Chairman shall be the "official head and spokesman of the Commission." Section 2.10(b) provides that the Chairman shall preside over all meetings and hearings of elections contests."

We observe that the statements attributed to Chairman Korkoya during the referenced press briefings were made on November 1, 2017, and that nowhere in the said statements is there any specific reference to the Liberty Party and/or the Unity Party. Neither is there any mention that the Chairman commented on any evidence that Appellants presented to the Hearing Officer. Moreover, as to the claims regarding the proliferation of ballot papers and the "Know your Candidates" papers that were posted on social media -- the Board notes that said claims were also made by Vision for Liberia's Transformation (Volt) and other political parties not parties in these proceedings.

The Board notes further that some of the issues the Chairman spoke about, including the issue concerning buried ballot papers in Grand Gedeh, do not form part of the complaint or any evidence in the Liberty Party's case. Moreover, at the time the Chairman made said statements, Unity Party was not a party; to case, having made a party on November 6, 2017. So the chairman could not have discussed their case or any evidence therein. The Chairman was only performing his role to the presumed validity of the election results and refutes the false social media report regarding the presence of alleged ballot papers in certain part of the country.

As to the statement that the "Commission stands by the election results published," the Honorable Supreme Court has held that election results are presumed to be valid until shown otherwise. *Kuku Dorbor et al v. National Elections Commission*, Opinion of the Supreme Court of Liberia, 2012. Therefore, it is the considered opinion of this Board that any statement emanating from the Commission which tends to support the validity of the elections until such validity is removed by a preponderance of the evidence adduced at a competent judicial forum cannot be the basis of a recusal.

The Honorable Supreme Court has held that in the absence of any statute to the contrary, it is settled that a judge is not disqualified because of unfavorable comments or an expression of the opinion as to the guilt or innocence of an accused. The mere opinion by a judge which can be removed by the evidence is insufficient to disqualify a judge from sitting on a case. For reliance, see: *In Re: Counselor C. Abayomi Cassell, Contempt Proceedings*, 1979).

Assuming, arguendo, that the referenced statements were unfavorable to Appellants, though not directed at their case and/or any evidence therein, we note that with Chairman Korkoya presiding, Appellants availed themselves several times before the Board after the alleged statements were made without ever raising the issue of partiality or bias.

This Board, with Chairman Korkoya presiding, on November 4, 2017, heard a motion by NEC to dismiss Appellants' appeal from the Chief Dispute Hearing Officer's ruling denying the Unity Party's motion to intervene in the case: Cllr. Charles Walker Brumskine and Harrison S. Karnwea et al versus NEC. Upon hearing the said motion, the Board, in a decision which was signed by Chairman Korkoya, denied the NEC's motion to dismiss the Unity Party's appeal. Moreover, on November 6, 2017, with Chairman Korkoya again presiding, the Board -- in a decision which was signed by Chairman Korkoya -- reversed the Hearing Officer's ruling in the motion to intervene thus permitting the Unity Party to intervene in the instant case.

Furthermore, with Chairman Korkoya presiding, this Board has made several decisions in disputes stemming from the October 10, 2017 representative elections in favor of the Unity Party. See Bill Twehway vs. Cebee C.D. Barshell, decided November 2017.

The fact that the Chairman might have "made statements deemed unfavorable by Appellants is not a legally sufficient ground for recusal. Moreover, decisions of the Board are reviewable by the Honorable Supreme.

WHEREFORE AND IN VIEW OF THE FOREGOING, because Appellants' Motion to Recuse has no basis in law, same is hereby DENIED AND IT IS HEREBY SO ORDERED.

GIVEN UNDER OUR HANDS AND SEAL OF THE NATIONAL ELECTIONS COMMISSION THIS 23rd DAY OF NOVEMBER, A. D. 2017.

CLLR. JEROME G. KORKOYA

CHAIRMAN

CLLR. SA AH M. JEGEDE TOE

CO-CHAIR

HON. SAMUEL Z. JOE

COMMISSIONER

HON. DAVIDETTA BROWNE LANSANAH

COMMISSIONER

HON. BOAKAI AMADU DUKULY, ESQ:

COMMISSIONER”

From the ruling quoted above, the appellants noted exceptions, but did not seek at the time the intervention of the Supreme Court, reserving the right instead to have the matter reviewed upon appeal of the main case. The Board, having disposed of the motion, proceeded to hear the merits of the appeal taken to it by the appellants from the ruling of the CDHO.

On the following day, November 24, 2017, the Board proceeded to hand down its final ruling on the appeal. It is the contention of the appellants that the Board rejected some of the contentions advanced by the appellants and omitted addressing others which the Board may not have felt were

relevant to its decision; and thereupon denying the appeal and affirming the ruling of the CDHO. It is from this ruling of the Board that a further appeal was taken to this Court for review. In order that the premise is laid for the review requested of this Court, we quote verbatim and in its entirety the ruling of the Board of Commissioners which the appellants assert is littered with reversible errors. Here is how the Board, in its final ruling, addressed the contentions raised by the appellants:

“FINAL RULING OF THE BOARD OF COMMISSIONERS

This appeal comes before us from the November 20, 2017 final ruling of the Chief Dispute Hearing Officer, dismissing Appellants' complaints. The Appellants herein are Charles Walker Brumskine, Harrison S. Karnwea, presidential and vice-presidential candidates and all Representative Candidates of the Liberty Party; and Joseph Nyumah Boakai and James Emmanuel Nuquay, presidential and vice-presidential candidates and the Unity Party, 1st and 2nd Appellants respectively.

The said final ruling denied the request for a re-run of the October. 10, 2017 election prayed for by the appellants. We must determine whether the Hearing Officer's ruling is supported by the evidence presented at trial and the law controlling.

FACTS AND PROCEDURAL BACKGROUND

On October 10, 2017, 1,641,922 (75.19%) registered voters cast ballots for the offices of President and Vice-President and for the 73 seats in the House of Representatives of the Republic of Liberia. Nine days following the said elections the National Elections Commission (NEC) announced final results.

The final result shows that out the 20 presidential tickets, the Coalition for Democratic Change (CDC) obtained 38.4 percent of the valid votes. cast. The Unity Party (UP) obtained 28.8 percent, followed by the Liberty Party (LP) with 9.6 percent.

Pursuant to Article 83(b) of the Liberian Constitution, the NEC announced a run-off election between the CDC and the UP, the two presidential tickets that received the greatest number of valid votes from the October 10, 2017 election.

Following the announcement of the final results, the LP, in exercise of its right Under Article 83(c) of the Liberian Constitution, filed a complaint with the NEC on October 23, 2017 alleging violation of the Constitution and Elections Law, fraudulent acts, and irregularities and prayed for a re-run of the said elections. We hereunder produce verbatim the Liberty Party's complaint: [omitted]

Consistent with the procedure at the NEC, Chairman Korkoya forwarded 1st Appellants' complaint to the NEC's independent hearing section for immediate investigation. Hearing into the Liberty Party's complaint commenced on October 27, 2017. In presenting its side of the case, the

Liberty Party called twelve witnesses in persons of Musa Hassan Bility; Benjamin Sanvee, Foday Fahnbulleh; Darling Clinton; Paul Wehyee; Debora Harris; Victoria Koffa; Yah Golden; Mark; Jurah Sanoe; Jefferson Gbadyquille, and Omaru Kamara.

TESTIMONIES OF WITNESSES CALLED BY THE LIBERTY PARTY

Witness Bility testified essentially that there was late opening at several polling places, that some polling places did not have queue controllers; that people in Grand Gedeh County discovered buried ballot :papers;: that polling staff in Grand Gedeh and Nimba Counties were arrested with pre-marked ballot papers; that ballot papers did not have serial numbers; that there was no worksheet; that more people voted at polling places than the number of people registered; that at some polling places 850 ballot papers were brought, that there was 1109 votes giving to a candidate at a single polling place; that the voting card numbers of voters starts with seven and ends with seven; that during the election' process some persons were caught with voting machine; that 2000 ballot papers were reported at a particular place;. that candidate Charles Walker Brumskine of the Liberty Party got 247 votes at a particular place, but the number was changed to 9 and the balance was giving to another candidate; that there were areas where people were allowed to vote after polls were closed; that people voted in tubs and opened ballot boxes.

- Witness Sanvee testified that polling centers opened late; that there were some polling places that did not have queue controllers;_ that people could not find their places to vote and they could not also find their names in the registration roll; that there was no presiding officer worksheet; that there were no serial numbers on the ballots; that the record of count showed that Mr. Kwasi Johnson obtained zero vote and after a recount he got 26 votes; that votes for candidate Brumskine were given to another candidate; that people carried ballot boxes in canoes and on their heads unaccompanied by security officers; that Mr. Amos Seiboe was arrested with voter registration making machine; that the CDC presidential ticket was giving 1109 votes at a particular polling center exceeding the maximum number of registered voters at that polling place, that in Grand Gedeh County ballot papers were discovered thrown in the water.
- Witness Fahnbulleh testified that he registered in Volocawhen Town District #7 Bong County; that on Election Day, ballot boxes, were taken to Camp America instead of Volocawhen Town.
- Witness Darling Clinton testified that she saw a Presiding Officer break the seals on a ballot box and put his hand in the said ballot box.
- Witness Wehyee testified that he got report from the tally center in Nimba County that showed variances in the results; that at three polling places, the ballots were in excess of 178; 294; and 176; that 14 of such occurred in Nimba County.
- Witness Harris testified that she registered to the precinct at which she was assigned but when she went to vote her name was not found in the FRR.
- Witness Victoria Koffa testified that she went to several rooms intending to vote, but that she did not vote because her name was not found in the FRR.

- Witness Yah Golden testified that she went to vote but her name was not found in the FRR and that election supervisor Doyen Moore asked her for LD150 before she could vote; that she complied with Mr. Moore's request.
 - Witness Mark testified that he was at the tally center at the SDK Sports complex when the ballots from the PG precinct code 30121, polling place #3, was brought for recounting; that before the counting the LP candidate had zero vote but after the recounting the LP candidate had 28 votes.
 - Witness Jurah Sanoe testified that he saw people with voter cards that were denied the right to vote; that the voting process was disorganized because there was not queue controller.
 - Witness Jefferson Gbadyquille testified that he went to the Suakoko Central High School from morning to 7:00 PM, moving from one line to another and did not vote because his name was not found in the book.
 - Witness Omaru Kamara, Liberty Party's poll observer in Lofa County, testified that during the counting at Yallahun Town, District #2, ballots belonging to the LP candidate was given to the UP candidate, that when he complained, it was corrected; that an invalid ballot was giving to the UP candidate, and when he insisted, he was told to take a complaint form.
- The Liberty Party rested with production of oral and documentary evidence on October 28, 2017 and introduced into evidence instruments marked "C/1" thru "C/23".

UNITY PARTY'S INTERVENTION

During the October 28, 2017 sitting of the hearing, it was brought to the Hearing Officer's attention that Joseph Nyumah Boakai, James Emmanuel Nuquay, presidential and vice-presidential candidates at the October 10, 2017 Elections and the Unity', Party had on October 28, 2017 filed a motion to intervene (to be admitted into the case) along with an intervenor's complaint, which we produce herein: [THE BOARD THEN QUOTED VERBATIM THE INTERVENORS' COMPLAINT]

... with the Board of Commissioners. In response, the NEC filed a motion to dismiss, arguing that the Unity Party failed to perfect its appeal from the Hearing Officer's denial of the motion to intervene. We heard arguments from the parties; denied the NEC's motion to dismiss the! Unity Party's appeal and, in a subsequent ruling, granted the Unity Party's application to intervene in the case and directed the Hearing Officer to immediately resume jurisdiction over the case.

Upon resumption of jurisdiction by the Hearing officer, the Unity Party made at least two motions and/or applications, all of which were heard and disposed of by the Hearing Officer.

In presenting its side of the case, the Unity Party called eleven witnesses in persons of Wilmot Paye. J. Cole Bangalu, Josiah Flomo Joekai; Ottos See Bliton; Youdy Bella; C. A. Lamin Lighe; Jeff Blibo; Frances Johnson-Allison; David Menyongai; Dennis Saah Popay; and No4 Kenneh.

TESTIMONIES OF WITNESSES CALLED BY THE UNITY PARTY

- Witness Wilmot Paye testified that long before the elections, the NEC had admitted to difficulties and challenges but informed the political parties that those were simple issues that could be addressed; that the NEC did not

publish the Final Registration Roll; that he registered but when he went to vote, his name was not found in the FRR and the Staff wrote down his name and allow him to vote; that hundreds of his supporters were angry because they were denied their right to vote; that the Registration Roll that was presented to political parties was completely different, from what NEC had.

- Witness J. Cole Bangalu testified that the provisional roll was not published; that when the final roll was released there were discrepancies like individual names not matching pictures; that the NEC's Chairman announced that those holding voter cards will vote even if their names were not found in the FRR; that the IUP raised concern and a Commissioner at the NEC disagreed with the Chairman's statement and the untimely publication of the FRR that on September 23, 2017 seven political parties were given the FRR on a flash drive; that the NEC had a SMS system which the Unity Party believe is an alteration of the FRR,' which amounts to fraud; that group of people were disenfranchised of their right to vote; that some voters voted more than once; that the ballots discovered in Grand Gedeh County were not "Know your candidate" :papers.

- Witness Josiah Flomo Joekai testified that occurrences were orchestrated by the leadership of Chairman Korkoya that led to inefficiency and incapacity at the Commission; that the Voter Registration process started in a disorderly manner, that the provisional registration roll was characterized by lots of omissions; that he was a candidate in the elections but his name was not found in the provisional voter roll; that Chairman Korkoya told the Liberian Senate that there were only 13,000 omissions in the provisional registration roll; that it was anti-democratic for Chairman Korkoya to announce that those with voter cards will vote even if their particulars were not found in the FRR; that he indicated that the country was not going to have a credible voter roll, that he voted illegally on elections day because his name was not found in the FRR; that the SMS system by which his particulars were identified is also an illegal process; that culprits were apprehended processing illegal voter registration cards; and that separate voter roll was created.

- Witness Ottos See Bliton from Grand Gedeh County testified that the Town Chiefs daughter in Glay Town discovered ballot papers when she went to take bath in a bamboo bathroom, that they were presidential ballot papers with red strips and representative ballots with green strips; that they were instructed by an official of the NEC to take a police officer with them on the scene, that the police officer took the ballot papers and reported to the NEC local office in Grand Gedeh; that he took photos and videos of the ballot papers.

- Witness Youdy Bella from Grand Gedeh County testified that he saw ballot papers being rooted from a bathroom in Glay Town; that the ballot papers were turned over to a police officer called Weah who took the papers to the NEC Zwedru office that the ballot papers were received by an official of the NEC called Mr. Donald.

- Witness C. A. Lamin Lighe, Executive Director of the NEC, was subpoenaed by the Unity Party to bring and testify, to the used presidential ballot paper; the used Representative ballot paper, and the Know-Your-Candidate poster and the flash drive containing the FRR. Witness Lighe presented the flash drive and confirmed that it is the flash drive that was distributed to political

parties in September, 2017. The witness presented the used presidential ballot paper and confirmed that it has a red strip - on the back. The witness presented the used representative ballot paper and confirmed that it has a green strip on the back. The witness presented the ballot paper stub and testified that the serial number' is found on the stub and not on the ballot itself. The witness also presented the `Know-Your-Candidate posters and confirmed that it was the poster used concerning the 2017 elections.

- Witness Jeff Blibo testified that the flash Unity Party in September had less data than he analyzed; that a total of 79 polling precincts not recorded on the previous di or more missing from the data that was polling places amount to 35,267 register votes that was given to the subpoenaed flash drive as were missing across 10 and 31 precincts with one 'en prior; that the missing voters with 10, duplicated ID numbers assigned to voters, that the FRR is different from the online system provided on the N EC's website.

Witness Frances Johnson-Allison testified that she was alarmed by the claims of irregularities and the fraud she was hearing; that the NEC went to the October 10, 2017 polls without a Final Registration Roll; that the Final Registration Roll shows the number of registered voters; that the Final Registration Roll was not published; that the Final Registration Roll is published by placing it at various .precincts and polling places. Witness Johnson-Allison sated that her testimony was based on news reports.

Witness David Menyongai testified that it had been a long time since he served at the NEC and that he could not remember anything.

Witness Dennis Saah Popay testified that he is a registered voter who went to vote at the Rock International; that his name was not found in the FRR; but that he was allowed to vote after his name was written on an addendum.

Witness Nou Kenneh testified that after he voted at the Muslim Solidarity Elementary and Junior High School, he came out and saw people crying with their voter cards in their hands `we want vote,' we want vote'; that he took their photos with his phone, that Hon. Sekou Kenneh told him to go in the community and find people who did not vote because their names were not in the FRR; that they went in the community and collected voter cards from people and some people refused to give their cards.

On November 17, 2017, the Unity Party rested with the production of oral and documentary evidence, and introduced 'into evidence instruments marked C/1 thru C/22.

TESTIMONIES OF WITNESSES CALLED BY THE NEC

On November 18, 2017, Defendant NEC took the witness stand. In presenting its side of the case, Defendant called two witnesses in persons of C.A. Lamin'. Lighe, Executive Director of the NEC; and Joseph A. Yarsiah, Director of Political Affairs. Witness Lighe testified essentially that the elections were free, fair and transparent; that it is the first in our election] history that the polling staff met voters in the queue as early as 4:00 a. ran., making it a challenge for some queue controllers to place voters in their proper queue to vote; that there were challenges in the recruitment of competent polling staff; that the Commission had earlier requested professional institutions to offer professionals to serve as polling stagy f but only one institution responded; that the staff experienced difficulty in locating some voters on the FRR and in directing them to their proper polling places: that no new

names were added to the FRR; that the procedure referred to as addendum/addition to the FRR is practiced in other electoral jurisdictions and has been consistently used by the NEC in the 2005, 2011, and 2014 elections, that ballot papers only carry serial number on the stubs; that at the Tokpaipolu Public School, the Presiding Officer inadvertently wrote 1109 for the CDC, but that same was corrected to reflect the actual votes of 110; that Appellants' witnesses Wilmot Paye and Josiah Joekai's testimonies that their names were not on the FRR are false.

Witness Yarsiah testified that all political Parties -- including the Appellants -- were informed of all major activities of the Commission through the IPCC meetings, that the political parties were informed of and taught how to use the SMS system and that Appellants' witness J. Cole Bangalu's phone number was used during the demonstration; that he informed the political parties of the preparation for the run-off, that the Unity Party and the Coalition for Democratic Change agreed to go to run-off; that both the CDC and UP have asked and the Commission has accepted that two party observers be allowed in the polling place during the run-off, that few polling places opened late in Sinoe County due to the overflowing of the river; that poll workers faced challenge in getting materials to certain polling places. Witness Yarsiah played a video recording of poll workers working to remove a log from the road leading to a voting precinct.

Both witness Lighe and Yarsiah testified that the elections were free, fair, and transparent and conducted in line with international best practice. They denied that the elections were fraudulent. In support of this testimony, Defendant NEC introduced reports from international observers to the elections to include: the Carter Center, NDI, European Union, and the U.S. Embassy among other.

Defendant rested with the production of oral and documentary evidence on November 18, 2017, and introduced into evidence instruments marked D/1 thru D/12.

On November 20, 2017, the Hearing Officer rendered final ruling dismissing Appellants' complaints. Not satisfied with the said ruling of the Hearing Officer, Appellants excepted, announced appeal to the Board of Commissioners, and on November 22, 2017 filed separate bill of exceptions with the Board. Hence, this appeal follows.

The parties appeared before us on November 23, 2017, for oral arguments. Having considered Appellants' bill of exceptions, arguments of the parties and the record in these proceedings, we have determined that the following issue is determinative of this appeal;

(1) Whether Appellants presented evidence of irregularities and/or fraud to warrant voiding the declared returns from the October 10, 2017 elections.

LEGAL STANDARD IN ELECTION DISPUTES

Because Appellants' appeal herein concerns the manner and/or results of the October 10, 2017 elections, we begin our analysis by noting the laws and legal standard controlling election dispute:

In the case: *Management of the Forestry Development Authority (FDA) v. Walters et al.*, 34 LLR 777, 783 (1988), the Honorable Supreme Court held as follows: "In this jurisdiction, it is evidence alone which enables the court, tribunal, or administrative forum to pronounce with certainty the matter in dispute, and no matter how logical a complaint might be stated, it cannot be taken as proof without evidence. It is required that every party alleging the existence of a fact is bound to prove it by a preponderance of the evidence."

In the case: *Sando D. Johnson v. National Elections Commission et al* (decided December 16, 2005), the Honorable Supreme Court, speaking through Mr. Justice Korkpor (now Chief Justice) held as follows: "We must keep in mind the cardinal principle 'governing election disputes, that is, he who challenges an election result must overcome a strong presumption in favor of the validity of the election process and results... In other words, in elections, the presumption is that the official is legitimate, he acted properly, the process is free, fair, and transparent and the result is credible. So, one who says that the election process is not fair and/or the result is not credible has the burden to establish his cause."

In the case: *Kuku Dorbor et al v. National- Elections Commission* (decided 2012), the Honorable Supreme Court held that election results are presumed to be valid until shown otherwise.

Section 3.6 of the New Elections Law states that. "The general registration roll for each registration center] shall be opened for public inspection at the office of the Magistrate of Elections without a fee on any day in a week during the hours the office is opened. A copy of each roll may be kept at such other places as the Commission may designate for public inspection."

Section 3.7 of the New Elections Law states that "No registration roll or other election shall be invalidated on the ground that it is not printed or because of any error made in the copying or printing thereof."

Section 4.2(la) of the New Elections Law states that the "Commission shall determine and publish the location of Polling Places to serve the voting precincts. The location of a polling place may be changed by the Commission if it determines that it is necessary. The Commission shall post signs showing the new location at least a week before the start of polling, unless the change is caused by an emergency in which case signs for the new location shall be posted as soon as possible."

Section 4.7(1) of the New Elections Law states that "Ballot Papers shall be in a form to be prescribed by the Commission, who shall arrange to print and issue them for the polls." Section] 4.7(2) states that the "Ballot Papers shall include the names of candidates in alphabetical order of surname, the name of the party, and selected emblem. Different coloured ballots may be provided for elections to differed elective offices."

Guided by the foregoing laws and controlling standard, we will revert to the record in these proceedings to ascertain whether the Hearing Officer's ruling comports with the controlling law and standard,

APPELLANTS' ALLEGATION CONCERNING SERIAL NUMBER

Appellants stated that serial numbers were placed on the ballots used during the 2005 and 2011 presidential and representative elections, and alleged that, the Appellee in these proceedings, intending to cheat, did not place serial number on the ballots used during the 2017 elections.

We note that Section 4.7(1) of the New Elections Law states that "Ballot Papers shall be in a form to be prescribed by the Commission, who shall arrange to print and issue them for the polls," and Section 4.7(2) states that "The Ballot Papers shall include the names of candidates in alphabetical order of surname, the name of the party, and selected emblem. Different coloured ballots may be provided for elections to differed, elective offices." Section 4.7(1&2) do not require that serial numbers be on the ballot, and appellants did not allege so. Appellants only argument here is that the ballots Used in the 2005 and 2011 elections had serial numbers. In response, Mr. C. A. Lamin Lighe, testifying for Appellants as a subpoenaed witness, stated that the ballots Used during the October 10, 2017 elections had serial numbers on the stub. The record shows that ballot stubs containing serial numbers from the presidential and representative ballots wer4 introduced into evidence. Appellants do not dispute that the October 10, 017 ballot stubs have serial numbers, The record further shows that witness Lighe testified that while serial numbers can be placed on the ballot stubs for, administrative purposes, it would be a violation of a voters' secrecy to place serial numbers on the ballot papers that are used by voters, as doing so wo ld allow others to take the marked ballots and trace it to particular voters. Accordingly, we hold that the Hearing Officer did not err.

APPELLANTS' ALLEGATION CONCERNING THE FRR

Appellants alleged that the FRR was not published as required by law; that there are multiple registration rolls; and that two flash drives analyzed by one of its witness showed that there are discrepancies. In response, witness Lighe testified that the final registration roll was published on NEC's website and made available at all of the NEC's magisterial offices for inspection by the public, and that the NEC has only one final voter roll.

On the allegation of the missing polling places and data, witness Lighe stated that the subpoenaed flash drive the NEC gave to Appellants was in PDF and that Appellants could not analyze it without converting it, and that during the said conversion of the data by Appellants, data were corrupted and lost during the process. The record shows that Appellants did not produce a rebuttal witness to the said testimony by witness Lighe.

We note that Section 3.6 of the New Elections Law states that "The general registration roll for each registration center hall be opened for public inspection at the office of the Magistrate of Elections without a fee on any day in a week during the hours the office is opened. A copy of each roll may be kept at such other places as the Commission may designate for public inspection."

The record shows that Appellant did not dispute' that the FRR was published on NEC's website and made available at all of NEC's 19 magisterial offices. Appellants argued, however, that same is not the publication contemplated by Section 3.6 of the New Elections Law. When asked whether they were aware that the last sentence of Section 3.6 says that a "copy of each roll may be kept at such other places as the Commission may designate for public inspection," one of counsels for Appellants conceded.

The Board says that there seems to be a confusion between the provisional and final voter roll. It is the provisional voter roll which is developed after

voter registration exercise that is required to be published and posted at all registration centers, nationwide. The final registration roll (FRR), on the other hand, is developed after cleaning the provisional voter roll and the publication that is required of it is simply to have them distributed and made available at all magisterial offices as required by Section 3.6 of the New Elections law. Because the record shows that the NEC complied with the requirements. of Section 3.6 of the New Elections Law, we hold that the Hearing Officer did not err.

As to Appellants' allegation that the NEC is maintaining more than one voter roll and that writing some voters' names on the addendum amounts to an alteration of the roll, witness Lighe testified that, what is referred to as an addendum to the voter roll is a procedure practiced in other electoral jurisdictions and provided for in the Polling and Counting Procedure Manual promulgated by the NEC. Defendant presented into evidence the Polling and Counting Manual for the 2005, 2011 and 2017 elections all of which have provisions that allow polling staff, security/police officers who are not registered at a center but assigned there on elections day to vote only in the presidential election and have their profiles recorded on a space at the back of the final registration roll. Witnesses Lighe and Yarsiah testified that the Commission maintains only one roll that which was distributed to the political parties, and that the SMS system on NEC's website is another way for voters to access their polling places.

As to Appellants' allegation that polling places were changed;, without notice to the voters, witness Lighe testified that same is false, that the public was given sufficient notice as to the change of any polling place. The record shows that Appellants did not rebut said testimony.

Section 3.19 of the New Elections Law states that "No Registration Roll may be altered within the thirty (30) days period immediately prior to an election, including Election Day, except upon order of the Honorable Supreme Court of Liberia on the determination of a manifest error."

In arguments before us, Appellants attempted to impress upon this Board that recording certain voters' names on what is referred to as an addendum amounts to an alteration of the FRR. We disagree. In the mind of this Board, the recording/writing of the names and other information of a person who is a registered voter but by reason of official assignment is in another location and by procedure is allowed to vote only in the presidential election, or as a result of° a printing error, whose name was not printed on the FRR for a particular polling place, does not constitute alteration. To "alter" means to add or remove. Additionally, we note that Section 3.7 of the New Elections Law states that "No registration roll or other election shall be invalidated on the ground that it is not printed or because of any error made in the copying or printing thereof."

Accordingly, the fact that a voter's particulars did not appear on the FRR will not be ground to invalidate any document or results concerning the October 10, 2017 elections. Accordingly, we hold that the Hearing Officer did not err.
APPELLANTS' ALLEGATION CONCERNING BALLOT BURIED IN GRAND GEDEH

As to Appellants' allegation that ballot papers were discovered buried, in Grand Gedeh county and turned over to a police officer, witness Lighe testified that same were "Know Your Candidate", posters that were altered and used in the process, and that the LNP in Grand Gedeh investigated this matter and turned the said "Know Your Candidates" posters to the NEC. The record shows that Appellants did not rebut this testimony.

APPELLANTS' ALLEGATION CONCERNING 1109 VOTES

As to Appellants' allegation that the CDC ticket was given 1109 votes at the Tokpaipolu Public School, polling place in District #6, polling place #1 in Bong County, in excess of the required registered voters at said polling place, witness Lighe stated that it was an inadvertence, on the part of the Presiding Officer, but same was corrected and that only 110 votes were processed as cast for the CDC ticket. The corrected "record of count" signed the parties was testified to and admitted into evidence. For the benefit of this decision, we herein produce the original record of the count:

As can be seen from the "record of the count" on which the votes each candidate received at the said polling place were recorded, the total number of votes cast there was 270, out of which 256 votes were recorded as valid and 14 votes as invalid. The CDC ticket received 110 votes; a combined total of 146 votes were received by other candidates. 110 plus 146, equals 256. Also, the above "record of the count" makes it clear that a red mark was placed on the number 9 that appears to the right of the 110 votes received by the CDC ticket, and same had no impact on any candidate's vote.

The Honorable Supreme Court has defined fraud as the employment of trick, artifice or deception to cheat or mislead another, and that it is not sufficient to merely allege fraud as a basis for relief; it must be established by proof. For reliance, see: *Kontar v. Mouwaffak*, 17 LLR 446; *Monrovia Construction Corporation v. Wazami*, 23 LLR 58; *Scaf v. Ricketts*, 28 LLR 263; *Francis v. The Mesurado Fishing Company, Ltd.*, 20 LLR 542; *Massaquoi v. Massaquoi*, 35 LLR 508.

All would agree that a transposing error, which was corrected and did not impact any candidate's vote does not constitute fraud. Accordingly, we hold that the Hearing Officer did not err, and 1st and 2nd Appellants' request for a rerun of the October 10, 2017 elections is hereby denied.

WHEREFORE AND IN VIEW OF THE FOREGOING, Appellants' appeal is hereby denied. The Hearing Officer's final ruling in these proceedings is hereby confirmed and affirmed. AND IT IS HEREBY SO ORDERED.

GIVEN UNDER OUR HANDS AND SEAL OF THE NATIONAL ELECTIONS COMMISSION THIS 24TH DAY OF NOVEMBER, A. D. 2017."

We note, from the ruling quoted above, that although the Commission handed down a single ruling in respect of the both appellant parties, the two parties, first and second complainants/appellants determined to file separate bill of exceptions in respect of the said ruling. We note also that although in

regard to the first complainants who had filed the complaint before the NEC and who had presented evidence before the CDHO, from whose decision an appeal was taken to the Board of Commissioners, who had participated in the appeal before the Board, and who had announced an appeal from the adverse final ruling of the Board, only the presidential and vice presidential candidates of the Liberty Party, in persons of Charles Walker Brumskine and Harrison S. Karnwea, filed a bill of exceptions before the NEC and complied with the recognizance appeal requirement from that body, taking issue with the NEC and seeking to vest jurisdiction in the Supreme Court to hear the appeal taken from the ruling of the Board of Commissioners of the NEC. Again, as we have done with other instruments filed in the hearing process, so that a full and accurate picture is presented of the contentions of the parties, we herewith quote in its entirety the bill of exceptions of Charles Walker Brumskine and Harrison S. Karnwea, filed with and approved by the Board of Commissioners of the NEC, as follows:

APPELLANTS' BILL OF EXCEPTION

Charles Walker Brumskine and Harrison S. Karnwea, Presidential and Vice-Presidential Candidates at the October 10, 2017 Elections, 1st Appellants in the above entitled cause of Action, most respectfully inform you, the Board of Commissioners, National Elections Commission, that on the 24th of November, 2017, you rendered your Final Ruling, denying the Appellants' appeal from the Final Ruling of the Hearing Officer, and confirmed and affirmed the Final Ruling of the Hearing Officer. 1st Appellants excepted to your Final Ruling, and announced appeal to the Honorable Supreme Court of the Republic of Liberia, and therefore, the 1st Appellants hereby submit this Bill of Exceptions for your approval as follows to wit:

1. 1st Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC denied the Motion of the Appellants, requesting the recusal of Cllr. Jerome G. Korkoya, Chairman, BOC, because of public utterances of the Chairman, pre judging the evidence and issues of the case, while the matter was being tried before the Hearing Officer, knowing that he would preside over the review of the matter on appeal. The refusal of the BOC to have Chairman Korkoya recuse himself, deprived the 1st Appellants of their right to free and fair trial.

Appellants' Allegation Concerning Serial Number

1. Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, like the Hearing Officer in his Final Ruling, failed to take judicial notice of the public historical fact, which is so well known, that serial numbers were

placed on the ballots, and not on ballot stubs, used during the 1997, 2005, and 2011 Presidential and General Elections. The failure of the Appellee to take judicial notice of its own records was obviously to justify it allegedly placing serial numbers on the stubs of ballots, instead of on the ballots, as has been the practice in this jurisdiction.

2. 1st Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, confirmed the assertion of witness Ligne of the Appellee that placing serial number on the ballots would be a violation of the voters' secrecy. 1st Appellants say that it is not likely that the confidentiality of a voter, who marked a ballot behind a screen or other enclosed compartment, and deposited the ballot in a secured sealed ballot box be compromised because a ballot carried a serial number, which would have provided accountability and credibility to the electoral process. 1st Appellants submit that if it could have been done in the 1997 elections, it certainly should have been done in 2017.

3. 1st Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, failed to take into consideration the refusal of the Appellee to use the Presiding Officer Worksheet. Among other things, the Presiding Officer's Worksheet would have indicated **the starting and ending serial numbers of ballots** used at a polling place, making it difficult for ballots in the ballot boxes to be replaced while in transit from the Polling Place to the Magistrate. Also, the Presiding Officer's Worksheet would have been signed by Party/Candidate Agents. In the absence of serial numbers on the ballots, not ballot stubs, there is no way of knowing whether the ballots in the ballot boxes were those that were assigned and delivered to a polling places, ballots that were cast at a Polling Place, or ballots that were surreptitiously stuffed in the ballot boxes after polling had closed. The Presiding Officer's Worksheet is found on page 90 of the "Polling and Counting Manual For Staff," prepared and published by the Appellee for governing the "Presidential and Representatives Elections 2017."

4. 1st Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, failed to take into consideration that the refusal of the Appellee to use the Presiding Officer Worksheet created a cloud of doubt over the entire elections. Information that the Presiding Officer inserted on the Record of Count, such as, "Total of unused, spoiled and discarded ballot papers," "Number of ballot papers that should be in the ballot box," "Number of ballot papers taken from the ballot box," and "Discrepancy if any," should have been copied from rows, B, C, D, and E, respectively, of the Presiding Officer's Worksheet. The Presiding Officer's Worksheet required the Appellee's Presiding Officer to insert information/statistics in the Presiding Officer's Worksheet four times during the day—in the morning (before polling), during the day, at the end of polling, and at the end of reconciliation. None of this was done; instead, the Appellee's Presiding Officer use only the Record of Count, at the end of polling, while deceptively indicating the information on the Record of Count was taken from the Presiding Officer's Worksheet.

5. 1" Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, failed to take into consideration the Message of the Chairman of the BOC, Cllr. Jerome G. Korkoya, as contained in the Polling and Counting Manual For Staff, stating that "We hope that this manual, the approved electoral rules, practices and functions will be used to ensure that the 2017 General Elections are successful, **credible** (emphasis ours), and professional." 1st Appellants submit that the deliberate failure of the Appellee to use the Presiding Officer's Worksheet brought into question the credibility of the elections, as was contemplated by the Chairman of the BOC.

Appellants' Allegation Concerning the FRR

1. 1" Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, failed to take cognizant of Section 3.11(2) of the Elections Law, which provides that, "The Commission shall determine a period of not less than at least two (2) days before Election Day which: (a) The registration roll shall be available for inspection at each **Registration Center** (emphasis added) and compared with the Commission's Master Registration Roll to make sure the roll is in order and that the names of the deceased registered voters are removed from the roll in accordance with the provisions of this chapter; and, (b) Claims for Registration and Objections to Registration may be made. The dates determined by the Commission shall be published in the same manner as is required by Section 3.2 for Notification of Registration Centers." Pursuant to the aforesaid quoted law, the Appellee issued its "Voter Registration Regulations, Section 22.1 of which provides that, "NEC shall certify the Final Registration Roll and print one copy for each polling place." The failure of the Appellee to comply with and enforce the Elections Law and Regulations is indeed a reversible error.

2. 1st Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error in its Final Ruling, by equating posting of the purported FRR on the NEC's website, and/or saving the purported FRR on flash drives, and distributing them to seven political parties, and/or making the purported FRR available at all the NEC's Magisterial Offices, instead of registration centers and/or polling places to publication, as contemplated by the Elections Law and Regulations. 1st Appellants submit that Section 3.11(2) of the Elections Law is unequivocal that the registration roll shall be available for inspection at each Registration Center for at least two (2) days before Election Day; and, Section 22.1 of the Regulations mandates that a certified Final Registration Roll is printed, and a copy is kept at each polling place.

3. 1" Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, failed to take cognizant of the fact, as pleaded by the 1st Appellant, and testified to by one of the Appellants' witnesses that on the day of election, with no emergency, voters discovered that some Polling Places were not at the locations that had been previously published by the NEC, thus depriving them of their constitutional right to vote. One of such examples was the location of a Polling Place in Precinct Center #6171,

District# 7, Fuama, Bong County, which was changed, without the required notice, from Korniekawoejai to Camp America, about six-hour walk, resulting in many not voting, thus depriving such voters of the constitutional right to vote. 1st Appellant submit that the Appellee failed to produce a single witness, its Presiding Officer or some else, or any documentary evidence to rebut the pleading **and** testimony of 1st Appellant.

4. 1st Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, stated that, "The Board says that there seems to be a confusion between the provisional and final voter roll. It is the provisional voter roll which is developed after voter registration exercise that is required to be published and posted at all registration centers, nationwide. The final registration roll (FRR), on the other hand, is developed after cleaning the provisional voter roll and the publication that is required of it is simply to have them distributed and made available at all magisterial offices as required by Section 3.6 of the New Elections Law. Because the record shows that the NEC complied with the requirements of Section 3.6 of the New Elections Law, we hold that the Hearing Officer did not err." 1st Appellants submit that, the Appellee issued its "Voter Registration Regulations," and pursuant to Section 3.11 (2) of the Elections Law, Section 22.1 of the Regulations provides that, "NEC shall certify the Final Registration Roll and print one copy for each polling place." The failure of the Appellee to comply with and enforce the Elections Law and Regulations, deprived voters, who did not have access to the NEC's website, and did not live near a Magistrate Office, equal opportunity and equal protection under the law, which is indeed a reversible error.

5. 1st Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, raised an issue of the voting of polling staff and others, stating that, "Defendant presented into evidence the Polling and Counting Manual for the 2005, 2011 and 2017 elections all of which have provisions that allow polling staff, security/police officers who are not registered at a center but assigned there on elections day to vote only in the presidential election and have their profiles recorded on a space at the back of the final registration roll." The voting of polling staff, and/or security/police officers was never raised during the hearing, and was not a part of the records forwarded to you from the Hearing Officer; it was the refusal by the NEC to allow average Liberians, who were registered voters, to vote because their names were not found on the FRR. The BOC failed to take into consideration the testimony of an average Liberian, Victoria Koffa, who testified as follows: "On Election Day I went to vote. I got on the first line I reached in the room. I showed voter ID card and they said my head was not there. They sent me to room 2. I went to room 2. I showed my voter ID card again, they said my name was not there and they told me to go to room 7. I went to room 7, they had 2 lines there. I got on one of the lines. Later, one boy came with a copy book. He opened it and started calling people

by their name to go and vote. They were calling people by their name to vote. Our foot was tired. I went closer to him and was looking at him to see whether he will call my name, but I never heard my name. Then I asked him, he said your name not in here, in fact your head not here, so you people will not vote. I left there it was 8 o'clock in the night. We left there and we never voted." The BOC failed to take into consideration the testimony of another average Liberian, as referred to on page 5 of the Hearing Officer's Ruling, "The Intervenor/Complainants tenth witness was Dennis Saah Popay, a resident of Duazon, Margibi County. The witness provided as follows; that he went to vote at the Rock International and his name was not found in the FRR and his name was written on an addendum and allowed to vote." These testimonies remained unrefuted by the Defendant.

6. 1st Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, failed to take into consideration the Appellee's witness Lighe, who testified as to the incompetence of the polling staff on election day, the absence of Queue Controllers to direct voters to the right voting lines, and the process of adding the names of individuals to the FRR, although no such provision is contained in the 2017 Regulations. Witness Lighe testified that, "Your Honor I like to obtain your permission to illustrate that over the last few days there have been witnesses who have that there were allow to vote because their names were not in the final registration roll and were added to the addition of the roll. I like to state here that all those voters were actually in our final registration base. I have evidence to prove that all those voters were actually registered, but couple with the fact that **some of them went into the wrong room** (emphasis ours), and **also some of the staffs were unable to find in the roll** (emphasis ours), they were added to the addendum if you can permit your Honor. After my testimony, we will enter into evidence to prove that those witnesses who have claimed that they were not allowed to vote, giving that their names were not on the final voter roll is false. (See, Victoria Koffa's testimony, as quoted in the immediate preceding paragraph 5, above.) What actually happen was they went to the wrong room. There were instances where they never went to the right room, but the staffs there were not able to find them on the roll. My testimony your Honor will also prove that **the procedure of the process of addition to the final roll is a process that has been practice and contained in our regulation as far back as 2005** (emphasis ours). I show you evidence your Honor that these regulations were contained in our file from 2005, 2011 and 2014. This is to say that the addition to the roll is not the making of this current board."

7. 1st Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, failed to take into consideration another portion of the Appellee's witness Lighe's testimony. He testified that, "The staff themselves were overwhelmed. That was also supported by the fact that our staff was also challenged. Prior to the conduct of these elections the Commission

taking clue from the election voters registration, were staff hired by the Commission in carrying out the function. We wrote other stake holders requesting assisting from professional Liberians. ... Unfortunately, we got response from only the Angie Brooks Randolph Institute and, as the result of political manipulation, there were rumors being spread wide and far that Chairman Kokoya had intended to fraud the process by bringing in presiding officers. And in order to satisfy those doubts, about three hundred names that were submitted were withdrawn. So basically, we went to the polls with those Liberians who were available. Those Liberians who were not the most qualified but who availed themselves to partake in the October 10 election. Monitoring reports and even our own observation clearly states that staff at our centers were challenged. They had difficulties in directing voters to their assigned rooms; they had difficulties in finding names on the final voter rolls in their polling stations. As a result of that, this caused uncomfortable situation with some voters. This led voters to be weary. These causes brought about congestion and delayed."

8. 1st Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, failed to take in consideration that although, "the fact that a voter's particulars did not appear on the FRR will not be ground to invalidate any document or results concerning the October 10, 2017 elections," it certainly deprived such voter of his/her constitutional right to vote, making the entire elections a sham, and should therefore be rerun, and the 1st Appellants so pray. A case in point is Debora Harris of Grand Bassa County, who testified that on election day she was a poll watcher for Liberty Party. When she went to vote she was told that her name was not on the FRR. She testified that she went from Polling Place to Polling Place, but was without success in finding her name on the FRR, so she and many others like her, as she testified, did not get to vote. Her testimony remained unrefuted by the Defendant.

9. 1st Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, failed to take into consideration Section 3.2 of the enabling Regulation on Polling and Counting, which provides that, "If a person has a valid Registration Card marked for a precinct, but whose name cannot be found on the voter registration roll for the precinct, subject to paragraph 3, the presiding officer shall permit the person to vote, if the person's Registration Card is verified through the SMS verification system managed by the NEC." Also, allowing individuals carrying "valid Registration Card," whose names are not found in the Voter Registration Roll, is subject to two conditions: (i) the Registration Card should be verified through the SMS verification system managed by the NEC. (ii) If the person carrying such "Registration Card" is on the list of persons provided by the NEC who have been removed from the Registration Roll, either because of double registrations, or because such person is underage, such person should not be allowed to vote. Again, the verification was never done by the NEC. Now, whether those who left the Polling Places, prior to the NEC's announcement, allowing every

person carrying a voter registration card to vote, were legitimate voters, deprived of their constitutional right to vote; or, those who voted, following the NEC announcement, were individuals who should not have been allowed to vote, were not considered by the BOC in dismissing the appeal of the Appellants.

10. 1st Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, failed to take into consideration the testimony of the Appellee's second witness, Mr. Yarsiah, as summarized on page 23 of the Final Ruling of the BOC. Mr. Yarsiah testified, "... that the political parties were informed of and taught how to use the SMS system." 1st Appellants submit that it is the statutory duty of the Appellee to instruct voters on how to use the SMS system, and not political parties. The Appellee, therefore, cannot escape such important duty, which may determine whether a Liberian can exercise his or her constitutional right to vote, to a political party. Obviously, the SMS system, as handled by the Appellee, excludes those Liberians who are not members of political parties; and, it certainly disadvantages those Liberians who do not have access to cell phone and/or the Internet.

Appellants' Allegation Concerning Fraudulent Acts

11. 1st Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, held that, "As to Appellants' allegation that the CDC ticket was given 1109 votes at the Tokpaipolu Public School, polling place in District #6, polling place #1 in Bong County, in excess of the required registered voters at said polling place, witness Lighe stated that it was an inadvertence on the part of the Presiding Officer, but same was corrected and that only 110 voted were processed as cast for the CDC ticket. The corrected "record of count" signed by the parties was testified to and admitted into evidence. For the benefit of this decision, we herein produce the original record of the count." 1st Appellants Counsel asked witness Lighe, "Mr. Witness, you testified here today with regards of records of count that we introduced into evidence that shows 1109 votes at a station that it should not have been more than 550 or 500 registered voters, can you tell me as a matter of policy or practice, the records of count, at what point in time are they signed by the political parties and the presiding officers?" [Page 35 of the Minutes—Liberty Party cross examination of Defendant First Witness/Lami Lighe] Answer: "The records of count are signed after the counting at the poll, after the counting of ballots, completion of the reconciliation, completion of sorting, counting completed, votes recorded then the records of count are signed. [Page 36 of the Minutes—Liberty Party cross examination of Defendant First Witness/Lami Lighe] Another question: "The document you testified to earlier with 1109 votes which you indicated was a mistake on the part of NEC; NEC took a red pen and altered this document. Look at it. Am I correct? Answer: "Yes." [Page 37 of the Minutes—Liberty Party cross examination of Defendant First Witness/Lami Lighe] 1st Appellants submit that from the witness' answers to questions during cross-examination, the red-pen mark, deleting the number 9 so that number of votes assigned to CDC would

be 110, instead of 1109, was done after the record of count had been signed by the Presiding Officer and the Party/Candidate Agents. If the change was not fraudulent, the Presiding Officer and the Party/Candidate Agents would have initialed the change made on the Record of Count, subsequent to their signing the document, and a Tally Sheet from the Collation Center, evidence the official correction, would have been exhibited during the hearing by the Defendant.

2. 1st Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, held that, "All would agree that a transposing error, which was corrected and did not impact any candidate's vote does not constitute fraud. Accordingly, we hold that the Hearing Officer did not err, and 1st and 2nd Appellants' request for a rerun of the October 10, 2017 elections is hereby denied." 1st Appellants say that the BOC failed to consider several other instances of fraud pleaded and testified to: (i) Amos Siebo, who was arrested as part of an illegal voter registration ring. He was caught with an assortment of the NEC voter registration card materials, including cameras, blank voter cards, forms and printers. The Defendant's witness, Lami Lighe, testified that throughout this election season there was no incident of any election materials being reported missing from the NEC. The reasonable presumption is, therefore, that Amos Siebo was part of a conspiracy to commit fraud against the people of Liberia, involving someone at the NEC, who had access to such materials. (ii) The BOC also failed to consider the case of the Presiding Officer at Precinct #30073, Bardnersville Public School, Polling Place #3, Montserrado County, whose hand was caught in the ballot box, having broken the seals, as pleaded and testified to by Darling Clinton, a witness of 1st Appellants. (iii) The case of an NEC Presiding Officer, Josephus Cooper, of electoral district #3, Nimba County, who was arrested with pre-marked ballots in his possession, some of which he had already deposited in the ballot box. (iv) The case of over fourteen Polling Places across Nimba County, spanning from District #1 to District # 8 that had more than 550 votes cast; some with 178 more votes, another with 294 more votes, and another one with 176 more votes, and on and on. (v) In Zota, Polling Place #3, Precinct Code #06102, Shankpallai Town, District #4, Bong County, following the close of the polls and counting of ballots, on Wednesday morning, October 11, 2017, it was noticed that the NEC Presiding Officer, Joseph Karlon, was carrying a presidential ballot box on a bike, unaccompanied by a Police Officer or anyone else. When confronted and interviewed, the Presiding Officer stated that the ballot box was left behind. (vi) At voting Precinct #30121, Polling Place #3, Paynesville Community School, Montserrado County, the Presiding Officer, Moses Cooper, forwarded report to the Collation Center at SKD Stadium, that the Liberty Party Representative Candidate, Kwisi Johnson, received no vote. When questioned at Collation Center, he stated that the Record of Count from the Polling Place was missing. When the ballots were recounted, the LP candidate in fact had 28 votes, and not zero, as reported by the Presiding Officer. (vii) At the Collation Center, at SKD Stadium, it was also observed that in Precinct #30171, Polling Place 3, District 12, Montserrado County, Liberty Party, Charles W. Brumskine obtained 205 votes. Regrettably, the

Presiding Officer elected to cancel same and allotted 26 votes. (viii) In Margibi County, Dwazon, District #1, Voting Precinct #24105, Polling Place #4, the Presidential Record of the Count shows that there were 2550, as "Total of unused, spoiled and discarded ballot papers," although there should not have been more than 550 ballots at any Polling Place. (ix) In Cinta Township, Margibi County, between the hours of 9:00 p.m. and 10:00 p.m., it was observed that an NEC pick-up was parked on the side of the road, and the occupants thereof had opened a ballot box, and when an alarm was raised by a resident of the Township, the vehicle with the occupants fled the scene, inadvertently dropping the top/cover of the ballot box. (x) In Bong County, Electoral District #4, Shankpalli 1, Voting Precinct #06102, Polling Place #1, the number of the ballot papers taken from the ballot box was 177, but candidate Robert Womba got 246. (xi) Yah Golden, a witness of Pt Appellant, testified that on Election Day she went to the Polling Center that morning. After going from Polling Place to Polling Place in an attempt to vote without success, she noticed that the NEC_worker had a copy book, from which they were calling people to vote. Then she inquired of Mammie Doyen Moore, the ES (Election Supervisor). The ES asked her to pay L\$150.00 to get enrolled in the copy book. After she paid the money, the ES told a young man to put her name in the copy book. It was only then that she was allowed to vote. (xii) Jurah Sanoë testified that on Saturday morning, October 14, 2017, while sitting in his yard in Jacob Town, Somalia Drive, near the Word of Faith, some kids brought him the top/cover of a ballot box that had been left there by some unscrupulous NEC worker, who had broken into a ballot box on Election Day or thereafter. All of these testimonies remained unrefuted by the Defendant.

3. 1st Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, held that, "All would agree that a transposing error, which was corrected and did not impact any candidate's vote does not constitute fraud." The holding of the BOC is against the weight of the legal principle "...that if the process is flawed, no matter how good may have been the intention, especially if it departs from the prescribed manner or mandate of the law, it could have the propensity to impact negatively and severely, not just a single individual but, as in the instant case ..." the entire nation. The BOC also committed a reversible error when in its Final Ruling, it failed to acknowledge the admissions made by the NEC witnesses as to challenges, difficulties, being overwhelmed, lack of qualified staff, all of which resulted into gross irregularities, as complained of by the Appellants.

4. 1st Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, held that, "As to Appellants' allegation that ballot papers were discovered buried in Grand Gedeh county and turned over to a police officer, witness Lige testified that same were "Know Your Candidate" posters that were altered and used in the process, and that the LNP in Grand Gedeh investigated this matter and turned the said "Know Your Candidates" posters to the NEC. The record shows that Appellants did not rebut this

testimony." 1st Appellants submit that during the cross-examination of witness Lighe, Counsel for 1st Appellant sought to impeach the credibility of the witness, and thereby rebut his testimony, by showing that the "Know Your Candidates" posters that the witness had presented to the hearing were not the marked ballots that were found buried in Grand Gedeh. Counsel for 1st Appellant put for the following question: "By permission of this Hearing, I will like to show you photograph of the ballots that were found in Grand Gedeh County and ask you were these the same documents that you brought here today?" Instead of allowing the witness to answer the question, as the hearing at the NEC should have been fact-finding, the Defendant's Counsel objected to the question on the ground that the "Document not pleaded, introducing extrinsic matter, and asked merely to entrap the witness." The Hearing Officer sustained the objection on the ground that "the document was not pleaded." [Page 32 of the Minutes—Liberty Party cross examination of Defendant First Witness/Lami Lighe] Another question put forth by Counsel of 1st Appellants was, "Mr. Witness, I am glad you testified to the document, that means your lawyer can't object to it any more. You have said that that photo represents know your own candidate. This exhibit has been marked by the investigation, as know your own candidate. I also give you this ballot paper, and ask you sir to look on the reverse, the back side, of the ballot paper, and tell me what mark you see there?" The witness answered, "There is a red lining." Next question: "On the know your candidate ballot paper, is there any mark on the back of it? Answer: It is plain white, not mark. Next question: Now I give you two photos showing the ballot paper from Grand Gedeh County, tell me whether you see the red mark on the back and the green mark on the back representing presidential and representative ballots. Take a good look sir. The Hearing Officer sustained the objection of the Defendant's Counsel on the grounds of, "vague and indistinct, argumentative, asked merely to entrap the witness, not the best evidence, irrelevant and immaterial, call for conclusion. [Page 33 of the Minutes—Liberty Party cross examination of Defendant First Witness/Lami Lighe] Thus, preventing the witness from being cross-examined, and his credibility impeached, as to the allegation that the marked ballots found in Grand Gedeh were "Know Your Candidates" posters, and not ballots. This was against the weight of the law, which provides that, "Except as otherwise provided by law, a witness may be cross-examined as to all matters touching the cause or likely to discredit him."

5. 1st Appellants say and aver that the Board of Commissioners (BOC) committed a reversible_error when the BOC, in its Final Ruling, held that, "As to Appellants' allegation that ballot papers were discovered buried in Grand Gedeh county and turned over to a police officer, witness Lighe testified that same were "Know Your Candidate" posters that were altered and used in the process, and that the LNP in Grand Gedeh investigated this matter and turned the said "Know Your Candidates" posters to the NEC. The record shows that Appellants did not rebut this testimony."

1st Appellants submit that the holding of the Final Ruling of the BOC negates a holding of the Supreme Court of Liberia, which states that, "We are taken aback, firstly, at the apparent misunderstanding by the Board of Commissioners of the issues presented and, secondly, by its reliance on legal technicalities in deciding whether in fact in the counting and reporting of the ballots casts violated the law or whether the totality of the facts presented pointed to such violation. In that connection, we must emphasize that the National Elections Commission is an administrative agency, not a court. As an administrative agency, its role in the investigative process is primarily fact-finding, not legal technicalities."

Other Issues

1. Although 1st Appellants pleaded and two of its witnesses, Musa H. Bility and Ben. Sanvee, testified as to the violation of the Constitution and Elections Law of Liberia, which substantially and effectively deprived voters of their constitutional right to vote, and that voters were not similarly afforded equal opportunity and equal protection, as guaranteed under the Constitution and laws of Liberia, the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, failed to address the salient issue of the violation of the constitutional right to vote, as well as equal opportunity and equal protection under the law.

2. 1st Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, failed to take into consideration the violation of the Constitutional and legal rights of the many voters, who were not allowed to vote because their names were not found on the Final Registration Roll. On page 8 of the Hearing Officer Ruling, the Hearing Officer conceded that, "The two witnesses of the Defendant testified to difficulties and challenges faced by the Defendant during the conduct of the October 10, 2017 elections. The witnesses informed the Hearing Officer that polling staff could not identify voters in the Final Registration Roll even though the voters were registered and had their particulars in the roll."

3. 1st Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, held that, "WHEREFORE AND IN VIEW OF THE FOREGOING, Appellants' appeal is hereby denied. The Hearing Officer's final ruling in these proceedings is hereby confirmed and affirmed," without taking into consideration or even referencing the holding of the Hearing Officer, which reads thus: "WHEREFORE AND IN VIEW OF ALL I HAVE SAID ABOVE, the National Elections Commission is mandated to take the necessary steps to correct all what they alluded to as difficulties and challenges before any future election." Here are some of the "difficulties and challenges" referred to by the Hearing Officer, which were presented by the 1st Appellants during the hearing, and which the BOC failed to consider: (i) In Margibi County, Precinct #24180, Polling Place #1, Liberty Party Poll Watcher noticed that around 6:30 p.m. after polling had closed, and the ballot box had been sealed, a group of persons came from the rear of the building. Surprisingly, the seals on the

closed ballot box were broken by the Presiding Officer, and those individuals were allowed to vote. (ii) In Bongaplay, District #4, Nimba County, the NEC had only three polling places, when there should have been four. The voters who were being deprived of their constitutional right to vote, took matters into their own hands, and disrupted the voting. (iii) In Lofa County, Precinct #21128, a Liberty Party Poll Watcher was tied, beaten, and bruised by a Police Officer Jefferson Togbah on orders of the Presiding Officer, because he had continuously raised issues of counting irregularities. (iv) Two young men, who do not appear to be NEC officials, but in any case, unaccompanied by a Police Officer, were photographed, wading in a body of water with sealed ballot boxes on their heads. (v) Individuals, whether they are NEC officials or not, in a canoe carrying ballot boxes, were unaccompanied by a Police Officer, as shown in a photo. (vi) In District #4, Klein Town, Polling Center #09085, Polling Place #1 in Grand Bassa County, ballots were cast in a tub, instead of a sealed ballot box. The Presiding Officer, Mary Yarkpawolo, admitted that a sealed ballot box was not used, but claimed that what she used was an unsealed "Polling kit" and not a tub. She claimed that a ballot box is not "sensitive material." (vii) In District #4, Kennedy Town, Polling Precinct 09039, Polling Place #2 in Grand Bassa County, ballots were cast in a carton box, instead of a sealed ballot box. The Presiding Officer, Patrick K. Ninwillay, admitted that a sealed ballot box was not used, but claims that what he used was an unsealed "Polling kit." (ix) In District #13, Montserrado County, voters cast their votes in a box that was not a sealed ballot box. But what is of greater significance is that the box was open while voters cast their votes, as shown by photos of the box. (x) The Women's Situation Room (a non-partisan and neutral based forum organized pursuant to UNSCR 1325), issued a statement on October 16, 2017, which read, "However, reports from our observers across the country as well as data received from the public via the 1010 short code in our Call Centres pointed to some deficiencies on polling day. As at yesterday Sunday, 15th October, 2017 our two Call Centres received a total of 1086 incident reports. 784 of these incidents were NEC related while 302 were security related. ... The NEC related calls were on issues of identification of voters polling places (voters who could not identify where they supposed to vote), NEC changing precinct locations thereby confusing voters with large number of invalid votes ..., many of the polling precincts were in schools which were inaccessible to the physically challenged and the elderly, the late arrival of ballot boxes and voting materials in some" (xi) Although the NEC quarantined 14 ballot boxes, meaning that the ballots of many voters have not yet been counted, the NEC announced the final results of the Elections, and was ready to proceed with the runoff.

4. 1st Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, held that, "WHEREFORE AND IN VIEW OF THE FOREGOING, Appellants' appeal is hereby denied. The Hearing Officer's final ruling in these proceedings is hereby confirmed and affirmed," giving the plethora of evidence in support of the claims of the Appellants that, the elections

were characterized by gross irregularities and fraud, which undermined the integrity of the elections and deprived thousands of Liberians of their constitutional right to vote. The violation of the Constitution and laws of Liberia, and the pervasiveness of the fraud and gross irregularities throughout the electoral process warrant a rerun of the Elections.

5. 1st Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, dismissed the Appellants' case, although the specific allegations of violation of the Constitution and Elections Law of Liberia, the Massive Fraud, and Gross Irregularities, effectively remained unrefuted by the Appellee. 1st Appellants submit that the October 10 elections did not pass the minimum standards required for free, fair, and transparent elections.

WHEREFORE and in view of the foregoing, 1st Appellants hereby tender this, as their Bill of Exceptions, for your approval so that your adverse Final Ruling will be reviewed by the Supreme Court of the Republic of Liberia, and reversed.”

As noted earlier, the second appellants, in persons of Joseph Nyumah Boakai and Emmanuel N. Yaquay, also noted exceptions to the ruling of the Board of Commissioners' ruling and announced an appeal to the Supreme Court. Consistent with that announcement of an appeal to the Supreme Court, the second appellants, on November 27, 2017 presented to the Board of Commissioners of the NEC their bill of exceptions for approval of the Board, and thereafter, on November 28, 2017, following approval of the said instrument by the Members of the Board of Commissioners of the NEC, filed same with the Clerk of the Supreme Court. We quote the said fifty-count bill of exceptions as follows, to wit:

AND NOW COME APPELLANTS /CO-COMPLAINANTS/INTERVENORS in the above entitled proceeding and having excepted to the Final Ruling of the Board of Commissioners of the National Elections ("NEC Board") rendered on November 23, 2017 and announced an Appeal to the Supreme Court of Liberia, hereby tender this Bill of Exceptions for the approval of the NEC Board enable APPELLANTS/CO-COMPLAINANTS/INTERVENORS perfect their appeal and for the Supreme Court to assume jurisdiction over the matter and review and reverse said Final Ruling, as follows:

1. That after oral arguments November 23, 2017, the NEC Board recessed the proceeding for approximately three (3) hours, returned and rendered its Final Ruling, at the end of which it stated, "... Accordingly, we hold that the Hearing Officer did not err, and 1st and 2nd Appellants' request for a rerun of the October 10, 2017 elections is hereby denied

AND IN VIEW OF THE FOREGOING, Appellants' appeal is hereby denied. The Hearing Officer's final ruling in these proceedings is hereby confirmed and affirmed. AND IT IS HEREBY SO ORDERED.". To this Final Ruling, Appellants excepted and announced an appeal to the Supreme Court, as is provided by Elections Law and the Constitution.

2. That the entire Final Ruling of the NEC Board ignored the cogent evidence and controlling law adduced by Appellants/Intervenors at the hearing, unrebutted and not discredited by the Appellee. Therefore, Appellants/Intervenors except and file this Bill of Exceptions.

3. That the evidence adduced by Appellants/intervenors show that Appellee violated the Constitution and Elections Law by denying the right to vote to thousands of Liberian citizens eligible to vote pursuant to Art. 77(b) of the Constitution and Section 3.1 of the Elections Law. And yet in the NEC Board's Final Ruling the NEC Board ignored that evidence and the controlling law. For which Appellants/intervenors except.

4. That the evidence adduced by Appellants/Intervenors, which shows that Appellee violated the rights of thousands and thousands of Liberians to vote on October 10, 2017 are: (1) the names of thousands and thousands of registered voters were not found on the Final Registration Roll (proved by corroborated, yet unrebutted, oral testimonies of witnesses, video recording, and 182 voter registration cards which were not punctured as should have been done had the owners of those voter registration cards voted). The Chief Dispute Hearing Officer ("CDHO") denied Appellants/Intervenors' application to admit the voter registration cards into evidence, to which Appellants/Intervenors excepted. In his Final Ruling, the CDHO ignored that evidence; and to which Appellants/Intervenors again excepted. But nowhere in the NEC Board's Final Ruling was this exception addressed. And for this reason, Appellants/Intervenors except.

5. That Section 3.6 of the Elections Law provides that the voter registration roll for each registration center shall be opened for

public inspection at the office of the Magistrate of Elections and copy of each roll may be kept at such places as Appellee may designate for public inspection. Appellants/Intervenors adduced evidence that Appellee did not comply with this requirement of law; and yet in his Final Ruling the CDHO did not reflect the consequences of this non-compliance by Appellee. To which Appellants/Intervenors excepted.

6. Further to Count Five (5) above, Appellants/Intervenors' interpretation of the clause, "...copy of each roll may be kept at such places as Appellee may designate for public inspection" is that the voter registration roll (or at least the portion relevant to each voting precinct) should be kept at the registration centers and voting precincts (polling places) for inspection by the public. Appellants/Intervenors' interpretation is supported by Appellee's own Voter Registration Regulations of August 12, 2016 (Art. 22.1 & 22.2), which provides that Appellee shall certify the FRR and print one copy for each polling place. Yet the NEC Board ruled that only the Provisional Registration Roll ("PRR") is required to be published at each registration center, but that the Final Registration Roll ("FRR") is not required to be published to be published at each polling place. And to which ruling of the NEC Board Appellants/Intervenors' except.

7. That also further to Count (Five) above, Appellee's failure to publish the FRR at each pooling place (at least that portion of the FRR related to the registration center relating to the polling place) in violation of its own regulation, is one of the irregularities, which Appellants/Intervenors' complained of and which undermined the fairness, freeness and transparency of the October 10, 2017 elections. And for this reasons, Appellants/Intervenors' except to the NEC Board's ruling on this issue.

8. That Appellants/Intervenors produced witnesses (including former commissioners of the National Elections Commission) before the CDHO, who testified that for all previous elections, the voter registration roll for each precinct was published at the polling place where the voters registered. This evidence was not rebutted or contradicted before the CDHO, and therefore deemed admitted pursuant to *Davis v. Davis*, 19 LLR 150. Yet the CDHO did not pass on the impact of this evidence on the case before him. Appellants excepted and submitted this exception for review by the NEC Board but the NEC Board ignored the evidence and the impact it had on the fairness, freeness and transparency of the October 10, 2017 elections. And for which, Appellants/Intervenors except.

9. That Appellants/Intervenors adduced evidence before the CDHO, conceded by Appellee pursuant to *Davis v. Davis*, 19 LLR 150 because the specie of evidence was not denied or rebutted, that Appellee did not publish the FRR as required by Section 3.6 of the Elections Law and Appellee's own Voter Registration Regulations of August 12, 2016, Art. 22.4. All that Appellee did insofar as the Final Registration Roll ("FRR") is concerned is to place the FRR in electronic form on a flash drive and gave it to seven (7) political parties on September 23, 2017. And this is what Appellee considered to be publication of the

FRR when according to this provisions of Appellee's own Voter Registration Regulations the making of electronic copies of the FRR was intended for the FRR to be available at Appellee's headquarters for the sole use by electoral stakeholders upon request. In his Final Ruling, the CDHO did not pass on this material issue and the effect of this violation of the Elections Law and Appellee's own Voter Registration Regulation by Appellee on the October 10, 2017 elections. To which Appellants/Intervenors then and there excepted, argued the issue before the NEC Board; but the NEC Board did not pass on the issue. But the NEC Board did not pass on the issue and the impact this evidence or fact had on the fairness, freeness and transparency of the October 10, 2017 elections. And for which reasons, Appellants/Intervenors except.

10. That Appellants/Intervenors say that Section 3.19 of the Elections Law and Appellee's own regulation (Voter Registration Regulations of August 12, 2016, Art. 22.5) provide that the FRR shall not be altered within the thirty days immediately before an election (including Election Day — October 10, 2017). This means that Appellee should have published the FRR long before that thirty-day period commenced; but Appellee hand-delivered the FRR on a flash drive (not published for inspection by the public) to seven (7) political parties barely three (3) weeks before the October 10, 2017 elections. In his Final Ruling, the CDHO did not cover the effect of this undue delay in publishing the FRR and the manner in which the FRR was delivered to political parties on flash drives as substitute for publication for inspection by the public. And so Appellants/Intervenors excepted and argued this issue before the NEC Board; but the NEC Board did not pass on this issue and the effect it had on the fairness, freeness and transparency of the October 10, 2017 elections. And for this reason, Appellants/Intervenors except.

11. That Appellants/Intervenors adduced evidence, and pursuant to *Davis v. Davis*, 19 LLR 150, was conceded by Appellee because it was never rebutted or denied, that Appellee's own Voter Registration Regulations of August 12, 2016 (Art. 22.1 & 22.2) provide that Appellee shall certify the FRR and print one copy for each polling place. Appellants/Intervenors also adduced evidence before the CDHO, unrebutted and not-discredited, that Appellee failed to comply with this requirement of its own regulations and yet in his Final Ruling the CDHO did not pass on this material issue and the effect of this non-compliance on the October 10, 2017 elections. To which Appellants/Intervenors excepted and argued this issue before the NEC Board; but the NEC Board erroneously ruled that it was not required that the FRR be published at each polling place. And to which ruling of the NEC Board, Appellants/Intervenors except.

12. That Appellants/Intervenors say that the Elections Law, Section 3.11(2)(a) requires that at least two (2) days before Election Day (October 10, 2017) the portion of the FRR for each registration center should have been available at each registration center for inspection and comparison with Appellee's master FRR. Appellants/Intervenors

produced evidence, which was not rebutted and therefore admitted pursuant to *Davis v. Davis*, 19 LLR 150, which proved that Appellee did not comply with this requirement of law. In his Final Ruling, the CDHO did not pass on this material issue and the effect of this non-compliance on the October 10, 2017 elections. To which Appellants excepted and argued the issue before the NEC Board; but the NEC Board erroneously ruled that Appellee was not required to published the FRR at each polling place. And to which ruling Appellants/Intervenors except.

13. That Appellants/Intervenors submit that Section 3.19 of the Elections Law and Appellee's own regulation (Voter Registration Regulations of August 12, 2016, Art. 22.4) provide that no voter registration roll, especially the FRR, may be altered within the thirty (30) days period immediately prior to an election. Appellants produced evidence that Appellee altered the FRR when Appellee unilaterally allowed persons with voter registration cards, legally or illegally obtained, but whose names were not on the FRR at the polling places where they appeared to vote, and allowed them to vote by merely having their names placed on a piece of paper, which pieces of paper were referred throughout the hearing before the CDHO as addenda to the FRR. The effect of this violation of law and Appellee's own regulation on the October 10, 2017 elections was never passed upon by the CDHO in his Final Ruling; and to which Appellants excepted and argued the issue before the NEC Board.

14. In ruling on the exception narrated in Count Thirteen (13) above, the NEC Board ruled that customarily addenda to the FRR is allowed for security officers and NEC polling staff, who may have registered at a registration center different from where he/she is assigned, to allow them to vote for the presidency only and so this was not an alteration to the FRR. However, the evidence adduced before the CDHO did not refer to security officers and NEC polling officer; the evidence adduced is that generally persons (not only security officers and NEC polling staff) with voter registration cards, legally or illegally obtained, were allowed to vote when their names could not be found on the FRR at the polling places where they appeared to vote. And this was in violation of the Elections Law and Appellee's own regulations. Because the NEC Board's ruling is erroneous and contrary to law and its regulations, Appellants/Intervenors except.

15. Appellants/Intervenors adduced evidence at the hearing to the effect that Appellee discriminated between those with voter registration cards whose names were not on the FRR at the polling places where they registered to vote. That is, thousands were allowed to vote by having their names placed on a paper (addenda to the FRR) and others were flatly denied the right to vote because their names were not on the FRR. Appellants adduced both oral testimonies and video recording (introduced into evidence) in support of this discrimination and yet in his Final Ruling, the CDHO did not pass on this material evidence which is a blatant violation of the Elections Law; the CDHO failed to have marked the 182 ballots

which the witness testified to; the CDHO also failed to pass on the effect of this evidence on the October 10, 2017 elections. And to which Appellants/Intervenor excepted and argued the issue before the NEC Board.

16. That further to the exception described in Count Fifteen (15) above, the NEC Board totally ignored the oral testimony, video recording and 182 ballots presented before the CDHO and the effect which this evidence had on the fairness, freeness and transparency of the October 10, 2017 elections, And for this reason, Appellants/Intervenors except.

17. Appellants/Intervenors adduced evidence that contrary to law Appellee adopted a regulation (Regulations on Polling and Counting of May 6, 2016, Art. 3.2), which provides that if the name of a person with a voter registration card could not be found on the FRR where he appears to vote, the presiding officer shall permit the person to vote if the person's voter registration card is verified through the SMS verification system managed by Appellee. In his Final Ruling, the CDHO did not pass on the effectiveness of this regulation, as it is contrary to law, and how this SMS verification system impacted the October 10, 2017 elections. And so Appellants excepted and argued the issue before the NEC Board; but the NEC Board totally ignore this specie for evidence and the effect it had on the fairness, freeness and transparency of the October 10, 2017 elections. And so Appellants/Intervenors except.

18. Appellants adduced evidence that after voter registration, which covered a period of several months, was completed, pursuant to Appellee's own Voter Registration Regulations of August 12, 2016, Arts. 9.1 & 9.2, Appellee printed a Provisional Registration Roll (PRR) separately for each registration center, exhibited it for public inspection and announced that 1.1 million persons had registered to vote. However when hundreds of registrants protested on the first day of the exhibition that their names could not be found on the PRR, Appellee closed down the exhibition on the second day when the exhibition should have been for a full week. The next time that Appellee informed the public about voter registration is a week after the abrupt closure of the exhibition and this time Appellee announced that 2.2 million persons had registered to vote. This information being statistically and practically impossible leads any reasonable person to the belief that the number of registered voters had been inflated to allow for fraudulent voting and ballot stuffing. The CDHO did not comment on this material evidence in his Final Ruling. And so Appellants/Intervenors except and argued the issue before the NEC Board; but, like the CDHO, the NEC Board totally ignored this specie of evidence and the effect it had on the fairness, freeness and transparency of the October 10, 2011 elections. And so Appellants/Intervenors except.

19. Appellants/Intervenors adduced evidence that after the protests from hundreds of registrants that their names were not on the PRR, Appellee's Chairman, issued a Press Statement that anyone with a

voter registration card, whether obtained legally or illegally, would be allowed to vote. In a Press Statement issued by one of Appellee's Commissioners, Hon. Jonathan Weedor, Hon. Weedor said that allowing persons with voter registration cards, whose name are not on the FRR to vote, was a recipe for frauds during the October 10, 2017 elections. But the CDHO completely ignored this evidence and did not pass on Appellants' submission that SMS verification system, which was intended to be used to validate persons with voter registration cards, obtained legally or illegally but who were not on the FRR, but which SMS verification system had never been used before by Appellee, undermined the integrity and credibility of the October 10, 2017 elections, constituted a recipe for fraud, and was useless to the majority of the voters who are illiterate, did not have cell phones to be able to use it, and even if some of them had cell phone, did not have telephone connectivity in their areas to use it. The CDHO did not address these material issues in his Final Ruling. And for which, Appellants excepted and argued the issue before the NEC Board; but the NEC Board ignored this specie of evidence and the effect it had on the fairness, freeness and transparency of the October 10, 2017 elections. And so Appellants/Intervenors except

20. Appellants/Intervenors adduced evidence before the CDHO that the SMS verification system managed by Appellee constituted the creation of a second FRR, separate and different from the FRR given to the seven (7) political parties in September 2017. This evidence was verified by the fact that a comparison by an expert computer engineer and data management specialist of the FRR given to the seven (7) political parties in September 2017 with the FRR brought to the hearing in November 2017 by Appellee under subpoena showed that the FRR which Appellee brought to the hearing under subpoena had thousands and thousands more registrants than the FRR given to political parties in September 2017. In his Final Ruling, the CDHO never passed on this material issue. And so Appellants except and argued this issue before the NEC Board.

21. Appellants/Intervenors say that the NEC Board relied on the self-serving, uncorroborated testimony of Appellee's Executive Director that the FRR information on the flash drive given to Appellants/Intervenors in September 2017 was corrupted and some was lost when Appellants/Intervenors' data management expert and computer engineer downloaded it for comparison with the flash drive that Appellee produced under subpoena in November 2017 at the hearing. Appellants/Intervenors submit that to prove that FRR information on flash drive given by Appellee to Appellants/Intervenors had been lost or corrupted, Appellee should have had brought to the hearing the same flash drive that was given to one of the other seven (7) political parties and the comparison conducted with what Appellants/Intervenors presented at the hearing in November 2017, not the self-serving testimony of Appellee's Executive Director. And to this, Appellants/Intervenors except.

22. Appellants/Intervenors also adduced evidence before the CDHO, unrebutted and uncontroverted, that the SMS verification system managed by Appellee was flawed and constituted a recipe for frauds. Additional demonstrative evidence was adduced by an expert computer engineer and data management specialist that when a voter registration number is inputted into Appellee's SMS verification system, two or more names appear when only one name should have appeared for that registration number. In his Final Ruling, the CDHO never passed on this material issue and how it impacted the October 10, 2017 elections. And so Appellants excepted and argued the issue before the NEC Board; but the NEC Board totally ignore this evidence and the impact it had on the fairness, freeness and transparency of the October 10, 2017 elections. And so Appellants/Intervenors except.

23. Appellants/Intervenors further adduced evidence, unrebutted and uncontroverted, that for the 2005 and 2011 elections, Appellee did not use an SMS verification system to verify whether a person holding a voter registration card but whose name was not on the FRR could be allowed to vote. The evidence adduced also proved that the use of Appellee's SMS verification system was a recipe for frauds just as Commissioner Jonathan Weedor predicted in his Press Statement. In his Final Ruling, the CDHO did not pass on this material evidence. And so Appellants excepted and presented the issue before the NEC Board; but the NEC Board failed to pass on this evidence and the effect it had on the fairness, freeness and transparency of the October 10, 2017 elections. And so Appellants/Intervenors except.

24. Appellants/Intervenors also further adduced evidence, unrebutted and uncontroverted, to support its submission that the placement of the FRR on a flash drive, as substitute for printing copies of the FRR and placing it at the offices of election magistrates and voter registration centers, in violation of Appellee's own regulation (Voter Registration Regulations of May 16, 2016, Arts. 22.1, 22.2 & 22.3) denied those members of the Liberian public who registered to vote the right to determine whether their names were on the FRR and also to determine whether a name on the FRR should not have been there because such person was ineligible to vote or did not come from that community. The CDHO did not pass on this evidence and the effect it had on the October 10, 2017 elections. And so Appellants/Intervenors excepted and argued the issue before the NEC Board; but again the NEC Board did not pass on this issue and the effect this evidence had on the fairness, freeness and transparency of the October 10, 2017 elections.

25. Appellants/Intervenors adduced evidence that hundreds and hundreds of citizens had two or more voter registration cards and that they voted multiple times in violation of Appellee's own Voter Registration Regulations of August 12, 2016, Arts. 21.1, 21.2 & 24.1(c). One of such persons is a Sokolo Raymond, who had three (3) voter registration cards nos. 723183727 (in handwriting), 723304577 (printed) and 723183727 (printed). In his Final Ruling, the

CDHO did not pass on this material evidence and the effect it had on the October 10, 2017 elections even though pursuant to the Executive Law (Administrative Procedure Act), Section 82.5(1), that specie of evidence relevant to proving fraud should have been admitted and the probative value determined. And so Appellants/Intervenors excepted and argued the evidence before the Board; but again, the NEC Board never passed on this issue and the effect the evidence had on the fairness, freeness and transparency of the October 10, 2017 elections. And so Appellants/Intervenors except.

26. Appellants adduced evidence that ballots on which voters had already voted were found buried in Glay Town, Grand Gedeh County and video recording of the discovery went viral on the internet. The oral testimonies of two of the persons who dug out the ballots were never rebutted or discredited; photographs of the buried ballots were exhibited; video recording of the buried ballots during the time that they were pulled out of the ground and thereafter was demonstrated. Yet, in his Final Ruling, the CDHO never passed on this material evidence and the impact it had on the October 10, 2017 elections. So Appellants excepted and argued the issue before the NEC Board.

27. That further to Count Twenty-Six (26) above, Appellants/Intervenors say that the NEC Board relied on the self-serving statement of Appellee's Executive Director that the buried ballots were "Know-Your-Candidates" postals, not ballots; but the NEC ignored the unrebutted testimony of the two witnesses that these were used ballots, which means they had been used to vote. The NEC Board also ignored the photocopies of the pictures and the video recording which showed that these buried ballots had the red stripes on the reverse side for presidential ballots and the green stripes of the reverse side for representatives ballots, while the "Know-Your Candidate" ballots had only plain white reverse side. This cogent evidence was completely ignored by the NEC Board in favor of the self-serving oral testimony of Appellee's Executive Director. And so Appellants/Intervenors except.

28. Appellants/Intervenors adduced evidence at the hearing to the effect that the FRR is the sine qua non for free, fair and transparent elections and that the FRR was materially flawed, intentionally or unintentionally, and that no free, fair and transparent elections could have been held on October 10, 2017 with such materially flawed FRR. To corroborate this evidence, Appellants applied for subpoenas duce tecum and subpoenas ad testificandum for the presiding officer worksheets and the addenda created all over the country; and even though the CDHO has the power to subpoena witnesses and records pursuant to Article 2.9(w) of the Elections Laws, Section 82.4(a) of the Executive Law (the Administrative Procedure Act) and Appellee's own regulations (Elections Hearing Procedures of May 6, 2016, Art. 8.2), the CDHO denied the application for these subpoenas, much to Appellants' prejudice. And to which erroneous ruling, Appellants

excepted; and the NEC Board confirmed the CDHO's ruling. And Appellants/Intervenors except.

29. That further to Count Twenty-Nine (29) above, had the presiding officer's worksheets and the addenda from all over the country been produced as in keeping with the subpoena requested for, proof of how pervasive and fraught that the October 10, 2017 elections was marred by gross irregularities and massive frauds would have been evidently established and CDHO's denial of the subpoena, affirmed by the NEC Board, was merely intended to ensure that this proof, in the possession of Appellee, would not be brought to light. And so Appellants/Intervenors except.

30. Appellants/Intervenors introduced evidence that the ballots for the October 10, 2017 elections did not carry serial numbers; however, serial numbers were placed on the stubs of the ballots. When asked on the cross examination the purpose for restricting the serial numbers to the ballot stubs, Appellee's Executive Director falsely testified that to do that would have exposed to the presiding officer how each person voted. This testimony was debunked by two witnesses for Appellants, who formerly served on the National Elections Commission; but this evidence which conclusively contradicted Appellee's Executive Officer, was never passed upon by the CDHO in his Final Ruling. And so Appellants excepted and argued the issue before the NEC Board.

31. Appellants/Intervenors say that on additional cross examination of Appellee's Executive Director on whether the serial numbers were intended for security purposes - to check on which ballots and how many ballots were used at a polling place for voting after voting had been completed - he testified that the serial number was for only administrative purposes. But when crossed as to what was the meaning of "administrative purposes", the question was objected to and the CDHO sustained the objection. And to that ruling, Appellants excepted and argued the issue before the NEC Board.

32. Also as to the absence of serial numbers on the ballots, Appellee's Executive Director falsely testified that serial numbers had never been placed on ballots for any election in Liberia and that was the international best practice. On the day of argument (Monday, Nov. 20, 2017), Appellants/Intervenors submitted to the CDHO a ballot from the 1997 elections (newly discovered evidence), which had the serial number on it and the CDHO was asked, that the hearing being administrative in nature (fact-finding) and not judicial, to take administrative notice that, contrary to Appellee's Executive Director that serial numbers had never been placed on ballots for voting in Liberia, ballots for the 1997 elections had serial numbers on them. The CDHO ignored this request and refused to take administrative notice of the evidence which conclusively contradicted Appellee's Executive Director and the CDHO never passed on this evidence and its effect on the October 10, 2017 elections. The refusal of the CDHO to take administrative notice of the historical fact that ballots for the 1997 elections had serial

numbers on the ballot stubs which correspond to serial number on the ballots themselves and to acknowledge and accept into evidence one of such ballots from the 1997 elections during the oral argument was an error, as Appellee's own regulation (Elections Hearing Procedures of May 6, 2016, Art. 7.3) provide that legal technicalities obtaining in courts of law shall not strictly apply to its hearings. And for which error, Appellants excepted and argued the matter before the NEC Board.

33. That in passing on the exceptions raised in Counts Thirty (30), Thirty-One (31) and Thirty-Two (32) above, the NEC Board relied on Section 4.7 of the Elections Law, which provides that ballots may be in the form as prescribed by Appellee and that ballot papers shall include the names of candidates in alphabetical order of surname, the name of the party and the selected emblems and that different color ballots may be provided for elections to different elective offices. Appellants/Intervenors did not say that this law meant that Appellee could depart from international best practice and standards, which require the ballot stubs and ballots should carry corresponding serial numbers. 26 Am Jurd 2d Elections, Section 223. This law, which was the same law when the 1997 election was conducted, did not intend that Appellee depart from the practice for the 1997 election, which provided for corresponding serial number on both the ballot paper and stubs. And for this reason, Appellants/Intervenors excepted.

34. That serial number on each ballot stub, which corresponds to serial number on the ballot itself, is for security purpose — to ensure that only ballots with the specific serial numbers assigned to a polling place would be found in the ballot boxes assigned to those polling places. That is why the presiding officer's worksheets have blank spaces thereon to show the starting and ending serial numbers for ballots assigned to each polling place. Had the CDHO granted the subpoena for the presiding officer's worksheets, the evidence would have revealed that none of these worksheets recorded the serial numbers for the ballots and that this made it possible for ballot boxes to be stuffed with excess ballots. And for these reasons, Appellants/Intervenors excepted.

35. That even though pursuant to Appellee's own regulations (Voter Registration Regulations of August 12, 2016, Art. 25.1(a), it is an election offense for a person without authority to print or distribute voter registration cards and possess other election material, the CDHO denied Appellants/Intervenors' request for subpoena and failed to exercise his power pursuant to Appellee's own regulations (Elections Hearing Regulations of May 6, 2016, Art. 8.2) to subpoena the records of the investigation of Mr. Amos Seibu of President Sirleaf's offices who had been found with machines for production of voter registration cards and found with other election materials in his possession. This evidence would have been used by Appellants to prove fraud. And so Appellants excepted and submitted the issue to the NEC Board; but the NEC Board first confirmed the denial of the

subpoena and also did not pass on the effect of this evidence on the fairness, freeness and transparency of the October 10, 2017 elections. And so Appellants/Intervenors except.

36. That the CDHO refused to issue subpoena pursuant to Section 2.9(w) of the Elections Law, Appellee's own regulations (Elections Hearing Regulations of May 6, 2016, Art. 8.2) for the records of the investigation of Appellee's presiding officer for Electoral District No. 3, Nimba County, who was being investigated by Appellee for possession of ballots which were marked before Election Day on October 10, 2017 - an election offense. The evidence from this investigation would have substantiated Appellants/Intervenors' claim that massive frauds were committed during the course of the October 10, 2017 elections. And to which, Appellants excepted; but the NEC Board refused to pass on this issue and the effect this evidence had on the fairness, freeness and transparency of the October 10, 2017 elections.

37. That the CDHO refused to issue subpoena pursuant to Section 2.9(w) of the Elections Law, and Appellee's own regulations (Elections Hearing Regulations of May 6, 2016, Art. 8.2) for the Presiding Officers Worksheets which would have shown how many voters were recorded to have cast their ballots at each polling station; and addenda produced at the various polling stations nationwide on October 10, 2017, which would have shown how many persons voted illegally on October 10, 2017, without their names being on the FRR. The evidence from these documents would have substantiated Appellants/Intervenors' claim that massive frauds were committed during the course of the October 10, 2017 elections. And to which, Appellants excepted and argued matter before the NEC Board; but the NEC Board did not pass on the issue and the effect it had on the fairness, freeness and transparency of the October 10, 2017 elections.

38. That Appellants/Intervenors urged the CDHO during the argument that Appellee's failure to rebut or contradict relevant species of evidence adduced at the trial by Appellants/Intervenors constituted admission of the facts which the evidence sought to prove. More specifically, Appellee did not produce any evidence to contradict or rebut Appellants/Intervenors' evidence that: (i)The FRR given on flash drives given to the political parties in September 2017 was significantly and substantially different from the flash drive submitted by Appellee's Executive Director under subpoena in November 2017 to the hearing, identified and marked, which confirms that the FRR was altered by Appellee in contravention of the Elections Law; (ii)That the flash driver given to the political parties has 79 Polling Stations in ten (10) precincts missing amounting to some 35, 750 voters; (iii) That in 75 precincts at least one polling station is missing; (iv) That the same Voters ID was assigned to more than one voter and in some cases to up to 5 voters;(v)That several voters existed on the roll multiple times, and gave the names of these voters and their ID numbers;(vi) That the

FRR was not published in hard copies (on paper) as required by law;(vii) That the FRR was not posted at the offices of election magistrates or at polling precincts for inspection;(viii) that the FRR was not in sync with the data base posted at Appellee's website, which was accessible by SMS, and which in essence means that Appellee maintained two Voters Registration Rolls for the October 2017 Elections, in violation of the law. These species of evidence were never rebutted and under Liberian law and practice, where evidence by the adversary is not rebutted, it is deemed admitted. *Neufville v. Killen*, 31 LLR 587; *Davis v. Davis*, 19 LLR 150. The CDHO never applied this basic principle of law in his Final Ruling. And for which, Appellants excepted and argued the issues before the NEC Board; but the NEC Board totally ignored the issues and how the evidence affected the fairness, freeness and transparency of the October 10, 2017 elections.

39. In his Final Ruling, the CDHO said that in its defense Appellee alluded to "difficulties and challenges" and the CDHO mandated Appellee to "take the necessary steps to correct what they(Appellee) referred to as difficulties and challenges before any future election". As the CDHO did not particularize what these "difficulties and challenges" were, the mandate of his Final Ruling is vague, ambiguous, uncertain and incapable of enforcement. And so Appellants/Intervenors except and argued this issue to the NEC Board; but the NEC Board did not pass on whether the CDHO's Final Ruling is vague, ambiguous, uncertain and capable of being enforced. And so Appellants/Intervenors except.

40. Also in his Final Ruling, the CDHO did not say exactly what Appellee should do "to correct" the "difficulties and challenges" faced by Appellee in its administration of the October 10, 2017 elections. So, the mandate of the CDHO's Final Ruling is vague, ambiguous, uncertain and incapable of enforcement. Therefore, Appellants/Intervenors excepted and argued the issue before the NEC Board; but the NEC Board did not pass on whether the CDHO's Final Ruling is vague, ambiguous, uncertain and capable of being enforced. And so Appellants/Intervenors except.

41. Appellants/Intervenors says the CDHO's Final Ruling, which mandates the Appellee to "take the necessary steps to correct what they (Appellee)referred to as difficulties and challenges before any future election "does not include a system or process by which it can be determined whether Appellee has complied with such vague, ambiguous, uncertain and unenforceable mandate before any future election is held and did not impose a time frame within which these necessary corrective steps should be taken. Nothing is said in the CDHO's Final Ruling how contestants in the run-off ordered by the CDHO will get the satisfaction that Appellee has complied with this mandate. And so Appellants/Intervenors excepted and presented the issue to the NEC Board but the NEC Board did not pass on the issue. And so Appellants/Intervenors except.

42. Appellants/Intervenors say that Section 82.5(2) of the Executive Law (the Administrative Procedure Act) clearly prescribes the form as to final determination and orders of an administrative agency with quasi-judicial powers. Liberian law (National Iron Ore Co. v. Gibson et al., 26 LLR 365; The Management of the National Iron Ore Co. v. Dennis et al. and The Board of General Appeals, Ministry of Labor, Youth & Sports) is very clear that in order to be enforceable a judgment (final determination), even of an administrative agency, must be certain and definite. For the ambiguity, uncertainty and indefiniteness of the CDHO's Final Ruling, Appellants excepted and presented the issue to the NEC Board but the NEC Board did not pass on the issue. And so Appellants/Intervenors except.

43. Appellants/Intervenors say that the CDHO's Final Ruling is founded on the legal principle of "actual fraud" and the CDHO ignored the legal principle of "constructive fraud" or "legal fraud"; the type of evidence required for both classifications of fraud is different (37 Am Jur 2d, Fraud and Deceit, Sections 3 &4). Given the relationship between Appellants and Appellee in the October 10, 2017 elections, Appellee's violations of the Constitution and Elections Law and its own regulations to the disadvantage of Appellants/Intervenors constitute "constructive fraud", otherwise called "legal fraud". It was therefore sufficient for Appellants/Intervenors to show that Appellee violated laws and its own regulations much to the prejudice of Appellants/Intervenors and constructive/legal fraud is thereby established. For applying the principle of actual fraud only to the facts and circumstances of Appellants/Intervenors' complaint, Appellants/Intervenors say that the CDHO committed a reversible error. And so Appellants excepted and presented the issue to the NEC Board but the NEC Board did not pass on the issue. And so Appellants/Intervenors except.

44. Appellants/Intervenors say that constructive/legal fraud requires neither actual dishonesty nor intent to deceive, being a breach of legal or equitable duty, which irrespective of the moral guilt of the wrongdoer, the law declares fraudulent because of its tendency to deceive others, to injure public interests, or to violate public or private confidence. 37 Am. Jur 2d., Fraud and Deceit, Section 4. Appellants/Intervenors say that had this principle of law on constructive/legal fraud been applied by the CDHO to the evidence adduced by Appellants/Intervenors, the CDHO would have properly ruled that massive pervasive frauds were committed throughout the October 10, 2017 elections, which undermined the credibility and integrity of the entire elections. For the CDHO's failure to so rule, Appellants/Intervenors excepted and presented the issue before the NEC Board but the NEC Board did not pass on the issue. And so Appellants/Intervenors except.

45. That Appellants Intervenors say that given the relationship between them and Appellee during the October 10, 2017 elections, Appellants/Intervenors are required to prove constructive/legal fraud, not necessarily actual fraud. The burden of proof for actual

fraud is different from the burden of proof for constructive fraud; and what the CDHO did in his Final Ruling, was to use the burden of proof for actual fraud, which was not in itself done well, to be the same burden of proof for constructive/legal fraud and based his Final Ruling on that assumption. So Appellants excepted and presented the issue to the NEC Board but the NEC Board did not pass on the issue. And so Appellants/Intervenors except.

46. Appellants/Intervenors says that in addition to constructive/legal fraud its evidence at the hearing fully justifies the finding that actual frauds were committed before and during the course of the October 10, 2017 elections. Appellants/Intervenors say that Liberian law is that one of the underlying elements of fraud is the conduct of a person that operates prejudicially on the right of others and was so intended. 37 Am Jur. 2d., *Fraud and Deceit*, Section 1. Appellee's violations of the Constitution, Elections Law and its own regulations for the conduct of the October 10, 2017 elections operated prejudicially on Appellants/Intervenors' rights. Ample evidence was shown that used ballots were buried, hundreds of voters had more than one voter registration card and voted multiple times, thousands and thousands of voters were not allowed to vote. So the CDHO should have ruled that actual frauds had been committed during the course of the October 10, 2017 elections. Instead the CDHO ruled and the NEC Board confirmed that no frauds or irregularities were committed or occurred. From this ruling, Appellants/Intervenors except.

47. Appellants/Intervenors say that the CDHO erred when he implied in his Final Ruling that the frauds complained of by Appellants/Intervenors must be proved by only direct and positive evidence. Liberian law provides that fraud may be inferred from circumstances. *Kontar v. Mouwaffak*, 17 LLR 446. Liberian law also provides that fraud may be established not only directly but by inconclusive circumstances which by their weight and number jointly considered may constitute sufficient proof. *Sirleaf v. Azar and Saba*, 21 LLR 221. Had the CDHO and the NEC Board applied these principles of Liberian law to the evidence adduced by Appellants/Intervenors at the hearing, the CDHO and the NEC Board would have properly concluded that the October 10, 2017 elections was fraught with massive frauds and gross irregularities; but the CDHO did not and the NEC Board confirmed his Final Ruling. And for that reason, Appellants/Intervenors except.

48. That Appellants/Intervenors say that in denying Appellant/Intervenors' prayer for annulment of the October 10, 2017 elections and confirming Appellee's determination that a run-off election between Joseph Nyumah Boakai, Unity Party's presidential candidate, and George Manneh Weah, presidential candidate for the Coalition for Democratic Change (CDC), should be conducted, at the minimum the CDHO and the NEC Board should have also ruled that prior to conducting any run-off election, Appellee should comply strictly with the Constitution, the Elections Laws and all Appellee's regulations regarding the FRR, which is a sine qua non for any free,

fair and transparent election. The CDHO should have ruled at a minimum that the Appellee should conduct a verification of the FRR, remove all duplicate voters, multiple registrations, and illegal voters, and to sanitize the process so that the elections are conducted in accordance with law. The CDHO's and the NEC Board's failure to include these minimum requirement or standards as a pre-condition for a run-off election, was an error and Appellants/Intervenors except.

49. Appellants/Intervenors also say that considering that Appellee conceded that it experienced "difficulties" and "challenges" before and during the conduct of the October 10, 2017 elections, in ordering a run-off election instead of a re-run of the elections, the CDHO should have included a mechanism through which Appellants/Intervenors, on the one hand, and Senator George Manneh Weah and his Coalition for Democratic Change, would be satisfied that the "corrective measures" mandated to be carried out by Appellee had been satisfactorily done before a run-off election is held. For the CDHO's failure to include such mechanism in his Final Ruling, without which none of the candidates would be satisfied that the "corrective measures" mandated by the CDHO had taken place, Appellants/Intervenors excepted and presented the issue to the NEC Board but the NEC Board failed and neglected to pass on it. And so Appellants/Intervenors except.

50. Appellants/Intervenors, jointly with Appellants/Complainants (Charles Walker Brumskine and Harrison S. Karnwea, Presidential and Vice Presidential Candidates of the Liberty Party, all Representative Candidates of the Liberty Party and the Liberty Party itself), filed a Motion to Recuse before the NEC Board in which they requested that Cllr. Jerome Korkoya, NEC Chairman, had made several prejudicial statements against Appellants/Intervenors and Appellants/Complainants to the media criticizing them for pursuing this legal course of action, stating that the legal course of action was "politically motivated" and had no merits. The press statements were made while the matter was pending before the CDHO; and Appellants/Intervenors, having determined that the NEC Chairman had prejudged them and the matter and was therefore unfit to give them a fair and impartial hearing, joined in the Motion for the NEC Chairman to recuse himself from hearing the matter and from all matters in which these parties are involved with respect to the October 10, 2017 elections. A hearing was held and the NEC Board denied the Motion to Recuse; and Appellants/Intervenors except.

WHEREFORE AND IN VIEW OF THE FOREGOING, Appellants/Intervenors respectfully submit this Bill of Exceptions for the NEC Board's approval as the step provided by law for perfection of their appeal to the Supreme Court for review of the NEC Board's Final Ruling.

RESPECTFULLY SUBMITTED

Joseph Nyumah Boakai and James
Emmanuel Nuquay, Presidential and

Vice Presidential Candidates at the
October 10, 2017 Elections and the
Unity Party, all of Liberia.”

The Supreme Court, upon receipt of the bills of exceptions filed by the first appellants and while awaiting the bill of exceptions of the second appellants, and as is common with elections proceedings before the Court, ordered the NEC to forward to the Court within twenty-four (24) hours the entire records of the proceedings held before the NEC, and directed that the parties file their respective briefs within forty-eight (48) hours of receipt of the bill of exceptions by the Court. In compliance with the mentioned directive, the records were forwarded to the Court by the NEC and the parties to the appeal proceedings filed their respective briefs.

On Friday, December 1, 2017, the Supreme Court, upon assignment duly made and served, met to commence hearing on the appeal. Upon the call of the appeal case for hearing, counsel for Appellee NEC informed the Court that the appellee had filed a motion to dismiss the appeal of first appellants Charles Walker Brumskine and Harrison Karnwea on ground that the said appellants had failed to comply with the provisions of the elections appeal law. The first appellants acknowledged that they had received copy of the motion filed by the appellee and that they had filed returns thereto. Accordingly, the Court, with the agreement of the parties, and as is the procedure followed by the Court in such matters, given the urgency attached to the disposition thereof, ordered that the motion and the main appeal action be consolidated, heard and disposed of in a single Opinion and judgment. Hence, and because the Court will address the motion to dismiss the appeal, we herein quote the said motion, as follows, to wit:

“AND NOW COMES Movant/Defendant/Appellee in the above entitled proceedings, and most respectfully moves your Honours and this Honourable Court to dismiss 1st complainants/respondents/appellants' appeal, and for legal and factual reasons, showeth the following, to wit:

1. Movant says and submits that on the 23rd day of October, 2017, 1st complainants/respondents/appellants filed a complaint with the National Elections Commission, alleging violation of the Constitution and Elections Law, fraudulent acts and gross irregularities during the October 10, 2017 Elections. Movant respectfully requests Court to take judicial notice of the records in these proceedings, especially the fact that the 1st Complainants are Charles Walker Brumskine and Harrison

5. Karnwea, Presidential and Vice Presidential Candidates at the October 10, 2017 Elections, all Representative Candidates of Liberty Party.

2. Movant says and submits that 1st complainants' complaint was filed by Counsellors James G. Innis, Jr. and Powo C. Hilton, who were later joined by Counsellors Kuku Dorbor and N. Oswald Tweh. The Court is respectfully requested to take judicial notice of the records in these proceedings.

3. Movant says and submits that our Supreme Court has held "it is presumed, in the absence of challenge, that a lawyer will not make representations as to his authority to act for a client unless such authority actually exists". *Saleeby Brothers, Inc. vs. Barclay Export Finance Company, Ltd.*, 20 LLR 520 (1971).

4. Further to count three (3) herein above, movant says in the absence of any challenge to the contrary, it is recognized that the lawyers named above represent the 1st complainants, including "all Representative Candidates of Liberty Party".

5. Further to count four (4) herein above, movant says and submits, assuming without admitting, that "all Representative Candidates of Liberty Party" were wrongly joined or misjoined, they remain parties until they are dropped by motion of any party or on the initiative of the Court. Civil Procedure Law, 1 LCL Rev., tit. 1, section 5.56 (1973).

6. Further to count five (5) herein above, movant says from the inception of these proceedings, beginning with the complaint, up to the announcement of appeal from the final ruling/judgment of the Board of Commissioners to this Honorable Court, Co-complainants: "all Representative Candidates of Liberty Party" have always been parties; and, therefore, announced an appeal to this Honorable Court by and thru their counsel.

7. Further to count six (6) herein above, movant says Section 6.8 of the New Elections Law of 1986 requires contestants to "enter into recognizance for payment of costs incurred on the appeal in the following amounts: "(a) with respect to the election of a President or Vice President, the Liberian dollar equivalent of five thousand United States Dollars (US\$5,000.00)" and "(c) with respect to the election of a member of the House of Representatives, the Liberian dollar equivalent of Two Thousand United States dollars (US\$2,000.00)".

8. Further to count seven (7) herein above, Movant says that there are sixty-seven (67) Representative Candidates of Liberty Party, amounting to US\$134,000 (United States Dollars One Hundred Thirty-Four Thousand); notwithstanding, only United States Dollars Five Thousand (US\$5,000.00) has been paid by 1st complainants as cost with respect to the appeal by Charles Walker Brumskine and Harrison S. Karnwea, Presidential and Vice Presidential Candidates at the October 2017 Elections.

9. Further to count eight (8) herein above, movant says no amount has been paid for "all Representative Candidates of Liberty Party". Like an appeal bond, the amount paid is grossly inadequate to cover

the appeal; thus the entire recognizance, as to 1st appellants, is a fit and proper subject for dismissal.

WHEREFORE, and in view of the foregoing, movant prays Your Honors and this Honorable Court to dismiss and deny complainants' appeal; and grant unto Defendant/Movant/Appellee any other and further relief as Your Honors may deem just, legal and equitable in the premises.

Respectfully submitted,
The National Elections Commission
MOVANT/DEFENDANT/APPELLEE

The first appellants, having been served copy of the motion to dismiss and cognizant that the jurisdiction of the Supreme Court over the appeal taken by said appellants was being challenged, filed resistance to the motion. We quote the said resistance as follows:

CO-RESPONDENTS BRUMSKINE & KARNWEA'S RESISTANCE

Co-respondents in the above entitled proceedings deny the legal and factual sufficiency of the motion to dismiss appeal for the following reasons to wit:

1. Because Section 6.7 of the Elections Law provides that "Within seven (7) days after the Commission's determination of a contest, any contestant appealing from the determination shall file his bill of exceptions to the office of the Clerk of the Supreme Court (emphasis supplied) ..." Co-Respondents submit that the law does not say every contestant at the level of the Commission; it says any contestant who decides to appeal.
2. Also because Section 6.8 of the Elections Law provides that, "The contestant shall enter into a recognizance for payment of costs incurred on the appeal (emphasis supplied) ..." Co-respondents submit that it does not require an astute jurist to realize from the interplay of Sections 6.7 and 6.8 of the Elections Law that in order for a person to be required to enter into a recognizance, such person must be an appellant before this Court—a party to the Bill of Exceptions.
3. And also because it is the bill of exceptions that gives the Honorable Supreme jurisdiction over a contestant. Stated differently, if a contestant is not a party to the bill of exceptions—does not to file a bill of exceptions—the Supreme Court may not exercise jurisdiction over such person.
4. And also because the caption of the bill of exceptions evidences that the 1st appellants are only "Charles Walker Brumskine and Harrison S. Karnwea, presidential and vice presidential candidates." Copy of the first page of the bill of exceptions, as filed with the Clerk of this Honorable Court, and served upon the Commission, is hereto attached, as Co-Respondents Exhibit "A."
5. And also because the entire motion, counts 1 thru 9, is without any legal basis, and should, therefore, be denied and dismissed.

6. And also because as to the entire motion, co-respondents deny all and singular the allegations contained in the motion, which have not been made a subject of special traverse herein.

WHEREFORE AND IN VIEW OF THE FOREGOING, the Co-Respondents pray that the Motion be denied and dismissed, denying Movant the relief sought; and, that Your Honors will grant unto the Co-Respondents such other and further reliefs, as are provided in law and equity, with cost against the Movant.

Respectfully submitted

The above named co-respondents.

Dated this 1st day of December, A.D. 2017.”

The foregoing constitutes the background to the appeal before the Supreme Court; and from the bills of exceptions filed by the parties appellants and the briefs filed by the parties, as well as the oral arguments made before the Court in support of the positions and contentions of the parties, we have culled the following issues which we believe warrant the consideration of the Court.

1. Whether from the circumstances presented in the case, the motion to dismiss the appeal of the first appellants on ground of non-compliance with the elections appeal law and which would thereby deprive this Court of jurisdiction over the appeal with respect to the said appellants, has legal merits to warrant the dismissal of the appeal?
2. Whether or not the Chairman of the NEC should have recused himself from sitting on the appeal taken before the Board of Commissioners of the NEC on account of statement attributed to him in connection to the complaint filed before the NEC by the appellants and at the time being investigated by the Chief Dispute Hearing Officer, and did his refusal to recuse himself from the hearing impact the decision of the Board?
3. Whether the appellants established fraud and irregularities of the magnitude as to render the October 10, 2017 Elections a legal nullity and thus to warrant a rerun of the said elections?
4. Whether the NEC committed acts against the Constitution and Elections Law and Regulations governing the conduct of elections promulgated by the NEC, and were the violations sufficiently substantial to warrant the cancellation of the October 10, 2017 elections?

We shall deal with the issues in the order of their presentment, not only because that course taken addresses the issues in a logical and chronological

sequence, but also because firstly issue (1) speaks to the jurisdiction of this Court, without which it cannot entertain the appeal, and secondly issue (2) goes to the validity of the ruling of the Board of Commissioners of the NEC which may obviate the need for the Court to delve into the substance of the complaints filed by the first and second appellants.

The first issue, relative to the legal sufficiency of the grounds set forth for the dismissal of the appeal, goes to the core of the jurisdiction of the Supreme Court to decide upon the merits of the appeal taken to it by the first appellants from the ruling of the Board of Commissioners denying the appeal taken to that Body from the ruling of the Chief Dispute Hearing Officer. This Court has opined in a countless number of Opinions that one of the highest prerogatives of a court is to determine firstly if it has jurisdiction to decide an issue or a matter brought before it for adjudication. *The Management of Paynesville City Corporation v. The Aggrieved Workers of Paynesville City Corporation*, Supreme Court Opinion, march term 2013; *K. Rasamny Brothers v. Burnette*, 21 LLR 271, 277 (1972). Indeed, the court, as a matter of law, must decide if it has jurisdiction to dwell into a matter even if the parties do not raise the issue. *Scanship v. Flomo*, 41 LLR 181, 188 (2002). In fact, the Supreme Court has elucidated in manifold Opinions whether it has the requisite jurisdiction to probe into a matter even if the parties agree that it should do so, and, finding that it lacks the legal jurisdiction, it must refuse to entertain notwithstanding the agreement of the parties. *Lands Mines and Energy v. Liberty Gold*, Supreme Court Opinion, March Term, 2013; *Mauric v. Diggs*, 2 LLR 3, 4 (1908). This is because where a court is lacking the jurisdictional prerogatives, any judgment entered by it is a legal nullity and unenforceable. *Firestone Plantations Corporation v. Kollie*, 41 LLR 63 (2002); *Farhat v. Gehkee*, 30 LLR 66 (1998). It is therefore beholding of this Court, in the face of the challenge to its jurisdiction, contained in the motion to dismiss, to determine if it does possess the required legal jurisdiction to entertain the instant appeal currently before it; for while this Court has decided numerously that it is not compelled to pass upon every issue placed before it, the issue of the jurisdiction of this Court, which if not addressed could place the decision and judgment of this Court into the realm of questionable legality, is not one that can be ignored.

The motion to dismiss the appeal asserts that at the onset of the case, the first complaining parties consisted of Charles Walker Brumskine and Harrison S. Karnwea, presidential and vice presidential candidates of the Liberty Party, all representative candidates of the Liberty Party, and the Liberty Party itself; that throughout the proceedings, those parties were so represented as parties to the action; that they continued to remain parties to the suit even at the level of the Supreme Court in the prohibition petition proceedings determined by the Supreme Court; that they remained parties to the proceedings before the CDHO and appealed from his ruling to the Board of Commissioners of the NEC; that all participated in those appeal proceedings before the Board; that all of them took exceptions to the adverse ruling made against them by the Board and announced an appeal to the Supreme Court for review; and that as such all of the first complainants were supposed to be before the Supreme Court. They assert that under the law, all of the first complainants remained parties to the suit or proceedings unless and until they are dropped, either by motion of a party or on the initiative of the court, none of which they say occurred in the instant case. As such, the first complainants remained as a unit in the proceedings.

The appellee makes the argument that notwithstanding all of the foregoing showing that the first appellants were still a unit and that none of them had been dropped, either at the instance of a party or by the NEC; and since the recognizance which the Elections Law requires each of them to pay to the NEC, a mandatory appeal obligation which none of them could escape from, was done for only Charles Walker Brumskine and Harrison S. Karnwea, the presidential and vice presidential candidates on the Liberty Party ticket, in the amount of US\$5,000.00 and no other persons. The appellee claimed that since there were sixty-seven (67) Representative candidates fielded by the Liberty Party and all of them were purported to be part of the first complainants, each should have deposited a personal recognizance with the NEC of US\$2,000.00, making a total of US\$134,000.00, instead of UN\$5,000.00 that was deposited. The NEC therefore regarded the recognizance entered into between it and the first appellants to be defective and therefore a ground for the dismissal of the appeal of the first appellants.

The Election Law, in respect of the claim of the appellee and which the appellee states forms the basis for its motion to dismiss the appeal of the first appellants states:

“The contestant shall enter into a recognizance for payment of costs incurred on the appeal in the following amount:

(a) With respect to election of a president or vice president, the Liberian dollar equivalent of five thousand United States dollars (\$US\$5,000.00)...

(c) With respect to election of a member of the House of Representatives, the Liberian dollar equivalent of two thousand United States dollars (US\$2,000.00).”

The appellee’s contention is that since the complaint was filed and pursued by not just the presidential and vice presidential candidates of the Liberty Party but also by all candidates of the Liberty Party seeking election to the House of Representatives, amounts should also have been included in the recognizance to cover all of the persons purporting to be complainants and who sought election to the House of Representatives. The records certified to us by the NEC does verify that the complaint filed against the elections results and the manner in which the elections were conducted does state that all candidates seeking election to the House of Representatives on the ticket were part of the complainants and that they were represented by a single set of lawyers. The records also show that following the final ruling of the Board of Commissioners of the NEC, all of the first complainants, including the candidates who sought election to the House of Representatives on the ticket of the Liberty Party, through their counsels, did note exceptions to the ruling and announced an appeal to the Supreme Court. Or put another way, the records do not indicate that the notation of exceptions to the final ruling of the Board of Commissioners of the NEC and the announcement of the appeal therefrom were limited to only Charles Walker Brumskine and Harrison S. Karnwea, and that hence the candidates who sought election to the House of Representative on the ticket of the Liberty Party were excluded from the appeal. Hence, it follows that if they had pursued their appeal, they would have been required and obligated, firstly, to file with the NEC as a condition to perfection of the appeal a bill of exceptions or at

least a bill of exceptions that included their names, duly approved by the members of the Board of Commissioners of the NEC, and secondly to enter into recognizance with the NEC. See The New Elections Law, Rev. Code 11:6.7, 6.8.

However, the records do not indicate that any of those steps were taken by the candidates who sought election to the House of Representative on the ticket of the Liberty Party. The bill of exceptions presented to the NEC on November 27, 2017 and approved by the members of the Board of Commissioners of the NEC and filed with the Supreme Court does not carry the names or any indications that the persons who sought election to the House of Representatives on the ticket of the Liberty Party were part of that appealing document. The logical and legal conclusion is that although their counsel had excepted to the ruling of the Board of Commissioners of the NEC and had announced an appeal therefrom, they had determined to abandon the appeal. This Court has said on multiple occasions that where a party announces an appeal from a decision of a lower tribunal and does not take the necessary steps to perfect the appeal, especially as in the instant case, the first step towards pursuit of the appeal, the appeal is deemed to have been abandoned and the tribunal that had entered the ruling or judgment is clothed with the authority and at the instance of the adversary party, to dismiss the appeal announced by the appealing party. *Abdullah M. Housseine and Zeinah Housseine v. Abraham Kaydea*, Supreme Court Opinion, March Term, 2012. In such a case, said final ruling or judgment is enforceable against the party abandoning the appeal. *Blamo et al. v. Catholic Relief Services*, Supreme Court Opinion, October Term, 2006. We hold therefore that the Board of Commissioners was the proper forum before whom a motion should or could have been filed for the dismissal of the appeal by the candidates seeking election to the House of Representative on the ticket of the Liberty Party on account of their failure to present to the Board of Commissioners a bill of exceptions for the approval of the members of the Board. *Firestone Plantations Company v. Kollie*, 42 LLR 159 (2004) Hence, this Court is the wrong and inappropriate forum before whom the motion to dismiss the appeal could or should have been filed. This Court has made identical pronouncements in other cases which, although not related to elections matters, operate under the same governing principles when it

comes to appeals. *Chris Toe v. FrontPage Africa*, Supreme Court Opinion, March Term, 2013.

We must emphasize also that where any party to a case in the lower court and against whom a decision or judgment has been entered, along with other parties to the case, and an appeal has been announced from said decision or judgment, any of the parties who announced the appeal is not obligated to file a motion to be dropped from the appeal before they can abandon the appeal. Nor is the court required, on its own accord, to decide that a party who has not met the statutory requirements for pursuing the appeal taken should be dropped from the action. That authority, under the circumstances of the instant case, is not vested in the court or any other judicial or quasi-judicial tribunal. The law clearly sets out the course to be pursued, especially by the appellee, should the appellant not pursue or perfect the appeal announced and taken. As stated above, the only action that the lower tribunal can take, at the instance of the winning party or the appellee, is to dismiss the appeal taken by the losing party. That is what the NEC should have done; that is what the NEC failed to do; and as indicated above, the Supreme Court cannot be used as a substitute for the NEC or the Board of Commissioners in whom the responsibility to dismiss the appeal is vested under the circumstances stated herein the instant case.

Moreover, the fact that others of the complainants determined not to pursue the appeal announced by them, does not prevent other parties to the action pursuing the appeal if they feel that they would like to have the Supreme Court make a final pronouncement on the manner in which the elections were conducted and the results announced by the NEC, particularly as to them. To hold, as advocated by the NEC, would not only be a travesty of justice but would set a bad precedent that any party to any action cannot appeal therefrom unless he or she carries the burden of the other parties to the action. That is not how the law operates and it certain is not the way the law was intended to operate.

In the case before us, the bill of exceptions presented to the Board of Commissioners of the NEC challenging the decision and ruling of the NEC, was submitted only by Charles Walker Brumskine and Harrison S. Karnwea. This Court concludes that by the said action, it was only those two persons that decided to further challenge the actions, decisions and judgment of the NEC. It was therefore

only those persons that were required under Section 6.8 of the Elections Law to enter into a recognizance with the NEC. We note that a party cannot enter into a recognizance with the NEC unless and until the party has submitted a bill of exceptions to the NEC and obtained the approval of the Members of the Board of Commissioners of the NEC. It is only after that submission and approval that a party is then required to enter into a recognizance with the NEC. This process is not different from the regular appeal process under the Civil Procedure Law. Under that Law, a party who challenges or disagrees with the judgment of the lower court and who desires to appeal the matter to the Supreme Court must first, after excepting to the judgment and announcing an appeal therefrom, file with the lower court a bill of exceptions duly approved by the trial judge. It is only upon the fulfilment of that condition that the party may then move to the next step of the appeal, which is the filing of an appeal bond, the equivalent to the recognizance stipulated in the Elections Law. As the records before us show that that first step was undertaken by Charles Walker Brumskine and Harrison S. Karnwea who were part of the first complainants, and was done within the time period stipulated by law, they therefore qualified to move to the next step, not in concert with the other first complainants who had decided to abandon their appeal, but in their own right and for the protection of their own interest, allowed under both the Constitution and statutory laws of this nation.

As such, the only obligation they had was to enter into a recognizance with the NEC as to them and to them only. The recognizance required of them, in such case, under Section 6.8(a) of the Elections Law, was only five thousand United States dollars (US\$5,000.00) or its Liberian equivalent. The records show that that amount was deposited into the account of the NEC. The NEC does not dispute that fact; it only argues that the amount should have also included the required payment for the candidates seeking election to the House of Representatives on the ticket of the Liberty---an issues which we have already addressed. We hold, therefore, that as the recognizance entered into between the first appellants herein, Charles Walker Brumskine and Harrison S. Karnwea and the NEC, was adequate and sufficient, and in full compliance with the law, the appeal taken by them to the Supreme Court was not just rendered thereby cognizable before the Supreme Court but vested in the Court the full legal jurisdiction to hear and

dispose of the appeal. Accordingly, this Court denies the motion to dismiss the appeal filed by the appellee, rejects all of the claims made therein, and sustains the resistance filed thereto.

This brings us to the second issue presented by the parties, whether the Chairman of the NEC should have recused himself from sitting on the hearing of the appeal taken to the Board of Commissioners, over which he presides as Chairman. Our answer to this issue is yes. We hold the strong and considered view, from our review of the statements made by the Chairman in press conferences held by him, that he could not play the role of an impartial arbiter in respect of the appeal taken to the Board of Commissioners from the ruling of the Chief Dispute Hearing Officer. We note that following those statements, which neither the NEC nor the Board of Commissioners of the NEC has denied, the first and second appellants filed before the Board of Commissioners a motion praying that the Chairman recuses himself from sitting on the hearing of the case as he had already expressed a negative view not only castigating the appellants for filing the complaint against the NEC but also characterizing the allegations made by the appellants in their complaints as lies and politically motivated. They asserted that under the circumstances, the Chairman, having already expressed his bias towards the complaint and the complainants, could not be expected to display impartiality at the appeal hearing. Specifically, they alleged that the Chairman had accused them of fabrication in an attempt to discredit the Commission; of taking "know your candidates" test ballot forms, which were given to everybody, including political parties, cutting them and because they carried pictures, they placed them on social media stating that the ballot papers were found buried in a septic tank; that the Commission stands by the elections results announced by it; that the allegations of the parties that the elections were marred by electoral fraud were politically motivated; that they were engaging in delay tactics; that the pronouncements and allegations were intended to influence or mislead the public; and that the allegations made by them were lies.

The Board, in its ruling on the motion to recuse, did not refute the allegations of the appellants as being untrue---allegations which were carried in most of the newspaper media of the country, and many of which quoted the Chairman's statements rather than just paraphrasing them; rather, the Board

sought to justify the statements made by the Chairman and to seek to make the case that the statements had legal backing in the Opinions of the Supreme Court. The Board ruled, for example, that nowhere in the Chairman's statements were there any specific mention of Liberty Party or that he commented on any evidence presented by the Liberty Party at the hearing before the Chief Dispute Hearing Officer; that some of the issues mentioned by the Chairman did not form part of the issues presented by the Liberty Party at the hearing before the CDHO; that at the time of the statement, Unity Party was not part of the proceedings and hence could not have been affected by the statements; that the Chairman was only performing his role in regard to the presumed validity of the elections results and refute false social media reports regarding the presence of alleged ballot papers in certain parts of the country; that the Chairman's statement regarding the Commission standing by the elections results announced by NEC is supported by the Supreme Court's Opinion in the Kuku Dorbor et al. v. NEC case, decided in 2012, wherein it said the Supreme Court decided, and the Board considered, that the Chairman's statement on the validity of the elections was appropriate until such validity is removed by a preponderance of evidence before a competent judicial forum, and therefore same cannot be the basis for recusal. The Board referenced a Supreme Court Opinion where it said the Court held that a judge is not disqualified because of unfavourable comments or an expression of opinion as to the guilt of a defendant, and hence same cannot be the basis for recusal of the judge. Moreover, the Board ruled that the appellants who were now questioning the impartiality of the Chairman had previously availed themselves of several matters in which the Chairman had presided and in which the Board had ruled in favor of the appellants, including allowing the second appellants to intervene in the case filed by the first appellants, in which the Chairman had affixed his signature to the rulings.

Let us state very clearly, in respect to the rationale provided by the Board for its denial of the motion for refusal of the Chairman of the Board that the fact that he did not make specific mention of the Liberty Party or of the Unity Party or of any specific reference to the case can be no justification for the statements made by him when conclusions can be drawn that he indeed has reference to the allegations set forth by the parties to or in the case. When the Chairman of the

Board of Commissioners and of the Commission, before whom an appeal from any adverse ruling of a subordinate officer is to be taken, decides that he can make comments characterizing the allegations made by parties in respect of the conduct of the elections as “lies” and “politically motivated” even as the complaint relating to the said allegations is being heard by a subordinate officer, the statements cannot find justification in our jurisprudence, and certainly not under the umbrella that the statements were made by him were in the performance of his role as head of the Commission.

There is certainly a point where the Chairman has to dissect and dissociate the two major roles he is charged with playing as Chairman of the NEC. In the one role, he is the ultimate administrative head of the Commission. In the other role, he is the head of the Legal Appeal Body [the Board of Commissioners] to whom all appeals from the decisions made on electoral challenges by subordinate persons of the Commission are taken. Indeed, the NEC structure is almost unique to the jurisprudence of this nation, for not only is the Chairman of the NEC but he is also the Chairman of the Board of Commissioners of the NEC, and by law “presides over all meetings and hearings of election contests”. Elections Law, Rev. Code 11:2.10. The Chairman is also indispensable to the constitution of a quorum of the Board. Section 2.4 of the Elections Law states: “Any five (5) members, including the Chairman, shall constitute a quorum for the transaction of business of the Commission; they shall decide any question before it, and said decision shall be binding on the Commission.” Elections Law, Rev. Code 11:2.4.

In the role delegated to him, and especially because he sits or is expected to sit on every election appeal matter taken to the Board of Commissioners for review, the Chairman cannot and should not make any utterances which would have or give the impression that he could not impartially adjudicate the appeal taken to him. Certainly our law requires that a judge refrains from making comments which would show partiality or give the impression that he has already formed a position in respect of a matter, either before it is brought to the court over which he presides or, as in the instant case, which is already before the court. We disagree with the Board that the comments made by the Chairman were merely unfavorable to the parties to the proceedings. They were prejudicial to the parties even before they had the opportunity of appearing before the

Board. In the circumstances, when the Chairman has characterized the allegations made by the parties who are appearing before a subordinate whose salary he pays and to whom he gives directives, as “lies” and “politically motivated”, how does he believe that subordinate will rule in the matter? But more than that, how does a party to the proceedings then feel as to what the disposition of the all-powerful chairman will be when the matter comes before the Board over which he presides.

If we place the comments in the context of the Supreme Court, can the Chief Justice of the Supreme Court comment on a particular matter that is being handled by the lower court and still expect to preside over the matter with his colleagues when or if the matter is appealed to the Supreme Court for review? This Court has said repeatedly that a judge or for that matter any person who is charged with a quasi-judicial function should show strict impartiality in a matter which is before him or her or which could be appealed to him or her for review. In *re Emery S. Paye*, Supreme Court Opinion, October term, 2012; *Sasaar v. Republic*, 29 LLR 35 (1981). Thus, whatever his or her views may be on the matter, the law requires that those views not be expressed as would or could be translated into a prejudice against a party. The Chairman should therefore have refrained from any expressions or utterances on any allegations made in respect of any of the allegations made by the parties to the proceedings so that no conclusion is reached that he has already prejudged the case and that the appearance before him is nothing more than a formality to meet the procedural rather than the substantive elements of the law, which is a core embodiment of the constitutional guarantee of due process of law.

It was particularly important that the Chairman refrained from making any comments dealing with any issue, accusation or allegations made against the NEC in respect of the October 10, 2017 elections while the proceedings was still be heard by the Hearing Officer and a possible appeal could be taken to the Board. This was crucial, given the complicated set up of the electoral framework and the role of the NEC. We must note especially that the NEC does not merely regulate the conduct of the public elections in Liberia, where it promulgates regulations and makes guidelines for the conduct of elections; it actually also conducts the elections and oversees all personnel charged with carrying out the elections. But

more than that, in the event of any challenges to the elections, either as the manner in which they were conducted or as to the results announced, it is before that same Body, the NEC, rather than before an independent body, that a complaint is lodged; it is before that same Body that a decision must be made by the Body in favor or against itself. In such a situation, it is important that the Chairman gives every semblance of impartiality so that the integrity and credibility of the process and of the institution is maintained and preserved.

The Board of Commissioner was therefore in serious error in denying the motion to recuse; it should have ordered that the Chairman recuse himself from the hearing and not append his signature to the ruling made by the Board. Having him sit on the appeal defied the laws, and especially the decisional laws of Liberia as pronounced by the Supreme Court. In the case *Congress for Democratic Change v. NEC*, Supreme Court Opinion, October Term, A. D 2011, the Supreme Court in addressing similar instant of a Chairman of the NEC making remarks on a matter pending and undetermined before the NEC held as follow:

“...where elections complaints are addressed to the Commission, whether through its Chairman or other Commissioners or officers, the Chairman or other such officers cannot preempt the investigation by setting out the position of the Commission on the issue raised by the Hearing Officer has had an opportunity to hear the evidence and determine upon the magnitude or sufficiency of the allegations and the evidence, and the matter appeal to the Board. No person at the Commission whether the Chairman or other Commission or officers should indulge in conduct which could be viewed as prejudicial or which could prejudice the outcome of the investigation or obviate the need for forwarding the matter to the hearing officer for investigation. Adherence to the course and procedure we have outlined here, and which we believe should be heeded by NEC not only conforms to the law and intent of the drafters of the Constitution and New Elections Law, but ensures due process of law reference in those sacred documents.”

We affirm and re-confirm the holding of the Supreme Court and hold that while a matter is pending and undetermined before the NEC, no officer of the NEC should indulged in any conduct or make any utterance that would prejudice the investigation being conducted by the NEC.

The third issue is whether or not the appellants proved by a preponderance of the evidence that the October 10, 2017 elections were steered with irregularities in violation of the Constitution and Elections Law, and if so whether they reached the magnitude as to those elections void and to warrant a rerun. In order to answer this issue, we take recourse to the allegations levied by the first and second appellants in their respective complaints and the oral and documentary evidence produced by them in support of the allegations, on the one hand, and the NEC's responses and/or rebuttal testimonies to these allegations on the other hand.

This Court has said in a large number of Opinions that it is the law that evidence alone enables the court to pronounce with certainty the matter in dispute, and that the best evidence which the case admits of must always be produced as no evidence is sufficient which supposes the existence of better evidence. *Reynolds v. Garfuah*, 41 LLR 362, 371 (2003); *Liberia Agricultural Company (LAC) v. Associated Development Company (ADC)*, Supreme Court Opinion October Term A.D. 2012, and that no matter how logical a complaint might be stated, it cannot be taken as proof without evidence. *The Management of International Bank v. Wilfredo C. Ochoada*, Supreme Court Opinion, October Term, 2012.

The 1st appellants' basic allegations of gross irregularities were as follow:

(1) many polling centers opened late after 8:00 AM contrary to the NEC's regulation which requires that all polling places opened at 8:00 AM; that some polling places even opened at 1:30 PM, 2:30 PM and 3:00 PM; that notwithstanding these late opening times, those polling places closed at the regular closing time of 6:00PM, thereby denying many of their members right to vote, in violation of Articles 77(b) and 80(c) of the Constitution. The 1st appellants gave specific polling places where polls opened late to include: a) Joel High School, Tusa Field, District 13, Precinct # 30237, Montserrado County opened at 1:30 PM, b) Saygbeken, District 2, Sinoe County, opened after 2:30 PM. The appellants alleged that at those polling places, the voters were not given additional hours to vote to cover for their lost time; and

- (2) that the NEC changed polling places without notifying the voters of said change. They named polling precinct #6171, District #7, Fuama, Bong County was changed without required notice from Korniekawoejai to Camp America about six hours walk from the original polling precinct. They contend (a) that these changes were void of any emergency situation;
- (3) that NEC failed to maintain an accurate voter registration roll which caused many persons names not to be found on the day of voting. They named a candidate of the Liberty Party, Stanley Carter, Sinoe County, District #1 who was only allowed to vote simply because he was a contestant. They contend that many persons similarly situated were denied their right to vote.
- (4) that following the denial of many persons' right to vote, the NEC announced that any person carrying a valid voters' registration card must be allowed to vote; that this prompted the NEC's staffs to use an extra sheet (copy book) to record names on those who were not on the FRR;
- (5) that the SMS system of verification was not utilized by NEC contrary to section 3.2 of the enabling regulation on polling and counting; that whether those who were allowed to vote were legitimate voters cannot be known due to NEC's failure to utilize the SMS verification system;
- (6) that the NEC failed to use the presiding officers' worksheet which document would have indicated the starting and ending serial number of ballot making it difficult for ballot boxes to be replaced while in transit from polling places to magistrate area; that in the absence of the serial number there was no way to determine whether ballots in the boxes were those cast at a polling place, assigned and delivered to the pooling place or ballots that were surreptitiously stuffed in ballot boxes after polling had closed; that the number of ballot papers that should be in the ballot box and the number of ballot paper taken therefrom should have been copied from the Presiding Officer Worksheet and since the work sheet was not utilize the entire process is cloud with doubt.
- (7) that the ballots used during the October 10, 2017 polls do not carry a serial number; that a design of ballot papers without a serial number was a calculated means to perpetuate massive fraud; and that at almost all of the

polling places there was no queue controllers; that voters stood in the queue for hours just to realize that they were on the wrong line, a situation which frustrated them and thereby denying them their right to vote.

(8) that in Margibi County Polling Precinct #24180, Polling Place #1, polling had closed at about 6:30 PM with the ballot boxes sealed with seal number Pre-056965 and Pre-056961 but later the presiding officer broke the seal and allowed additional persons to vote; that in Bongagplay Nimba County, there were only three polling places while there should have been four; that in Lofa County precinct \$21128, a Liberty Party Poll watcher was beaten and tie simply because he raised concerns over the counting irregularities; that two young men, who do not appear to be NEC workers, unaccompanied by police officers were seen wadding in body of water with ballot boxes on their head; that individuals were carrying ballot boxes in canon without being accompanied by police officers; that in District #4, Klein Town, Polling Center # 09085, Polling place #1 in Grand Bassa County, ballots were cast in a bathing tub, instead of sealed ballot boxes, that the presiding officer, Mary Yarkpawolo admitted that sealed ballot boxes were not used but claimed to use an unsealed polling kit; that in District # 4, Kennedy Town, Polling Precinct 09039, Polling Place #2 in Grand Bassa County, ballots were cast in a carton box, instead of sealed ballot box, that the presiding officer Patrick K. Ninwillay admitted to same but had similar defense like Mary Yarkpawolo; that in District 13, Montserrado County votes were cast in an opened box and that although the NEC had quarantined 14 ballot boxes it had proceeded to announce the final results.

To substantiate these allegations of irregularities, the 1st appellants produced several witnesses, first of which was Mr. Musa H. Bility, Chief Executive Officer of the Liberty Party Campaign, who testified that polling started late at about 90% of the polling places across the country, a situation which he said frustrated people and they had to leave without voting; that there was no queue controller at most of the polling places making it difficult for voters to locate their place of voting and that this situation prompted the NEC's chairman to announce that everyone with a valid voter's registration card would be allowed to vote. The witness stated that in Nimba a presiding officer was arrested with pre-marked

ballot paper; that the NEC failed to use the presiding officer's work sheet and that there were more votes recorded in most places than the number of registered voters.

We note that although witness Bility testified to irregularities which he said occurred in ninety percent of the polling places and precincts throughout the country, his testimony fell short of mentioning the particular counties, districts, precincts or polling places constituting the ninety percent of irregularities he made mentioned of. The Court takes judicial notice that there were 2,080 number of precincts spread out across the country containing 5,390 polling places. In was important therefore that the witness should have been specific as to the precincts and polling place that were corrupted by the irregularities which he alleged occurred.

1st appellants' second witness, Mr. Benjamin Sanvee, Chairman of the Liberty Party basically recounted the testimony of the 1st witness and reiterated the allegations in the complaint to the effect that the Presiding officer's worksheet was never used; that the ballot papers were without serial numbers; that a Liberty Party Candidate in person of Mr. Kwasi Johnson of District #5, Montserrado County, was said to have gotten 0.0 vote on the record of count but after a recount at the collation center he got a 26 votes; that Amos Seiboe, employed in the office of the President at the time was arrested and caught with voting ID machine producing ID cards; that a record of count at a particular polling place showed that the CDC candidate attained 1109 votes more than fifty 50% of the total votes cast at that center; and that a particular polling place showed that 2,550 votes we recorded, more than 200% above the threshold vote that should be at a single polling place.

1st appellants' third witness testified to the change of polling place on voting day without notice to the voters. This how he stated same in his testimony in chief:

"NEC had a registration on time in Volocawhen Town and that registration when on for some weeks. I did the registration there and they extended it to the mining camp on the day before the election. I noticed, we saw the boxes been taken to camp America which was not the original NEC registration site instead of volocawhen Town they took the box at Camp America mining camp about six hours walk without notice to the community. This had hundreds of citizens

not to vote, if you take the distance into consideration most of the voters did not vote from volocawhen Town to Camp America, the distance was a major impact in terms of turn out to vote.”

1st appellants’ fourth witness Ms. Darline Clinton, a poll watcher at the Bardnerville Public School polling place #3 testified that after polling had closed and all the observers left, she went back and caught the presiding officer’s hand in the ballot box; that he broke the seal. Here is her testimony in chief:

“On that day after the counting of the ballots we all left awaiting my friends, because they were in the other room checking, it was late, while awaiting them I saw the Presiding officer putting his hands into the ballot box, so I went closer and later he went and took the sixer [scissors] from the table and broke the seal, I raised alarm and [I] said we all closed it and you are breaking it. That is what happened and the man that went for the report told me the reason for which they broke the seal was because they made mistake and put something in the ballot and I told him your supposed to call us before breaking it.”

In an apparent quest to impeach the credibility of the witness’ testimony, the following questions were asked by the appellee on the cross:

Q, Madam Witness, did anybody meet with you, whether in this room or at your party about what you were coming to say here today?

A, No

Q, Madam Witness when you noticed that the seal according to you or alleged by you was broken what did you do?

A, I said when the first seal was broken, I raised alarm, we demanded that the box was not going until they can recheck the ballot, so they decided to place a new seal on the ballot, so they gave us the new seal number, the second closing seal.

While we do not see the relevance of these questions, we should note however they do not prove or disprove the witness’ testimony. It is important nevertheless that we emphasize, as we have done before, that hearings before the NEC are not and should not be governed by the technical rules of evidence which obtain in a formal court setting.

1st appellants fifth witness, Paul Wehyee, testified to the existence of excess number of ballots above the threshold of 550 in [a polling place in] Nimba County and the arrest of a presiding officer with pre-marked ballot part. He testified as follows:

A. On October 10 our people turnout to vote and we voted, we were told by NEC at the tally center that we needed people to observe the tally and we deployed two (2) persons at the tally center, we had upper Nimba and Lower Nimba tally centers. We got report from the tally centers that showed variance in the results, some of the areas specifically three of those areas they had excess of ballot papers that was issued according to the tally sheets. One had more than 550 and the difference of 178 and the other one 294 and another one was 176 and we had over 14 of these across Nimba County ranging from District 1 to Distract # 8.

Q, Mr. Witness, beside what you stated [is] there another observation or report that you received from the field?

A, In Nimba the was fraud in Dulla, where a PO was arrested with ballot papers that was investigated and turnout to the police and in Dulla there was another instant that they did not had voting the reason been the ballot box carried there was less than the places but it was later on ratified and there was a re-run there.

Q, Mr. Witness, please identify some of the discrepancies that you reference in your testimony?

A, the number of votes Paduo Public School, precinct 33102, you have more ballots than the number of people registered.

Q. how many?

A. here you have 409 and 431 voted is the same thing with polling place #4, we have 794 voters at this polling place we have only 297 registered voters, Toden Public School, we have 211 persons that registered here to vote and then we have 844 ballot papers that were issued.

Like the other witnesses, this 5th witness testified to specific incidents of irregularities in Nimba County; he mentioned the excess of votes about the threshold of 550; the arrest of a presiding officer with pre-marked ballot papers and the shortage of ballot boxes in a particular polling place. However, as with the testimonies of some of the other witnesses, this witness testimony is lacking with respect to particularities in terms of the exact districts, precincts and polling places that the alleged irregularities occurred. Moreover, the issue of irregularities in Dulla is of no meaningful relevance because the witness acknowledged in his testimony that in Dulla the irregularities was rectified and corrected by the NEC by ordering a re-run of the election. At best, the testimony conveyed that where irregularities were noticed and brought to the attention of the NEC, some measures, even if not sufficiently adequate, were taken to correct

the problem. We should make it clear, however, that this does not necessarily lead to the conclusion that the same occurred at all of the centers.

1st appellants' sixth witness, Debora Harris, testified that she was assigned in Grand Bassa as a poll watcher for the Liberty Party and that she watched the polls at the center where she had registered; that she attempted to cast her vote earlier that day but the NEC staffs told her that as a poll watcher she should wait for the evening hours; that when the evening came she went to vote but her name could not be found at the polling place where she was assigned; that she went to the other room but only her head was on the FRR and so the NEC workers refused to allow her to cast her ballot and that she requested a complaint form to file a formal complaint but the NEC worker denied her the form to file a complaint.

1st appellants' seventh witness Victoria Koffa testified that she went to vote but her name was not on the FRR; that she visited all of the polling places at that precinct but she did not find her name; that later a gentleman came with a copy book and starting calling people names from the book to vote; that she approached him to ascertain whether her name was in the book but that he told her that neither her name nor her head was in the book; that she remained in the queue up to 8pm but could not vote as she did not find her name.

1st appellants' eighth witness Yah Golden narrated similar accounts as the 7th witness but unlike the 7th witness who did not vote as per her testimony, witness Yah Golden testified that she had to pay L\$150 to one Mammie Doyen, an Election Supervisor of the NEC who later had a gentleman to place her name in a black copy book before she was allowed to vote. Because of the gravity of this witness' testimony we quote her statement in chief as follows:

"A. On Election Day we went to the polling center that morning I got on the line when I reached in the room they said my head was not there so they sent me to another line, I went there they said my head was not there. They had one copy book and they were calling people to go and vote, so they sent me to room 7, I went there they said my head was not there, so I came back to room #1, then I asked Mammie Doyen Moore, the ES, I told her during the voter registration time you people were the one that registered me and they are telling me my head is not here and I really want to vote, she said Yah wait, later she said before you can vote you need to give me small thing, either you buy me soft drink, she said give me 150, I give

her the 150 dollars, after I gave her the 150 she told the boy to put my name in the black copy book and they put my name in the copy book , then they called me, Yah Golden come and to vote, when I went to vote they gave me the ballot paper they did not stamp it, so I told them to stamp the ballot paper, they said no I said you will stamp this ballot paper, we started arguing, then he later stamped the ballot paper then I voted, even my daughter, she paid money to vote. That was I saw during the Election Day.

All of these testimonies of 1st appellants' witnesses regarding allegations of gross irregularities in violation of the Constitution and Elections Law during the October 10, 2017 elections were similarly buttressed by witnesses of the 2nd appellants. Primary amongst them were 1) Atty. Jerold Cole Bangalu who testified that the Final Registration Roll was marred with massive irregularities and fraud; that the provisional registration roll was never published to magisterial areas as required by the elections law and NEC regulations; that there was huge discrepancies between the provisional roll and final roll; that although the exhibition period for the provisional roll should have been for a week to allow voters make corrections to the roll but was unusually cut off due to many outcries from the public as to the discrepancies on the provisional roll; and that instead of addressing those discrepancies the NEC chairman announced that all those with valid voters registration card would be allowed to vote. Some of the discrepancies pointed out by the witnesses were: a) names of voters did not match with the photos, b) males were taken for females, c) duplication of names, amongst others. The witness also stated that the FRR was never published as required by law and that it was only after thorough engagement with the NEC that seven political parties were given the FRR on a pen drive.

According to the witness, the FRR given them was dissimilar to that which was posted on the NEC's website indicating that the NEC operated two separate and distinct FRR; that the SMS system of verification of names on the FRR constituted an addition to the FRR since names that were not found on the FRR given the parties could be found through the SMS system and that there were more than four thousand people who had voter cards but could not vote because their names were not found on the FRR. The witness further testified that the ballot papers used during the October 10, 2017 polls were without serial numbers and that the ballots found in Grand Gedeh County had features of valid ballots

contrary to the NEC's claim that they were 'Know Your Candidate' ballots. 2) Josiah Flomo Joekai testified that his name appeared on the provisional registration roll but that during the voting he did not find his name on the final registration roll but was allowed to vote when the presiding officer used the SMS to verify his number; that there was no queue controller to where he voted.

The testimony of the witness was impressive, but we are unable to conclude that it did conveyed or demonstrated that the violations were of such high a magnitude that it altered or could have altered the results of the elections. Thus, while we do not dispute the testimonies and do not believe that the appellee sufficiently rebutted the said testimony, we say that as important as it was, it did not, standing alone, overwhelmingly show that it impacted the final results in such manner that if not committed the results would have been different or that the positions of the parties would have changed, as for example, from first position to second position or from second position to third position. What it means for the Court is that the parties, knowing and/or suspicious of how the NEC was playing its role in the elections should have so positioned themselves, both with the mechanic and with the personnel, to ensure that any perceived attempts by the NEC would not materialize and that in the event they saw that the NEC was deviating from the dictates of the law or committing acts not in consonance with what it was expected to be doing, they should have sought recourse to the courts to prevent the NEC committing such violations.

In response to all of these allegations and supported testimonies of irregularities and gross violations of the Constitution, New Elections Law and NEC's regulations alleged by the 1st and 2nd appellants, the NEC produced two witnesses, none of whom was directly privy to the incidents out of which the appellants' allegations grew but rather who served in capacities that allowed them to receive feedbacks from NEC's staffs on the field. The National Elections Commission being a fact finding institution, one would have thought that the NEC would have brought those presiding officers and electoral supervisors from those specific polling places named to provide rebuttal testimonies and/or clarity on some of the allegations raised by the appellants.

The NEC's first witness was Mr. Lamin Leighe, Executive Director of the Commission who is responsible for the general administrative running of the

Commission and who serves as secretary to the Board of Commissioners. The testimony of Mr. Leigh is worth noting because of its interesting nature; he admits to challenges in the conduct of the elections but at the same time attempted to refute all of the irregularities alleged by the appellants. Witness Leigh began his testimony by stating that the October 10, 2017 polls were free, fair and transparent; that same was evidenced by six international observation groups report declaring the polls as such; and that there is a Final Registration Roll which has not been altered and which was published. On the allegations of late opening of polls and difficulties in locating polling places, the witness testified that the NEC was challenged by the level of turn out by voters and that most of the poll workers had limited capacities; that NEC was not able to hire the requisite qualified poll workers due to political manipulations.

This is how the witness began his testimony:

“Your Honor, I like to begin by firstly stating that the Election on October 10, 2017 were free, fair, transparent and credible. This is supported by observers reports from over six observers both National and international observers wherein there was no instance of fraud cited. I also like to include that the National Elections Commission has one final voter roll. Prior to the 10 of September, the processes of voters registration details were finalized and since that day there has been no alteration to the voters roll. On October 10, 2017, I happen to be one of those who began monitoring as early as 4: A.M. And to my outmost surprise there were queues of voters at voting precincts as early as 4: A.M. in the morning. Normally the precedent had being that the voters will meet our staffs at the centers. But in this case our staff arrived at the centers with voters already queued. This presented an overwhelming situation for the staff most especially our presiding officers who initially were able to redirect voters to their lines to facilities their smooth voting. What we witnessed at the early starts of the polling were because of the overwhelming turnout of the Liberian people to express their way through the ballot box. The staffs themselves were overwhelmed. That was also supported the fact that our staff was also challenged. Prior to the conduct of these elections the Commission taking queued from these election voters registration were staffs hire by the Commission in carrying out the function. We wrote other stake holders requesting assistance from professional Liberians. To name just a few, we wrote the Ministry of Education, we wrote the Association of Female Lawyers. We wrote the National Bar Association of Liberian requesting assistance in providing professional

Liberians to help in the conduct of these elections on Elections Day. This is also the practice in most electoral jurisdiction where you have senior citizens volunteering on Elections Day to support the process. Unfortunately we got respond from only the Angie Brooks Randolph institute and as the result of political manipulation there were rumors being spread wide and far that Chairman Kokoyah had intended to create fraud in the process by bringing in presiding officers. And in order to satisfy those doubts, about three hundred names that were submitted by Angie Brooks Institute were withdrawn. So basically we went to the polls with those Liberians who were available. Those Liberians who were not the most qualify but who availed themselves to partake in the conduct of the October 10, 2017 election. Monitoring reports and even our own observation clearly states that staffs at our centers were challenged. They had difficulties in directing voters to their assigned rooms; they had difficulties in finding voters names on the final voter's rolls in their polling stations. As a result of that this cause uncomfortable situation with some voters. This leads voters to be weary. These causes brought about congestion and delayed. But notwithstanding, over 75 percent of the 2.1 million voters turned out and voted on October 10, 2017.”

The above testimony of witness Leighe attempted to refute that the polls opened late, and that there were no queue controllers to direct voters on the requisite queues, but he did acknowledge that there were some problems which he blamed on the fact that voters had turned out much earlier than expected and hence that the NEC workers had not been deployed. In fact, the witness acknowledged that this created difficulties in finding voters' names on the FRR; that voters became weary due to the congestion and delayed. The question is to what extent did such somnolent posture of the voters affected their right to vote, especially in the face of allegations that many voters could not vote due to these challenges.

On the allegation of names not found on the FRR, the witness testified that all those who voted were names that were on the FRR; that it was only when there was a challenge in locating one's name on the FRR that the presiding officer or NEC's worker added said person's name to an addendum to the FRR. Here is what the witness said:

“Your Honor I like to obtain your permission to illustrate that over the last few days here, there have been witnesses who testified that they were allowed to vote because their names were not in the final registration roll but were added to the addendum of the roll. I like to state here that all those voters were actually in our final registration data base. I have evidence to prove that all those voters were actually register but couple with the fact that some of them went into the wrong room, and also some of the staffs were unable to find their names in the roll they, were added to the addendum. If you can permit me, Your Honor, after my testimony, we will produce evidence to prove that those witnesses who claimed that they were allowed to vote, giving that their names were not on the final voters roll is false. What actually happened was they went to the wrong room. There were instances where they never went to the right room but the staffs there were not able to find their names on the roll. My testimony your Honor will also prove that the procedure or the process of addendum to the final roll is a process that has been practiced and contained in our regulation as far back as 2005. I will show you evidence your Honor that these regulations were contained in our file from 2005, 2011 and 2014. This is to say that the addendum to the roll is not the making of this current board.”

We are not impressed by this answer given by the witness. The allegations of the appellants was to the essence of the addendum to the FRR; that this addendum could only be used for NEC’s workers who are assigned to areas other than those where they had registered as well as security officers (police) on duty to a polling place different from the place where they had registered.

This is the how NEC’s Polling and Counting Manual speaks to these queries:

“Voting by Polling Staff, NEC Officials On Duty, Election Security Personnel, International Observers Drivers, And Other Special Civil Servants

FOR THE ELECTION, POLLING STAFF WILL VOTE AT THE END OF THE DAY BEFORE THE POLLING PLACES ARE CLOSED.

For those who are on special assignments at the polling places around the country, such as members of the election security sector (LNP, DEA, BIN, FS, etc.), NEC officials, international observer drivers and escorts, they may either vote at the same time as the polling staff.

2017 VR replacement card is in portrait form. It has unique features such as: logo of NEC at the bottom of the right-hand corner, the Republic of Liberia flag is watermarked

at the top of the card and its seal is in the center of the card or at some time on Election Day, with no interference to the normal voting process, within the polling place in the area of their assignment.

The condition for such voting requires that the voter must be in possession of: 1. A valid 2017 VR card 2. An accreditation badge issued by the NEC 3. Personal or work related ID card Other than these categories, no one is permitted to vote in a different voting precinct. Because these elections are both single and multi-constituency, in line with the Presidential and House of Representatives, special rules as indicated in the table below shall apply:

Registered staff, elections personnel, Observers and escorts	Polling officials, security drivers	President	House of Representatives
In different precinct within the same district		YES	YES
In different district within the same county		YES	NO
In different county		YES	YES NO

See page 26 of the NEC’s Polling and Counting Manual

This means that no other person can be recorded on an addendum to a FRR of a particular polling place other than those named hereinabove. Thus, the answer given by the witness validates the allegation of the appellants that individuals whose names were not found on the FRR at a particular polling place were allowed to vote. Our law provides that all admissions made by a party or its agent is conclusive evidence against such party. *Dukuly v. Jackson 30 LLR 159 (1982); In re: Joseph K. Jallah 34 LLR 392 395 (1987); Liberia Agricultural Company (LAC) v. Associated Development Company (ADC) Supreme Court Opinion October Term, A.D. 2012.*

The witness also attempted to give clarity to a statement made by the NEC’s Chairman to the effect that all those holding valid voters’ registration cards would be allowed to vote. According to the witness, the Chairman’s statement was made during the provisional voter roll

exhibition and was only intended to assure Liberians that at the close of the exhibition process all those with valid voter registration card will be confirmed and admitted to the roll. We equally quote this aspect of the witness' testimony in chief:

"I also like to provide clarity as we have done in the past that commissioner's statement regarding those with valid ID cards names not being found on the provisional roll. At that point in time, were speaking to voters who had raised concerned that they could not find their names on the voters' registration roll. The essence of exhibiting the provisional roll is for verification, it is for actual modification of voters prior to the compilation of the Final Registration Roll. When Chairman Kokoyah spoke months ago he was calming the fear of many voters who did not see their names on the registration roll and he assure them that at the close of the exhibiting process when the final roll must have been prepared all those voters who were legitimately given voter ID cards, their name will be on the final registration roll and be allowed to vote. Your Honor we are grateful to the Liberian people for the level of participation as exhibited on the 10 of October, 2017."

The question is, if that was the true intent of the Chairman's statement then what was the necessity of making such a statement since the sole essence of the exhibition process was to verify the legitimacy and/or accuracy of voters' identification? If that is the interpretation of the Chairman's statement, why did the Co-chairman counter such statement by flagging out its potential of creating chaos? Or should we conclude that the Co-chair could not properly read into the intent of the chairman's statement rather it is the Executive Director who is best suited to interpret the Chairman statement? Or better still why couldn't the Chairman provide clarity to his statement since he is the best person suitable enough to determine the meaning of same? All these questions point to a conclusion that the NEC's workers relied on such statement and allowed persons whose names were not found on the FRR at a particular polling station to vote.

Moreover the above testimony of witness Lamin Lighe failed to refute the appellants' allegation that the NEC discriminated in determining whose name to be placed on the addendum. We are yet to

see how this testimony rebutted 1st appellants' sixth witness Debora Harris' testimony, assigned in Grand Bassa County that she was not allowed to vote as her name was not found on the FRR and that she requested a complaint form but the NEC's staffs at said polling place refused; how it rebutted witness Victoria Koffa who testified that although a gentleman was recording people's name in a copy book and allowing them to vote she approached him but he refused to allow her to vote and that she stood in the queue up to 8pm but was unable to vote; and how it rebutted witness Yah Golden who alleged that she had to pay L\$150 to one Mammie Doyen, an Electoral Supervisor of the NEC before she could vote? It is the law that *"when statements or evidence presented in the pleading or by witnesses on the stand, which are damaging to a party and needs to be rebutted, and the party fails to produce rebutting witnesses or other evidence, the evidence presented will be deemed to be true."* *Cole v. Cole, Supreme Court Opinion, March Term, 2013.*

Witness Leigh also confirmed the appellants' allegations that the ballots papers were without serial number; he stated that the serial numbers were instead placed on the ballot stumps. The witness stated that placing the serial number on the ballot stumps was intended to conceal the identity of the voter.

This how he responded to a question on direct examination:

Q: One of the allegations is that there are no serial numbers on the presidential and representative ballots. What do you have to say to this?

A: The ballots papers before issue to the voters on Elections Day is attached to the ballots stumps that carry a serial number of each ballot paper. When the ballot papers is being issue to a voter to protect the secrecy of the voters choice as stated in our constitution, the detachable part of the ballot is removed from the ballot studs and giving to the voters. In this way there are no way the presiding officers or any staffs can determined what choice was made by the voters.

To this answer of the witness, counsel for the 2nd appellants posed the following question:

Q. To the serial numbers which you place, according to you, and on your advice, you placed on the stubs of the ballots, and not on the ballots themselves, what was the purpose for the serial number, Sir?

A. The ballot papers consist of two portions. You have the portion bearing the stubs and the serial numbers, and the portion that detachable. The serial number is placed on the portion bearing the stub for administrative purposes. Once the ballot paper is being issued to a voter, it is detached from that stack that bears its serial number, in that way, it protects the secrecy of that voter's choice.

Q. Mr. Witness, people who own current account know, that the serial number on the stub is also on the check itself, the intention being, to check that that check that is issued, is the same number that is on the stub. Do you know about that as a fact?

The Hearing Officer sustained an objection to this question on grounds that it was irrelevant as no check was before the investigation. We disagree with the hearing officer and we believe he should have allowed the witness to answer this question as it would have given the investigation the actual purpose of the serial number. This is especially so since the witness had stated that the serial number was placed on the stump in order to protect the voter's privacy. Another reason for the serial number, as alluded to by the appellants, could also be to determine whether the ballots stumps recorded at a polling place corresponds with the ballot papers in the box at the close of polling.

The above narratives constitute the evidence and testimonies in support of the appellants' allegations of irregularities as well as the NEC's response to those allegations. But the question we continue to ask is whether the irregularities were demonstrated to be substantial enough to warrant a re-run of the entire October 10, prudential and representatives elections.

Ancillary to the above third issue is whether or not the appellants prove that fraud was committed during the elections. The allegations assigned as fraudulent acts by the 1st appellants were that (1) in District #6, Bong County, polling place #1 the CDC ticket was given 1109 votes in excess of the total number (550) votes that should have been at that polling place; (2) that Amos Seaboe, a staff employed in the President's office, was apprehended with machine producing voter registration cards; (3) that a presiding officer at Bardnersville

Public School polling precinct 30073 polling place number 3 hands were caught in the ballot box after polls had closed, votes counted and ballot box sealed and parties observers had left; (4) Josephus Cooper of District #3, Nimba County was arrested with pre-marked ballot paper; (5) the case of over fourteen (14) polling places across Nimba with excess ballots found in the ballot box with more than 550 votes some with 178, 176, 294 more votes respectively; (6) the NEC presiding officer in Zota District, polling place #3, precinct code #06102, Shankpallai Town, presiding Joseph Karlon was seen carrying sealed ballot box unaccompanied and that when interviewed he stated that the ballot box was left behind; (7) at voting precinct #30171, polling place 3, Paynesville Community School, Montserrado County the presiding officer forwarded a report to the collation center at SKD which indicated that the Liberty Candidate Kwisi Johnson received no vote, that when questioned at the collation center, the presiding officer stated that the record of count was missing but that following a recount the said candidate attained 28 votes; (8) at a polling place, Precinct 30171 District 12, Montserrado County Liberty Party attained 205 votes but the presiding officer recorded 26 and it was only at the collation center same was discovered; (9) in Dwazon Margibi, District 1 precinct #24105 polling place 4 the presiding officer record of count reflected a total vote of 2550, about 2000 votes above the threshold of 550; (10) in Cinta Township Margibi County it was observed that a NEC pick up was parked on the side of the road and the occupants therein had opened the ballot box and when an alarm was raised by a resident the vehicle inadvertently dropped the top cover of the ballot box; (11) that in Bong County, District 4 voting precinct #06102, polling place #1 the number of ballot papers taken from the ballot box was 177 but candidate Robert Womba got 246 of the votes; (12) marked ballot papers discovered in Grand Gedeh County.

In addition to these allegations of fraud, the 2nd appellants also alleged that 1) the FRR given on the flash drives to the political parties in September 2017 was different from the flash drive submitted by the Appellee's Executive Director under subpoena which confirmed that the FRR was altered; 2) that the flash drives given the political parties have 79 polling stations with ten (10) precincts missing amounting to some 35,750 votes; 3) that in 75 precincts at least one

polling place is missing; 4) that several voters existed on the FRR multiple times and that 5) the same voter ID was assigned to more than one person.

To the above allegations, we have not seen an adequate response from the appellee and in cases where the appellee's primary witness attempted to respond, he came short of adequately addressing the allegations. Notwithstanding, this Court must keep into focus the legal principle which has guided it over and over and a half that he who makes an allegation has the burden of proving sufficiently that allegation to sustain a decision in favour of the allegations.

On the allegation of the marked ballot papers discovered in Grand Gedeh County, which one of appellants' witness testified that had all the marks of a valid ballot paper, witness Leigh admitted that indeed ballots were discovered but claimed that same were know your candidate ballot papers. Here is how he commented on this allegation:

- Q: Mr. Witness, there was an incident in Grand Gedeh county. Please tell us if you know anything about it.
- A: The commission was made to be aware of an alleged report by an ELBS reporter from Grand Gedeh where he claimed that he had been informed that ballot papers were found in district #2 specifically in a bathroom. The Commission instructed its County Magistrate to investigate the matter. The Magistrate along with the County Police Commander and the reporter who had earlier reported this story conducted this investigation. The alleged ballot papers were brought forth. The reporter saw the alleged ballot papers. The commander confirmed what he saw said ballots, and the Magistrate explained that there were key features that differentiated the actual ballot papers from know your candidates. What was actually submitted was a portion of the "know your candidates" that was designed by the NEC and distributed to political parties and civil organizations for the outreach. Those alleged portions of the "know your candidates" were sent to Monrovia and we have it now in our custody and I will love to demonstrate what actually happened.

The following questions were posed to the witness by counsel for the 1st appellants during cross examination:

- Q. Mr. Witness, let go back to Grand Gedeh County, the paper that you brought to this Investigation you claim to be know your candidate documents tell us when did you get those documents from Grand Gedeh?
- A: can't give you the exist date but that something I can provide, they were on board on UNMIL Flight so I can provide that for you.
- Q: Mr. Witness, I suggest to you that the Chairman of NEC, Cllr. Jerome Korkoya had a press conference on November 1, at that time that he mentioned political parties attempting to spoil the great name of this Commission. Is that correct?
- A: Yes, we had a press conference.
- Q: The political party including the LP had first come into knowledge of the existence of those ballots from the social media. It was from the social media report that political parties made statement to which the Chairman reacted. Are you aware of that?
- A: What am aware is the Commission did not react to those allegations until we had physical evidence. Yes there were report prior to our press conference but in the absent of physical evidence the Commission waited until we received the evidence before we proceeded with the press conference.
- Q: By the permission of this Hearing I will like to show you photograph of the ballots that were found in Grand Gedeh County and ask you were these were the same documents that you brought here today?

The Hearing Officer sustained an objection to this question on grounds of what he termed as “document not pleaded.” We wonder which document the Hearing Officer was referring to that had not been pleaded; the witness having testified that the ballots found were the ‘know your candidate ballot’, having shown the features of the know you candidate ballot, it was important for the investigation to have allowed him to answer the question to ascertain the veracity of his testimony. How did the hearing officer reach the conclusion that the ballot papers were know your candidate ballots in the face of appellants’ witness B. Saye Bliton’s testimony. We note that witness B. Saye Bliton testified that he discovered ballot papers hidden in Clay Town, Grand Gedeh County; that one Patrick Boar called the NEC office which informed them to contact the police; that when police accompanied them on the scene, they saw representative ballot papers with green marks and presidential ballot papers with red marks; that they

took photographs and video recording in the presence of the police and that the ballots discovered were not the 'know Your Candidate' ballots papers.

Further, we do not believe that witness Ligne was best suited to rebut the testimony of B. Saye Bliton; why didn't the appellee bring the police officer whose report witness Leigh relied on to indicate that the ballots found were know your candidate ballots or why didn't they bring another eye witness to refute the allegation that the ballots were not the original. This query by the Court did not however relieve the appellants or meeting their burden of proof similarly by the production of persons who had firsthand knowledge of incidents complained of such that those who testified, as for example, the Chief Executive of the Campaign of the Liberty Party, could have their testimonies buttressed substantially by those firsthand eye witnesses. The response of Witness Ligne, while inadequate to address the claim of the appellants, was yet limited to only a specific claim which we have said from the evidence, did not go to showing that the proof shown by the appellants was overwhelming.

On the allegation that the flash drives given the political parties had 79 more polling stations with ten (10) precincts missing amounting to some 35,750 votes; that in 75 precincts at least one polling place is missing; that several voters existed on the FRR multiple times and that the same voter ID was assigned to more than one person, the appellee's witness stated that the FRR referenced or relied on by the appellants was manipulated by the transfer of data; that the FRR had not changed. In the face of such a defense, one would have thought that the appellee would have produced one of the original flash drives given another political party to contradict what was produced by the 2nd appellants and validate this defense. The law is *"the best evidence which the case admits of must always be produced and no evidence is sufficient which presuppose the existence of better evidence. In Re: Massaquoi et al v. Denis, 40 LLR 704 (2001); The Management of City Builders v. The Purported City Builders, Supreme Court Opinion March Term A. D. 2013."*

On the allegation of CDC receiving 1000 more votes that the actual threshold of votes at the polling place, the appellee's witness stated that that was an error made by the presiding officer, but that the error was subsequently corrected by the presiding officer. We see from the records that the tally sheet

from the polling place was corrected to reflect the position of the NEC, and was signed by the parties' representatives present.

All of these circumstances put together could on the surface construe the implication of fraud; for even though fraud should be proven with every particularity...fraud can be inferred or reasonably presumed from the surrounding circumstances. *Cooper et al. v. Baker, Supreme Court Opinion, March Term, 2014*. According to law writers, fraud is a generic term which embraces all the multifarious means which human ingenuity can devise and are resorted to by one individual to gain an advantage over another by false suggestions or by suppression of the truth. In its general or generic sense, it comprises all acts, omissions and concealment involving a breach of legal or equitable duty and resulting to damage to another. Fraud has also been defined as any cunning deception or artifice used to circumvent, cheat or deceive another. *Cooper et al. v. Baker, Supreme Court Opinion, October Term, 2014*.

Fraud may be established, those law writers have said, not only directly, but by inconclusive circumstances which by their weight jointly considered, may constitute sufficient proof. *Jawhary v. The Intestate Estate of the late Rebecca Watts-Pierre, Supreme Court Opinion, October Term, 2008, decided January 30, 2009; Dassen et al v. Captan et al., Supreme Court Opinion March Term A. D. 2012*.

Thus, the NEC's resistance to the appellants' request for a *subpoena* of all the addition to the FRR or the extra sheets used during the voting which was sustained by the hearing officer is of concern. We cannot speculate as to what would have been revealed had the additional lists been provided. We do believe, however, that had the additional lists been provided, they would have enabled the Hearing Officer to determine whether in fact additional persons voted at a particular polling place than were permitted by the NEC's regulation. We are equally concerned by the NEC's resistance to the request for *subpoena* of the worksheets of the presiding officer and the Hearing Officer's action of sustaining said resistance. In the face of the cross allegations, claims and counter claims had the presiding officer's worksheets were used, the Hearing Officer would have been in a position to determine whether the appellants' allegations were true and widespread as claimed by the appellants or whether they were isolated. However,

we note that the request for worksheets was made for all polling places in the country. In our opinion, such request should have been limited to places where the appellants had specifically alleged and pleaded that irregularities and fraud had occurred. The nature of the request conveys the impression that the appellants were not in possession of the requisite to support the claim and that they were therefore on a fishing expedition in the hope of finding such evidence. We note that the appellants should have so positioned themselves that they would or could identify every polling place that had a problem or where they had identified a problem rather than just speculate that every polling place had a problem without any indication of evidence in all of those polling places.

We have catalogued the testimonies of the witnesses, especially of the complainants to highlight the irregularities those voting centers specified and to see if they permeated substantial geographical areas of the country; they would certainly have provided adequate basis for the declaration of nullity of the October 10, 2017 elections, as prayed for by the first and second appellants. But we are of the opinion that as much as the evidence showed gross irregularities in and at certain polling centers, they did not demonstrate that, in the absence of other evidence at other centers, the reported incidents occurred at a substantial proportions of the centers as would warrant cancellation of the entire elections and ordering a rerun. This Court believes that for there to be such massive turn around in the entire electoral process, the appellants were under a legal obligation to show that these activities occurred not just at a few isolated centers but that they occurred at most if not all of the polling centers. The records of the NEC show that there were five thousand three hundred ninety (5,390) polling centers in the country; more than twenty (20) presidential and correspondingly more than twenty (20) vice presidential candidates for the only two top executive positions of the nation; and that there nine hundred eighty-four (984) candidates for the only seventy-three (73) House of Representatives seats.

This Court had expected or believed, for example, that the political parties would have deployed observers and agents not just at a few polling centers which the evidence seems to portray. And even assuming that the political parties did deploy sufficient observers and agents throughout the country to cover the elections, they were each expected to at least have a coordinating or monitoring

center where the data from the field could be assessed as they came in from each polling place so that in the event there was a court challenge, they would have been able to point to the irregularities that were reported by their agents, observers or representatives from each center; that the communications from the polling places would not just be by calls but also, and primarily by text messages which would note the phones from the messages were being sent, would indicate the polling station involved, and which could be forwarded to the NEC and reduced into writing that would form part of the evidence to demonstrate the widespread nature of the violations or irregularities or fraud. It is that kind of evidence that would be viewed persuasively by the Court. It is insufficient that they would cite only a few incidents and call upon the Court to speculate that those incidents occurred at every voting center, without the production of the necessary evidence or statistics that such incidents did occur at those other centers for which evidence were not presented.

We note that in argument they alluded to other political parties and independent observers holding similar views as the appellants. We take note that the public records do show that several other political parties expressed “solidarity” with the claims of the Liberty Party and the actions being taken by that Party. We are disappointed however that they believed that those parties would believe that this would be sufficient in law to meet the burden of proof which the Liberty Party was required to meet under the law. The only Party sufficiently brave and believing convincingly in the cause advocated by the Liberty Party was the Unity Party, which filed a motion to intervene, and having been allowed to intervene, presented additional evidence and claims in regards to acts and actions of the NEC. Had the other political parties, by merely sitting on the fence and expressing “solidarity” with the Liberty Party, they could also have presented additional evidence which would probably have further buttressed the evidence of the Liberty Party and the Unity Party as may have enable the evidence to reach the threshold under the law to sustain the prayer that the October 10, 2017 elections be cancelled and that a rerun, as opposed to a run-off election, should be held. But that evidence was not sufficiently present, in the mind of the Court, to warrant granting the prayer of the appellants for a rerun.

Indeed, at the hearing before this Court, one of counsel for the second appellants was asked as to whether they had representatives or agents at each of the polling centers to ensure the protection of the interest of the party and its candidates so that an accurate and comprehensive record could have been compiled and made available to the Investigation before the Hearing Officer to substantiate the allegations that the incidents which were cited by the appellants occurred throughout all or most of the polling places. The response of counsel to the question was that they were not there to monitor the NEC and that they had no obligation to do so; the responsibility for ensuring that such incidents did not occur, he said, was purely within the purview of the NEC. The Court does not dispute that it is the responsibility of the NEC to ensure, even guarantee, that its conduct of the elections would be free, fair and transparent; and that that Body cannot and should not fail to meet that standard, prescribed both by the Constitution and the statutory laws of the nation, so that the credibility of the process is not brought into question. But the Court also believes that the political parties and the candidates have a great role to play in ensuring that their interests are protected and that the NEC does not deviate from its mandate or commit the kinds of acts as are complained of in the instant case. For the parties not to secure their interest by the adequate representation at the many centers, even if it meant collating and combining their efforts, and they fall short of showing that the incidents they complained of occurred throughout the country, and to thereby expect the Court to enter into the realm of speculation, is untenable. We know that the task which we have stated herein for political parties is enormous, but that is the sacrifice expected of them in order to gather the evidence and demonstrate the widespread nature of the irregularities sufficiently convincing to the Court that indeed those incidents did occur throughout the country.

The presentation of that quantum of evidence was equally important since out of the nine hundred eight-four (984) candidates for election to the House of Representatives, only a few of them filed complaints against the conduct of the elections or believed that the elections were marred with such irregularities that it permeated the whole nation and the entire election sphere. Even in regard to the presidential and vice presidential candidates, which number more than twenty (20) in each category, only two political parties complained before the

NEC involving a total of only two presidential and two vice presidential candidates. This does not in and of itself warrants the conclusion that the elections were free, fair and transparent. What it does mean is that the complaining parties now have a greater burden to show and demonstrate that even in the absence of such complaints, there were widespread irregularities and fraud committed throughout the national electoral spectrum. We are not convinced that that burden of proof was met.

This Court cannot be asked and certainly cannot be expected to indulge in such speculation, in the absence of such overwhelming catalogue of evidence showing widespread irregularities at most of the 5,390 polling centers, and on the basis of that evidentiary failure, to have the Court proceed to annul the entire elections and order a rerun, being fully aware of the enormous expense and other consequences for the nation.

In a similar vein, as stated above, the political parties were under an obligation to themselves and to their constituents to work so closely with NGOs, International and National and other Observers so that their efforts were spread throughout the country and not just in particular places where many of them assembled, leaving other areas completely unattended. This may have left many areas exposed to the kinds of activities referred to by the appellants. But in the absence of evidence to show that those activities did occur in those areas, evidence would have had to be presented. We did not see that evidence in the records before us.

The appellants contend that international observers who observed the October 10, 2017 Presidential and Representatives elections were unanimous in their view that there were challenges and/or irregularities committed during the elections. They say, for example, that the international observers concurred on the issue of late opening at many voting precincts; that there were no queue controllers in many polling places; and that many voters could not find their identities on the FRR. The appellants are quite correct in their assessment of the position of the international observers on the just ended elections. What the appellants did not say, however, is that the same international observers noted in their respective reports issued that generally the presidential and representatives elections held on October 10, 2017 were peaceful and the results fairly represent

the intent of the electorates. The position of the international observers is in line with our findings in this case.

Our esteemed colleague, Mr. Justice Kabineh M. Ja'neh, disagrees with the majority of the Court and has therefore prepared a dissenting Opinion. We do not go into the basis or rationale of the dissent. It is critical however that we point out that the dissent suggests that we should sacrifice a core and principle value upon which our legal jurisprudence is built or that we should choose to ignore the basic principle behind that value that is part of the bedrock that has guided our jurisprudence. We do not, for example, disagree with him that there was some evidence that fraud and irregularities were committed at a few polling places. What we disagree with him is that a conclusion can or should thereby be reached that on account of the less than ten centers for which evidence was presented the entire 5,390 polling places should also be adjudged of commission of fraud and irregularities, and thus that the entire elections should be cancelled and a rerun ordered. Indeed, our esteemed colleague goes even further. He would have us overturn the entire elections even if fraud was shown in only a single instance and at a single polling place, since proof of a single fraud is sufficient to annul the elections. We disagree, for it would mean that in every election held, it will take only one person, who could show that fraud or irregularities were committed at one polling place to overturn the entire elections without any further proof that a substantial number of the polling places were also involved in fraud and irregularities. Stated another way, this will mean that no person who makes an allegation of overwhelming massive fraud and irregularities throughout the entire electoral spectrum can or should be held to proof of the allegations made; that such person had only to show one or two instances at one or two polling centers, and the Court must then thereby conclude that the complainant has met the standard of the burden of proof. This will mean that the elections would be unending and it would provide a recipe for chaos in our electoral system and process. What is required, in our view, is not merely a demonstration that there was massive fraud or irregularities at a few polling centers, but rather that there was fraud and/or irregularities committed at an enormous number of polling places such that a conclusion could be drawn that absent such fraud or irregularities, the results of the elections would be different.

Alternatively, the appellants could have shown that there was conspiracy by the Commission to have its staff commit the fraud and irregularities referred to by the appellants. But this would call into question whether if this was a conspiracy, only a few centers would have been targeted and not the entire electoral spectrum. Thus, here again, proof would have been required to show that the bulk of the electoral spectrum was affected. That proof was lacking.

We are therefore not prepared to take the course of our esteemed colleague and explore that realm of speculation or sacrifice the law for convenience. The evidence must be overwhelming such as would warrant this Court ordering that new elections be held from scratch. There can be no lesser standard. The parties involved in the process were expected to appreciate all of the intricacies of elections today, unlike in the past, and hence that they will put into place every safeguard to protect their interest and ensure that they are not cheated, that the elections are not rigged, and that the elections are free, fair and transparent. The evidence did not show that they sufficiently deployed personnel to guide and protect their interests. Otherwise, they would have been able to gather the evidence required to make the case of massive fraud and irregularities throughout the electoral process and covering the entire nation or a greater part of the nation.

We hold therefore that while the appellants did show that indeed fraud and irregularities were committed during the October 10, 2017 presidential and legislative elections at the centers for which evidence was presented, there was a rather strange lack of evidence by the appellants that those fraudulent acts and irregularities occurred throughout the country and at the greater number of polling places or that they were of such magnitude as to justify the cancellation of the October 10, 2017 elections and the ordering of a rerun as opposed to a runoff.

Our review of the records revealed two important points: (a) that indeed and in fact there were elections violations and irregularities by persons employed by the NEC to participate in the conduct of the October 10, 2017 Presidential and Representatives Elections; and (b) that although there were violations, they were not shown to be so overwhelming as to enable us to draw the conclusion that the

results would have been different had the violations and irregularities not occurred.

We do not here say that the violations and irregularities were not of the magnitude alleged by the appellant or that they may not have been of the magnitude alleged. They very well could have been. All we say, however, is that the first and second appellants did not produce the evidence in such magnitude as to lead to the conclusion that violations and irregularities were widespread or was of such a nature that they permeated the entire election spectrum. Perhaps what this means is that the parties will make the sacrifice and have more elections observer and agents deployed such that in the event of any future challenge, the agent and observers would be able to recount that throughout the process, fraud, violations and irregularities were committed. In the instant case, the portrayal of the violations and irregularities would seem to be more in the nature of isolated incidents, unless the Court proceeds to delve into the realm of speculation that since they happened in a few areas, they must have happened throughout the entire nation. This Court has said on manifold occasions that it cannot allow itself to speculate as to what may or may not have happened in regard to the totality of a process or event. It is for the party making the allegation to demonstrate the totality of the incident such that the conclusion can be drawn that the incidents alleged were widespread and affected the entire nation. *Congress for Democratic Change v. National Elections Commission*, Supreme Court Opinion, October Term, 2012.

In the alternative, the question is whether the violations of the Constitution and/or other laws, including the Elections Law, were of such magnitude that they warrant the cancellation of the prior elections and the ordering of new elections. This would be an issue more of law than of fact. And, as a matter of law, we have not seen in the violations alleged to be of such magnitude as to warrant, as a matter of law, cancelling the elections and ordering new elections.

As the matter stands at the moment, this Court had difficulty accepting that because of such isolated violations the entire elections can or should be cancelled and a rerun ordered. In order for such contention, as advanced by the first and second appellants, to be sustained, they must have shown that there was overwhelming and massive violations. Merely alleging and in the evidence

showing few violations and expecting that the Court should conclude that these were indications that they were widespread is not a position that this Court can endorse.

The Supreme Court has said repeatedly, and the parties hereto are expected to understand and appreciate that in order for allegations to be sustained, the person or party making the allegations must present evidence to sustain the whole and not just a fraction of the allegations. In the instant case, the appellants were able to present certain evidence in respect of certain violations; what they failed to do, however, was to show that the evidence permeated the entire spectrum of the elections and that this had the effect of substantially diluting the electoral votes of the appellants that absent such violations and irregularities, the appellants would have been placed differently than as results of the NEC placed them. We have not seen from the records that the appellants were able to demonstrate that there was a conspiracy by the National Elections Commission, as an Institution, or that the NEC sanctioned the conduct of those persons who were alleged to have committed elections violations.

We do not believe that the evidence reached that threshold. As important as the evidence was, the fraud and irregularities complained of and shown by the testimonies of the witnesses were limited to the generality of the elections rather than indications of widespread intentional gross conspiracy conduct by the NEC as an Institution. Nor did the evidence point to a single candidate benefiting from the irregularities or fraud, or that the irregularities and fraud were orchestrated for the sole purpose of a particular candidate. Besides the few cases which were testified to and which directly affected the Liberty Party, all of the incidents shown went to the general conduct of the election.

This then leave us with the final issue, which is that even in the face of this Court's opinion that there was not sufficient evidence presented to establish that the fraud and irregularities complained of and substantiated prevailed throughout all or most of the polling places, that the NEC committed and indulged in such violations of the Constitution, the Elections Law and the Regulations and Guidelines promulgated by the NEC for governing the conduct of public elections that as a matter of law the October 10, 2017 elections should be cancelled and a

rerun. The primary contention of the appellants in regard to the said issue focuses on the failure of the NEC to publish as prescribed by the various laws the FRR.

Let us therefore review some of the challenges advanced by the appellants. In their accusations against the NEC, the second appellants accused the NEC of violating Section 3.6. of the Elections Law, which speaks to the Final Registration Roll (FRR), requires that "the general voters' registration roll for each registration center shall be opened for public inspection at the office of the Magistrate of Elections and copy without a fee on any day in a week during the hours the office is opened. A copy of each roll may be kept at such other places as the Commission may designate for public inspection. The Commission may by regulation either general or applicable to any particular roll, specify the method or preparation and prescribe the Rules and Regulations to be observed in regard thereto." Elections Law, Rev. Code 11:3.6, 3.10. They asserted that although the non-compliance by the NEC with this very important provision of the law was brought to the attention of the CDHO, he failed to deal with the issue in his ruling; that the issue having been excepted to and raised again at the level of the Board of Commissioners of the NEC, that Body dismissed the claim, stating that its interpretation of the law was that only the Provisional Registration Roll was required to be published at each polling place.

This Court is taken aback by the interpretation which the Board of Commissioners gave to the provision of the statute in light of its own Regulations promulgated under authority of the very statute. Our review of the laws reveals that in furtherance of the provision of the Elections Law, quoted above, the NEC promulgated Article 22 of the General Provisions of the Compilation Regulations as a mean of effectuating section 3.6 of the referenced Elections Law. The said Article provides as follow:

"22.1. The NEC shall certify the Final Registration Roll and print one copy for each polling place.

22.2. Copies of the certified Final Registration Roll shall be the Registration Roll for all polling places and shall remain in force until rendered invalid by subsequent certified Registration Rolls.

22.3. The NEC shall make a copy of the certified Final Registration Roll available at the office of the Magistrate of Elections for viewing during ordinary business hours.

22.4. The NEC shall make electronic copies of the certified Registration Roll available at the Headquarters to electoral stakeholders upon request.

22.5. No certified Final Registration Roll shall be altered within a period of thirty (30) days immediately prior to an election, including Election Day or Referendum, except upon orders of the Supreme Court of Liberia on the determination of a manifest error."

The parties appearing before the Supreme Court do not dispute the validity of the provisions of the law quoted hereinbefore or the regulation derived therefrom, also quoted above. Rather, they dispute the applicability of the law with regards to the publication of the Final Registration Roll (FRR). The Board of Commissioners of the NEC, and indeed the NEC, hold the view that notwithstanding the clear language of Section 3.6 of the Elections law and Article 22 of the NEC Regulations, the only obligation under the publication requirement is that the NEC puts the FRR document on its website and distribute same on flash-drives to certain specifically designated political; and that with this action the NEC is deemed to have satisfied the publication requirement since section 3.6 of the New Elections Law provides that, "a copy of each FRR may be kept at such other places as the Commission may designate." The appellee and its Board of Commissioners are also of the view that unlike the Provisional Roll which must be presented to all magistrates for possible challenges, the FRR on the other hand is developed only after the editing and finalization of the Provisional Registration Roll (PRR).

The appellants, for their part, advances the counter-argument that the publication requirement is only satisfied upon the availability of the FRR to all Magistrates/polling centers across the country since the New Elections Law and the Regulations mandate so. We view the argument of the NEC as not only flimsy but an attempt to cover-up what was an obvious failure to comply with the clear wording of the law, and thereby creating the prospect for election mal-handling. We do not believe that this was the intent of the framers of the Elections Law. What, we are inclined to enquire, was the utility of the Commission promulgating the Article 22 Regulations if it had no intention of complying with those very Regulations. Was it to impress the public or others that it was serious in ensuring

that elections are free, fair and transparent when it had no intention of actual compliance that would make such elections free, fair and transparent?

Article 22 is in no way ambiguous. It clearly sets out that "the NEC shall certify the Final Registration Roll and print one copy for each polling place and that the certified Final Registration Roll shall be made available at the office of the Magistrate of Elections for viewing during ordinary business hours." We interpret the provision as setting a two-fold mandatory and compulsory standard which the NEC must comply with. Firstly, that the NEC must have a copy printed of the FRR for each polling place, meaning that such printed copy must be displayed at each of such polling places. Secondly, the NEC must also ensure that a certified copy is made available to the office of each Magistrate of Elections. The provisions, we note are not only logical but they are also reasonable; and for an institution such as the NEC, the multiple roles assigned to it in the electoral process, from regulating the process to actually and physically conducting the elections to adjudicating disputes arising out of the elections, including even those brought against it, the least that is expected is compliance with the law. The laws referenced herein seek to ensure that voters have the opportunity, by the most inexpensive means and avenue available, to inspect the FRR. This guarantees to them the opportunity to exercise of the constitutional right to vote. How does a citizen of voting age and meeting the requirements to exercise the right to vote ensure that his or her name is on the FRR, which would enable him or her to vote, if he or she does not have ready access to the FRR? Indeed, it is to accord the assurance of that opportunity to exercise the constitutional voting right that the provision states that the FRR shall be made available not only to magistrates but also that it will be at each voting place. The publication of the FRR on the appellee's website and the distribution of same on flash-drives to certain designated political parties cannot be made a substitute for compliance with the unambiguous language of the law. Accordingly, we hold that this provision of the law, as interpreted by us, is the correct and applicable interpretation, and that therefore the provision was not fully satisfied and that until is done the appellee will be deemed not to be in full compliance with the publication requirement of the FRR.

But whilst we have adjudged the appellee NEC to be in default of the law, we must deal with the question of whether the default was of such a nature as to warrant a rerun of the elections. We do not believe that the default of the NEC in fully complying with the provisions of the law can be said to have reached a level as to warrant a rerun of the entire elections, especially in light of what the NEC has advanced as a misinterpretation of the law, the fact that the legislative candidates of the complaining political parties have chosen not to pursue the appeal taken from the rulings of the CDHO and the Board of Commissioners of the NEC, and the fact that no private citizens came forth with complaints that they had been deprived of the right to vote. But perhaps more importantly because that same law that imposes the duty and obligation on the NEC also provides that a failure by the NEC to comply with the requirement does not invalidate the FRR. Section 3.7 of the New Elections Law, which speaks to instances of defaults by the NEC in regard to Section 3.6, provides thus:

"3.7. Non-Compliance with prescribed Forms which will not affect the validity of Rolls and other Election Documents.

No registration roll or other election document shall be invalidated on the ground that it is not printed or because of any error made in the copying or printing thereof."

We do not give the impression from the above quoted provision that the NEC is not mandatorily required to comply with the requirements of Section 3.6, as interpreted hereinabove, or that consequences are not or cannot be attached to non-compliance with the provisions. We acknowledge that there was non-compliance and that the non-compliance did deprive certain citizens of the right to vote. We do state, however, that from the totality of the evidence presented by the appellants, the violations as a matter of law do not reach the threshold of such an impact on the totality of the votes as to warrant or necessitate declaring the elections null and ordering a re-run. What we direct herein is that given the fact that the FRR is already prepared and in possession of the appellee NEC, coupled with the fact that the Supreme Court is authorized to correct, modify or enter the requisite judgment that the trial court (or administrative tribunal) should have entered, the appellee, in the interest of transparency and fairness to these electoral process, is mandated and ordered to fully comply with the

standards of publications of the FRR discussed herein, including that a full clean-up be made of the FRR and that it be made available in published hard-copies to all its Magistrates and polling places across the country several days prior to any run-off election being held. This clean-up must be done in consultation with and information to the two political parties who are to participate in the run-off. This is important to avoid attacks on the credibility on the process.

Wherefore and view of the foregoing, it is the considered opinion of this Court that the ruling of the NEC's Board of Commissioner declaring a run-off election is hereby affirmed, however, with modifications as follows:

- That the NEC is mandated and ordered to fully comply with the standards of publications of the FRR as discussed herein;
- That the NEC is mandated to conduct a full clean-up of the FRR to ensure that multiple names of identification number are removed therefrom;
- That the FRR be made available in published hard-copies to all Election Magistrates and polling places across the country in accordance with law prior to any run-off election being held.
- That given the fact that the FRR is the only electoral document that speaks to the eligibility of voters, the NEC is hereby prohibited from permitting anyone whose name is not found on the FRR to vote;
- That any addendum to the FRR be limited to only those listed in the NEC's polling and counting manual
- That poll watchers who are not registered at their places of assignment and whose names are not on the FRR should not be allowed to vote;
- That the Chairman and Members of the Board of Commissioners of the NEC and any staff thereof are hereby prohibited from any public or other pronouncement s and utterances relating to any matters which may grow out of the run-off elections or any statements in regard to any complaint filed with the NEC or proceedings being investigated by the NEC, as would create any semblance of bias, prejudice or view of the case.
- That the stay order ordered issued on November 6, 2017, growing out of the writ of prohibition filed by the first appellant LP against the NEC is hereby lifted.

The Clerk of this Court is ordered to inform the parties of the decision of this Court. AND IT IS HEREBY SO ORDERED.

Counsellors Charles Walker Brumskine, James G. Innis, Jr., Powo C. Hilton, Kuku Y. Dorbor and N. Oswald Tweh appeared for the 1st respondents/appellants; Counsellors Benedict F. Sannoh, Snonsio E. Nigba and Laveli Supuwood appeared for the 2dn appellants. Counsellors Joseph N. Blidi, Frank Musah Dean, Jr. and C. Alexander Zoe appeared for movant/appellee.