
Committee Meeting

of

SENATE JUDICIARY COMMITTEE

The following nomination(s) will be interviewed:

To be reappointed as an Associate Justice of the Supreme Court

“Honorable Faustino J. Fernandez-Vina, of Barrington, for the term prescribed by law”

LOCATION: Committee Room 6
State House Annex
Trenton, New Jersey

DATE: October 22, 2020
12:00 p.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Nellie Pou, Vice Chair
Senator Linda R. Greenstein
Senator Paul A. Sarlo
Senator Bob Smith
Senator Brian P. Stack
Senator Stephen M. Sweeney
Senator Loretta Weinberg
Senator Christopher “Kip” Bateman
Senator Gerald Cardinale
Senator Kristin M. Corrado
Senator Michael J. Doherty



ALSO PRESENT:

David J. Lorette
Office of Legislative Services
Committee Aide

Alison Accettola
Senate Majority
Committee Aide

Michael Molimock
Senate Republican
Committee Aide

Meeting Recorded and Transcribed by
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TABLE OF CONTENTS

	<u>Page</u>
Faustino J. Fernandez-Vina Associate Justice Supreme Court of New Jersey	3
Stuart Rabner Chief Justice Supreme Court of New Jersey	12
mej: 1-12	

SENATOR NELLIE POU (Vice Chair): Good morning everyone. We are now going to start our Senate Judiciary Committee.

At this moment, I am going to ask Mr. Lorette to please take roll call.

MR. LORETTE (Committee Aide): Committee roll call.

Senator Doherty.

SENATOR DOHERTY: Yes.

MR. LORETTE: Senator Corrado.

SENATOR CORRADO: Here.

MR. LORETTE: Senator Cardinale.

SENATOR CARDINALE: Here.

MR. LORETTE: Senator Bateman.

SENATOR BATEMAN: Here.

MR. LORETTE: Senator Weinberg.

SENATOR WEINBERG: Here.

MR. LORETTE: Senator Stack.

SENATOR STACK: Here.

MR. LORETTE: Senator Smith.

SENATOR SMITH: Here.

MR. LORETTE: Senator Sweeney is subbing in for Senator Singleton, he is marked in as present.

Senator Pou.

SENATOR POU: Here.

MR. LORETTE: Vice Chair, you have a quorum.

SENATOR POU: Thank you for that.

I'd like to begin first by welcoming Chief Justice Stuart Rabner, who has joined us here today for this Senate Judiciary Committee.

And I am going to-- Before I ask our Associate Justice to come up and come before us to take his hearing, I am going to ask you to just hold on for just a moment, Fernandez-Vina. And let me just say how privileged and honored I am to welcome you to these hearings, Associate Justice Fernandez-Vina, who has been nominated -- re-nominated, I should say -- to serve on the State Supreme Court.

Justice Fernandez-Vina was appointed to the State's highest court by Governor Christie in 2013, and he has served there with distinction these past seven years, offering measured, well-argued opinions whether writing for the majority or writing in dissent.

Prior to his service on the bench, Justice Fernandez-Vina was in private practice from 1982 to 2004. He described his former practice as exclusively devoted to civil litigation. He was appointed to the bench by Governor McGreevey in 2004 and was the first Latino nominee to the Superior Court in Camden County.

Upon appointing him Assignment Judge, Chief Justice Rabner stated that Fernandez-Vina brings to the position of Assignment Judge a wealth of experience, a proven and practical approach to addressing issues, superb judgement, and respect of the bench and bar.

Justice Fernandez-Vina has shown a clear eye, common-sense view of the law as it affects all residents of New Jersey. He also brings an important voice to the court, and adds diversity to a panel that seeks to serve the legal needs of the entire state.

I made it a point of providing these particular introductory notes because I've had the pleasure-- I was here serving as a member of the Senate Judiciary Committee when, in fact, he was first appointed, and that was my first interaction with him, back seven years ago. And I had a very good opportunity to have a long dialogue at the time when he was being nominated.

So it's my honor to ask you again, Associate Justice Vina, if you can please come forward so that we can administer the oath.

J U S T I C E F A U S T I N O J . F E R N A N D E Z - V I N A :
Thank you so much Senator Pou.

SENATOR POU: Please, David.

MR. LORETTE: Yes, the administration of the oath.

Do you swear or affirm that the testimony you are about to give here today is true, correct, and complete to the best of your knowledge, information, and belief?

JUSTICE FERNANDEZ-VINA: I do.

MR. LORETTE: Thank you.

JUSTICE FERNANDEZ-VINA: If I may?

SENATOR POU: Yes, please.

JUSTICE FERNANDEZ-VINA: Thank you, Senator.

I would like to thank Governor Murphy for nominating me for tenure on the New Jersey Supreme Court, as well as the State for their thoughtful efforts.

I would also like to thank Senate Judiciary Committee Chairperson Senator Pou, as well as the other honorable Senators and

members of the Judiciary Committee, and the rest of the members here, for taking the time to consider my nomination, especially in these trying times.

It has been an honor and a privilege to serve the citizens of our great state as a member of our Judiciary for the past seven years -- the last seven in our Supreme Court. I would be honored to continue serving our State and our citizens in that capacity.

As I said during my confirmation hearing seven years ago: I truly believe in the rule of law. It is what makes our country and our State a beacon for freedom and democracy in the world. I have personally seen as a child -- and relived through my mother, and father, and their friends' stories about their travels, fears, and destroyed dreams -- what can happen when democracy fails and totalitarian regimes come into power with no regard for individual freedoms, or liberty, or democracy.

As a judge -- and now as a justice -- I have kept those lessons at the forefront. I have always based my analysis and decision on the premise that our court's constitutional mandate is to effect the will of the Legislature; to apply the laws as written; and to always be faithful to the rule of law and the separation of powers.

It would be an honor to continue our Supreme Court's legacy and help to uphold the rule of law.

Thank you. I would be pleased to try and answer any of your questions.

SENATOR POU: Thank you so much for your opening remarks.

I'm going to open it up now for anyone who has any questions for our Justice Vina. Questions from any of our members or comments that anyone would wish to make?

Senator Cardinale.

JUSTICE FERNANDEZ-VINA: Good morning, Senator.

SENATOR CARDINALE: Good morning, good morning.

It is almost like yesterday that we heard you say that you will apply the facts to the law. You will apply the law to the facts.

MR. FERNANDEZ-VINA: Yes.

SENATOR CARDINALE: And as I have reviewed your record in recent days, that seems to have been something that you have just characteristically done automatically.

And it is refreshing, almost, that we have people on our Supreme Court who have tended in that direction -- which has not always been the case. We have had our court at times act as a super legislature and create some problems for New Jersey, which we are trying to cope with and trying to overcome for the benefit of the people.

But you have shown yourself to be really true to the law, and it is my great pleasure to be able to support you for tenure.

JUSTICE FERNANDEZ-VINA: Thank you so much, Senator. I truly appreciate your comments.

SENATOR POU: Thank you Senator Cardinale.

And other comments from any of our other members?

Senator Doherty, did I see your hand up?

SENATOR DOHERTY: Yes, is this the time to ask questions?

SENATOR POU: If you have a question, I am happy to recognize you.

SENATOR DOHERTY: Okay.

We have redistricting coming up next year, possibly. And I have a question-- I've always been troubled by this.

The New Jersey Constitution states that when it comes to redistricting and drawing the 40 districts, that you are not supposed to cut up a county in New Jersey unless that county is more than 1/40 of the State population.

And I'm amazed-- This was voted upon by the people of New Jersey back in the 1960's and, you know, we would never think of doing away with the 11th tie-breaking member that's appointed by the Chief Justice to decide these disputes on the map. However, I think that, in fact, the people of New Jersey voted on this. They didn't want counties broken up -- unless you had to -- to make the legislative districts.

And I think this was done because they wanted to make sure that smaller counties had a voice and that they weren't diluted. And so we've seen this trend recently in New Jersey where the map has been approved and given constitutional approval where some of our counties like Somerset, divided into six; and Hunterdon divided into three; my home county divided into two. And I am just amazed that we have a Constitution that seems to be ignored. And then when the Supreme Court takes a look at it, they just ignore these provisions.

And I often ask people, "can you imagine a world where the Chief Justice didn't appoint an 11th tie-breaking member just because he didn't feel like doing it?" And people say, "Well, no, because it's in the

Constitution.” While in the next paragraph, it says you can’t break up a county unless you have to, and somehow that doesn’t matter.

So I just wanted to get your opinion on that, or your thoughts. Does the Constitution matter in New Jersey? And when it says that you shouldn’t break counties up unless you have to, how can a court just approve that decade after decade, when that is clearly not doing what the people of New Jersey wanted?

The people of New Jersey voted on this. They went to the polls and they said, “We don’t want counties divided.” Now how the heck are we in 2020 -- next year 2021 -- and that’s going to be totally disregarded, what the people of New Jersey voted upon?

And sorry for being passionate, but I like supporting the Constitution. I think we should look at the Constitution and dust it off every once in a while, and I just wanted to get your comments on that.

JUSTICE FERNANDEZ-VINA: Well, Senator, as I’ve indicated seven years ago and echoed to Senator Cardinale: I always review the Constitution, I apply it to the facts as I determine the facts to be.

With respect to the statements that you’ve made, I haven’t reviewed that. Perhaps it’ll come before the court, and if that’s the case, as you know, I can’t give you an advisory opinion. I can’t tell you how I would rule on something like that because that would be inappropriate.

All I can tell you is that I will uphold my oath, review the Constitution, review the statute and apply the law to the facts. That is all I can promise you.

SENATOR DOHERTY: Okay. Thank you, thank you sir.

SENATOR POULSON: Senator Smith.

SENATOR SMITH: So, free legal advice in a statement.

When you do the review, I think you're going to find that those portions of our Constitution have been overruled at the Federal level as not being consistent with "one-person, one-vote."

At one time in New Jersey, we used to have a State senator for every county, which made counties with 3 people in it as powerful as counties with 300,000 people in it. So I think when somebody does the research, in answer to Senator Doherty, it's a matter that the Federal constitution has been interpreted to overrule the provision that he's talking about. Best guess.

But while I have you and the Chief Justice in the room, one of the things we're going to do today is to release a bill -- hopefully -- to provide more safety and security for the judges and prosecutors in New Jersey. And I don't expect you to have any opinion at this point, but before we pass the bill, it would be great if the AOC or the appropriate parties in the judicial branch would let us know whether, number one: Have we gone far enough; and number two: Have we gone too far?

There were multiple opinions in here, including one from the New Jersey Land Title Association, which said we may be creating some problems for judges, especially on the transfer of property, don't expect you to have an answer. But it would be great if the Judiciary would weigh in before we pass the bill.

SENATOR POU: Any other questions?

SENATOR DOHERTY: Yes, this is a very important point, and thank you Senator Smith for bringing it up, because that's common-- This whole thing about redistricting.

I agree. It was back in the 60's, they said, under "one-man, one-vote" you can't-- We had a system in New Jersey where every county had one Senator, right, and they said under one man, one vote, that violates it.

And so, actually, we had to scrap what we had. And we came up with a new system of 40 districts, right, and so nobody is saying that a smaller county should have the same amount of power in the Legislature as a larger county like we did in the past.

But what happened in New Jersey is the people went to the polls and they voted to change the Constitution. And so after that decision where you couldn't have one senator for each county, they decided to come up with a system where we had 40 legislative districts, each district represented by one senator and two members of the assembly.

And the people decided that you couldn't divide a county up for an assembly district unless you had to. So right now we have about 225,000 people per legislative district. So if you have a county that's less than 225,000 people, you cannot divide that up to make an assembly district.

And that is not saying that every county should have a Senator and go back to before 1965. That's saying that the people of New Jersey voted to come up with a new way of making our districts, and that you shouldn't divide up the small counties.

SENATOR POU: Senator--

SENATOR DOHERTY: I'm just clarifying because this is a very important point that he brought up.

SENATOR POU: Okay, Senator, hold on. Through the Chair, first of all.

SENATOR DOHERTY: Okay.

SENATOR POU: I appreciate-- In fact, I'm enjoying the conversation, the legal debate that's going on right now.

But we have, today, the re-nomination of our Justice Vina in front of us. That's what is at hand at the moment.

I was giving you some latitude-- I understand how passionate you are, and I certainly recognize it and know how you are. I am happy to allow that discussion.

But right now our focus should be right on what we're doing here at hand, not the debate or dispute about the legal proceedings and terms of something that may or may not come before the Supreme Court, for this discussion.

So I'm going to ask you-- Thank you very much for your comments. I'm going to ask for us to return back to the vote at hand and the point of what we're doing.

With that being said, I am going to ask any members if they have any questions or comments directly towards the re-nomination of Justice Fernandez-Vina. And if not, I am going to ask for a motion. It's been moved by Senator Sweeney, and it's been seconded by so many of our members -- Senator Brian Stack, Senator Bateman, and Senator Cardinale.

I am going to give you all the opportunity to be acknowledged in terms of that support and that motion.

With that, a roll call please.

MR. LORETTE: Committee roll call.

Senator Doherty.

SENATOR DOHERTY: Yes.

MR. LORETTE: Thank you.

MR. LORETTE: Senator Corrado.

SENATOR CORRADO: Yes.

MR. LORETTE: Senator Cardinale.

SENATOR CARDINALE: Yes.

MR. LORETTE: Senator Bateman.

SENATOR BATEMAN: Yes.

MR. LORETTE: Senator Weinberg.

SENATOR WEINBERG: I am certainly going to vote yes.

I'm sorry that we didn't reach out and have an opportunity to have a person-to-person meeting. I read the opinions that you've written that were submitted to the committee, and I look forward to voting yes.

JUSTICE FERNANDEZ-VINA: Thank you Senator Weinberg.

MR. LORETTE: Senator Stack.

SENATOR STACK: Yes.

MR. LORETTE: Senator Smith.

SENATOR SMITH: Yes.

MR. LORETTE: Senator Sweeney.

SENATOR SWEENEY: Yes.

MR. LORETE: Senator Pou.

SENATOR POU: Yes.

MR. LORETTE: The nomination is released.

SENATOR POU: Thank you so very much.

Congratulations to you, Justice.

JUSTICE FERNANDEZ-VINA: Thank you very much.

It's an honor to serve the State and to appear before this legislative body.

SENATOR POU: Thank you so very much.

JUSTICE FERNANDEZ-VINA: Thank you so much.

SENATOR POU: Chief Justice Rabner, before you leave I don't want to ignore the fact that if you wanted to make any comments before we conclude this, we're happy-- If not, we welcome and we thank you for being here.

CHIEF JUSTICE STUART RABNER: Thank you, I'm delighted that you have passed on this extraordinary candidate.

SENATOR POU: Thank you. Thank you so very much.

(MEETING CONCLUDED)