Cuomo: End chaos in Senate

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Gov.-elect Andrew Cuomo wants a viable Senate. (Will Waldron/Times Union)

ALBANY -- The still-unsettled question of which party controls the state Senate "would complicate, if not render impossible, the conduct of day-to-day business in the Senate Chamber," Gov.-elect Andrew Cuomo wrote in a letter to the state's top judge.

"In my view, a Senate in limbo is not only undesirable, but also unacceptable," Cuomo said in an open letter to Court of Appeals Chief Judge Jonathan Lippman. "The challenges now facing the State are immense and impact the lives of all New Yorkers. Rarely in our history has it been more important that the State has a fully functional Legislature."

Cuomo asked Lippman, who oversees New York's court system, to expedite legal cases surrounding the ballot counting that will decide Senate seats in Nassau, Westchester, Niagara and Erie counties.

Three Democratic incumbents -- Suzi Oppenheimer, Craig Johnson and Antoine Thompson -- must be re-elected for Democrats to obtain the majority. The exact tallies shift day by day, but Republican challengers to Johnson and Thompson currently lead, and could provide the GOP with the 32 elected members needed to control the chamber. Oppenheimer's lead grew Wednesday after a judge authorized counting to begin.

Democrats and Republicans alike issue near-daily declarations of optimism that their side will control the chamber. Gov. David Paterson said Republican control is "probable," and Cuomo indicated last week he desired simply a "functional" Senate. During his campaign, he kept that chamber's current leadership at arm's length; it is believed a Republican-controlled Senate would help Cuomo enact some of the more fiscally conservative elements in his agenda.

"Obviously every vote must be counted accurately and fairly; but, they must also be counted expeditiously," Cuomo wrote to Lippman. "I make this request without regard to any political considerations, and solely out of a desire to ensure that our State government is capable of addressing the grave problems that lay before us."

Gary Spencer, a spokesman for Lippman, said he has received Cuomo's letter and "agrees the matter is both important and urgent. It will be addressed promptly." A more detailed response is expected soon.

Meanwhile, Senate Democrats in recent days laid the groundwork for legal motions to count every paper ballot cast and read by an optical scanning machine based on problems reading electronic "memory sticks" in Erie County, Thompson's home base. They also verbally requested full recounts in Johnson's race, but have not yet made a formal legal motion.

"We want a timely and responsible process that leads to a fair and honest count of every vote," said Austin Shafran, a spokesman for the Senate Democratic conference. "Due to the widespread, reported machine problems ... on Election Day, a full manual recount may be the only way to ensure every vote is counted."

Republicans say the request does not meet necessary legal thresholds, and they note standard audits of 3 percent of the scanners have not shown irregularities. Senate Republican spokesman Scott Reif said Democrats were "desperate to portray the process as flawed because they don't like the results."

If the Democrats prevail in their legal arguments the recounts could drag for months, according to Jerry Goldfeder, an election law specialist at Stroock & Stroock & Lavan who often works for the party. In addition to the veracity of individual ballots, questions of the validity of the machines and process would be litigated.

"It would be unprecedented in the last 50 years," Goldfeder said, noting the state's previous use of mechanical voting machines. "And it could take quite a while, unless the boards of elections and/or the courts impose strict deadlines."

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The Senate (so far)

Solid GOP seats: 30

Solid Democratic seats: 29

Toss-ups: GOP leads in 2; Democrat, 1

7th District, Nassau County: Republican Jack Martins leads Sen. Craig Johnson, D-Port Washington

37th District, Westchester County: Sen. Suzi Oppenheimer, D-Mamaroneck, leads Republican Bob Cohen

60th District, Erie and Niagara Counties: Republican Mark Grisanti leads Sen. Antoine Thompson, D-Buffalo