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## **Republicans press for judicial ruling**

GOP says Senate coup's legality must be decided

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ALBANY -- The battle for the state Senate entered a new phase Monday after Sen. Hiram Monserrate officially returned to the Democratic fold, leaving the chamber deadlocked, 31-31, with less than one week left in the scheduled legislative session.

After a long day of back-and-forth at the Capitol and the state Supreme Court, both sides sat down to discuss the notion of power sharing -- only to emerge less than an hour later with Republicans insisting that no progress could be made until a judge had decided whether last week's dramatic coup on the Senate floor had been legal and binding.

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"I have always been clear about my loyalty to the Democratic party," Monserrate said at a midday news conference, where he was joined by Senate Democrats. It came a week after he joined breakaway Democrat Pedro Espada Jr. and the 30-member Republican conference in a shocking coup that ousted the Democrats from their brief majority.

Senate Democratic Leader Malcolm Smith began the news conference by introducing Brooklyn's John Sampson as the new "conference leader" who will run its day-to-day operations. While Smith will retain his current title, Sampson is widely acknowledged as the new leader of the Senate Democrats.

Smith has brought suit against Espada in state Supreme Court to regain the title of Senate president pro tempore.

Smith's legal team contends that the Republican-led coup was not done according to Senate rules, a claim the GOP and Espada dispute.

Monserrate made his return to the Democratic conference contingent on a change in its leadership, which Sampson's elevation apparently satisfies.

"This conference today is more unified than ever," said Monserrate, who described himself as "a beat cop ... sent here to shake things up." His future in the Senate, however, remains uncertain. Monserrate currently faces assault charges for a December incident in which he allegedly slashed his girlfriend's face with a broken glass.

Monserrate failed to answer questions about whether he continued to support Espada as president pro tempore.

Espada spent Monday insisting he still has Monserrate's backing. "I will go to my grave defending the 32 votes that were cast last Monday," Espada said at a rally of his supporters on the east steps of the Capitol.

Interviewed outside his office after the rally, Espada brushed off the suggestion that any power-sharing arrangement between Democrats and Republicans could result in his being voted out of the powerful position.

Espada is currently the subject of several investigations into his campaign finances and the operation of a nonprofit group he founded.

"Thirty-two votes can kick me out, 32 votes elected Malcolm Smith," he said. "With 32 votes you can change anything."

On Monday afternoon, Espada and the GOP conference gathered in the Senate chamber for what was mostly a news conference. Breaking with precedent, the GOP allowed television cameras on the Senate floor before and after the Senate was gavelled into session.

But with only 31 members present -- one short of the 32 needed for a quorum -- the session accomplished nothing more than political theater, as Senate Republicans decried the Democrats' absence from the chamber.

Espada's chief of staff, Andrew Yong, delivered an invocation that had the overtones of a policy statement: "Lord, we pray that before us, that we would enact real reform, that there will be true transparency, and that there would be justice in this state," he said solemnly. "Lord, we turn back on the many ways in which we've been criticized as being dysfunctional to conduct business in a way that brings peace and prosperity in this state and that is ultimately pleasing to you."

While most of Monday's developments were political, its parallel legal drama continued a block from the Capitol in the courtroom of acting state Supreme Court Justice Thomas McNamara, where Smith's case against Espada was heard on Friday.

After a Monday morning hearing and discussion in chambers, the judge extended his original deadline by a day.

"I can't let it go on forever, and I can't allow the external process across the street to go on forever," McNamara said in court. The judge met in chambers with the senators' lawyers as well as Peter Kiernan, Gov. David Paterson's counsel -- apparently as part of an effort by Paterson to play a peacekeeping role in the fight.

McNamara ordered both sides to return to court at 10 a.m. today.

"If you come in here and tell me there is no way it will be resolved, in all likelihood I will be in a position to render a decision," he said. "If you tell me that it's resolved and you give me all the credit for that, I will appreciate it. If you tell me you need more time, I will consider that, given the circumstances of what you tell me.

"But again, I urge you -- in the strongest possible way I can, and I don't know how else to say it, and I don't know how else all these people are going to report it -- you've got to work it out amongst yourselves."

But by the end of the day, however, Senate leaders were at an impasse.

Although Paterson called an afternoon leaders' meeting to explore a solution, the main actors -- Smith, Skelos, Sampson and Espada -- met on their own at 5 p.m. in a neutral Senate conference room.

During the meeting, Senate Democrats proposed a power-sharing plan that would rotate the position of president pro tempore between two the parties on a daily basis, with that person running the Senate with a floor leader from the opposition party. A bipartisan committee of six senators, three from each party, would set the session agenda.

Espada and Skelos emerged after less than an hour to essentially throw the future of negotiations back into state Supreme Court, saying no progress could be made until the question of the coup's legitimacy had been resolved.

"We have decided that we need the judicial decision from Judge McNamara," Espada said.

"Our position is that it's 32-30," said Skelos. "That was the vote. So as many times as you want to say it didn't occur, it occurred." The Democrats, he added, "are getting paid and they aren't showing up for work."

Sampson said the GOP was to blame for the breakdown. "I'm not going to work out an agreement on unreasonable terms," he said, contending that Skelos and Espada "were just concerned about who is the president pro tem and who's the majority leader."

"People are not concerned about who's the president pro tem and who's the majority leader," Sampson said. "They're concerned about getting the work of the people done."