

Election deadlock decided in court

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ALBANY -- More than two and a half months after Election Day, state Senate [Democrats](#) lost their last legal challenge and conceded that Republicans will control the chamber with a 32-30 majority.

"We are disappointed in the [Court of Appeals](#) decision, but proud of our fight to ensure every vote was counted fairly and honestly," said Senate Democratic Conference Leader [John Sampson](#) of Brooklyn. "We will now fully turn our attention to the state's most pressing needs, including job creation and addressing the deficit. Governing should be about the people we represent, not the political lines we hold."

The coming change has been visible for some time. Three races were too close to be called in the days after the election, but after a Democratic incumbent conceded in Buffalo and a Republican challenger gave up in Westchester County, all eyes turned to the Nassau County contest between Sen. [Craig Johnson](#), D-Long Island, and his Republican challenger, [Jack Martins](#).

The Court of Appeals ruled unanimously Monday that [Johnson's](#) motion for a recount of all 84,000 ballots in the district was unnecessary, because despite irregularities in mandatory audits of 3 percent of the machines "there is no substantial likelihood that the result of the election would be altered by the conduct of a full manual audit."

"Moreover, there is no evidence that the discrepancies arose from any flagrant irregularity in the election process. Therefore, on this record, this Court is without the power to disturb the discretionary determination" of a lower court judge who ruled against a recount earlier this month.

In a statement, Johnson congratulated Martins and left the door open for a future run. Republicans said they would be getting to work immediately.

"Now that Democrats have exhausted all of their legal options, it's time to get back to work. We have a transition that must take place and only days to do it," Senate Republican Leader [Dean Skelos](#) said. "New Yorkers deserve a functional and orderly State Senate beginning on Jan. 1, and both Democrats and Republicans have an obligation to ensure it. I am confident that Leader Sampson and his Democrat colleagues will work with us to that end."

This will be Skelos' second stint as majority leader. Republicans controlled the Senate for 43 years until Democrats won enough seats for their own 32-30 majority in the 2008 elections. But the narrow margin proved frustrating, and led to a June 2009 coup in which two Democrats -- Sens. [Pedro Espada Jr.](#) and [Hiram Monserrate](#) -- caused a month of turmoil when they temporarily defected to the GOP caucus.

A staff reorganization is expected, and some employees who lost their jobs when the Democrats took the majority have been spotted around the Capitol in recent weeks as the Democrats' legal options looked slim.

"Our transition process has been reduced to two weeks because of the process," Martins said. "But we're looking forward to moving forward."

In court Monday, Johnson's attorney [Steven Schlesinger](#) said preliminary checks revealed problems with 46 percent of machines. Given that it was a close race, he argued a recount should proceed. Martins' attorney [Peter Bee](#) said they were small enough that they don't indicate a "substantial possibility" of the race being reversed.

"We're not convinced that there was any failure of any machine that was done on the audit. There were perfectly reasonable explanations" for the discrepancies, Bee said. "Of all the machines that were inspected, the entire number of votes that were changed was two or three -- not making up the 450-vote discrepancy between the two candidates."

Johnson also said in a statement that he hoped the court would "establish a precedent for all future close elections. I thank the courts for their due consideration, but still believe that firm guidelines for such recounts are needed to uphold the democratic ideals that this government was founded upon."

It remains to be seen if Republicans can hold together a 32-vote bloc more consistently than the Democrats were able to. Generally speaking, their platform is aligned with Gov.-elect Andrew Cuomo in calling for reductions in state spending and an end to new taxes and fees.