

JUDICIAL BRANCH  
 SUPREME COURT OF LIBERIA



IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA  
 SPECIAL SESSION SEPTEMBER A. D. 2005

HIS HONOUR HENRY REED COOPER..... CHIEF JUSTICE  
 HIS HONOUR FRANCIS S. KORKPOR, SR..... ASSOCIATE JUSTICE  
 HIS HONOUR JOHN L. GREAVES ..... ASSOCIATE JUSTICE  
 HIS HONOUR ISHMAEL CAMPBELL ..... ASSOCIATE JUSTICE  
 HER HONOUR FELICIA V. COLEMAN ..... ASSOCIATE JUSTICE

The National Elections Commission (NEC) )  
 Represented by its Chairman, Counsellor )  
 Frances Johnson-Morris and/or any of the )  
 Other Honorable Commissioners ... APPELLANT) )

VERSUS )

APPEAL

Coalition for Transformation of Liberia )  
 (COTOL), represented by its National )  
 Executive Committee, represented by )  
 Its National Chairman, Isaac Mannah, Sr., )  
 Its National Vice Chairman for )  
 Administration, S. Napoleon Toquie, II, )  
 And its National Vice Chairman for )  
 Operations, D. Sheba Brown, of the )  
 City of Monrovia, Liberia ..... APPELLEE) )

GROWING OUT OF THE CASE )

Coalition for Transformation of Liberia )  
 (COTOL), represented by its National )  
 Executive Committee, represented by )  
 Its National Chairman, Isaac Mannah, Sr., )  
 Its National Vice Chairman for )  
 Administration, S. Napoleon Toquie, II, )  
 And its National Vice Chairman for )  
 Operations, D. Sheba Brown, of the )  
 City of Monrovia, Liberia ..... PETITIONER) )

VERSUS )

PETITION FOR  
 DECLARATORY  
 JUDGMENT

The National Elections Commission (NEC) )  
 Represented by its Chairman, Counsellor )  
 Frances Johnson-Morris and/or any of the Other )  
 Honorable Commissioners ... ..RESPONDENT )

MR. CHIEF JUSTICE COOPER DISSENTING:

I beg to dissent from my Colleagues who have agreed to the majority Opinion of this Court, for the reasons stated in this dissenting Opinion.

The majority of this Court dealt with two issues:

1. Whether or not the refusal of the appellant ( NEC) to make any determination of the meaning of section 1, subsection 1.3 of the Electoral Reform Law of 2004, was a ruling as contemplated by the law, that only an appeal to the Supreme Court will lie and not a Petition for Declaratory Judgment?
2. Whether or not the final statement **“EACH VOTER SHALL HAVE ONE VOTE”** as found in section 1 subsection 1.3 of the Electoral Reform Law is intended to mean that a voter is entitled to vote once for the two senatorial offices for each county as contended by Appellant?

The majority having conceded that the first issue is moot, with which holding we fully concur, we believe that it was unnecessary for the first issue to be any further discussed.

We agree with the majority opinion that the second issue is most important and crucial to the determination of this matter. We see that the majority has looked at the entire **Subsection 1.3 of the Electoral Reform Law** so as to read the last paragraph thereof in context rather than in isolation, as appeared to have been done by both the Appellee and the Judge of the trial court.

It is clear to us that **Subsection 1.3 of the Electoral Reform Law of 2004** is meant by the legislative body to change whatever law or principle of law was or may have been applicable before the enactment of this law of December 2004. Our search does not show anywhere in the prior laws where it is mentioned, i.e., in the 1986 Constitution or the Elections Law or in any relevant applicable principle of law, that one Liberian voter shall cast one vote for each senator or one vote for only one senator of the two senators to be elected from each County. We have only been able to discern (based on **Article 77(b) of the 1986 Constitution**) that "every Liberian citizen not less than 18 years of age, shall have the right to be registered as a voter and to vote in public elections and referenda under this Constitution." We also find in the Constitution that it is the legislative body only which has power to say how citizen will vote and to set other rules to govern the conduct of elections, in cases where no governing provision is included in the Constitution. We do concede, however, that from the beginning of the Republic to the present, except for the Special Elections of 1997, during which a system of Proportional Representation was used and voters voted for a slate of persons, it appears that each eligible Liberian voting in national elections has always had and exercised the right to cast one vote once for each senator, or in other words, to vote once for each of the two senators from each County of the Republic. But let us recall that the forthcoming elections will also be a very special elections, like the 1997 elections, which is being conducted or organized in order to return Liberia to full constitutional rule in January 2006, according to the Accra Comprehensive Peace Agreement (CPA). In our opinion, special elections such as the forthcoming one do in fact require the making of special rules.

Having looked at what now exists and what may have existed prior to the December 2004 law, can it be said that the last sentence of said sub-paragraph 1.3 is ambiguous? We think not, because even though the Members of this Court may not agree with what the legislative body may or may not have done to the elections law, or to any other law, amendatorywise, it appears clear that what the last sentence of subsection 1.3 says regarding the two senators to be elected from each county is that: "Each voter shall have one vote" in respect to the elections of the said two senators. It is the legislative body i.e. the NTLA, which makes law, not this Court whose duty is to interpret the laws.

When this last sentence of Subsection 1.3 is read in isolation and when we take into consideration the long elections history of Liberia, we see that this last sentence may be susceptible of two interpretations, and it could therefore be concluded, as Appellee has asked this Court do, and as my Colleagues have done, that that last sentence is just a restatement of an age old principle of elections. In this connection, Appellee argued that the new law means that each voter shall cast one vote for each senator to be elected or that each voter shall cast two votes for the two senators to be elected from each county; and that the last sentence abovementioned is just merely a restatement of the principle of the "one man, one vote rule." My Colleagues have also said that the last sentence of **Subsection 1.3** "...is a well-known and established principle of democracy..." We ask, why should the legislative body restate a rule that is already the law? In answering this question, we must keep in mind that this is not a situation in which the legislative body has enacted a codified restated version of an old law or one of those cases in

which the legislative body has repealed a whole title, chapter or some other section of the old law and replaced same with a new title or chapter or section of the law, as a result of which, some part of the new title or chapter or section will be restated verbatim in the replacement law. This is a clear case where the only logical conclusion to be reached is that the legislative body intended to change the old applicable law or rule, and did do so.

It is interesting to note the meaning of the “one-man, one-vote rule”, or “one person, one-vote rule” upon which Appellee has been relying to support his argument in favor of keeping what is described as an old rule, contrary to the interpretation of the NEC. According to **Black’s Law Dictionary, 7ed. (1999)**, the “one person, one vote rule” is constitutional law, and means “The principle that the Equal Protection Clause [of the U.S. Constitution] requires legislative voting districts to have about the same population.” Case law citations also followed this dictionary meaning, which we need not mention here, except for the dictionary note that refers the reader to the meaning of the word “APPORTIONMENT.”

“Apportionment” according to **Black’s Law Dictionary** has the following meaning in reference to elections: “3. Distribution of legislative seats among districts that are entitled to representation; esp., the allocation of congressional representatives among the states based on population, as required by the 14<sup>th</sup> Amendment. The claim that a State is denying the right of representation to its citizens through improper apportionment presents a justifiable issues. – Also termed legislative apportionment. See Reapportionment.”

“Reapportionment” means “Realignment of a legislative district’s boundaries to reflect changes in population. The U.S. Supreme Court has required federal reapportionment: See US Const. Art. I, Section 2, cl. 3. – also termed **redistricting.**...” See Black’s Law Dictionary

Please note that there is a provision in the 1986 Constitution of Liberia which deals with "apportionment", as follows:

"Immediately following a national census and before the next elections, the Elections commission shall reapportion the constituencies in accordance with the new population figures so that every constituency shall have as close to the same population as possible; provided, however, that a constituency must be solely within a county." See **1986 Const. of Liberia Art. 80(e)**.

It is therefore our opinion that the change of the voting system that the NTLA has included in subsection 1.3 of the Electoral Reform Law of 2004 has nothing whatsoever to do with "apportionment" or the "one man, one-vote rule," as has been argued by Appellee.

In researching this matter, we found in a recent United States case some principles of law which we believe are pertinent to the issues here raised, although the facts and circumstances of the Florida case are not analogous to this case. We refer to the Opinion of the Supreme Court of Florida in the case **PALM BEACH COUNTY CANVASSING BOARD, Petitioner, v. Katherine Harris, etc., et al., Respondents. Volusia County Canvassing Board, et al., Appellants, v. Katherine Harris, etc., et al., Appellees. Florida Democratic Party, Appellant, v. Katherine HARRIS, etc., et al., Appellees. 772 So. 2d. 1273, decided Dec. 11, 2000.**

These principles of law which the Florida Supreme Court relied upon in part of that case are as follows: "Legislative intent is the polestar that guides a

court's inquiry into the provision of the Florida Election code." **At page 10 of the Opinion;** "Florida court generally will defer to an agency's interpretation of statutes and rules the agency is charged with implementing and enforcing." **At page 10;** "Florida courts, however, will not defer to an agency's opinion that is contrary to law." **At page 10;** "Courts should construe statutes to give effect to all provisions, and not to render any part meaningless." **At Page 3;** "Statute should be construed in its entirety and as a harmonious whole." **At Page 3;** "Where two laws are in conflict, courts should adopt an interpretation that harmonizes the laws, for the legislature is presumed to have intended that both laws are to operate co-extensively and have the fullest possible effect." **At Page 3;** "Statutory provision will not be construed in such a way that it renders meaningless or absurd any other statutory provision." **At Page 3;** "All parts of a statute must be read together in order to achieve a consistent whole. **At Page 3;** "It is necessary to read all provisions of the Election Code in pari materia." **At Page 4.**

We believe that **Subsection 1.3 of the Electoral Reform Law**, especially the last sentence thereof, requires a reading in context of the present situation in Liberia in order to properly understand that although this Court has been unable to find any minutes of the legislative body or of the NEC or any minutes anywhere, to assist this Court in finding out of the intention of the legislative body at the time of the enacting of the above mentioned provision of the law, this Court has a duty when interpreting a statute such as the one under consideration, to look at the prior law, the new law, the situation of our Country that led to the making of the new law, and the records, if any, of the legislative body as to what it intended to achieve when it enacted the new law. Whilst we do not wish here to elaborate on all of these points, it is our opinion that it suffices to point it out that the ultimate purpose of enacting the new Electoral Reform Law is to facilitate the holding of Special Elections pursuant to the CPA, or as required by the CPA, in order to usher in a newly elected government and return Liberia to full constitutional rule. **Article XXXV Subsection 1e of the CPA** provides that "All suspended provisions of the Constitution, Statutes and other laws of Liberia, affected as a result of this

Agreement, shall be deemed to be restored with the inauguration of the elected Government by January 2006....” We read this provision to mean that our prior relevant constitutional provisions, statutes and regulations governing elections in October 2005 “shall be deemed to be restored” after inauguration in January 2006. In this context, it is clear that the NTLA intended to change what existed before, and not just to restate a principle of law, when it enacted **subsection 1.3** of the **Electoral Reform Law** abovementioned. If this provision of the new law has been drafted so that it is susceptible of several meanings, then it is the fault of the drafters, i.e., those who drew up the new law at the NEC.

Further, it is noted that Appellee relied in part on the Liberian case, **Shannon v. Liberian Trading Corporation, 23 LLR 66 (1974)**, and that the Judge of the trial court also relied, in part, on the same case in his Judgment declaring that **Section 1.3** of the **Electoral Reform Law** is a mere restatement of the one-man, one vote rule “or one-person, one-vote rule,”

Let us look at the **Shannon** case. In order for Liberia to be in compliance with certain minimum standards of the International Labour Organization (ILO), the Legislature in 1963 enacted the Labour Practices Law which included a provision for retirement pension. Although it was and is still clear that the standards which the Legislature wished to adopt would require an employer to pay pension of 40% of last average monthly earnings to a retiree each month, the statute was printed to show that the retirement pension would be 40% of last average monthly earnings, same to be paid in twelve equal monthly installments, i.e. if average monthly earnings were say \$40.00, a retiree would receive \$3.33 monthly instead of \$40.00 each month. When in 1970 an employer decided to apply the letter of the retirement pension law to his retiree, the lawsuit ensued. The Supreme Court decided in that case, and correctly so, that it was the clear intention of the Legislature that a qualified retired employee was to be paid each month after retirement 40% of the average of his monthly earnings, such monthly average to be derived from his earnings received over the last five years of his employment. In that Opinion, the Supreme Court also made it crystal clear that, “In pursuit of the

judicial function of construction of the laws enacted by the Legislature, courts are to construe them according to the intent of the Legislature and the spirit of the law, rather than by the mere application of the letter of the law in disregard of the factors motivating enactment of the law and the consequences flowing from such literal interpretation.” (From Syllabus #5 of the Report in the **Shannon** case.) As I understand this holding, a court has a duty to take into consideration, in such cases, “the factors motivating enactment of the law and the consequences flowing from such literal interpretation.” At page 90 of the Report, the Court emphasized that “The historical significance of the statute., as a whole, together with all attending circumstances cannot be ignored.”

It is interesting to note that Appellee and the lower court, as well as my Colleagues, relied in part on the holding in the same **Shannon** case that we believe supports our conclusion to accept the NEC’s interpretation of **Section 1.3** of the **Electoral Reform Law** in this matter. It should be noted that my Colleagues have not concluded that **Subsection 1.3** is unconstitutional. They appear to accept the proposition (at page 18 of the majority Opinion) that the Subsection in question does say that one voter shall vote only for one of the two senate candidates for each county, but they insist that the NTLA could not have meant to so restrict the voter because to have done so would effectively “disenfranchise” voters. We are of the opinion that in context, the last sentence of the said **Subsection 1.3** is not ambiguous or of doubtful meaning, will not work any injustice, is not absurd or contradictory and is not redundant or against the public good. We are of the opinion that **Subsection 1.3** is clear and conveys the policy of the State and the NTLA regarding the holding of the forthcoming special general elections.

In this matter, a final point shall be made. Our Colleagues have said that if we should adopt the interpretation of the last sentence of **Subsection 1.3** of the **Electoral Reform Law** as interpreted by the NEC, certain voters will be disenfranchised. We disagree with that conclusion. According to **Black’s Law Dictionary**, “disenfranchisement” in the context of the case means: “The act of

taking away the right to vote in public elections from a citizen or class of citizens." – Also termed disfranchisement." Clearly, no Liberian voter will be denied the right to vote under **Subsection 1.3** of the **Electoral Reform Law**. The new law merely states that when a voter goes to vote for senators, instead of casting two votes for his two county senators, he will cast one vote for one senator. This case should have been dismissed.

It is for these reasons stated above that I had found it necessary to dissent from the Opinion of my Colleagues.

  
Henry Reed Cooper  
CHIEF JUSTICE