

MOTION FOR DISMISSAL

This Motion for the immediate dismissal of **Mr. Keith Lowenfield**, the incumbent Chief Election Officer (CEO) of the Secretariat of the Elections Commission is hereby made on the basis of and for the following reasons:

WHEREAS, pursuant to Article 161A (1) of the Constitution of the Cooperative Republic of Guyana, hereinafter referred to as "*the Constitution*", the Elections Commission is responsible for the efficient functioning of the Secretariat of the Commission, which shall comprise the officers and employees of the Commission, and is vested with the power to remove and to exercise disciplinary control over such staff.

AND WHEREAS Sections 18 and 19 of the Elections Laws (Amendment) Act, No 15 of 2000, hereinafter referred to as "*ELAA*" provide that notwithstanding any written law the CEO shall be subject to the control and direction of the Commission.

AND WHEREAS, pursuant to Article 162 (1) (b) of the Constitution of the Cooperative Republic of Guyana, the Elections Commission is vested with the power to issue such instruction and take such action as appear to it necessary to ensure in partiality fairness and compliance with the provisions of the Constitution or any Act of Parliament on the part of persons exercising powers or performing duties connected with or relating to the conduct of elections.

AND WHEREAS, pursuant to Section 8 of the Representation of the People's Act, Chapter 1:03, the Chief Election Officer, hereinafter referred to as "*the CEO*", took an oath to "*faithfully perform the duties of the said office according to law, without partiality, fear, favour or affection*".

AND WHEREAS, the Representation of the People's Act, Chapter 1:03, hereinafter referred to as "*ROPA*" specifies and contains the various statutory duties, functions and responsibilities of the CEO.

AND WHEREAS, the CEO as the functional head of the Secretariat and most senior Election Officer is responsible to provide instructions, directions and guidance to all election officers of the Secretariat of the Commission in respect of the performance of their respective statutory duties, functions and responsibilities, including all Returning Officers.

AND WHEREAS on or about the 2nd March, 2020, during the National and Regional Elections 2020, the CEO, by virtue of his office, received from the Presiding Officer for each polling station in Election District Number 4 a Statement of Poll pursuant to Section 84 of ROPA.

AND WHEREAS the Honourable Chief Justice Roxane George SC on the 11th March, 2020, in the case of *Reaz Holladar v. Returning Officer, Clairmont Mingo; the Chief Election Officer; and Guyana Elections Commission (2020-HC-DEM-CIV-FDA-*

360) vacated and set aside the declaration made by the Returning Officer for District 4 as being unlawful and in breach of Section 84 of ROPA and the Chief Justice further ordered that the Returning Officer/Deputy Returning Officer to comply with the requirements of the said Section and further granted an injunction restraining GECOM from declaring the results of the election until the Section has been complied with.

AND WHEREAS Paragraph 12 of Order 60 of 2020 issued by GECOM and gazetted on the 4th May, 2020, as emended by Order No. 69 of 2020, gazetted on the 29th May, 2020, required the CEO to tabulate "*the matrices for the recount of the ten Electoral Districts*" and to submit them in a report together with a summary of the observation reports for each District.

AND WHEREAS Section 96 (1) of ROPA provides that the CEO shall, after calculating the total number of valid votes of electors which have been cast for each list of candidates, on the basis of votes counted and the information furnished by returning officers under Section 84 (11), ascertain the result of the election in accordance with Sections 97 and 98.

AND WHEREAS Section 96 (2) of ROPA provides that the CEO shall prepare a report manually and in electronic form in terms of Section 99 for the benefit of the Commission, which shall be the basis for the Commission to declare and publish the election results under Section 99.

The Grounds and Basis for this Motion for Dismissal are as follows:

1. In breach of his functions, duties, responsibilities and obligations, the CEO failed and/or refused and/or neglected to ensure due adherence and compliance of the statutory process, to wit, Section 84 of ROPA by the Returning Officer for Election District Number 4, **Clairmont Mingo**, an election officer under his control and supervision, during the process of adding up the votes recorded in the Statements of Poll for the said District.
2. In breach of his functions, duties, responsibilities and obligations, the CEO failed and/or refused and/or neglected to ensure that the process of ascertaining the total number of votes cast in favour of each list of candidates for Election District Number 4 by adding up the votes recorded in the Statements of Poll was done "*with dispatch*" and without "*inordinate or undue delay*".
3. In breach of his functions, duties, responsibilities and obligations, the CEO failed and/or refused and/or neglected to provide proper and lawful directions, instructions and guidance to the officers and employees of the Secretariat in the performance of their statutory duties during the process of the adding up of the votes recorded in the Statements of Poll for Election District Number 4 which led to protects, confusion and chaos at the Gecom Headquarters at Ashmin's Building.
4. Even after complaints to the CEO and public protests from members of the contesting opposition political parties that there were major and serious discrepancies in the votes recorded in the Statements of Polls in the possession of those parties and the votes being declared by the Returning Officer for District

4 purportedly extracted from the Statements of Poll in the possession of the Returning Officer, the CEO deliberately failed and/or refused and/or neglected to ensure that the correct tabulation and adding up of the votes by reference to the Statements of Polls in his possession.

5. Despite the injunctions granted in the **Reaaz Holladar Case** cited above, and the existence of the interim injunction restraining GECOM from declaring the results of the election until Section 84 of ROPA has been complied with and the pending decision of the Honourable Chief Justice, the CEO on or about the 7th March, 2020, in breach of the injunction, prepared a final report pursuant to Section 99 of ROPA containing all of the unverified votes as declared by the Returning Officer for District 4, and in which he declared the APNU/AFC as winners. The CEO also sought by letter to the Chairwoman to convene a meeting to approve same.
6. In spite of and in breach of the Orders, guidance and directions of the **Honourable Chief Justice Roxane George SC** given on the 11th March, 2020, in the **Reaaz Holladar Case**, in which the Chief Election Officer was a party, the CEO again failed and/or refused and/or neglected to ensure due adherence and compliance of the statutory process by the Returning Officer for Election District Number 4, **Clairmont Mingo**. This was a second act in defiance of an Order of the Court. As a result, both contempt proceedings and a second challenge were filed against this second declaration.
7. Throughout the process of adding up the votes for each list from the Statements of Poll, the CEO either condoned or encouraged the numerous breaches and violations of Section 84 of ROPA committed by the Returning Officer for District 4,

Clairmont Mingo, and other election officers and staff of the Secretariat or he abdicated and abandoned his functions and duties to take the necessary steps to remedy such breaches and violations.

8. On the 13th June, 2020, in breach of and contrary to his duty pursuant to Paragraph 12 of Order 60 of 2020, the CEO submitted a report in which he disregarded the votes cast for each of the list of candidates as established by the recount process and instead he produced revised totals of votes cast after he had deducted scores of thousands of votes in favour of the PPP/C list of candidates on grounds of alleged "irregularities and anomalies", a phrase coined by the APNU/AFC during the recount process and he concluded that he concluded that the results for District 4 cannot be regarded as credible. In short, he failed and/or refused to produce the report as he was lawfully required to do as the CEO and instead he was purporting to act as a Judge of the High Court hearing an Elections Petition.
9. By letter dated 16th June, 2020, the Madam Chairperson issued a directive to the CEO to prepare and submit his report pursuant to Article 177 (2) (b) of the Constitution and Section 96 of ROPA by the 18th June, 2020, at 13:00 hours using the results of the recount, for consideration of the Commission. The CEO deliberately failed, refused and neglected to do as directed without any proper reason or excuse.
10. On the 22nd June, 2020, the Court of Appeal made its Orders in the case of Eslyn David v. Chief Elections Officer, Civil Appeal No. 41 of 2020, including an Order that there be a stay of its judgment for a period of three (3) days and in breach and violation of the said Order for stay of execution. In spite of the stay of execution,

the CEO on the 23rd June, 2020, submitted a second recount report to the Elections Commission. This act was the third instance where the CEO openly acted in defiance of Orders made by the Court.

11. The Caribbean Court of Justice in the case of Mohamed Irfaan Ali v. Esllyn Davis and others [2020] CCJ 10 (AJ) GY, found that in this second recount report submitted on the 23rd June, 2020, CEO *"took it upon himself to himself to invalidate such votes as he considered ought to be invalidated. This second report purported to invalidate well over 100,000 votes that had been previously counted and verified as valid votes within the meaning of the ROPA"*.
12. This invalidation process upon which the CEO embarked upon was found by the Caribbean Court of Justice to be unlawful and in conflict with the existing electoral laws. The Court said: *"The idea that the CEO or GECOM could, in an unaccountable, non-transparent, and seemingly arbitrary manner, without the due process and the legal standards established in Article 163 and in the Validation Act, disenfranchise scores of thousands of electors is entirely inconsistent with the constitutional framework."*
13. It is important to note that in this second report submitted after the recount process, the CEO again purported to declare the results showing that APNU/AFC won the General and Regional Elections. The CCJ in the Esllyn David case ruled that the Report of the CEO dated 23rd June, 2020, is invalid and of no effect.
14. Subsequent to the decision of the CCJ in the Esllyn David case delivered on the 8th July, 2020, the Chairperson wrote to the CEO by letter dated 9th July, 2020, again directing him pursuant to Section 18 of ELAA and the relevant provisions of the Constitution and ROPA to prepare and submit his report by 2 pm on the 10th

- July, 2020 using the valid votes counted at the National Recount as per Certificates of Recount generated therefrom. The CEO failed to meet the deadline as stipulated by the Chairperson. In a written response, the CEO requested certain clarifications.
15. On the 11th July, 2020, the CEO submitted his third recount report with figures that were inconsistent with the figures from the National Recount and shown on Certificates of Recount. Instead, the CEO unilaterally and arbitrarily decided to use the figures submitted to him by the ten (10) returning officers pursuant to Section 84 of ROPA, including the fraudulently manufactured figures declared by the returning officer for District 4. The report submitted by the CEO again showed a victory for the APNU/AFC list of candidates.
 16. On the 13th July, 2020, the Chairperson issued a ruling that the results of 13th March, 2020, cannot be used since these were replaced by the tabulation of the votes at the recount process and the Chairperson again requested the CEO to prepare a report by the 14th July, 2020, based on the recount results. This was the fourth opportunity given to the CEO to prepare the report pursuant to the recount results. The CEO again failed to submit his report within the time stipulated.
 17. By the aforesaid conduct, actions and omissions of the CEO, he has not only violated but has discarded the oath of office which he has taken to faithfully discharge the duties of his office and to act fairly and impartially in the discharge of those duties. The foregoing actions of the CEO cannot be reasonably seen as acting impartially and fairly.
 18. By the aforesaid conduct, actions and omissions of the CEO, he has caused a loss of public confidence and public trust in the electoral process and he has failed,

neglected and abdicated his functions, duties and responsibility to ensure both compliance with the provisions of the Constitution and the electoral legislative framework and the essential criteria of impartiality, transparency, fairness and credibility to the operations of the Elections Commission and its Secretariat.

19. The CEO is currently facing criminal charges being prosecuted by the Guyana Police Force in respect of his numerous infractions of the law and regardless of the outcome of those charges, the Commission must take all necessary steps and action, pursuant to Article 162 (1) (b) of the Constitution to restore and ensure impartiality, credibility, transparency, public confidence and public trust in its institution and its constitutional and statutory mandate.
20. In light of the foregoing, this Motion is moved for the immediate dismissal of the CEO, Keith Lowenfield.



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Sase Gunraj
Commissioner



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Bibi S. Shadick
Commissioner

Dated this 1st day of June, 2021.