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Senate's rules remain murky

Coup sparked a flurry of legal battles, spotlighting a lack of clarity in laws

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ALBANY -- The battle to control the New York state Senate is history.

Now they just need to tell the lawyers.

At least eight different lawsuits were filed in courts from Albany to Long Island over the past five weeks as warring factions in the upper house, joined by Gov. David Paterson and state Comptroller Thomas DiNapoli, launched efforts linked to the impasse.

In the end, Sen. Pedro Espada Jr. of the Bronx rejoined the Democratic leadership, ending a crisis that began with his June 8 coup against Malcolm Smith.

But several questions remain unanswered, prompting some observers to suggest lawmakers address procedural rules and regulations to prevent future mayhem.

"If there was anything we learned from this month, it's that there is a lot of uncertainty," said Patricia Salkin, director of the government law center at Albany Law School. " ... All in all, these cases point out many gray areas in Senate Rules of Procedure and the lack of precise clarity in the (state) constitution."

The legal battles began inside a Troy courtroom on June 11, when Senate Democrats tried to get state Supreme Court Justice George B. Ceresia to halt the coup that installed Espada as Senate president pro tempore and made Sen. Dean Skelos, a Nassau County Republican, the majority leader.

At the time, Andrew Celli, an attorney representing Majority Leader Malcolm Smith of Queens, argued the coup did not follow a "privileged" resolution. In addition, he said Smith had been elected to two-year term the prior January and therefore remained leader.

He said no vacancy existed for Republicans to assume control. The GOP side, in turn, argued that Smith was trying to get a judge to overturn the votes of 32 lawmakers who voted for the coup.

The issue was quickly removed from the legal arena. Five weeks later, the argument remains fuzzy within the Senate. The validity of the coup remains an unanswered question, as do other issues that will never see their day in court.

For example, when DiNapoli announced plans to withhold the senators' pay amid the malaise, he sought a court order. Senate Democrats, in turn, said they would fight. But once the Senate battle was over, DiNapoli dropped his effort, leaving it unclear whether he had such power legally.

"This is an important question," noted Salkin, "and I would hope (it) could be answered for future clarification."

Another issue was raised when state Sen. Frank Padavan, a Queens Republican, ambled into the chamber for a beverage during a session presided over by Democrats. The Democrats, contending Padavan's presence meant enough lawmakers were present, started to pass bills. After the state Assembly declined to accept the legislation back before handing them up to the governor, Democratic Sen. Darrel Aubertine, in turn, sued the lower chamber.

But the senator is now "no longer pursuing the case" because the bills in question have since been passed by the full Senate, according to Aubertine spokesman Drew Mangione.

"The senator is ready to move on," he said.

Travis Proulx, a spokesman for Senate Democrats, acknowledged that questions remain unanswered despite the end of the internal war.

"From a procedural point of view, we worked it out," he said, "but from an historical point of view, it would be interesting to continue."

The most high-profile legal battle still going is the Senate Republicans' challenge to Paterson's appointment last week of Richard Ravitch as lieutenant governor.

That legal process is taking place in Nassau County.

The lawsuit filed by Senate Republicans against Senate Secretary Angelo Aponte, whom they accuse of effectively locking up the chamber, remains active, said

Skelos spokesman Scott Reif. It was not expected to continue, according to a person with knowledge of the case.

The lawsuits, if nothing else, set two things in stone: For one, Supreme Court Justice Joseph Teresi found that Paterson had the right to call the Senate into a special session without also calling back the Assembly, rejecting arguments from both Democratic and Republican senators.

It also showed that judges, generally speaking, wanted no part of the legislative fight.

"Again, I urge you in the strongest way I can -- I don't know how else to say it," Acting Supreme Court Justice Thomas McNamara told the lawyers for both sides on June 15. " ... But you've got to work it out amongst yourself."