

CITIZENS UNION | ISSUE BRIEF AND POSITION STATEMENT

Filling Vacancies in the Office of Lieutenant Governor

INTRODUCTION

Citizens Union of the City of New York is an independent, non-partisan civic organization of members dedicated to promoting good government and political reform in the city and state of New York. For more than a century, Citizens Union has served as a watchdog for the public interest and an advocate for the common good. Founded in 1897 to fight the corruption of Tammany Hall, Citizens Union currently works to ensure fair elections, clean campaigns, and open, effective government that is accountable to the citizens of New York. We do so by informing the policy debate and influencing the policy outcomes that affect the lives of all New Yorkers.

Believing that an informed citizenry is the cornerstone of a thriving local democracy, Citizens Union Foundation—the non-profit research, education, and advocacy organization affiliated with CU—publishes GothamGazette.com, a front row seat to New York City policies and issues.

Citizens Union's Issue Briefs and Position Statements present CU's analysis of, and positions on, important issues. They seek to inform our members and shape the public discussion on policy issues by also providing background information and making specific policy recommendations.

Shortly after Citizens Union's last report on the subject of filling vacancies in February 2008, former Governor Eliot Spitzer resigned from the office of governor and former Lieutenant Governor David A. Paterson assumed the role of New York's fifty-fifth governor. Although the voters elected Paterson as lieutenant governor in 2006, purposefully to fill such a vacancy in the office of governor should it occur, his succession created a vacancy in the office of lieutenant governor, and, more importantly, created confusion among citizens and elected officials in Albany about whether the current Temporary President of the Senate who serves as acting Lieutenant Governor can serve in both positions simultaneously. This unexpected vacancy exposed a deficiency in the law because no process exists to fill permanently a vacancy in the position of lieutenant governor until the next statewide election in 2010.

Though the processes for filling vacancies ordinarily receive little attention, the recent number of vacancies in various offices at the state and local level has increased the public's interest in how such vacancies are filled. Citizens Union believes that there should be a clearer and new process for filling a lieutenant governor vacancy because it is one of just four elected statewide offices. This issue of succession and power also warrants consideration because the current law regarding a vacancy in the office of lieutenant governor is vague with respect to which responsibilities of the lieutenant governor the temporary president of the senate assumes and how that affects the senate temporary president's role as the leader of that house of the legislature.

Citizens Union's issue briefing and position statement on this topic draws upon research and analysis conducted by Citizens Union Foundation for its briefing paper, "Circumventing Democracy: The Flawed System for Filling Vacancies for Elected Office in New York," which was released in April 2007, and Citizens Union's issue brief and position statement on "Filling Vacancies in Elected Offices and Residency Requirements" released in February 2008 – both of which are available on Citizens Union's website.

This briefing paper examines how vacancies for lieutenant governor are filled nationwide and presents Citizens Union's recommendation to give the governor the power to appoint a lieutenant governor who would be subject to confirmation by a majority vote of the senate and the assembly voting separately. This recommendation seeks to increase democratic participation and strengthen voter enfranchisement – especially since voters deserve full representation at the state level.

FILLING LIEUTENANT GOVERNOR VACANCIES IN NEW YORK AND NATIONWIDE

The laws for filling vacancies that occur during a term of office differ greatly from the usual process of electing representatives through traditional primary and general elections. To prevent significant gaps in representation when an elected official leaves office unexpectedly, a variety of rules are used to fill seats in a timely manner. In New York when there is a vacancy in the office of lieutenant governor pursuant to article four, section six of the New York State Constitution, the temporary president of the senate, who may also serve as the senate majority leader, shall perform all the duties of lieutenant governor during such vacancy or inability. It is unclear, however, how long the temporary president of the senate assumes those duties and in what capacity the president shall continue to fulfill his or her role in the Senate.

For example, it is unclear under the law whether the temporary president of the senate would be able to vote twice on an item before the senate if the final vote of all members were tied – due to his or her dual capacity as a member of the senate and as a tie-breaker when acting as lieutenant governor.

Citizens Union researched the processes for filling vacancies of lieutenant governors throughout the nation and found that thirty states specifically outline in their laws a process for filling such vacancies. The research shows that the most common procedures for filling this vacancy are through gubernatorial appointment, automatic succession, or special election.

The majority of states throughout the country empower the governor to fill a lieutenant governor vacancy through an appointment. Of those that allow the governor to appoint a lieutenant governor, many require the appointee be confirmed by a majority of the members of both houses of the legislature. New Mexico, however, is one state which only requires its state senate to confirm the governor's nomination for lieutenant governor. In a few states, the president of the senate automatically fills a lieutenant-governor vacancy through succession. Kansas is similar to New York in that the president of the senate serves only in certain capacities as lieutenant-governor. Some states, under specific circumstances, hold special elections to fill the vacancy. In contrast, Rhode Island and Texas create a special committee in the senate which elects a replacement.

CITIZENS UNION RECOMMENDATION FOR FILLING A LIEUTENANT GOVERNOR VACANCY IN NEW YORK

Filling vacancies that occur when an elected official leaves office early is a complicated task. There are many issues to be taken into consideration, such as the time it will take to fill that seat, the effect the vacancy has on the state, the ability to attract qualified individuals to assume the position, and the cost and ease of the process.

By examining the current procedures for filling lieutenant governor vacancies nationwide, Citizens Union compared models to suggest a method for filling this vacancy that balances the governor's need to substantially influence who will be his or her deputy and successor in the event he or she must vacate the office with the role of the legislature in state government as a co-equal branch of

government that acts as a check on the governor's authority. It should be noted that the legislature currently acts as a check on the governor's appointment power for the filling of many positions such as agency heads or commissioners – when the senate confirms these appointments – and for other offices such as the Board of Regents in which both houses of the legislature meet jointly to confirm the appointment.

Citizens Union recommends

that the governor should be given the power to appoint a lieutenant governor who would be subject to confirmation by a majority vote of the senate and the assembly voting separately. This recommendation would ensure that the governor nominates a candidate of his or her choosing and each house of the State Legislature plays an equal role in the confirmation process and that no one house by virtue of its size has more influence in the decision than the other. This approval process is currently used by the United States congress in confirming appointments for vice president as put forward by the president.

Citizens Union encourages the State Legislature and the Governor to adopt this proposal for filling a vacancy in the office of lieutenant governor.

GOVERNORIAL VACANCIES IN NEW YORK: NOT AN UNCOMMON PHENOMENON

A vacancy in the office of governor is not a new problem in New York. In fact, nine governors have vacated the office since its establishment in 1777:

- David A. Paterson succeeded Eliot Spitzer in 2008
- Malcolm Wilson succeeded Nelson Rockefeller in 1973
- Charles Poletti succeeded Herbert H. Lehman in 1942
- Martin H. Glynn succeeded William Sulzer in 1913
- Horace White succeeded Charles Evans Hughes in 1910
- David B. Hill succeeded Grover Cleveland in 1885
- Enos T. Throop succeeded Martin Van Buren in 1829
- Nathaniel Pritcher succeeded DeWitt Clinton in 1828
- John Tayler succeeded Daniel D. Tompkins in 1818

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