

NY Senate Committee Poised to Reject Hochul's Chief Judge Pick

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Frustrated Democrats say they're ready to sink Gov. Kathy Hochul's pick to head New York's highest court because of the nominee's decisions in organized labor and abortion cases—arguing he's too conservative.

If state senators refuse to allow a floor vote on the elevation of Justice Hector D. LaSalle, the Court of Appeals will continue to have a 3-3 partisan deadlock. Those involved in the confirmation process disagree about what the next steps would be because no judicial nomination has failed at the committee stage since the current system was put in place in 1978.

LaSalle, presiding justice of the New York Supreme Court's Second Department, is scheduled to go before the Judiciary Committee on Wednesday. After the hearing, the panel will decide whether to send the nomination to the full Senate in an early test of the relationship between Hochul (D) and the Democratic-supermajority Legislature at the start of her first full term in office.



New York Gov. Kathy Hochul (D) shown at a conference in New York City, Dec. 12, 2022. Photographer: Spencer Platt/Getty Images

"I think the likely outcome is that the committee will not move the nomination forward," Committee Chairman Sen. Brad Hoylman (D) said in an interview.

The Court of Appeals is composed of six associate judges and a chief judge, each serving 14-year terms.

The chief judge also oversees the state court system, which is one of the largest in the nation with a budget of about \$3 billion. LaSalle, who would be the state's first Latino chief judge, was nominated to replace Janet DiFiore, who retired in August.

Withdrawal Calls

Key Democratic Party constituencies, including labor unions, reproductive rights groups, and civil rights advocates, have said Hochul should withdraw LaSalle's nomination, citing decisions with which they disagree. His nomination also was criticized by activists who are pressing to diversify the bench with non-prosecutors.

LaSalle's supporters include a coalition of court unions, the New York Bar Association president, US House Minority Leader Hakeem Jeffries (D-NY), and nine former state appellate justices who said in a letter that the nominee is qualified and has been "faithful to the rule of law." The committee should at least allow a floor vote, they wrote.

Hochul contends that the committee can't kill her nomination. There still needs to be a vote of the full Senate. "I'm willing to do everything I need to do to get it through the committee," Hochul told reporters Jan. 12.

LaSalle has been "horribly maligned based on the handful of cherry-picked cases out of 5,000," she said.

For months, the highest court for the fourth most populous state has had three generally left-leaning judges and three conservative-leaning judges. The court could on a case-by-case basis, bring in an appellate division judge to be the seventh member, said Vin Bonventre, a law professor at Albany Law School.

"There's an opportunity to change the trajectory of this court, and that's what we would like to see done," state Senate Majority Leader Andrea Stewart-Cousins (D) told reporters last week. "There has never been on a national level or a statewide level more interest in who is sitting in these seats."

Abortion, Redistricting

Politicians were reminded of the importance of judicial choices last year when a state redistricting ruling favored the position of Republicans and two US Supreme Court decisions overturned abortion precedent and a New York law limiting who could carry a handgun in public combined .

The newly retired chief judge was a Republican-turned-Democrat who often sided with conservative colleagues.

“Lawyers, judges, politicians, are reawakening to the fact that state courts are really important in conditional matters,” Bonventre said. State courts “don’t have to follow the US Supreme Court on constitutional matters. The only thing they can’t do is they can’t violate federal constitutional rights and liberties,” he said.

Opponents’ Arguments

Unions opposing LaSalle’s nomination have focused on him signing onto a 2015 ruling keeping alive a defamation lawsuit by an employer against union leaders — an argument that became more potent with the US Supreme Court taking up a case that could allow state-level lawsuits against union leaders.

Pro-abortion rights groups focused their arguments on a 2017 decision that LaSalle joined that ruled parts of the state attorney general’s investigation into fraudulent medical clinics run by anti-abortion crisis pregnancy centers was unconstitutional. Now both the nominee and the nomination process are under scrutiny. Hoylman said his fellow Senate Democrats are discussing “reforming the commission on judicial nomination and that would include the selection process itself.”

Under the current system, the governor, chief judge, and legislative leaders choose a 12-member committee that comes up with a list of potential nominees. The governor must choose from that list. The process takes months to complete.

When the Judiciary Committee opposed nominees in 1993 and 2013, the panel moved the nominations to a floor vote without recommendation. Whether the committee can reject the nominee without sending it to the floor is unclear.

University at Buffalo Law Professor James Gardner said the Senate creates its own procedures, while Albany Law School's Bonventre agreed with the governor on the need for a full Senate vote.

Both the state Constitution and Judiciary Law only say "the Senate," and don't address the committee's actions.

If the committee rejects the nominee, Hochul would have the choice of asking for a new list of potential judges or selecting someone else from the list given to her in November, according to Hoylman. That too, though, is up for debate.

LaSalle's nomination is important enough to the governor that she staged a rally on Saturday on his behalf.

"If she backs down, then she will look weak," said Democratic strategist Na'ilah Amaru, former executive director of the New York City Council's Black, Latino, and Asian Caucus. "Then it becomes a calculation of do you want to look weak, or do you want to be politically productive with your partners in state?"

Hochul, she added, is "someone with an incredible amount of power wasting a lot of political capital on a decision that ultimately doesn't make a lot of difference in terms of her governance but could hurt her politically."