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NEWS RELEASE

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**ASSEMBLYMAN GIANARIS, CITIZENS UNION, COMMON CAUSE/NY
CONTEND CURRENT STATE LAW ALLOWS GOVERNOR PATERSON
TO APPOINT LT. GOVERNOR**

Shows How State Constitution and Public Officers Law Can Be Used to Break Albany Impasse

New York State Assemblyman Michael Gianaris, Citizens Union Executive Director Dick Dadey, and Common Cause/NY Executive Director Susan Lerner today sent Governor David A. Paterson a letter outlining how under current law he can appoint a Lt. Governor and in doing so resolve the impasse that has paralyzed state government.

Though it has become accepted conventional wisdom that a vacancy in the office of Lt. Governor cannot be filled until the next statewide election, the letter posits that the plain language of the Constitution and the Public Officers Law gives the Governor the power to appoint a Lt. Governor who can serve until next year's elections.

The letter contends that Section 43 of the Public Officers Law applies in this situation and is not precluded by the Constitutional mandate that the Temporary President of the Senate shall perform the duties of the Lt. Governor during a vacancy. Public Officer Law Section 43 states "[i]f a vacancy shall occur, otherwise than by expiration of term, with no provision of law for filling the same, if the office be elective, the governor shall appoint a person to execute the duties thereof until the vacancy shall be filled by an election..."

"The answer to the state's gridlock was right under own noses the entire time: the law allows Governor Paterson to choose a Lieutenant Governor when there is a vacancy," said Assemblyman Michael Gianaris. "I urge the Governor to make this appointment as quickly as possible so the state legislature can resume its work and pass the dozens of important measures that await action."

Dick Dadey, executive director of Citizens Union said, "Hidden in plain sight in our Constitution and the Public Officers Law lays the solution for Governor Paterson to fill the vacancy in the office of Lieutenant Governor. In doing so, he can end the partisan chaos in the State Senate that has gridlocked our state government, and the business of the people of New York can finally be addressed"

Susan Lerner, executive director of Common Cause/NY, said “Today we provide a straightforward interpretation of the law, harmonizing the Constitution with the provisions of the Public Officers Law, to address the continuing crisis in the State Senate. It makes sense that the Public Officers Law applies to fill the gap in the Constitution. Governor Paterson should act quickly to end the stalemate by appointing a Lieutenant Governor to break the unacceptable deadlock that has prevented the Legislature from doing its work.”

The letter to the Governor lays out the legal theory behind this contention, including reference to a 1943 decision affirmed by the state's highest court, *Ward v. Curran*, 266 A.D. 524, 44 N.Y.S.2d 240, (3d Dept 1943), *aff'd* 291 N.Y. 642, 50 N.E.2d 1023 (1943), that holds that a Constitutional provision that the Temporary President of the Senate performs the duties of Lt. Governor during a vacancy does not preclude a section of the Public Officers Law that provides for filling vacancies in elective offices generally. Decisions from other states facing similar circumstances are also cited in the letter.

The issue was carefully examined before it was embraced by Gianaris, Dadey and Lerner. Several state legal and constitutional experts were consulted in recent days, including, but not limited to, Richard Briffault, a noted professor in state and local law at Columbia Law School, who also serves as vice chair of the Citizens Union Board of Directors.

The letter in its entirety is attached.