



NEW JERSEY GENERAL ASSEMBLY

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SPEAKER

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January 12, 2012

Honorable Stuart Rabner
Richard J. Hughes Justice Complex
25 Market Street
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Trenton, NJ 08625-0023

Dear Chief Justice Rabner

As the presiding officer of the New Jersey General Assembly, I respectfully request that the New Jersey Supreme Court vacate its order dated January 10th consistent with the General Assembly's strong interest in swearing in Gabriela Mosquera with her colleagues at our next quorum call scheduled for this Tuesday, January 17th. I request this in the interest of comity, as well as the Assembly's reasonable reliance on the Executive Branch's support of her candidacy, and the disruption that the vacancy poses to the General Assembly's operations.

Comity

The Judiciary should defer to the Legislature on this matter. As both the Attorney General and counsel for Ms. Lovett have acknowledged in their papers, the New Jersey Constitution states that "[e]ach House shall be the judge of elections, returns, and qualifications of its own members." Art. IV, Sec. IV, par. 2. The Rules of the General Assembly, readopted this week, incorporate this provision. Assembly Rule 1:2. The Legislature's authority has been reinforced by this Court, which interpreted the same provision in the pre-1947 Constitution in Conger v. Convery, 20 A. 166 (1890), and Van Winkle v. Caffrey, 175 A. 362 (1934). In both of these cases, the Supreme Court held that each House of the Legislature retains the ultimate jurisdiction under the Constitution.

The same wording in the federal Constitution has been interpreted the same way by the federal courts, including in questions of residency. See, e.g., Roudebush v. Hartke, 405 U.S. 15 (1972); Morgan v. United States, 801 F.2d 445 (D.C. Cir. 1986) (then-Judge Scalia holding that the Constitution "unambiguously proscribes judicial review" of a decision by a House on its members); Cox v. McCrery, Docket No. 5:2006cv02198 (W.D. La. 2007) (federal judge dismissed challenge to residency of Congressman-elect; "The House of Representatives is the only institution permitted by the Constitution to decide the qualifications challenge").

As the ultimate arbiter of the qualifications of our members, the General Assembly should be able to swear Ms. Mosquera in at our next quorum call without interference from this Court.

Reasonable Reliance

The Assembly's position that it should be able to swear in Ms. Mosquera is based on our reasonable reliance upon the Executive Branch's determination that Ms. Mosquera was a qualified candidate. Ms. Mosquera's candidacy was certified by the Secretary of State's Office in August, 2011 in a determination not challenged by any party before the election. The Attorney General's position in a brief filed with the Superior Court in this case supported the Secretary of State's determination. The more recent filing by the Attorney General on Tuesday, January 10th in this Court represented an unreasonable reversal of the State's earlier position.

Having relied upon the Executive Branch's support of Ms. Mosquera, the Assembly began preparations for Ms. Mosquera's inclusion in the Two Hundred and Fifteenth Legislature. For the reasons explained below, prohibiting the Assembly from filling her seat at this time could significantly disrupt the start of our Session.

Disruption to the Ordinary Operation of the Legislature

Committee Assignments

Following each legislative election cycle, the presiding officer and her leadership team immediately begin preparing for the upcoming Session. One of my chief responsibilities as presiding officer is assigning members to Assembly committees.

The bulk of our legislative work takes place at the committee level. Indeed, this is where the public has the opportunity to testify in favor of or against a particular measure and where the majority of amendments are made to a bill before it is considered by the full Assembly.

Each Session, it is customary for the size, composition and party ratio of committees to change based upon the make up of the particular Legislature. Like all incoming members, Ms. Mosquera submitted her committee preferences to myself and my staff following her election. She was assigned to committees based on her preferences, as well as a variety of other factors, including the preferences of other members, the partisan composition of each committee and the major pieces of legislation expected to be considered by each committee over the next two years.

Ms. Mosquera's absence will create a vacancy on the committees to which she was assigned, thereby disrupting not only the composition of those committees but potentially the composition of other committees as well. This could require us to reconfigure committee assignments prior to our first committee day.

Other Operational Disruptions

In addition to committees, the Court's interference in this matter presents a variety of other possible disruptions to the Assembly's operation, including new member orientation, district office management and seniority.

If Ms. Mosquera is not sworn in on Tuesday, she will not be permitted to participate in the Assembly Democratic Caucus' new member orientation. The orientation provides trainings on the basics of law making, the budget process, ethics and conflicts of interest law and communications with the press. Members appointed to fill seats vacated throughout the Session

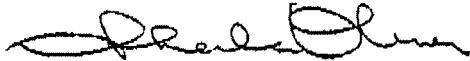
do not receive this full-day orientation until the start of the following Session, as time and resources prohibit us from conducting more than one comprehensive orientation a Session. Instead, members appointed in mid-Session are typically given abbreviated trainings, as needed, throughout their inaugural term. As a result, incoming members who have received the full-day orientation at the start of their legislative career are far more knowledgeable and effective members of the General Assembly. Depriving Ms. Mosquera of the opportunity to participate in this training is a disservice to her as well as the entire caucus.

The vacancy also compromises the fourth district's constituent service operation. Depending upon the preference of the individual legislators in a particular district, legislators may opt to retain their own individual offices or coordinate resources and staff by combining offices. While Ms. Mosquera's seat remains vacant, her running mates are unable to finalize these very important determinations.

Finally, it is worth noting that Ms. Mosquera is personally disadvantaged each day her swearing in is delayed. Advancement in the Legislature is often based on seniority. The degree to which committee preferences are honored, for example, is in large part due to a member's length of service. Committee chairpersonships, legislative leadership titles, legislative offices and seating arrangements are all also largely awarded based upon seniority. Ms. Mosquera's position in the Assembly relative to her peers is weakened if she is not permitted to be sworn in on Tuesday.

For these reasons, it is in the strong interest of the New Jersey General Assembly that Gabriela Mosquera be sworn in at our next quorum call on January 17, 2012.

Sincerely,



Sheila Y. Oliver
Speaker

cc: Honorable Jeffrey S. Chiesa, Attorney General
William Tambusi, Esq
Matthew Wolf, Esq.