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NY Senate Panel Shoots Down Kathy Hochul's Chief Judge Pick

By Keshia Clukey

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A key committee of the New York state Senate, in an unprecedented move Wednesday, rejected Gov. Kathy Hochul's pick to head New York's highest court, citing the nominee's conservative record, including cases on organized labor and abortion.

The move sets Hochul up for an early battle with the state Legislature's Democratic supermajority in her first full term at the helm of the state. She's pledging to fight for her court pick in a power move reminiscent of those used by former Gov. Andrew Cuomo (D).

The Senate Judiciary Committee in a 10-2 vote denied the elevation of Justice Hector D. LaSalle to the Court of Appeals and refused to send it to the full Senate for a vote. Seven committee members voted to move the nomination without recommendation. The court in the interim will continue to have a 3-3 partisan deadlock.

People involved in the confirmation process disagree about what happens next because no judicial nominee has failed at the committee stage since the current system was put in place in 1978. Hochul and other court experts say the nomination constitutionally needs to go to the full Senate for a vote. Senate leaders and constitutional experts say the committee has the final say.

“While this was a thorough hearing, it was not a fair one, because the outcome was predetermined,” Hochul said in a statement. “Several Senators stated how they were going to vote before the hearing even began—including those who were recently given seats on the newly expanded Judiciary Committee.”

The Judiciary Committee “failed to follow its Constitutional responsibility” to allow the nomination to go to full Senate vote, Senate Minority Leader Rob Ortt (R) said in a statement. The “radical majority members of the Judiciary Committee put their far-left politics ahead of their obligation to the people of New York, effectively blocking Justice LaSalle from becoming the first Latino Chief Judge of the Court of Appeals,” he said.

The committee vote comes after a nearly five-hour hearing in a packed room where lawmakers grilled LaSalle, who currently serves as presiding justice of the New York Supreme Court’s Second Department. He would be the first Latino chief judge in history if confirmed.

Some Democratic lawmakers took issue with the nomination because of LaSalle’s prosecutorial background, having pressed Hochul to diversify the bench with non-prosecutors.

LaSalle defended himself by saying no one asked about cases where he reduced sentences, set aside wrongful convictions, and reversed convictions because of prosecutorial misconduct.

“I only ask that this body look at my entire record, not the record that certain advocates have chosen to look at,” he said at the hearing. “You can look at those. I think it’s entirely fair. I’d only ask that you’d look at the other ones and give those equal weight.”

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.

Hochul vs. Supermajority

The governor ahead of the hearing that she’d do “everything I need to do” to get the nomination through, which could include legal action.

Hochul’s push may cost her politically, said Democratic strategist Na’ilah Amaru, former executive director of the New York City Council’s Black, Latino, and Asian Caucus.

Hochul committed to an open, transparent governance, but “Albany works by cutting deals in closed rooms,” Amaru said. When Cuomo was faced with such roadblocks, he found a way out in private negotiations, she said.

“He understood the game. He understood power and how to use it,” she said. Hochul “is learning in a very public way that looks bad.”

Committee Chairman Brad Hoylman and Senate Majority Leader Andrea Stewart-Cousins (D) told reporters after the hearing that the committee’s decision is the final word. They said the process will now start over with the independent nominating committee creating a new list of potential judges.

Hochul’s office, when asked whether she plans to sue the Senate to get a full floor vote said Wednesday in an emailed statement prior to the vote: “We have of course been consulting with various experts on the process, but that does not mean we are set on any particular course of action.”

Stewart-Cousins said she thought the hearing was fair and isn’t aware of any potential legal action. “The committee has spoken. As they said, the nomination was lost. And I’m hoping that we can move forward and really work to find the chief judge that’s reflective of the majority of what the conference, what New Yorkers expect in a chief judge,” she said.

The Nominee

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.

For months, the highest court for the fourth most populous state has had three generally left-leaning judges and three conservative-leaning judges. While the legislature and governor fight over the nomination, the court could, on a case-by-case basis, bring in an appellate division judge to be the seventh member.

Protesters against LaSalle rallied at the state Capitol in Albany Wednesday morning, while his supporters gathered at the Legislative Office Building across the street where his hearing was held in an effort to greet him as he walked in.

Several Senate Democrats questioned LaSalle for his decisions on several cases, particularly those involving civil rights and union and reproductive rights.

LaSalle pushed back saying he believes in a woman's right to choose.

He called the anti-labor accusations a "mischaracterization" intended to derail his nomination.

He also was asked about his background as a prosecutor and how his rulings statistically favor prosecutors over the defendants. LaSalle said his rulings are on a case-by-case basis, not in aggregate.

Politics

Questioned about civil rights issues LaSalle said: "It's incredibly important that everyone, no matter their situation, be treated fairly before the law."

"The concern is that I and many of our colleagues want this court to go in a different direction, but your alliance with the former chief judge raises some questions," Hoylman asked.

LaSalle noted that he is a Democrat, and has run for elected judicial positions on the Democratic, Independence, and progressive Working Families Party lines, as well as the Conservative Party line.

Some Democrats, including Sen. Luis R. Sepúlveda, seemed to side with LaSalle, rebuking many of the statements against him as a "character assassination," and calling LaSalle "fair" to everyone who comes before him.

Throughout the hearing several Republican Senators pushed back against their majority of their Democratic colleagues.)

“It also seems in this political climate that defamation is viewed as a strategy,” Sen. Andrew Lanza (R) said about comments made against LaSalle in the past few years. “Our politics, I am sure are very different, but that is not what I am going to consider when I consider your nomination,” Lanza said. “I don’t think we ought to do that here or anywhere frankly.”

(Updates throughout with comments from Hochul, the Senate Majority Leader, Senate Minority Leader and committee chair.

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