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Judge Thomas J. McNamara
Albany County Supreme Court
16 Eagle Street Room 274
Albany, NY 12207

June 14, 2009

Dear Judge McNamara,

The Court has requested that the defendant answer the question as to how long matters may stand in the current posture before they become justiciable to permit court intervention.

The threshold issue is of course an assessment of the current posture. At present in the face of a 32-person vote to change the Temporary President, a single person the Secretary of the Senate Angelo Aponte has decided that the vote is a nullity. He has therefore interposed himself to impede and obstruct the work of the Senate. Contrary to the Constitution (Art. III, §10) and the Rules of the house he has sealed the chamber preventing the 32-member majority from entering to do the people's business. When 32 Senators entered the chamber on Thursday, June 11, which constituted a quorum for the doing of the people's business, they discovered that Aponte had ordered staff not to appear in the chamber or risk being fired for insubordination. Further, all the bill jackets, the Journal, and other Senate property necessary for the Senate to perform its constitutional function were sealed and locked away in order that no one could gain access.

Fundamentally, Aponte and his co-conspirators have refused to recognize a democratic process that deprived them of power to control the house. One man now stands in the way of the People's business on the sole predicate that he has literally the keys to the mechanics of conducting Session. Aponte, deprived of power by the enactment of new Senate Rules, currently obstructs the work of the house. Remove the obstruction, eliminate the insubordination and the Senate would be working again and thus issues of justiciability would be removed. This is especially true in light of the fact that Justice Ceresia would not issue a temporary restraining order to re-install the plaintiff in this action.

Simply put, the matter would never become justiciable by virtue of intervening events. First, should the matter remain unresolved, the Senate could be called into Special

Session at any time by the Governor who would have the power to set the agenda for that session. He would not necessarily be able to impose his will on the house, at any point no matter the events of June 8, 2009.

The Senate would either meet on its own or go out of session. The elected leadership could bring forward legislation for consideration, debate and vote. It may not go out of session but rather adjourn day-to-day by the presiding officer designated by Senator Espada. Fundamentally, the matter could remain unresolved until a political solution occurs. The latest such a solution could occur would be occasioned by the 2010 election.

In other separation of powers issues such as judicial pay raises, the matter became justiciable after years of a lack of a pay raise. It required that the courts decided that the failure to raise pay for a decade so harmed the judicial branch as to make it necessary for the court to step in and rectify a years long process. In so doing it appears that the legislative process may be interfered with on separation of power grounds only after a long-time deadlock. This matter in the sphere of the political branch of government will certainly be resolved before it reaches the threshold of judicial pay raise and denigration of the posture of one branch by another.

In a political branch where the duly elected members must solve their own dilemmas even at the cost of deadlock, the court may not intervene on the basis of a justiciable controversy because it will never reach the threshold of decades of impasse. Legislative deadlock, although unattractive, pressures a solution. The matter at hand has gone on for all of a week. While the press, the political players and the parties are demanding instant gratification, the danger of intervention is clear. A court-imposed solution will undermine, not enhance, the repute and legitimacy of the institution of the judiciary and the legislature. Bush v. Gore, 534 U.S. 98 (2000) created a fallout of partisanship and lack of confidence in both the political and judicial processes.

In our system of government the recourse for political questions is the ballot box and not the courthouse. For matters legislative voters themselves have the first and final say. In essence the matter never becomes justiciable because it never remains in the same posture. Pressure, personalities, ambition and nature release the bonds that at first glance look so fixed.

It is respectfully suggested that the matter never becomes justiciable, because of the press of unknown but certain intervening events. What may be adjudicated is the

refusal of an employee of the Senate to carry out the directives of the legislative body.
That question, however, is not before this Court.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "John Ciampoli". The signature is fluid and cursive, with a long horizontal stroke at the end.

John Ciampoli, Esq.,
Attorney for Senator Pedro Espada, Jr.