

**IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA  
SITTING IN ITS OCTOBER TERM AD 2024**

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PRESENT: HER HONOUR SIE-A-NYENE G. YUOH.....CHIEF JUSTICE

PRESENT: HER HONOUR JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE

PRESENT HIS HONOUR YUSSIF D. KABA.....ASSOCIATE JUSTICE

PRESENT HIS HONOUR YAMIE QUIQUI GBEISAY, SR.....ASSOCIATE JUSTICE

PRESENT HER HONOR CEATNEH D. CLINTON JOHNSON.....ASSOCIATE JUSTICE

**IN RE: THE CONSTITUTIONALITY OF CERTAIN ACTIONS OF MEMBERS OF THE HOUSE OF REPRESENTATIVES OF THE 55th LEGISLATURE PETITIONERS TAKEN BY SOME MEMBERS OF THE HOUSE OF REPRESENTATIVES OF THE 55th LEGISLATURE**

**VERSUS**

**Some Members of the House of Representatives of the 55th Legislature, including Deputy Speaker Thomas Falah and Representative Samuel G. Kogar RESPONDENTS**

**AND**

**The Constitutionality of the removal of Honorable J. Fonati Koffa as Speaker of the House of Representatives of the 55th Legislature and the Election of Honorable Richard N. Koon as the New Speaker**

**AMICUS CURIAE BRIEF FILED BY CLLR. TIAWAN SAYE GONGLOE IN ORDER TO AID THE COURT ARRIVE AT A DECISION THAT WILL SHOW TO THE PARTIES BEFORE THIS HONORABLE COURT, THE PEOPLE OF LIBERIA AND THE WORLD THAT THIS COURT UPHOLDS THE SUPREMACY OF THE LAW OVER POLITICS UNDER THE CONSTITUTION OF LIBERIA AND THAT THIS COURT HAS JURISDICTION OVER ALL DISPUTED ISSUES GROWING OUT OF THE THE EXERCISE OF CONSTITUTIONAL RIGHTS.**

**TABLE OF CONTENTS**

1. Interest of the Amicus Curiae
2. Summary of the Essential facts
3. Summary of Argument
4. Argument
  - i. The Superiority of Law Over Politics in an Organized Democratic Society
  - ii. The Supreme Court’s Paramount Role in Resolving Contentious Issues Among Government Branches
  - iii. Debunking the Argument of Non-Interference in Legislative Leadership Disputes
5. Conclusion

**1. Interest of the Amicus Curiae**

Tiawan Saye Gongloe, has had over thirty six years of practice of law, during which period he argued constitutional issues such as the lack of immunity of a former head of state for prosecution of crimes committed, under certain conditions, the appointment power of the President of Liberia, the doctrine of separation of powers, amongst others; and has been a frequent commentator on constitutional issues, one evidence of which is his 1999 article in the Democracy Watch Journal entitled “Liberia’s Experience with the Doctrine of Separation of powers”. He is a former president of the Liberian National Bar Association, life-time member of the African Bar Association, member of the Public Interest lawyer Association of West Africa and with extensive experience in democratic governance and separation of powers jurisprudence in Liberia. He submits this amicus curiae brief to provide impartial and scholarly insights on the critical importance of upholding the rule of law over political interests within Liberia's democratic framework. This brief seeks to assist the Court in affirming the constitutional principles that ensure the judiciary’s authority to adjudicate disputes arising from other branches of government, specifically in matters

concerning the leadership and operational integrity of the House of Representatives as this Court has ably done in the exercise of the removal of executive officers occupying tenured positions.

## **2. Summary of the facts**

There are two petitions before this court. The first petition filed on November 22, 2024, is seeking this court's decision on the constitutionality of certain actions taken by some members of the House of Representatives. Those actions include: (a), the convening of a plenary of the house, not under the authority of the Speaker, the constitutionally recognized presiding officer of the House of Representatives, contrary to Article 49 of the Constitution of Liberia; (b), the suspension of three members of the House of Representatives, namely, Edward Flomo, Abu Kamara and Marvin Cole by the group of representatives who convened without regard for the authority of the Speaker; (c), the restructuring of the leadership of the House of Representatives of the said group of representatives; and (d), the seizure of the 2025 Draft National Budget sent to the House by the President through the Speaker.

The second petition is requesting this Court to make a decision on the Constitutionality of the removal of the Speaker of the House of Representatives, Hon. J. Fonati Koffa by the same group of representatives mentioned in the first petition and the election of Hon. Richard N. Koon as the New Speaker by the said group of representatives.

## **3. Summary of Argument**

The issues before this court are simple:

1. Does this Court have Jurisdiction over leadership disputes in any of the two houses of the Legislature? The holding is a resounding yes.
2. Whether or not a majority of the members of the House of Representatives has the legal authority to stay away from a regular session of the House or convene not under the authority of the Speaker? The holding is no.
3. Whether or not meetings convened outside the official legislative chambers without proper authorization and in contravention of established procedures are invalid.  
The holding is no. This was the holding of this Honorable Court in the case: Edwin Snowe v. Some members of the House of Representatives, decided by this Honorable Court in 2007.
4. Can any action taken by a group of lawmakers who convene a meeting contrary to article 33 of the Constitution, be considered constitutional? The holding is no. Therefore, the purported suspension of three members of the House, the seizure of the 2025 National Budget, the restructuring of the leadership of the House of Representatives and the purported removal of the Speaker are all unconstitutional. Also, all of the issues raised in the return filed by on behalf of the "majority block" regarding the conduct of Speaker Fonati Koffa are matters of internal consideration that should be raised before the House, when properly convened consistent with Article 33 of the Constitution, not before this Honorable Court.
5. Whether or not the removal of the Speaker was done within the scope of Article 49 of the Constitution of Liberia. The holding is in the negative. The failure of the House to function for nearly a month has been because of the failure of those members opposed to Speaker Koffa to obtain two thirds votes of members of House as required by article 49 of the Constitution. On the failure of this group to obtain the required votes, they then coined the phrase "majority block of the House" to justify their illegal actions of staying away and engaging the various illegal actions that necessitated seeking this Court's intervention. It is logical to conclude that if the so-called majority group had had the required vote for the removal of Speaker Koffa, they would have followed the constitutional steps of proceeding by due process and voting him out of office. It should be noted that the law is the law and has no place of expediency, quick-fixes, emergencies and any form of arbitrariness. The only power that the law recognizes is the power that the law provides not any other source of power, such as "majority block".

In a thriving democratic society, the rule of law must supersede political maneuvering to maintain institutional integrity, fairness, and justice for sustained peace and progressive socioeconomic development. The Supreme Court of Liberia holds a pivotal role in interpreting and enforcing the Constitution, thereby ensuring that all branches of

government operate within their constitutional mandates. This brief argues that the Court must decisively address and resolve contentious issues emanating from the Legislative branch, including disputes over leadership, to uphold the Constitution and prevent the erosion of democratic institutions. The argument against judicial interference in legislative affairs undermines the separation of powers and threatens the integrity of democratic governance.

The Court's action in determining the constitutionality of certain actions of the legislative branch is not interference, but an exercise of its authority given by articles 2, 65 and 66 of the Constitution of Liberia, which provide as follows: One, "This Constitution is the supreme and fundamental law of Liberia and its provisions shall have binding force and effect on all authorities and persons throughout the Republic..." at article 2; two "The Judicial Power of the Republic shall be vested in a Supreme Court and such subordinate courts as the legislature may from time to time establish..." at article 65; and three "The Supreme Court shall be the final arbiter of constitutional issues and shall exercise final appellate jurisdiction in all cases whether emanating from courts of record, courts not of record, administrative agencies, autonomous agencies or any other authority, both as to law and fact except cases involving ambassadors, ministers, or cases in which a county is a party. In all such cases, the Supreme Court shall exercise original jurisdiction. The Legislature shall make no law nor create any exceptions as would deprive the Supreme Court of any of the powers granted herein." The jurisdiction of this Court in resolving all contentious issues in the Republic of Liberia, including those coming from the other two branches of government is unquestionable.

This Court should take judicial notice of the provision of Article 66 that bars the Legislature from creating any exceptions as would deprive the Supreme Court of any of the powers granted the Court under the said article. It logically follows that no rule made by the entire Legislature or action taken by the entire legislature or a group of legislator, no matter how big their number can deprive this Court of its power of judicial review of all actions within the territorial boundary of Liberia. Throughout the history of Liberia, this Court has repeatedly maintained its authority to say what the law is on every matter.

In 1914 this Court, in the case: In re Constitutionality of Legislative Act [1914] LRSC 5; 2 LLR 157 (1914) (12 May 1914), held, "All civilized nations jealously guard the independence of their judiciary. The courts stand between order and anarchy, facing the latter with a stern repressive frown, and extending aid and encouragement to the former. In the evolution of society, a plan was reached providing for the choice of certain men to decide controversies, where the parties thereto were unable to agree. The essential element of such plan was that the men so set aside, must be free and that they must be above every outside influence whether sought to be exercised by king or people; that they must decide all matters coming before them without fear, favor or affection."

It is important to note that the contending parties before this Court, stand "between order and anarchy" in this matter and must face anarchy with stern repressive frown and extend aid and encouragement to order. It is within the scope of the jurisdiction of this Court be clear and definitive that its existence is to prevent anarchy in all forms, shapes and manners. In this case a group of members of the House of Representatives are promoting anarchy under the canopy of "majority block" of the House of Representatives, a strange phraseology, is being used with a sinister motive to undermine the effectiveness of the Constitution of Liberia.

The people of Liberia were farsighted enough to know that there could come a time in the history of Liberia where group of lawmakers, as is happening now, could disobey the Constitution based on their numerical strength. Therefore, the people of Liberia prevented the possibility of such arbitrariness in article 33 of the Constitution by providing, "A simple majority of each House shall constitute a quorum for the transaction of business, but a lower number may adjourn from day to day and compel the attendance of absent members..." This provision recognizes the minority of lawmakers presents in plenary as the members with the legal authority to meet and adjourn in order to compel the majority absent from plenary to attend the next plenary. This provision of the Constitution is so plain and simple, even for an elementary school student to understand.

Any action of members of House of the Legislature outside the clear boundary prescribed by article 33 is null and void ab initio. The age old maxim from Roman Law that says, *Nihil sine lege*, meaning “what is not legally done, is not done at all” is squarely applicable to this case.

Therefore, every action that has been taken by the members of the House referring to themselves as the “majority block” outside the boundary of article 33 is unconstitutional, invalid and void ab initio. This Court held in the case: **Broh v Hon House of Rep. et al. [2014] LRSC 20 (24 January 2014)** “... the Supreme Court does indeed have unqualified authority to determine whether the acts of the House of Representatives violated the Constitution and conformed to the law.” In the same case, this Court further held, “...the Supreme Court can and is vested with the power and the authority to seize itself of any matter, whether emanating from acts of the Legislative Branch, the Executive Branch or even the Judiciary Branch itself, once allegations are made of the violation of any of the provisions of the Constitution.” The same position had been earlier stated by this Court in the cases: **Snowe v. Some Members of the House of Representatives**, decided during the Special Session of this Court, October Term, 2006, decided January 2007; and **Morlu II v. House of the Senate**, March Term, 2008, decided June 28, 2008.

### **3. Argument**

#### **A. The Superiority of Law Over Politics in an Organized Democratic Society**

In an organized democratic society, the Constitution serves as the supreme law of the land, establishing the framework within which political processes and institutions operate. The principle of the rule of law dictates that all actions by government entities and officials must conform to constitutional mandates, thereby ensuring accountability, transparency, and fairness. This position is supported by article two of the Constitution which provides, “This Constitution is the supreme and fundamental law of Liberia and its provisions shall have binding force and effect on all authorities and persons throughout the Republic...”.

#### **B. Constitution as the Supreme Law**

The Constitution delineates the powers and responsibilities of each government branch, ensuring a balance that prevents the concentration of power. This hierarchy establishes that no political interest can supersede constitutional provisions, safeguarding individual rights and maintaining institutional integrity. The role of the Court is clearly defined under articles 2, 65 and 66 and this court in a plethora of cases has made this clear to the other two branches of government and the people of Liberia.

#### **C. Political Processes Within Legal Boundaries**

While politics is an inherent aspect of governance, it must operate within the boundaries set by law. Political decisions and actions should be guided by legal principles to prevent abuses of power and ensure that the purpose of government is to serve the public interest rather than narrow political interests.

#### **D.C. Ensuring Stability and Predictability**

Adherence to the rule of law fosters stability and predictability in governance, allowing citizens and institutions to operate with confidence in the legal framework. This stability is essential for the functioning of democracy, economic development, and the protection of civil liberties.

### **II. The Supreme Court’s Paramount Role in Resolving Contentious Issues Amongst Government Branches**

The judiciary, and particularly the Supreme Court, serves as the arbiter of constitutional interpretation, ensuring that all branches of government adhere to constitutional principles as enshrined in Articles 65 and 66 of the Constitution of Liberia.

#### **A. Judicial Review and Constitutional Interpretation**

Through the doctrine of judicial review, the Supreme Court has the authority to evaluate the constitutionality of legislative and executive actions. This power is essential for maintaining the checks and balances fundamental to democratic governance. This authority of the Court is provided for in article 2 of the Constitution which provides, “...The Supreme Court, pursuant to its power of judicial review, is empowered to declare any inconsistent laws unconstitutional.”

#### **B. Upholding Separation of Powers**

The Supreme Court's involvement in resolving disputes between branches prevents any single branch from overstepping its constitutional authority. By addressing contentious issues, the Court reinforces the separation of powers, a cornerstone of democratic systems. As stated earlier in this brief, "The courts stand between order and anarchy, facing the latter with a stern repressive frown, and extending aid and encouragement to the former." In *Re: The Constitutionality of the Act* (1914)

### **C. Ensuring Fairness and Justice**

The judiciary must remain impartial and independent, providing a fair platform for resolving disputes. This impartiality ensures that decisions are based on legal merit rather than political influence, thereby upholding justice.

## **III. Debunking the Argument of Non-Interference in Legislative Leadership Disputes**

Arguments advocating for non-interference in legislative matters often stem from a desire to preserve legislative autonomy and prevent judicial overreach. However, such arguments fail to recognize the judiciary's essential role in upholding constitutional order and protecting democratic principles. An abdication of this very essential function of the judiciary based on shallow arguments in support of what is ignorantly termed as judicial interference in the affairs of the other two branches of government will be aiding and abetting chaos in the two political branches of the Government of Liberia. Politics without the control of the rule of law logically leads to the breakdown of law and order, thereby promoting chaos and anarchy as well as undermining the security of the state and its citizens. As stated earlier this Court has held, "...the Supreme Court can and is vested with the power and the authority to seize itself of any matter, whether emanating from acts of the Legislative Branch, the Executive Branch or even the Judiciary Branch itself, once allegations are made of the violation of any of the provisions of the Constitution." In the case: *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), Chief Justice Marshall stated "It is emphatically the province and duty of the judicial department to say what the law is." Therefore, the issue of judicial interference when there is a dispute that is based on an allegation of constitutional violation has no legal basis.

### **A. Necessity of Judicial Oversight in Leadership Disputes**

Leadership disputes within the legislative branch can lead to paralysis, factionalism, and erosion of democratic processes. Judicial intervention ensures that such disputes are resolved in accordance with constitutional mandates, maintaining legislative functionality and integrity.

### **B. Preventing Abuse of Power**

Without judicial oversight, legislative bodies may engage in power struggles that bypass legal frameworks, leading to authoritarian practices. The Supreme Court's involvement acts as a safeguard against such potential abuses, ensuring that leadership transitions and decisions adhere to democratic principles.

### **C. Affirming Judicial Independence and Authority**

Rejecting judicial resolution of legislative disputes undermines the judiciary's authority and the principle of checks and balances. Recognizing the Court's role in adjudicating legislative disputes reinforces the importance of judicial independence and the rule of law.

### **D. Comparative Jurisprudence**

In numerous democratic jurisdictions, supreme courts actively resolve legislative disputes to maintain constitutional order. For instance, in the United State of America, the Supreme Court has consistently affirmed its role in ensuring legislative adherence to constitutional principles, thereby enhancing democratic governance. **Powell v. McCormack, 395 U.S. 486 (1969)**

**Summary:** *Powell v. McCormack* dealt with the House of Representatives' attempt to exclude a duly elected member, Adam Clayton Powell Jr., despite him meeting all constitutional qualifications for office. In that case, the Court held that Congress could not exclude a member who had been duly elected and met all constitutional requirements.

### **E. Practical Implications for Liberian Democracy**

In the Liberian context, allowing the Supreme Court to resolve legislative leadership disputes strengthens democratic institutions, promotes accountability, and ensures that political dynamics do not override legal and constitutional mandates.

## **4. Conclusion**

In concluding this brief, it is important to draw the Court's attention to certain historical facts that should be considered to be taken consideration in deciding this case. It is a historical fact that Liberia is the oldest constitutional democracy in Africa and its legislature is the oldest legislative body on the entire continent. In fact the Liberian legislature is the oldest governmental body in Liberia. Following the independence of Liberia on July 26, 1847, the first branch of government established by the people of Liberia was the National Legislature on August 3, 1847. The legislature, then organized a presidential election in October 1847. The first elected President of Liberia, Joseph Jenkins Roberts was administered his oath of office on January 3, 1848 by the Speaker of the House of Representatives. It was followed the inauguration of President Roberts that he constituted the Judiciary beginning with the appointment of Samuel Benedict as the first Chief Justice of the Supreme Court and other justices of the Supreme Court and judges of subordinate courts. The point here to remember is that oldest branch of government reminded by the Court to restrict all its actions within the scope of the law, from 1914 up to present. It is important to note the incidence of breaking the law has been more frequent since 2007 up to present. Yet on each occasion this Court has spoken clearly to the need for lawmakers to remain within boundaries of the Constitution in all of their actions, both in dealing with each others and in interacting with members of the other branches of government. By continuously acting outside the scope of the Constitution, some members are by their actions risking lawmakers to be called lawbreakers. The law must remain supreme under all conditions and circumstances in the exercise of all political rights.

The supremacy of law over politics is fundamental to the stability and integrity of an organized democratic society. The Supreme Court of Liberia must uphold its constitutional role by addressing and resolving contentious issues emanating from the Legislative branch, including disputes over House leadership. Judicial intervention is not an infringement but a necessary measure to preserve the rule of law, ensure separation of powers, and protect democratic principles. Upholding these constitutional imperatives is essential for fostering a resilient and just democratic governance structure in Liberia.

**WHEREFORE AND IN VIEW OF THE FOREGOING**, the Amicus Curiae prays this honorable Court to declare the removal of Speaker Kofa unconstitutional, his replacement by Honorable Koon unconstitutional, the suspension of honorable Edward Flomo, Abu Kamara and Marvin Cole and the restructuring of the leadership of the House by "Majority Block" unconstitutional, as same was done not in conformity with articles 33 and 49 of the Constitution and order the absent members to attend to their legislative duties in keeping with the Constitution of Liberia, particularly in keeping with article 33, which provides for a lower number to compel absent members of either house to be present for the conduct of legislative business and to provide any other remedy in resolving petitions before this honorable Court consistent with the Supreme of law over politics in the Republic of Liberia.

Respectfully submitted:

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