



US Law Week

Hochul Confronts Tax, Budget Battles After Top Judge's Defeat

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- Floor vote allows politicians to hit 'reset,' analyst says
 - Budget process will tell if power balance has shifted
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The New York state Senate's rejection of Gov. Kathy Hochul's nominee for top judge may have shifted the power dynamic between the newly elected moderate Democratic governor and the growing left-leaning side of the state legislature, setting up future battles over whether to increase taxes on the wealthy and raise the minimum wage.

The Senate, in an unprecedented move, on Wednesday in a 20-39 vote discarded Hochul's nominee Hector D. LaSalle from serving as chief judge on the state Court of Appeals. The vote ended a standoff between state lawmakers and Hochul over how the nomination should proceed. What happens next and who comes out on top is still an open question.

A Senate committee in January rejected LaSalle's elevation. Democratic leaders said the committee's rejection should have ended the matter, but Hochul maintained the state Constitution requires a nominee to go before the full 63-member Senate, where Democrats hold a supermajority.

"The vote is done, so all the what if, maybes, and should haves, those are no longer on the table," said Democratic strategist Na'ilah Amaru, former executive director of the New York City Council's Black, Latino, and Asian Caucus. "For both parties, this is an opportunity to push the reset button."

The Court of Appeals is New York's highest court, which at full strength has a chief judge and six associate judges, each serving 14-year terms. The court currently has a 3-3 partisan deadlock.

Here are four questions on what's next in Albany, New York's Capital:

What does this mean for Hochul's relationship with the legislature?

All eyes will be on Hochul and whether she differs in her approach to getting her next nominee through the chamber.

"This is a long game and no game is won or lost on a single incident," said Bob Bellafiore, an Albany-based communications consultant who served as a senior aide to former Gov. George Pataki (R). "It all depends on what she does next."

Albany politics are traditionally negotiated through backroom deals, a skill that Hochul's predecessor, former Gov. Andrew Cuomo (D), excelled at.

Watching the LaSalle fight, political observers questioned whether Hochul had spoken with Senate Democrats and put pressure on them to confirm him prior to announcing her nominee—a move that could have saved her from a public political blow. She also missed the opportunity to use a pay raise for state lawmakers, enacted late last year, as leverage.

The Senate majority as a result was able to flex some muscle—something that hasn't been done in prior years, when the chamber served as more of a ceremonial rubber stamp for the governor's judicial appointments.

Senate Majority Leader Andrea Stewart-Cousins on Wednesday said Democrats agreed to a floor vote, even though they didn't think it necessary, so they could focus on the budget, which is due on March 31. Hochul got the floor vote she wanted, but the Democrats got the outcome they sought in rejecting LaSalle.

Stewart-Cousins knew her caucus members and how they would vote, Amaru said. "To me that is a demonstration of political leadership and power of the Senate in terms of them being able to coalesce together as a block when it comes to a potential challenge from the executive branch."

Budget negotiations will be telling, she said. "The deeper we get into negotiations, we'll be able to see really the extent to how much damage this LaSalle nomination really cost both sides in terms of negotiating power."

What's next in the search for a top judge?

After an official rejection letter is sent to the Court of Appeals, the court clerk will notify the nominating commission to begin its candidate search, which can take up to 120 days but can be expedited.

The 12-member commission—appointed by the governor, legislative leaders, and the former chief judge—then sends a list of seven candidates to Hochul for her consideration, after which she has between 15 and 30 days to make her appointment. It then goes to the Senate, which has 30 days to confirm or reject the appointment.

Several of the seven candidates sent to Hochul in November could still be viable and already have the backing of some civil rights organizations and community groups. A coalition of such groups known as The Court New York Deserves previously called on Hochul to nominate public defender Corey L. Stoughton; the state court system's Deputy Chief Administrative Judge for Justice Initiatives Edwina G. Richardson-Mendelson; or Abbe R. Gluck, a Yale University law professor and a former law clerk to US Supreme Court Justice Ruth Bader Ginsburg.

Advocates and both mainstream and progressive Democratic lawmakers say they want a non-prosecutor who has a broad vision of the law and how it affects people from diverse backgrounds.

Wait. Isn't there a lawsuit?

Yes, for now. State Sen. Anthony Palumbo, the ranking Republican on the Senate Judiciary Committee, last week filed a lawsuit asking the court to require a floor vote on Hochul's nomination. Arguments in the case are scheduled for 2 p.m. Friday in state Supreme Court in Suffolk County.

The court could still decide to rule on the issue to stop future conflicts and answer the constitutional question of whether confirmation power can be delegated to a committee. But it's unclear if Palumbo still has standing to sue, since the harm he cited in his complaint was his inability to cast a vote on the LaSalle nomination. On Wednesday, he got that opportunity.

It's in Hochul's best interest to have her gubernatorial powers clarified by the court, otherwise she risks having every appointment subjected to a similar process and forfeits that power to the Senate, Bellafore said. "What's bad governmentally for her is also bad for her politically, which is not being able to have appointment power over judges she is authorized to appoint, as well as commissioners and anybody else who gets a gubernatorial appointment."

What's next for Hochul and progressives?

The public fight over the chief judge highlighted the difference between Hochul, an upstate moderate, from the ever-growing left-leaning progressive wing of the legislature—especially with Republicans voting in favor of her nominee and taking the matter to court.

The Senate action may win Hochul some voters—Democrats who are more conservative on crime, for example, or members of the Latino community who feel disrespected by the chamber's vote, said Hank Sheinkopf, a long-time political consultant. "What this does is it sends a message to conservative voters in the state that Hochul is more like them than not, which is probably one of the reasons she's having those problems in the first place."

Left-leaning Democrats may look to further flex their muscles to dictate who they want for the chief judge. How Hochul responds to them will be telling, Amaru said. "To me that's a hat tip in terms of who's calling the shots and who feels like they have to recover capital that's been lost because of this," she said.

Progressives could also use their strength to push their priorities into the budget, such as taxing the ultra wealthy and putting billions of dollars into child care. They could also eliminate Hochul's proposed rollback of a bail standard that asks judges to apply the least-restrictive measures to ensure a defendant returns to court. Progressives also are advocating for an increase in the minimum wage before tying future raises to inflation.

But a governor has "enormous power and leverage" in the state budget process, Bellafiore said. The process is by law largely controlled by Hochul, who put out her executive spending plan in January.

"The question is does Governor Hochul have a vision and the stomach to push it," he said. "It's clear that the legislature has both."

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