

BEFORE THE HONORABLE SUPREME COURT OF REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2017

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
 BEFORE HIS HONOR: KABINEH M. JA'NEH.....ASSOCIATE JUSTICE
 BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
 BEFORE HIS HONOR: PHILIP A.Z. BANKS, IIIASSOCIATE JUSTICE
 BEFORE HER HONOR: SIE-A-NYENE G. YUOHASSOCIATE JUSTICE

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.....Informants)

versus)

The National Elections Commission, Represented by)
 its Chairman, Hon. Jerome Korkoya,)
 of the City of Monrovia, Liberia.....Respondent)

BILL OF
INFORMATION

GROWING OUT OF THE APPEAL:)

The National Elections Commission)
 Represented by its Chairman, Hon. Jerome Korkoya)
 of the City of Monrovia, Liberia.....Movant/Appellee)

versus)

Charles Walker Brumskine and Harrison S. Karnwea,)
 Presidential and Vice Presidential Candidates and all)
 Representative Candidates of Liberty Party and the)
 Liberty Party, all of Liberia.....Respondent/1st Appellant)

APPEAL – MOTION TO
DISMISS APPEAL

GROWING OUT OF THE CASE:)

Charles Walker Brumskine and Harrison S. Karnwea,)
 Presidential and Vice Presidential Candidates and all)
 Representative Candidates of the Liberty Party and)
 the Liberty Party, all of Liberia.....1st Appellants)

AND)

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.....2nd Appellants)

APPEAL

versus)

The National Elections Commission,)
 Represented by its Chairman, Hon. Jerome Korkoya,)
 of the City of Monrovia, Liberia..... Appellee)

GROWING OUT OF THE CASE:)

Charles Walker Brumskine and Harrison S. Karnwea,)
 Presidential and Vice Presidential Candidates and all)
 Representative Candidates of Liberty Party and)
 the Liberty Party, all of Liberia,.....1st Complainants)

Violations of the Constitution
and Elections Laws,
Gross Irregularities During the
October 10, 2017 Elections

AND)

Joseph Nyumah Boakai and James Emmanuel Nuquah,)
 Presidential and Vice Presidential Candidates at the)
 October 10, 2017 Elections and the Unity Party,)
 all of Liberia....., 2nd Complainants)

versus)

The National Elections Commission,)
Represented by its Chairman, Hon. Jerome Korkoya,)
of the City of Monrovia, LiberiaDefendant)

Heard: December 18, 2017

Decided: December 21, 2017

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

This bill of information was instituted on December 14, 2017, by Joseph Nyumah Boakai and James Emmanuel Nuquay, Presidential and Vice Presidential Candidates at the October 10, 2017 Presidential and Representative Elections and the Unity Party (herein after known as “informant”) against the National Elections Commission (hereinafter known as the “respondent”). In order to have full insight into the bill of information, we deem it necessary to present a brief synopsis of the background of the events leading to its filing.

On October 10, 2017, the National Elections Commission (NEC), the body charged with the constitutional as well as statutory responsibility to conduct all elections in Liberia, conducted Presidential and Representative Elections throughout the country. Final results in the elections, which were announced by the NEC on October 19, 2017, showed that no presidential ticket obtained an absolute majority on the first ballot. In such a case, *Article 83(c)* of the Constitution of Liberia mandates that the two presidential tickets that received the greatest number of valid votes on the first ballot shall be designated to participate in the run-off election. The NEC declared that the Coalition for Democratic Change (CDC), which fielded George Mannah Weah as its presidential candidate and Jewel Howard Taylor as its vice presidential candidate, had obtained the greatest number of votes in the amount of five hundred ninety-six thousand thirty-seven (596, 037) amounting to 38.4% of the votes cast. The NEC also declared that the Unity Party (UP), which fielded Joseph Nyumah Boakai as its presidential candidate and James Emmanuel Nuquay as its vice presidential candidate had obtained the second highest number of votes cast in the amount of four hundred forty-six thousand seven hundred sixteen (446,716) votes amounting to 28.8%.

At the time of announcing the final results on October 19, 2017, the NEC also announced that a run-off election would be held on November 7, 2017, between the CDC and the UP, the two political parties that had obtained the highest valid votes in the October 10, 2017 elections.

On October 23, 2017, Charles Walker Brumskine, presidential candidate of the Liberty Party (LP) and Harrison S. Karnwea, vice presidential candidate also of the LP, and all LP

candidates for the House of Representatives, and the LP itself, not being satisfied with the results of the elections announced by the NEC, filed a complaint with the NEC. The complainants alleged that the NEC committed gross irregularities and fraud, and that the NEC violated the Constitution, the New Elections Law and the Rules and Regulations of the NEC in many respects during its conduct of the elections. The complainants therefore requested the NEC to set aside the results of the elections and conduct a re-run. The complainants also requested the NEC to postpone the run-off election until the complaint was heard. But the NEC did not postpone the run-off election as requested by the complainants; while the complaint was being investigated by the Chief Dispute Hearing Officer (CDHO) at the NEC, the NEC was carrying on preparations for the conduct of the run-off election between the CDC and UP. This prompted the complainants to file a writ of prohibition before the Justice in Chambers of the Supreme Court. The Justice in Chambers ordered the issuance of the alternative writ of prohibition and referred the matter to the Full Bench of this Court for expeditious hearing and determination because of the constitutional issues raised in the petition for writ of prohibition, and also because this was an election matter which requires prompt hearing and determination.

On November 6, 2017, this Court, after having heard the petition for the writ of prohibition, entered a Judgment affirming the alternative writ of prohibition and granting the peremptory writ of prohibition. The Court directed the NEC not to proceed with the November 7, 2017 run-off election until the NEC had decided the complainants' complaint and, if necessary, any appeal to the Supreme Court had also been decided. The NEC resumed jurisdiction over the matter and the CDHO of the NEC continued with the investigation.

On October 28, 2017, Joseph Nyumah Boakai and James Emmanuel Nuquay, presidential and vice presidential candidates of the UP and the UP itself, (hereinafter known as "interveners") filed a motion before the CDHO to intervene in the complaint filed by *Charles Walker Brumskine et al* before the NEC; they simultaneously filed a complaint, also against the NEC and also complaining of gross irregularities and fraud, and violation of the Constitution, the New Elections Law and the Rules and Regulations of the NEC regarding elections. The CDHO entered a ruling denying the motion. On appeal before the Board of Commissioners of the NEC, the Board reversed the ruling of the CDHO ordering that the intervenors be allowed as co- complainants.

On November 20, 2017, the CDHO entered a ruling denying the complaints filed by Charles Walker Brumskine et al, and the intervenors for lack of sufficient evidence to warrant re-run

of the October Presidential and Representative Elections as requested by the complainants. The CDHO however “mandated” the NEC to correct what the NEC had referred to as difficulties and challenges before any future election. On appeal to the Board of Commissioners of the NEC, the Board confirmed the ruling of the CDHO.

The parties appealed the decision of the Board of Commissioners of the NEC to the Supreme Court. And this Court, after hearing the appeal, delivered its Opinion and entered a Judgment on December 7, 2017, confirming the ruling of the Board of Commissioners of the NEC, however with modifications as follows:

- a. “That the NEC is mandated and ordered to fully comply with the standards of publications of the FRR as in keeping with law and as discussed in the Opinion;
- b. That the NEC is mandated to conduct a full clean-up of the FRR to have it comply with the provisions of the law;
- c. 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 conducted;
- d. 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;
- e. That any addendum to the FRR be limited to only those listed in the NEC’s polling and counting manual;
- f. That the pool watchers who are not registered at the places of assignment and whose names are not on the FRR should not be allowed to vote;
- g. That the Chairman and members of the Board of Commissioners of the NEC and any staff of the NEC are hereby prohibited from any public or other pronouncements and utterances relating to any matters which may grow out of the run-off election or any statements in regard to any complaint filed with the NEC, as could create any semblance of bias, prejudice or view of the case; and
- h. That the stay order ordered issued on October 31, 2017, growing out of the writ of prohibition filed by the 1st appellants, is hereby lifted and the NEC is ordered to proceed with the scheduling of the run-off election in accordance with the Constitution and the New Elections Law.”

This bill of information grows out of the aforesaid Opinion and Judgment of this Court. The informants have filed this bill of information, contending essentially that the NEC has not implemented the mandate of the Supreme Court as contained in its Opinion and Judgment. The informants have informed this Court that the NEC has not conducted the clean-up of the FRR and published the FRR as mandated by the Supreme Court; that until the FRR is

fully cleaned in a manner to make it compliant with law, or the number of days required to fully clean the FRR in a manner to make it compliant with law is determined in close consultation with the CDC and UP, the two political parties designated to participate in the run-off election, it is tantamount to improper execution of the mandate of the Supreme Court for the NEC to unilaterally set the date for the run-off election. In this connection, the informants posed the query - what if "a full clean-up of the FRR" to make it compliant with law is not completed by December 26, 2017, the date set by the NEC for the run-off election, what then would be the effect of the Supreme Court's mandate? The informants maintained that by not knowing in advance how long it will take to conduct a full clean-up of the FRR to the satisfaction of the political parties to the runoff election, it was improper for the NEC to set the date of the run-off election, and hence an improper execution of the mandate of the Supreme Court. The informants informed us that the NEC has failed, neglected and refused to call for and exercise collaboration and consultation with the CDC and UP, in spite of repeated demands made on the NEC by the two political parties to do so, including and in particular the UP.

The informants have argued that the NEC does not have the constitutional and statutory authority to, all by itself, set December 26, 2017 as the date for the run-off election; that for the NEC to set a date for the conduct of the run-off election, it must first seek and receive authorization from the Legislature through a Joint Resolution of the Senate and House of Representatives to set the date for the run-off election. Regarding this latter contention, the informants have urged us to take judicial notice that when the time set by the Constitution for mid-term elections to be held in October 2014 lapsed because of the Ebola Virus crisis, the NEC sought and obtained a Joint Resolution of the Senate and House of Representatives, which set the date for the mid-term elections in December 2014. The informants contend that the NEC is bound by this precedence. The informants have further urged us to give specific orders for the NEC Chairman and the NEC Executive Directors to recuse themselves from the run-off election process because, according to the informants, the Chairman and the Executive Director of the NEC had so compromised themselves that they could not oversee, manage and operate the runoff election impartially and without prejudice, coupled with proven evidence of deliberate violations of the Constitution and the Elections Laws. For the purpose of this Opinion, we quote below the full text of the Bill of Information:

"INFORMANTS INFORMATION

AND NOW COME Joseph Nyumah Boakai and James Emmanuel Nuquay, Presidential and Vice Presidential Candidates at the October 10, 2017 Elections and the Unity Party, INFORMANTS/APPELLANTS in the above-entitled proceeding, most respectfully inform your Honours of the improper manner in which Your Honors mandate of December 7, 2018 is being implemented and for legal and factual reasons showeth the following:

1. That Liberian jurisprudence is replete with holdings of the Supreme Court that the purpose of a Bill of Information is to review and correct any irregularities in the execution of a mandate of the Supreme Court to a Lower Court or tribunal. *Kromah v. Badio & Hill*, 34 LLR 85 (1986). In this jurisdiction, a Bill of Information is a special proceeding in the form of a complaint before a court where a matter is pending, or before a court which had earlier adjudicated a cause, invariably informing the court of a failure to do what it had ordered to be done, or of something which ought to be done or undone for one who is a party, or for one who was a party in or otherwise affected by a cause already adjudicated. *Kpoto v. Kpoto*, 34 LLR 371 (1987). A Bill of Information seeks to remedy the improper execution of the mandate of the Supreme Court. A Bill of information seeks to correct irregularities committed by a judge or judicial officer in the execution of the mandate of the Supreme Court. If anything goes wrong when an issue has reached the point of executing a mandate of the Supreme Court, it is the duty of the party who felt he was wronged to, in some way bring the action of wrong against whoever was committing the wrong to the attention of the Supreme Court en banc, and from time immemorial, it has been the practice to come by Bill of information. If a judge or any judicial officer attempts to execute the mandate of the Supreme Court in an improper manner, the correct remedy is by Bill of information to the Court. *Kromah v. Pearson and British Petroleum Med West Africa (Liberia) Ltd.*, 34 LLR 304(1986). A party who feels that a lower court or tribunal, in executing a mandate of the Supreme Court, has proceeded in an improper manner, has remedy not by remedial writ but by bill of information to the full bench. *Jawhary v. Jones et al.*, 38 LLR 584 (1998).

2. That Informants/Appellants, in their Brief and their Bill of Exceptions, raised the following cardinal issues which formed the basis of their prayers for relief to this Honourable Court:

"That regardless of whether re-run or run-off elections are-ordered, that your Honor will take into consideration the following irregularities which warrant verification and sanitization of the FRR:

(i)The FRR given on flash drives to the political parties in September 2017 being significantly and substantially different from the flash drive submitted by Appellee's Executive Director under subpoena in November 2017, necessitate a sanitization of the FRR;

(ii)The flash drives given to the political parties has seventy-nine (79) polling places in ten (10) precincts missing amounting to some 35, 750 voters, which necessitates the sanitization of the FRR;

(iii) In the seventy-five (75) precincts at least one polling place is missing, which necessitates sanitization of the FRR;

(iv) The same Voters ID was assigned to more than one voter and in some cases to up to five (5) voters, which necessitates sanitization of the FRR;

(v) Several voters existed on the FRR multiple times, which necessitates the sanitization of the FRR;

(vi) The FRR was not published in hard copies (on paper) as required by law and regulations and this should therefore be done;

(vii) The FRR was not posted at the offices of [the] election magistrates and at polling precincts for inspection, as required by law and Appellee's regulation and this should therefore be done and that such publication of the FRR should be done not less than thirty (30) days, as contemplated by the Elections Law, before re-run elections or run-off election, whichever is ordered by Your Honours, is conducted;

(viii) The FRR was not in sync with the database posted at Appellee's website, which was accessible by Appellee's SMS verification system, and which in essence means that Appellee maintained two Voters Registration Rolls for the October 2017 Elections, in violation of the law. And so the Appellee's SMS verification system should not be used for any future election;

(ix) The ballots and their stubs should carry serial numbers, with the serial numbers for each ballot corresponding with the serial number on its stub so as to ensure the integrity of the ballots;

(x) To order that the maximum number of ballots to be printed should be not more than 10% over and above the maximum number of registered voters on the sanitized FRR so as to make administration of any election easier, expeditious and smoother,"

(xi) To order that the maximum number of voters allowed at each polling place should be not more than 500 and that the maximum number of ballots allocated to each polling place should be not more than 550, the extra 50 ballots to be used for replacement of spoiled ballots, which would make the administration of any election easier, expeditious and smoother;

"4) To order that for the sanitization of the FRR Appellee should employ the assistance of a data management expert, specifically a non-Liberian, who can be trusted by the parties to re-run elections or run-off election, whichever is ordered by Your Honours, so that they parties will have confidence in the sanitization process;

"5 To order that the Appellee employs competent and sufficient polling staff for the conduct of re-run elections or run-off election, whichever is ordered by Your Honors, so that the "challenges" and "difficulties" allegedly experienced by Appellee and acknowledged by the CDHO in his Final Ruling, before and during the course of the October 10, 2017 elections would not recur;"

"6) To order that Appellee acquires and places at the disposal of its polling staff and magisterial offices, logistics and materials sufficient to ensure the efficient and expeditious conduct of re-run elections or run-off election, whichever is ordered by Your Honours;" See Part IV of Petitioner/ Appellants Brief, pages 20-22. See also the Petitioners/2nd. Appellants Bill of Exceptions. Count 11-22 on irregularities in the FRR, Counts 30-34 on lack of Serial numbers on the ballots; Count 38 on the existence of two FRRs and the discrepancies between them; and Count 39-41 on necessary steps to correct difficulties and challenges

3. That on December 7, 2017, this Honourable Court handed down its Opinion and Judgment in which it mandated the Respondent National Elections Commission (NEC) "to conduct a full clean-up of the FRR so as to make it compliant with law." See page 2 of the Judgment of the Honourable Court. Although not so expressly stated in the Judgment, a reading of the

entire Opinion, however, shows that the Supreme Court intended and has so unequivocally stated in the Opinion that the clean-up mandated of the FRR is to be done in consultation with and information to the two political parties who are to participate in the run-off election, so as to avoid attacks on the credibility of the process. This is clearly stated on pages 128-129 of the Opinion which we quote verbatim for the purpose of this Information:

"What we direct herein is that given the fact that the FRR is already prepared and in possession of the Appellees, NEC, coupled with the fact the Supreme Court is authorized to correct, modify or enter the requisite judgment that the trial court (or administrative tribunal) should have entered, the appellees, 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 elections being held. The cleanup 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 of the process." (EMPHASIS OURS).

4. That on Friday, December 9, 2017, while awaiting the release of the full opinion, Informants/Appellants addressed a letter to the Chairman of the NEC, Respondents herein, requesting for a meeting with the Respondent NEC with the view to discuss and evolve a consensus on the modalities for the full cleaning of the FRR, as can be more fully seen from a copy of said communication hereto attached and marked as Informants Exhibit INF/1 to form part of this Information. Although Respondent NEC received this communication, it failed, neglected and refused to respond to it.

5. Informants/Appellants say that on Saturday, December 9, 2017, the Board of Commissioners of Respondent NEC invited the contesting parties to the run-off election for the reading of the mandate of the Supreme Court, whereupon one of Counsels for Informants/Appellants in the person of Cllr. Benedict F. Sannoh, made a submission on the record to the effect that since the Supreme Court Judgment is not clear on which of the two FRRs(the FFR given to political parties by Respondent in September 2017 or the FFR that Respondent NEC introduced into evidence under subpoena at the hearing in November 2017 before the Chief Dispute Hearing Officer) should be cleaned, and also not clear on what constitutes "full clean-up of the FRR," and since the issue of the authenticity of the FRR was raised by Informants/Appellants in their Bill of Exceptions and argued in their Brief along with a prayer that the FRR be sanitized prior to any run-off election being conducted, the proper way to proceed with the implementation of the Supreme Court's mandate is for Respondent NEC to work with informants/Appellants with the view to evolving consensus on how the clean-up of the FRR should be conducted. In its submission, Counsel for Informants/Appellants also admonished Respondent NEC's Board that a collaboration with the two political parties who are to Participate in the run-off in the clean-up process, will induce confidence in the process, avoid delay, and potentially obviate the need for any of the parties taking recourse to the Supreme Court by way of Bill of Information for any conduct it may consider as improper implementation of the Supreme Court's mandate. To this submission, contrary to the evidence, Respondent NEC's Board, through its Chairman, reiterated that there is only one FRR but he affirmed that Respondent NEC's Board was disposed to working with the two political parties who are to participate in the run-off, and that Respondent NEC's Board had in fact invited these two parties to a meeting scheduled for 4:00pm on Saturday, December 9, 2017 to discuss the implementation modalities of the Supreme Court's mandate. A copy of the minutes of this meeting is hereto attached and marked as Informants Exhibit INF/2 to form part of this Information.

6. That at the aforesaid 4.00pm, December 9, 2107 meeting, which Unity Party (UP), one of Informants/Appellants, and the Coalition for Democratic Change (CDC), the two political parties who are to participate in the run-off elections attended, Respondent NEC's Chairman came in with no agenda or proposal as to how the clean-up should be done, or how Respondent NEC and these two political parties can collaborate in this regard. Instead, Respondent NEC's Chairman created the impression that the FRR is already cleaned; which impression defies the Supreme Court's opinion and judgment. However, the two political parties (UP and CDC) who attended the meeting underscored that there is a need to clean up the FRR prior to the run-off election as a manner of compelling necessity. As the meeting became intense on the matter of cleaning-up of the FRR, Respondent NEC's Chairman ended the meeting in a rather abrupt manner with the promise, that he will cite the parties to another meeting. Up to the filing of this Information, Respondent NEC has failed, neglected and refused to cite the parties to a meeting.

7. That in an effort to move the process forward, representatives of UP and CDC, the two political parties who are to participate in the run-off elections, met on Sunday, December 10, 2017 and agreed on what full cleaning-up of the FRR shall entail, which was reduced into writing and submitted to the Respondent NEC as the parties' recommendations regarding the cleaning up of the FRR. A copy of this submission is hereto attached and marked as Informants Exhibit INF/3 to form part of this Information. Up to the filing of this Information, Respondent NEC has failed, neglected and refused to react to this submission, let alone to invite the parties to a meeting to discuss same. Consequently, one of Counsels for Informants/Appellants addressed a second letter to Respondent NEC urging it to comply with the mandate of the Supreme Court by forging collaboration and consultation with the political parties that are to take part in the run-off election. A copy of this second communication is hereto attached and marked as Informants Exhibit I•/4 to form part of this Information

8. That about 4:00 pm on Tuesday; December 12, 2017, Respondent NEC announced that the run-off election will be conducted on Tuesday, December 26, 2017, to which the Unity Party (UP), one of Informants/ Appellants, through its Counsels, immediately registered its objections as can be more fully seen from a third communication addressed to Respondent NEC, hereto attached and marked as Informants Exhibit INF/5 to form part of this Information. Informants/Appellants say that Respondent NEC's announcement of a date for the run-off election constitutes an irregular and improper execution of the Supreme Court's mandate for the reasons set forth below.

9. Informants/Appellants say firstly, that Respondent NEC has not conducted the clean-up of the FRR and publication of the FRR as mandated by the Supreme Court and Respondent; and Respondent/NEC has not reported back to the Supreme Court on the manner in which Respondent NEC has executed the Supreme Court's mandate, considering that a written report to the Supreme Court is the legal and customary requirement of the Supreme Court. The Respondent NEC's failure to comply with the mandate of the Supreme Court is also supported by statements of the international partners supporting the electoral process including ECOWAS and EU, both of which have called on Respondent NEC for a cleanup of the FRR consistent with the Opinion of the Supreme Court.

10. Secondly, Informants/Appellants say that the Opinion of the Supreme Court calls for collaboration and consultation in Respondent NEC's cleaning up of the FRR with the two political parties (UP and CDC) who are to participate in the run-off election. Respondent NEC has failed, neglected and refused to call for and exercise such collaboration and consultation in spite of repeated demands made on Respondent NEC by the two political

parties, which will participate in the run-off election, including in particular the Unity Party, one of Informants/Appellants.

11. Thirdly, Informants/Appellants say that until the FRR is fully cleaned in a manner to make it compliant with law, or the number of days required to fully clean the FRR in a manner to 1 make it compliant with law is determined in close consultation with the two political parties, who are to participate in the run-off election, it is tantamount to improper execution of the mandate of the Supreme Court for Respondent NEC to unilaterally set the date for the run-off election, as it has done. What if "a full clean-up of the FRR" to make it compliant with law is not completed by December 26, 2017, the date set for the run-off election, what then would have been the effect of the Supreme Court's mandate? Informants/Appellants say that by not knowing in advance how long it will take to conduct a full clean-up of the FRR to the satisfaction of the parties to the runoff election, it was improper for Respondent NEC to set the date of the run-off election, and hence an improper execution of the mandate of the Supreme Court.

12. Fourthly, Informants/Appellants say that Respondent NEC does not have the constitutional and statutory authority to, all by itself, set December 26, 2017 as the date for the run-off election, which appears to be an attempt to schedule the elections in accordance with Article 83 of the Constitution, which states in part as follows:

Article 83(b) "All except for President and Vice President, all elections of public officers shall be determined by a simple majority of the valid votes cast in any election. Election of President and Vice President shall be by absolute majority of the valid votes cast. If no Presidential ticket obtains an absolute majority in the first ballot, a second ballot shall be conducted on the second Tuesday following expiry of the time provided in Article 83 (c). The two presidential tickets that received the greatest number of valid votes on the first ballot shall be designated to participate in the run-off election and the ticket with a majority of the valid votes cast shall be declared winner. "

Article, 83 (c) "The returns of the elections shall be declared by the Elections Commission not later than fifteen days after the casting of ballots. Any party or candidate who complains about the manner in which the elections were conducted or who challenges the results thereof shall have the right to file a complaint with the Elections Commission. Such Complaint must be filed not later than seven days after the announcement of the elections.

13. Informants/Appellants say that that portion of the aforesaid Article 83(b)of the Constitution, which calls for a run-off election to be conducted on the "second Tuesday following expiry of the time provided in Article 83 (c)" is no longer applicable for this run-off election as the time contemplated by the Constitution for the run-off election, same being the "second Tuesday following expiry of the time provided in Article 83 (c)", would have been November 7, 2017 had there not been a dispute regarding the October 10, 2017 elections. The electoral dispute, which was eventually settled by the Honourable Supreme Court on December 7, 2017, affected the time contemplated by the Constitution; the second Tuesday following expiry of the time provided in Article 83(c) of the Constitution (that is November 7, 2017) having lapsed, Respondent NEC lacks the constitutional and statutory authority to unilaterally set December 26, 2017 as a new date for the run-off election.

14. For Respondent NEC to set a date for the conduct of the run-off election, it must first secure authorization from the Legislature by way of a Joint Resolution of the Senate and House of Representatives setting the date for said run-off election, which Respondent NEC

has failed to do. Informants/Appellants pray this Honourable Court to take judicial notice that when the time set by the Constitution for mid-term election to be held in October 2014 lapsed because of the Ebola Virus crisis, Respondent NEC sought and obtained a Joint Resolution of the Senate and House of Representatives, which set the date for the mid-term elections in December 2014. Respondent NEC is bound by this precedence to seek a Joint Resolution of the Senate and House of Representatives to set the date for the run-off election, which arises from the October 10, 2017 elections.

15. Informants/Appellants say that when the Supreme Court lifted the Stay Order on the runoff election originally scheduled by Respondent NEC for November 7, 2017 and mandated Respondent NEC to conduct the aforesaid run-off election in accordance with the Constitution and the Elections Laws, the Supreme Court intended that Respondent NEC, after cleaning-up the FRR and publishing the FRR at all its magisterial offices and all polling places throughout the country as mandated by the Supreme Court, Respondent NEC would, just as it did in 2014, proceed to the Legislature and obtain a Joint Resolution of the Senate and House of Representatives, which sets the date for the run-off election. The Supreme Court never intended that Respondent NEC, which has no authority to set election date, would unilaterally assume that power and function. Respondent NEC's setting of December 26, 2017 as the date for the run-off election was therefore ultra vires; the unilateral declaration of December 26, 2017 as the date for run-off election is tantamount to an improper execution of the mandate of the Supreme Court for which Information lies. And Informants/Appellants pray Your Honours to so declare and to also declare that before Respondent NEC seeks a Joint Resolution of the Senate and House of Representatives for the setting of the date for the run-off election, Respondent NEC must have first complied fully with the Supreme Court's mandate and informed the Supreme Court in writing that it has so complied.

16. For emphasis Informants/Appellants reiterates that this is not the first time in the electoral history of Liberia that the date set in the Constitution for elections have passed without the elections being held and the procedure adopted for the setting up of the new date. It should be recalled that in 2014, when the senatorial elections (mid-term elections) could not be held on the date set by the Constitution, same being the second Tuesday in October of 2014, due to the outbreak of the Ebola Virus in Liberia, the Respondent NEC made a formal request to the Legislature to set a new date, following which the Senate and the House of Representatives, by Joint Resolution set a new date for the elections in December 2014. The situation in 2014 was occasioned by a supervening cause (the Ebola Virus Crisis), which is exactly the same as in the instant case (the electoral dispute and the Writ of Prohibition issued by the Supreme Court). Hence Informants/Appellants say that Respondent NEC's unilateral declaration of December 26, 2017 as the date for the run-off election is tantamount to an improper execution of the mandate of the Supreme Court for which Information will lie.

17. Informants/Appellants say that in their Bill of Exceptions and Brief and from the records certified to this Honorable Court it is clear that Respondent NEC had two FRRs (the one given to political parties in September 2017 and the one that Respondent NEC used for its SMS verification system on the day of polling on October 10, 2017, the latter of which was introduced pursuant to subpoena at the hearing before the Chief Dispute Hearing Officer in November 2017. Evidence at the hearing shows that the latter FRR has thousands and thousands more voters and many more polling stations than the former. Even the FRR given to the political parties in September 2017 had flaws, such as multiple voters, multiple voter registration cards and ineligible voters, etc. So, in ordering that the FRR should be cleaned and sanitized before a run-off election should be held, Your Honours omitted to say which FRR should be cleaned and sanitized — the one given to the political parties in September 2017 or the one that the Respondent NEC used for its SMS verification system,

which was introduced into evidence at the hearing in November 2017. Informants/Appellants say that the FRR which should be cleaned and sanitized is the FRR which was given to the political parties in September 2017, and both UP and CDC, the contesting parties to the run-off election have so agreed as both of them are among the seven (7) political parties which received this FRR of September 2017 and so the authenticity of that FRR can be easily verified. And so Informants/Appellants pray that Your Honours should so order to avoid any confusion during the cleaning-up process.

18. Informants/Appellants also say that if this issue of which the FRR is to be to be cleaned, sanitized and used for the run-off election is not settled, Respondent NEC is likely to use the FRR which Respondent NEC used for its SMS" verification system, which SMS verification system Your Honours outlawed for the run-off election. And since Respondent NEC alone has the information stored on that latter FRR, there will be no way for Informants/Appellants or the Coalition for Democratic Change (the other contestant at the run-off election) to determine the veracity of the information stored on that latter FRR. This would mean that whatever "cleaning or sanitization" Respondent NEC submits that it has done will not be verifiable. And so Informants/Appellants pray Your Honours to clarify Your Honors' mandate by augmenting it with the order that the FRR to be cleaned and sanitized is the FRR submitted by Respondent NEC to the political parties in September 2017 (not the FRR used by Respondent NEC for its SMS verification system), especially when Your Honours have condemned Respondent NEC's use of the SMS verification system for the October 10, 2017 elections. And Informants/Appellants so pray.

19. That Informants/Appellants say that Your Honours inadvertently omitted to mandate the process or standard by which the FRR would be considered cleaned, sanitized and published as mandated by Your Honours. Informants/Appellants say that for a credible run-off election to be conducted, Respondent NEC should file a written certification, approved by the chairperson of the two political parties contesting in the run-off election, with Your Honours (perhaps through the Justice in Chambers) that Respondent NEC has cleaned, sanitized and published the FRR as mandated by Your Honours. This is the only way Respondent NEC can establish to Your Honors' satisfaction and to the satisfaction of the contesting parties to the run-off election that Respondent NEC has cleaned the FRR in consultation with and information to the two Political parties who are to participate in the run-off as ordered by Your Honors. Otherwise, there is no compelling reason why and how Respondent NEC will comply with Your Honors' mandate to clean, sanitize and publish the FRR at the offices of the election magistrates and polling places throughout the country, especially given the fact that Respondent/ NEC was a party defendant in the proceedings out of which the mandate emanated. And Informants/Appellants pray Your Honours to so order that before the runoff election is conducted Respondent NEC should so certify to Your Honours.

20. Informants/appellants also further say that Your Honour's Opinion and Judgment in the principal case ordered that a run-off election shall be held in accordance with the Constitution and Election Laws; but Your Honours did not state when the run-off election shall be held. All that Your Honours said is that before a run-off election is held, the FRR should be cleaned and sanitized and published in hard copies (on paper) at the offices of the election magistrates and at each polling place. But when exactly after the cleaning and sanitization of the FRR and its publication at the offices of the election magistrates and polling places should the run-off election be held? Your Honours did not say; but Informants/Appellants pray Your Honours, to take judicial notice that in their prayer, they requested that the minimum period between the publication of the sanitized FRR and the conduct of the run-off election should be thirty (30) days since this is the period before an election within which the FRR may not be altered. Elections Law, sec. 3.19; Voter Registration Regulation of August

12, 2016, Art. 22.5. However, Your Honours inadvertently failed to pass on this issue and so it appeared to Respondent/ NEC that Your Honours left it to Respondent/ NEC's discretion as to when to conduct the run-off election mandated by Your Honours; but this certainly was not Your Honors' intention. More importantly, Respondent/ NEC cannot and should not unilaterally set the date for the run-off election; Respondent/ NEC should request for a Joint Resolution of the Senate and the House of Representatives which set the actual date for the run-off election.

21. Informants/Appellants say that it is necessary for Your Honours to state with particularity and specificity the timeframe within which the activities mandated, specifically the cleaning up of the FRR and its publication, should take place; otherwise Respondent/ NEC might capriciously and whimsically set a date for the run-off election, as it has done, which does not give voters sufficient time to inspect the cleaned, sanitized and published FRR before the run-off election takes place. And so Informants/Appellants pray Your Honours to order that the run-off election shall not take place less than forty-five (45) days after the cleaned, sanitized FRR has been fully published all around the country. Fifteen (15) days shall be for the time period for public challenges to the cleaned, sanitized FRR and thirty (30) shall be the legal time immediately before an election that the FRR may not be altered. The specific date of the run-off election should be set by a Joint Resolution of the Senate and the House of Representatives on the petition of Respondent/ NEC, after having fully executed Your Honors' mandate in the principal case. And Informants/Appellants so pray.

22. Informants/Appellants also says that the mandate of the Supreme Court to Respondent/ NEC to conduct the run-off election in accordance with the Constitution and Elections Laws, and at the same time to comply with its mandate prior to the conducting the run-off election is instructive and it appears that Respondent/ NEC did not fully understand Your Honors' instructions, which simply means that for the Legislature to set a date for the run-off election, the Legislature must take into consideration the period required for Respondent/ NEC to comply fully with the mandate of the Supreme Court to clean and, publish the FRR. Proceeding to set the date for the run-off election without fully executing the Supreme Court's mandate to the satisfaction of the Supreme Court and without prior authorization by the Legislature is tantamount of improper execution of the Your Honors' mandate.

23. Informants/Appellants say that if Respondent/ NEC has made it itself available for consultation and collaboration with Informants/Appellants and the CDC in the implementation of Your Honors' mandate, a number of outstanding issues which impinge on the integrity of the process would have been addressed. This relates among others to the ballots and serial numbers thereon and the number of ballots to be printed which Your Honours inadvertently omitted to pass upon. Informants/Appellants pray Your Honours to recall that they introduced un-rebutted and un-contradicted evidence at the hearing before the Chief Dispute Hearing Officer that the ballots used for the October 10, 2017 elections carry serial numbers on the stubs of the ballots but not on the ballot themselves, contrary to generally acceptable standards and contrary to what was obtained and practiced in previous elections.

24. Informants/Appellants say that they tried at the hearing before the Chief Dispute Hearing Officer to ascertain why the ballots for the October 10, 2017 elections, in contrast to the 1997 proportional representation election, carried serial numbers on the ballot stubs but not on the ballots and all that Respondent/ NEC's witness (its Executive Director responsible for such things) said is that the reason is "administrative"; but Respondent/ NEC's lawyers objected to question posed to the witness to explain what was meant by "administrative" in that context and the objection was sustained. Informants/Appellants produced evidence that the purpose of the serial numbers on ballots and their stubs is for

security reason — to check which ballots are allocated to a particular polling place as will be indicated on the presiding officer's worksheet for that polling place and to ensure that ballots intended for a particular polling place would not be used for another polling place, and thereby deterring and stopping an election offense called "ballot box stuffing". Unfortunately, both the Chief Dispute Hearing Officer and Respondent/ NEC's Board of Commissioners did not pass on this issue; Informants/Appellants raised the issue of the serial numbers on the ballots in their Bill of Exceptions and argued it before your Honours but unfortunately Your Honours also did not pass on this issue.

25. That further in addition to Paragraphs 23 and 24 above, Informants/ Appellants pray Your Honours to order that the ballots for the run-off election should carry serial numbers on the ballots and on the ballot stubs, with the serial number on the ballot stub and ballot corresponding one to the other; the intention of this order being to deter and stop "ballot box stuffing", an election offense, which Informants/Appellants complained occurred during the October 10, 2017 elections.

26. That Informants/Appellants also say that due to the refusal of Respondent/ NEC to engage the Informants/Appellants in furtherance of the implementation of Your Honors' mandate, it is not possible to ensure that the maximum number of ballots to be printed should not be more than 10% over and above the maximum number of registered voters on the sanitized FRR so as to make administration of any election easier, expeditious and smoother especially when Respondent/ NEC's principal witness (its Executive Director responsible for the printing of the ballots for the October 10, 2017 elections) at the hearing before the Chief Dispute Hearing Officer said that Respondent/ NEC had challenges and difficulties in administering the October 10, 2017 elections and the Chief Dispute Hearing Officer acknowledged the existence of these challenges and difficulties. Excessive ballots facilitate "ballot box stuffing" - an election offense, evidence of which was introduced at the hearing, but which election offense will be deterred or eradicated at the run-off election by the limitation on the number of ballots that Respondent/ NEC is permitted to print for the run-off election. And Informants/Appellants pray Your Honours to so order.

27. Informants/Appellants say that given the comprehensive nature of Your Honors' Opinion, pointing to the level of ineffectiveness in the management of the NEC, and how its Chairman had so compromised himself that he could not oversee, manage and operate the runoff election impartially and without prejudice, coupled with proven evidence of deliberate violations of the Constitution and the Elections Laws, the NEC Chairman and the NEC Executive Director (the latter being the person who directly supervised and managed the October 10, 2017 elections) should and ought to have tendered their resignations. With arrogance, they have failed to do so, and Informants/Appellants say that the continued involvement of the NEC Chairman and the NEC Executive Director in the organizing and running of the run-off election offends the spirit of the mandate of Your Honors' mandate for free, fair and transparent run-off election, for which Informants/Appellants pray that Your Honours give specific orders for the NEC Chairman and the NEC Executive Directors to recuse themselves from the run-off election process. This request was first made to Your Honours in the Brief filed by Informants/Appellants but Your Honours inadvertently overlooked it and the Respondent NEC's refusal to coordinate with parties to the run-off election to implement Your Honors' mandate and Respondent's unilateral declaration of December 26, 2017 as the date for the run-off election together illustrate the necessity for the recusal of these two (2) persons from the- run-off election. And Informants/Appellants pray Your Honours to so order.

25. Finally, Informant/Appellants say that in light of the seriousness of the irregularities committed by Respondent NEC in the execution of Your Honors mandate, that Your Honors

will issue a stay order on the holding of the run-off election on December 26, 2017 and on all activities in furtherance of holding the run-off election on the said December 26, 2017 until Your Honours shall have passed upon this Bill of Information. And Informants/Appellants so pray.

WHEREFORE AND IN VIEW OF THE FOREGOING, Informants/Appellants respectfully prays the Honourable Supreme Court to, in addition to orders and judgments already mandated in Your Honors' opinion and judgment of December 7, 2017, order as follows:

1. Issue a stay order immediately on the holding of the run-off election on December 26, 2017 and on all related activities in furtherance of holding the run-off election on that date until Your Honours shall have disposed of this Bill of Information.
2. Rule that Respondent NEC lacks the constitutional and statutory authority to set December 26, 2017 as a new date for the run-off election without first having fully complied with and fully executed Your Honors' mandate of December 7, 2017, and second, without authorization from the Legislature by way of a Joint Resolution of the Senate and House of Representatives; and that by such conduct, Respondent NEC acted contrary to your Honors' mandate.
3. Rule that setting December 26, 2017 as the date for the conduct of the run-off election by the Respondent NEC is ultra vires, constitutes an irregular and improper execution of the Supreme Court's mandate of December 7, 2017; that it is in violation of the Constitution and the Elections Laws of Liberia; and to declare same null and void and of no legal effect.
4. Rule that the announcement by Respondent NEC for the run-off election to be held on December 26, 2017 constitutes an irregular and improper execution of the Supreme Court's mandate for the reasons that Respondent NEC has not conducted a full clean-up of the FRR; that Respondent NEC has failed, neglected and refused to call for and engender collaboration and consultation with the two political parties participating in the run-off election as mandated by Your Honours; that until the FRR is fully cleaned in a manner to make it compliant with law, or the number of days required to fully clean the FRR in a manner to make it compliant with law, is determined in close consultation with the two political parties, who are to participate in the run-off elections, it is improper for Respondent NEC to unilaterally set the date for the run-off election, as it has done.
5. Order that for the purpose of the run-off election, the FRR given by Respondent NEC to the political parties in September 2017 shall be considered as a "Provisional Voters Roll" which shall be cleaned, sanitized and thereafter published in the manner dictated by Your Honours in the opinion and judgment of December 7, 2017 and in collaboration and consultation with the two political parties taking part in the run-off election as contained in the Supreme Court's aforesaid opinion and judgment of December 7, 2017.
6. Order that Respondent NEC shall certify its compliance with and execution of the Supreme Court's mandate to conduct a full clean-up of the FRR (the FFR submitted by Respondent NEC to political parties in September 2017) by submitting a written certificate, attested to by the contestants in the run-off election, to the Chambers Justice and the Chambers Justice shall approve the certificate if the Chambers Justice is satisfied that the written certificate is truthful.
7. Order that fifteen (15) days shall be allowed after Respondent NEC's publication of the cleaned and sanitized FRR (herein also referred to as the "Provisional Voters Roll") for the public to inspect and for voters to verify whether their names and other information are on

the voters roll, to also determine whether any ineligible person is listed on the FRR, and to thereafter publish an authenticated and verified Final Voters Roll (FRR) in the manner mandated by Your Honours.

8. Order that consistent with the Elections Law and election regulation which provide that the FRR shall not be altered within the thirty (30) days immediately before an election, after the fifteen-day public inspection period of the cleaned and sanitized FRR has expired, an additional thirty (30) days shall lapse before the run-off election shall be conducted by Respondent NEC.

9. Order that the actual date for the run-off election shall be set by the Legislature through a Joint Resolution of the Senate and House of Representatives, the petition for the Respondent NEC shall make to the Legislature only after the Respondent NEC has satisfied the Supreme Court that Respondent NEC has fully complied with and executed the Supreme Court's mandate of December 7, 2011.

10. Order that the ballots for the run-off election shall carry serial numbers with the serial number on each ballot stub corresponding to the serial number on the ballot itself so as to preserve the integrity of the ballots for the runoff election, facilitate smoother and manageable run-off election, and avoid and deter "ballot box stuffing" — an election offense which Informants/Appellants complained of.

11. Order that the maximum number of ballots to be printed should be not more than 10% over and above the maximum number of registered voters on the sanitized FRR so as to make administration of any election easier, expeditious and smoother and avoid and deter "ballot box stuffing" — an election offense which Informants/Appellants complained of;

12. Order that the Respondent's Chairman and its Executive Director be disqualified from participating in or having anything to do with the run-off election and that they be temporarily replaced and/or substituted as in keeping with the Elections Law and orders of the Respondent's Board of Commissioners, whichever is applicable under each circumstance; and

13. Grant unto Informants/Appellants any other relief as in such matters is provided by law.

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
INFORMANTS/APPELLANTS
By and through their Counsel:

Benedict F. Sannoh
COUNSELLOR-AT-LAW

J. Laveli Supuwood
COUNSELLOR-AT-LAW

Snonsio Nigba
COUNSELLOR-AT-LAW

Golda Bonah-Elliott
COUNSELLOR-AT-LAW"

The respondent, NEC, filed returns to the bill of information denying the averments set forth therein. The NEC contended essentially that the bill of information was premature and was filed in bad faith, intended to interfere with the execution of the Supreme Court's Mandate and undermine the electoral process. The NEC also contended that the informants did not show that the NEC was wrongly executing the mandate of the Supreme Court. The NEC urged us to take judicial notice of the averments of the bill of information in Count 1 thereof wherein the Counsel for the informant's letter to the NEC attached to the bill of information as informants' Exhibit INF/4, states: "You will also vividly recall that when the judgment of the Supreme Court was read on Saturday, December 9, 2017, at the NEC Headquarters, I made a submission on the record to the effect that since the Opinion of the Supreme Court does not state with clarity what cleaning up the FRR entails, and the issue having been raised by the Unity Party, the NEC should conduct clean-up of the FRR in close collaboration with the two (2) [political] parties involved in the run-off." In this connection the NEC contended that if the informants believe that ".....the Opinion of the Supreme Court does not state with clarity what cleaning up of the FRR entails...", then a petition for re-argument would have been the proper remedy, and certainly not a bill of Information. The NEC maintained that the informants have adopted a posture of affront and confrontation in their interaction with the NEC, taking the position that matters on which the Supreme Court had decided in its Opinion of December 7, 2017, should be re-litigated. The NEC maintained that while it is prepared to invite and had invited the two political parties to the run-off election and entered consultations with them, such consultations and cooperation must be done in a manner that preserves the authority, integrity, independence and neutrality of the NEC as a disinterested empire.

The NEC also maintained that the implementation of the Supreme Court's Mandate is not an event but a process, which comprises three (3) phases, namely (1) pre-runoff election activities; (2) election day activities; and (3) post run-off election activities; that phase one (1), which comprises pre-runoff election activities, entails the conduct of the full clean-up of the FRR to ensure that multiple names of identification numbers are removed; that voters' identification numbers are made unique by preventing more than one voter from having the same identification number; that there is de-duplication of the FRR and publication of the FRR; that the FRR in hard copies are made available to all Election Magistrates and at all polling places; that only those whose names are on the FRR would be permitted to vote; that only those listed in the NEC's polling and counting manual would be permitted to vote on the addendum to the FRR; and that only those pool watchers whose names are on the FRR at their precincts and polling places would be permitted to vote. All of these activities,

the NEC said, have been undertaken, some completed and some nearing completion for the conduct of the run-off election.

The NEC informed us that to ensure the cleaning up of the FRR, it requested the Economic Community of West African States ("ECOWAS") to send a team of technicians to Liberia to assist; that the ECOWAS' Technical Team arrived in Liberia on Tuesday, December 12, 2017; that since their arrival members of the Team have been working along with technicians of the NEC and United Nations Development Program's (UNDP) technicians on a road-map regarding the cleaning up of the FRR; that on December 15, 2017, the technicians held a meeting at the NEC's headquarters with representatives of the UP and the CDC with local observers and members of the media in attendance, to discuss the Proposed Work Plan by the National Elections Commission and the ECOWAS Technical Team on the Supreme Court's mandate with regard to the Register of Voters; that during the meeting, a consensus was reached on the full implementation of the Work Plan. The NEC said that during the December 15, 2017 meeting, the technical team discussed the Proposed Clean-Up Road Map and answered questions from the two (2) contesting political parties; that the informant did not interpose any objection to the proposed Road Map; that the technical team expects to finish the clean-up in a couple of days; that after the clean-up, the two (2) contesting parties will each be provided with a copy of the cleaned FRR; that after the clean-up, the NEC has plans to immediately begin printing; and that after printing, the cleaned FRR for each county will be sent to the Elections Magistrate concerned, and published at polling places across the county days before the run-off election.

The NEC also said that phases two (2) and three (3) of the implementation of the Supreme Court's Mandate, election day activities and post run-off election activities, entail the smooth conduct of polling, the counting process, the announcement of the results in conformity with law and refraining from prejudicial utterances that may compromise the neutrality of the NEC as adjudicators of post-election complaints.

The NEC further said that as the body with the constitutional and statutory responsibility for the conduct of all elections, it announced the date of the run-off election in keeping with Article 83 (b) of the Constitution of Liberia; and that the request made by the informant for the Supreme Court to disqualify the Chairman and the Executive Director of Respondent from participating in or having anything to do with the run-off election, without any legal basis, is contemptuous and intended to undermine the separation of powers as enshrined in our Constitution.

As was done with the Bill of Information, we also quote the full text of the returns for the benefit of this Opinion.

"RESPONDENT NEC'S RETURNS

Respondent, in the above-entitled proceeding, denies the legal and factual sufficiency of Informants' Bill of Information to warrant the relief sought, and respectfully requests Your Honours and this Honourable Court to deny and dismiss same, for the following legal and factual reasons, showeth to wit:

1. That as to the entire Bill of Information, Respondent says same is a fit and proper subject for dismissal because Bill of Information "will lie to prevent a Judge or any Judicial Officer who attempts to execute the mandate of the Supreme Court in an improper manner" and "to prevent any one whomsoever from interfering with the Judgment and/or Mandate of the Supreme Court". Revised Rules of the Supreme Court, V part 8, page 71; Seke et al. v. Yancy et al., 30 LLR 403 (1982), syl. 3.

2. Further to Count One (1) herein above, Respondent says the Bill of Information is most premature, filed in bad faith, intended to interfere with the execution of the Supreme Court's Mandate and undermine the electoral process.

3. Further to Count Two (2) herein above, Respondent respectfully requests Court to take judicial notice of the averments of the Bill of Information, embodied and reflected in One of Counsel for Informant's letter to Respondent, attached to Informants' Bill of Information as Informants' Exhibit INF/4, viz: "you will also vividly recall that when the judgment of the Supreme Court was read on Saturday, December 9, 2017 at the NEC Headquarters, I made a submission on the record to the effect that since the Opinion of the Supreme Court does not state with clarity what cleaning up the FRR entails, and the issue having been raised by the Unity Party, that NEC should conduct clean-up of the FRR in close collaboration with the two (2) parties involved in the run-off'(Emphasis ours).

4. Further to Count Three (3) herein above, Respondent says if the Informant believes ".....the Opinion of the Supreme Court does not state with clarity what cleaning up of the FRR entails...", then Petition for Re-argument would have been the proper remedy, and certainly not a premature Bill of Information.

5. Further to Count Four (4) herein above, Respondent says Informants have adopted a posture of affront and confrontation in their interaction with Respondent, maintaining that matters decided and opinionated by the Honorable Supreme Court in its Opinion of December 7, 2017 must be re-litigated. The Court is respectfully requested to take judicial notice of Count Five (5) of Informants' Bill of Information which seeks to maintain that there are two or more Final Registration Rolls "since the Supreme Court Judgment is not clear on which of the two FRRs (the FRR given to political parties by Respondent in September 2017 or the FFR that Respondent NEC introduced into evidence under subpoena at the hearing in November 2017 before the Chief Dispute Hearing Officer) should be cleaned".

6. Further to Count five (5) herein above, Respondent says Informants' demand for involvement with the cleaning up process is based on their misunderstanding that the Mandate of the Supreme Court is unclear and that they established in their pleadings and evidence adduced before the Chief Dispute Hearing Officer and the Supreme Court that there are two (2) or more FRR's. Respondent says it understands the Mandate of the

Supreme Court and there is only one (1) FRR. Moreover, while Respondent invites and encourages consultations with the parties (Unity Party and Coalition for Democratic Change), such consultations and cooperation must be executed in a manner that preserves the authority, integrity, independence and neutrality of Respondent as a disinterested empire.

7. That as to Counts One (1) thru Twenty-Five (25) and the Prayer of the Bill of Information, Respondent denies the averments therein contained and says the implementation of the Supreme Court's Mandate is not an event, but a process, which comprises three (3) phases, namely (1) Pre-runoff Election Activities; (2) Election Day Activities; and (3) Post runoff Election Activities.

8. Further to Count Seven (7) herein above, Respondent says Phase One (1), namely Pre-runoff Election Activities, entails the conduct of the full cleanup of the FRR to ensure that multiple names of identification numbers are removed; that voters' identification numbers are unique by preventing more than one (1) voter from having the same number; de-duplication of the FRR; publication of the Final Registration Roll (FRR); availability of the FRR in hard copies to all Election Magistrates and Polling Places; limiting the eligibility to vote only to those on the FRR, limitation of the addendum to FRR to those listed in NEC's polling and counting manual; and limiting the eligibility to vote for poll watchers to their being on the FRR and at their precincts and polling places.

9. Further to Count Eight (8) herein above, Respondent says to ensure the cleaning up of the FRR, Respondent requested the Economic Community of West African States ("ECOWAS") to send a team of technicians to Liberia to assist; that the ECOWAS' Technical Team arrived in Liberia on Tuesday, December 12, 2017; that since their arrival they have been working along with NEC's technicians and United Nations Development Program's (UNDP) technicians on a road-map regarding the cleaning up of the FRR.

10. Further to Count Nine (9) herein above, Respondent says during the afternoon hours of December 15, 2017, the Technical Teams jointly held a meeting at NEC's headquarters with Representatives of the Unity Party and the Coalition for Democratic Change, with local observers and members of the media in attendance, to discuss the Proposed Work Plan by the National Elections Commission and the ECOWAS Technical Team on the Supreme Court's Judgment with regard to the Register of Voters. During the Meeting, a consensus was reached on the full implementation of the Work Plan. Copy each of the Work Plan and the Minutes of said Meeting are hereto attached and marked Respondent's Exhibit "R/1" in bulk.

11. Further to Count Ten (10) herein above, Respondent says during the December 15, 2017 meeting, the Technical Team discussed the Proposed Clean-Up Road Map and answered questions from the two (2) contesting political parties; that the Informant (Unity Party) did not interpose any objection to the proposed Road Map; that the Technical Team expects to finish the Clean-Up by the middle of next week; that after the clean-up, the two (2) contesting parties will each be provided with a copy of the cleaned FRR; that after the clean-up, Respondent has made plans to immediately begin printing; and that after printing, the cleaned FRR for each county will be sent to the Elections Magistrate concerned, and published at polling places across the county days before the run-off election.

12. Further to Count Eleven (11) herein above, Respondent says phases two (2) and three (3), namely Election Day Activities and Post Runoff Election Activities, respectively, entail the smooth conduct of polling, the counting process, the announcement of the results in

conformity with law and refraining from prejudicial utterance that may compromise the neutrality of the Respondent as adjudicators of post-election complaints.

13. Further to Count Twelve (12) herein above, Respondent says it is charged with the constitutional and statutory duty, mandate and responsibility to "conduct all elections for elective public offices including the chieftaincy election and all referenda and declare the results thereof. For reliance see: New Elections Law, 1986, Chapter 2 section 9, subsection (g)."

14. Further to Count Thirteen (13) herein above, Respondent says consistent with its mandate and as dictated by Article 83 (b) of the 1986 Constitution of Liberia that the run-off is held on the second Tuesday following the announcement of the results, Respondent set the run-off for December 26, 2017, representing the second Tuesday after Respondent resumed jurisdiction on Tuesday, December 12, 2017, as per the Mandate of the honorable Supreme Court.

15. Further to Count Fourteen (14) herein above, Respondent says Informants' call for the Supreme Court to disqualify the Chairman and the Executive Director of Respondent from participating in or having anything to do with Runoff Election, without any legal basis, is contemptuous and intended to undermine the separation of powers as enshrined in our Constitution.

16. Further to Count Fifteen (15) herein above, Respondent says Counsels for Informants, having assigned reasons for the instant Bill of Information other than the reason(s) expressly prescribed by the rules of the Supreme Court should be penalized by either the imposition of a fine, suspension or disbarment. In the case, *Duncan vs. Cornomia*, 42 LLR 53 (2004), then Associate Justice, now Chief Justice, His Honour Francis S. Korkpor, Sr., speaking for this Honourable Court said: "any counselor who files information before the Supreme Court assigning reasons therefor other than the reasons expressly prescribed by the Rules of the Supreme Court shall be penalized by the imposition of a fine, suspension or disbarment".

17. Further to Court Sixteen (16) herein above, the Court is respectfully requested to take judicial notice of its own records that this is the second unmeritorious Bill of Information filed by the Informants before this Court; hence, the need to penalize them is imperative.

18. Respondent denies all and singular the averments of the Bill of Information contained therein, and not made a matter of special traversal herein.

WHEREFORE AND IN VIEW OF THE FOREGOING, Respondent prays Court to deny and dismiss Informants' Bill of Information, penalize Counsels for Informants for filing a unmeritorious Bill of Information; and grant unto Respondent such other and further relief as may be deemed just, legal and equitable in the premises.

Respectfully submitted,

The National Elections Commission,

RESPONDENT,

By and thru its Counsel

Joseph N. Bliidi COUNSELLOR-AT-LAW

Alexander Zoe COUNSELLOR-AT-LAW

Frank Musah Dean, Jr. COUNSELLOR-AT-LAW

At the call of the case for argument before this Court on December 18, 2017, the counsels for the parties presented oral arguments in line with their respective briefs filed before the Supreme Court. After having carefully perused the bill of information, the returns thereto filed by the NEC, and having read the briefs submitted by the counsels representing the parties and listened to their arguments, we have determined that there are four (4) principle issues for the determination of this case. They are:

1. Whether or not the NEC failed, refused, neglected or is proceeding wrongly with the execution of the Supreme Court's mandate contained in the Court's Judgment of December 7, 2017?
2. Whether or not the request by the informants for this Court to order that the Chairman and Executive Director of the NEC be disqualified from participating in or having anything to do with the run-off election is justifiable?
3. Whether or not the NEC was in error by announcing December 26, 2017, as the date for the run-off election?
4. Whether or not a bill of information will lie under the facts and circumstances of this case?

We shall discuss the issues in the order as presented, starting with the first issue - whether or not the NEC failed, refused, neglected or is proceeding wrongly with the execution of the mandate of the Supreme Court contained in the Court's Judgment of December 7, 2017?

Growing out of the case: *Charles Walker Brumskine et al v. National Elections Commission (Supreme Court Opinion, December 7, 2017)* this Court issued a Mandate (already quoted in full above), directing the NEC to take certain actions preparatory to the conduct of the run-off election. The directives in that Mandate, which specifically relate to the FRR, are (a) that the NEC conducts a full clean-up of the FRR to have it comply with the provisions of the law; (b) 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 the run-off election; (c) that given the fact that the FRR is the only electoral document that speaks to the eligibility of voters, the NEC is prohibited from permitting anyone whose name is not found on the FRR to vote; and (d) that any addendum to the FRR be limited to only those listed in the NEC's polling and counting manual.

The aforesaid Opinion and Judgment of this Court were handed down on Thursday, December 7, 2017. We take note from the informants' own statement that "while awaiting the release of the Opinion, the informants...addressed a letter to the Chairman of the NEC...

requesting a meeting... to evolve a consensus on the modalities for the full cleaning up of the FRR." The informants said that no reply was sent or acknowledgement made to that letter. But according to the informants, on Saturday, December 9, 2017, the Board of Commissioners of the NEC invited the two political parties to the run-off election to a meeting for the purpose of reading the Mandate of the Supreme Court. The informants admit that its legal counsel attended the scheduled meeting on Saturday, December 9, 2017, and that its legal counsel even made a submission on the records of the meeting suggesting how the NEC should proceed to implement the Mandate of the Supreme Court.

The NEC confirmed scheduling the Saturday meeting and said that it invited the two political parties to the run-off election for the purpose of reading and discussing the Mandate of the Supreme Court and to encourage consultations with them in an effort to fully comply with the Mandate of the Supreme Court. The NEC said that to ensure the cleaning up of the FRR, it requested the Economic Community of West African States ("ECOWAS") to send a team of technicians to Liberia to assist; that the ECOWAS' Technical Team arrived in Liberia on Tuesday, December 12, 2017; that since their arrival, members of the Team have been working along with technicians of the NEC and United Nations Development Program's (UNDP) technicians on a road-map regarding the cleaning up of the FRR; that on December 15, 2017, the technicians held a meeting at the NEC's headquarters with representatives of the UP and the CDC with local observers and members of the media in attendance to discuss the Proposed Work Plan by the NEC and the ECOWAS Technical Team on the Supreme Court's mandate with regard to the FRR; that during the December 15, 2017 meeting, the technical team discussed the Proposed Clean-Up Road Map and answered questions from the two (2) contesting political parties; that the informants did not interpose any objection to the proposed Road Map; that after the clean-up, the two (2) contesting parties were each expected to receive a copy of the cleaned FRR; that after the clean-up, the NEC had plans to immediately begin printing; and that after printing, the cleaned FRR for each county would be sent to the Elections Magistrate concerned, and published at polling places across the country days before the run-off election. The NEC also said that phases two (2) and three (3) of the implementation of the Supreme Court's Mandate, which comprise election day activities and post run-off election activities, entail the smooth conduct of polling, the counting of ballots, the announcement of the results in conformity with law and refraining from prejudicial utterances that may compromise the neutrality of the NEC as also mandated by the Supreme Court were expected to be fully complied with.

We take note that the informants did not deny meeting with the ECOWAS Technical Team on December 15, 2017, along with representatives of the CDC, local observers and with members of the media in attendance to discuss the Proposed Work Plan by the NEC and the ECOWAS Technical Team on the Supreme Court's mandate with regard to the FRR. The informants did not deny, also, that they participated in that meeting with the ECOWAS Technical Team, discussed the Proposed Clean-Up Road Map and posed questions to the Team. The meeting, which was intended to implement the mandate of the Supreme Court, was being held while the bill of information filed by the informants on December 14, 2017, was pending for determination by this Court. Lest we forget, the informants' bill of information alleged that the NEC had failed to execute the Mandate of this Court and that the NEC had also failed to consult and collaborate with the informants in implementing the said Mandate. The question is, why did the informants file the bill of information only to partake, a day later, in a meeting with the NEC and other stakeholders for the implementation of the Mandate of this Court?

During argument before us, the counsel for the NEC suggested that perhaps there was a "disconnect" or a breakdown or lack of communication between the informants and their legal counsel. In other words, it did not appear that the informants were apprising their legal counsel who filed the bill of information on how they (informants) were proceeding to consult and collaborate with the NEC and other stakeholders to have the Mandate of the Supreme implemented. We think this could very well be true because we cannot comprehend why the informants who had filed a bill of information complaining that the NEC was not consulting with them in implementing the Mandate of this Court could fully collaborate with the same NEC just a day after the filing of the bill of information without qualm.

We fully agree with the NEC that the implementation of the Supreme Court's Mandate is not an event but a process that involves phases. Dialoguing with the political parties and with technical experts for the purpose of cleaning the FRR is indeed a good beginning for the implementation of this Court's Mandate. Much can be achieved when the parties and stakeholders participate and continue the process in good faith. Who knows, from the time the ECOWAS Technical Team arrived and commenced meeting with the relevant parties and stakeholders until now, much may have, by now, been achieved regarding the process of implementing this Court's Mandate regarding the FRR. .

The first phase of the Supreme Court's Mandate, which requires the clean-up of the FRR must take place before the other phases. As the NEC has said, after the clean-up, it has

plans to immediately begin printing, and after printing, the cleaned FRR for each county will be sent to the Elections Magistrates and published at polling places across the country days before the run-off election in accordance with the Mandate of this Court. The NEC also said that phases two (2) and three (3) of the implementation of the Supreme Court's Mandate, which comprise election day activities and post run-off election activities, such as the smooth conduct of polling, the counting of ballots, the announcement of the results in conformity with law and refraining from prejudicial utterances that may compromise the neutrality of the NEC as also mandated by the Supreme Court will be carried out. Under the circumstance, we do not agree that the NEC has failed, refused or neglected to conduct the cleaning up of the FRR and publication of the FRR as mandated by this Court. Rather, from all accounts, we believe that the process of cleaning the FRR is going on. We hold, therefore, that the filing of this bill of information at this time is pre-emptive as well as premature. We nevertheless implore the NEC to intensify its consultations and interactions, through its technical team, with the two political parties so that the process can retain credibility.

We address, next, the second issue - whether not the request by the informants for this Court to order that the Chairman and Executive Director of the NEC be disqualified from participating in or having anything to do with the run-off election is justifiable?

The informants have urged this Court to give specific orders for the Chairman of the NEC and the Executive Director of the NEC to recuse themselves from the run-off election process because, according to the informants, the Chairman and the Executive Director of the NEC have so compromised themselves that they cannot oversee, manage and operate the run-off election impartially without prejudice to the interest of the informants. The informants contended that the two top officials of the NEC have proven records of deliberate violations of the Constitution and the Elections Laws, both in regard to the process and on account of prejudicial statements made by the Chairman and falsehood in testimonies given by the Executive Director.

We say, in respect of the Executive Director of the NEC, that there is no specific showing connecting him with any bias or prejudicial acts. Therefore, whether in the instant case or past cases involving the NEC, we find no reprehensible acts attributable to him.

In reference to the Chairman of the NEC, however, the informants, through their counsel, have contended that he had made statements inimical to the interest of the informants that compromised his position as a disinterested person presiding over an electoral process. We

take note that in the *Charles Walker Brumskine et al* case, decided by this Court on December 7, 2017, referenced above, this Court concluded that certain statements attributed to the Chairman of the NEC were prejudicial. The Chairman is said to have referred to the complaints filed by the LP and the UP and which complaints were pending before the NEC as “lies” and “politically motivated”. The NEC did not refute that its Chairman made these statements. The NEC only stated that its Chairman’s statement was in line with, and in performance of his duty as Chairman of the NEC in regard to the presumed validity of the election results; that the Chairman was only refuting false social media reports regarding the alleged presence of ballot papers in certain parts of the country. In spite of this position of the NEC, the Supreme Court found that the Chairman of the NEC indeed made the statements attributed to him and concluded that the said statements were bias and prejudicial. This Court then warned the Chairman of the NEC and other staff of the NEC to refrain from any and all expressions or utterances on matters that were pending before the NEC. Consequently, this Court held that the Chairman should have recused himself from sitting on and deciding the complaint filed by the LP and the UP at the level of the Board of Commissioners of the NEC, and that it was an error for the Board of Commissioners of the NEC not to have ruled in favor of its Chairman’s recusal. The holding of this Court is reflected in its Mandate which states:

“That the Chairman and members of the Board of Commissioners of the NEC and any staff of the NEC are hereby prohibited from any public or other pronouncements and utterances relating to any matters which may grow out of the run-off election or any statements in regard to any complaint filed with the NEC, as could create any semblance of bias, prejudice or view of the case.”

The above quoted mandate, as stated earlier, emanated from a complaint filed by Charles Walker Brumskine et al growing out of the Presidential and Representative Elections held on October 10, 2017. We must say that this Court carefully considered all the records in that case and handed down an Opinion from which the Mandate was issued, prohibiting not only the Chairman of the NEC, but all members of the Board of Directors and other staff of the NEC from making any pronouncements and utterances relating to any matter which may grow out of the run-off election or any statements in regard to any complaint filed with the NEC, as could create a semblance of bias, prejudice or view of the case. Had this Court deemed it necessary and appropriate at the time to order the Chairman of the NEC to recuse himself from the run-off election, this Court would have so ordered in its Opinion and Judgment handed down on December 7, 2017. But this Court, in its wisdom, decided to prohibit the NEC and its staff from any and all prejudicial statements and utterances. Since the Mandate was issued, there is no indication whatsoever, that the Chairman of the NEC

has disobeyed the said Mandate. We, therefore, at this point, decline to order him to recuse himself from the run-off election process as requested by the informants.

However, during arguments before us, the counsel for the informants brought to our attention that a day after this Court handed down its Opinion and Judgment from which the Mandate grew, Mr. Henry Flomo, Communications Director of the NEC made a statement on the Liberia Broadcasting System (LBS) that the FRR was clean and did not require further cleaning as mandated by the Supreme Court. The counsel for the NEC conceded that indeed such a statement was made by the Communications Director of the NEC, and for making said statement, the Communications Director was reprimanded and that "he nearly lost his job". The counsel did not say what action was taken against the Communications Director of the NEC. But clearly, the action of Mr. Flomo is reprehensible. When this Court issues a mandate, it is intended to be scrupulously obeyed. The matter at hand is of critical nature regarding the destiny of our country which must be treated with the deserved caution. Therefore, this Court will not allow anyone to treat it lightly by flaunting its directives intended to provide legal recourse and direction to the process. Failure to carry out, obstruction to, or interference with the Mandate of this Court may be punished by contempt. Accordingly, Mr. Henry Flomo, the Communications Director of the NEC, for his statement aforesaid, which runs contrary to the Mandate of this Court is hereby adjudged guilty of contempt of this Court and is ordered to pay the amount of US \$500.00 into Government Revenue within 72 hours as of the date of the Judgment of this case. A copy of the receipt of payment shall be deposited with the Marshal of the Supreme Court. He is further ordered incarcerated at the Monrovia Central Prison for a period of two days. The Clerk of this Court will prepare the necessary detention instrument and place same in the hands of the Marshal of the Supreme Court for execution.

The third issue which we have determined to be important for the resolution of this case is whether or not the NEC was in error in announcing December 26, 2017 as the date for the run-off elections?

The informants, in their bill of information and brief, as well as arguments made by their counsel before this Court, have asserted that the NEC was without the constitutional authority to set a new date of December 26, 2017 for the run-off election. According to the informants, once the date set by the Constitution, which they assert was November 7, 2017, the second Tuesday following the announcement on October 20, 2017 by the NEC of the final results of the October 10, 2017 Presidential and Representatives Elections had lapsed

because of the issuance by the Supreme Court of the writ of prohibition in the case *Charles Walker Brumskine et al* case, the NEC was thereafter without the constitutional and statutory authority to unilaterally set a new date for the run-off election. They maintained that it was only the Legislature, as the direct representative of the people that had the constitutional and statutory authority, under the circumstances of the instant case, to fix a new date for the run-off election. They cite Article 83 of the Constitution (1986) in support of their argument and contention.

Article 83 of the Constitution states:

“(a) Voting 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.

(b) Except for President and Vice President, all elections of public officers shall be determined by a simple majority of the valid votes cast in any election. Election of President and Vice President shall be by absolute majority of the valid votes cast. If no presidential ticket obtains an absolute majority in the first ballot, a second ballot shall be conducted on the second Tuesday following expiry of the time provided in Article 83(c). The two presidential tickets that received the greatest number of valid votes on the first ballot shall be designated to participate in the run-off election and the ticket with the majority of the valid votes cast shall be declared winner.

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

The Elections Commission shall, within thirty days of receipt of the complaint, conduct an impartial investigation and render a decision which may involve a dismissal of the complaint or a nullification of the election of a candidate. Any political party or independent candidate affected by such decision shall, not later than seven days appeal against it to the Supreme Court.

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

The crust of the informants’ argument and contention is that since Article 83(b) calls for a run-off election to be conducted on the “second Tuesday following expiry of the time period in Article 83(c)” and since that time period for the run-off election which, as contemplated by the Constitution, was November 7, 2017, had expired and was therefore no longer applicable

“for the run-off election ordered [by the Supreme Court]”, the NEC was without the constitutional and statutory purview and authority to unilaterally set December 26, 2017 as a new date for the run-off election. The date for the run-off election, the informants insist, are mandatory and could not therefore be changed by the NEC without the expressed authorization from the Legislature. The powers and duties of the NEC, they argue, are specifically fixed by *Section 2.9* of the New Elections Law. Nowhere in the powers and duties enumerated by Section 2.9, they assert, is the NEC granted the power to set the date of election, and that in fact the setting of a date for election is a law-making power which is exclusively reserved to the Legislature by Article 34 of the Liberian Constitution (1986) which not only vests in the Legislature to enact the elections law of the country (Article 34(i)) but all other laws necessary and proper for “carrying into execution” the powers reserved to that body. In setting forth that theory, the informants conclude that once the date of the run-off lapses, for whatever reason, it is strictly within the province of the Legislature to set the new date for the run-off.

As much as the contention and argument of the informants are appreciated, this Court believes that they misinterpret the Article 83 provisions of the Liberian Constitution. Firstly, while it is true that Article 83(b) provides for the holding of a run-off election for presidential and vice presidential tickets where in the first round of the election no candidate in the categories mentioned herein obtained an absolute majority of the valid votes cast, the Article 83(b) provision predicates the second Tuesday on the “expiry of the period provided in Article 83(c)”, not on a specific date set in Article 83(c). Thus, the “expiry” referred to in Article 83(c) is not a date, but an event, and that event is not based on the announcement of the results of the first round of the election but on all of the intervening factors stated in Article 83(c).

As seen from the provisions of Article 83(c), quoted above, once the NEC announces the final results of the presidential and vice presidential elections, a right is automatically vested in a losing candidate or party to file with the NEC a complaint contesting either or both the results of the elections and the manner in which the elections were conducted. Once that right is exercised by a losing candidate or party, it freezes the holding of the run-off election on the second Tuesday following the announcement of the final results of the first elections. It is only if no complaint is filed by a candidate or party that the second Tuesday following the announcement of the final results holds. That holding process on the second Tuesday continues as long as the challenge is pursued. In that regard, since the NEC is given a period of thirty (30) days within which to hear and rule on any complaint against the election results and/or the manner in which the elections were conducted, the second Tuesday continues to

remain on hold until the NEC decides the matter in conformity with the time frame granted that Body by the Constitution. Once a final ruling is made by the NEC, the party against whom the ruling is made has a period of seven days within which to appeal the decision to the Supreme Court. If within the seven-day period, the losing party determines to file an appeal with the Supreme Court, the second Tuesday further continues to hold. And it is only after the Supreme Court has entered a final Judgment and had forwarded a mandate to the NEC that the second Tuesday contemplated by the Constitution begins to run, since as indicated before, the second Tuesday is an event and not a date set by the Constitution. Thus, when the Constitution speaks of "expiry" it is speaking of the expiry of an event, and since Article 83(c) has stipulated a series of events, it is only after the occurrence of the final event that the second Tuesday spoken of by the Constitution triggers in.

It was therefore not a unilateral action taken by the NEC in announcing that the run-off election would be held on December 26, 2017. The setting of that date was without the purview of the NEC; it was dictated by the Constitution based on the date the last event stated in Article 83(c) occurred and when upon the expiry of that event a Mandate to resume jurisdiction is sent down to and received by the NEC. In the instant case, the Supreme Court handed down its Opinion on Thursday, December 7, 2017. The Mandate could not have been sent down to the NEC on that date since by law a party against whom judgment is rendered by the Supreme Court has a period of three days within which to file a petition for re-argument before the Supreme Court. The law provides that if the period within which a party should act is less than ten days, intervening Sundays and holidays cannot be counted. Hence, although the Supreme Court handed down its judgment on December 7, 2017, and the informants had until December 10, 2017 to file a petition for re-argument, that period was extended by a day since there was an intervening Sunday. Thus, since by midnight on December 11, 2017, no petition for re-argument had been filed, the Supreme Court, on December 12, 2017, sent down a Mandate to the NEC directing that body to resume jurisdiction over the case and proceed to hold the run-off election consistent with the provisions of the Constitution, meaning basically Article 83, since in the Opinion and Judgment the Supreme Court lifted the prohibition on the holding of the run-off election. Because the NEC received the Mandate on Tuesday, December 12, 2017, that day did not count. The first Tuesday therefore fell on December 19, 2017 and the second Tuesday on December 26, 2017. It was without the purview of the NEC, and it would have been unconstitutional for the NEC to set any other date than that which was dictated by the Constitution, predicated upon the "expiry" of the events stated in Article 83 of the Constitution. We therefore cannot accept the contention of the informants that the NEC set

a date for the run-off election, not to even speak of the NEC unilaterally setting a date. The date was dictated by the Constitution and the NEC had no choice but to follow that date. The setting of any other date would have been subject to a constitutional challenge.

But the informants further misinterpreted the Constitution in arguing that because the Constitution vests in the Legislature the power and prerogative to enact the elections law, that body is thereby vested with the power and authority to act contrary to the Constitution. This Court has said repeatedly that where the Legislature enacts any law or orders any act that runs contrary to the Constitution, the Act or action is unconstitutional. *Citizen Solidarity Counsel v RL* [2016] LRSC 20 (2016); *Vergas v Reeves et' al* [1997] LRSC 6; 39 LLR, 368 (1999); *CDC et al v Executive Branch* [2008] LRSC 5 (2008); *Fofanah v Toe* [1998] LRSC 19, 39 LLR 25 (1998). And on several occasions, when the Legislature has acted in a manner deemed to have been in contravention of the Constitution, the Supreme Court has not hesitated to declared such Act or action unconstitutional, invalid and of no legal effect. *William v Tah et'al* [2011] LRSC 12 (2011); *In re the Petition Benjamin J. Cox* [1990] LRSC 19; 36 LLR, 849 (1990); *Broh v Hon. House of Representatives et al* [2014] LRSC 20 (2014).

In the instant case, the Constitution has clearly set out an event or events that would trigger the holding of the run-off election for president and vice president, the Legislature does not have to pass a resolution or take any action for such run-off to be held once the events specified by the Constitution have occurred and been concluded. The intervention of the Legislature as would affect the constitutional timetable or to set any date would have been unconstitutional. Such power is not vested in the Legislature absence the occurrence of another event such as a declaration of an emergency specified by the Constitution. Nor can the informants cite or rely on the Ebola events of 2014 as a precedent for the claim that power is vested in the Legislature to set or change the date in the instant case. The President has not declared a state of emergency or suspended any provisions of the Constitution, as was the situation in 2014 that warranted the intervention of the Legislature. The Constitution provides that in the event of a declaration of a state of emergency, the Legislature must approve of the President's declaration of emergency. The Legislature, in approving the state of emergency, may set such conditions to its approval as it deems necessary and appropriate. In the instant case, not only is there no state of emergency, but there is no legal or other basis for any intervention by the Legislature and any such intervention would be unconstitutional. Hence, we cannot sustain the argument or contention of the informants that the effectuation of the constitutional timetable was law making and therefore within the constitutional prerogative of the Legislature. Accordingly, we dismiss the said contention in

that regard and state that the NEC did not err in announcing that the run-off election would be held on December 26, 2017.

We address last, the issue - whether or not a bill of information will lie under the facts and circumstances of this case?

Under the controlling law in this jurisdiction, a bill of information will lie where there is a showing that the Mandate of the Supreme Court is being interfered with or is being executed in an improper manner. A bill of information will also lie to prevent a judge or any judicial officer who attempts to execute the mandate of the Supreme Court in an improper manner and to prevent anyone whomsoever from interfering with the Judgment and/or Mandate of the Supreme Court. (See *Revised Rules of the Supreme Court, V part 8*, page 71.); *Seke et al. v. Yancy et al.* 30LLR 403 (1982).

We have already taken the position hereinabove, while addressing the first issue, that there was no evidence, as at the time the bill of information was filed, that the NEC failed, refused or neglected to conduct the cleaning up of the FRR and publication of the FRR as mandated by this Court; that rather from all indications, the process of cleaning the FRR had commenced following the filing of this bill of information and that the process was going on. Therefore, except for the misguided statement of Henry Flomo, the Communications Director of the NEC for which he has been penalized, no other evidence has been established that the NEC has committed any other act of interference with, or disobedience to the Mandate issued by this Court as at the time of the filing of the bill of information to warrant the granting of this bill of information. We therefore decline to grant the informants' bill of Information.

Before concluding this opinion, we must observe that many counts and averments in the informants' bill of information relate to issues which were also raised in the *Charles Walker Brumskine et al* case decided by this Court on December 7, 2017.

For example:

- a) Count 2 of the informant's bill of information which comprises ten sub-sections relate to the informants' brief and bill of exceptions filed in the *Charles Walker Brumskine et al* case;
- b) Counts 20 & 21 of the bill of information state that this Court, in deciding the *Charles Walker Brumskine et al* case, inadvertently failed to set the date for the run-off election;

- c) Counts 23 & 24 of the bill of information state that this Court inadvertently failed to pass on the issue of serial number on the stubs of ballots, which was raised in the *Charles Walker Brumskine et al* case; and
- d) Count 27 of the bill of information states that although the informants had requested this Court in the *Charles Walker Brumskine* case to order the Chairman and the Executive Director of the NEC to recuse themselves from conducting the run-off election, this Court inadvertently failed to pass on the issue.

Clearly, by including the aforesaid stated issues which were raised in the *Charles Walker Brumskine* case in this bill of information, the informants' intent was for this Court to re-litigate those issues. As we stated earlier, this Court carefully considered all the issues raised in the *Charles Walker Brumskine* case before making its decision. The Supreme Court is not required to pass on all issues in a given case. Only issues which are germane to and dispositive of the case the Court is required to pass on. *Miamen et'al v Inter-co Security* [2016] LRSC 30 (2016); *Lamco J.V. Operating Company v Verdier* [1978] LRSC 9, 26 LLR, 445, 446 (1978); *Trokon International et'al v Reeves et'al* [1999] LRSC 31; 39 LLR, 626 (1999).

On the other hand, if the informants believed that certain deciding issues were inadvertently not passed on by this Court in the *Charles Walker Brumskine* case, the remedy available to the informants was to file a petition for reargument and not a bill of information. For this further reason we cannot grant this bill of information.

We must say, however, that notwithstanding our decision not to grant this bill of information, given the critical nature of the electoral process currently underway, the Court mandates the strictest compliance with every element of its December 7, 2017 Opinion and Mandate, particularly with regards to the clean-up of the FRR and publication thereof at every polling place in the country days before the run-off election date.

WHEREFORE, and in view of the foregoing, the informants' bill of information is hereby denied and dismissed. The Clerk of this Court is ordered to inform the parties of this decision. IT IS SO ORDERED.

Counsellors Benedict F. Sannoh, Snosio E. Nigba and Laveli Supuwood appeared for the informants.

Counsellors F. Musah Dean and C. Alexander B. Zoe appeared for the NEC.