



# CITIZENS UNION

## ISSUE BRIEF AND POSITION STATEMENT

### Filling Vacancies in Elected Offices and Residency Requirements

February 2008

*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](http://GothamGazette.com), a front row seat to New York City policies and issues.*

## INTRODUCTION

From the last state election in November 2006 to February 2008, a more than usual number of vacant seats were filled for elected office at the state and local levels. A new Comptroller was appointed by the New York State Legislature to serve out virtually the entire four year term of his predecessor who resigned before being sworn in; eight State Legislators were elected in special elections after closed door party nominations were held to select the party nominees, including the most recent special election held in the 48<sup>th</sup> Senate District in northern New York State; and two New York City Council members were elected in non-partisan special elections. One City Council special election required a “do-over” because of the failure of the winning candidate to prove he had met residency requirements. Though the process for filling vacancies ordinarily receives little attention, these recent and numerous events have highlighted a lack of democratic practice and voter participation in the filling of vacancies for elected office; this was made all the more glaring when research by Citizens Union Foundation showed that nearly one third of currently serving State Legislators were first elected to either their Assembly or Senate seat in a special election when voter turnout was extremely low.

This issue briefing and position statement 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 can be found on the Citizens Union website. The statement examines how the vacancies for different elected positions in New York State are filled and presents policy recommendations to increase democratic participation and strengthen voter enfranchisement.

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## **FILLING VACANCIES FOR ELECTED OFFICE**

The rules for filling elected office vacancies in New York State 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. However, the current rules have provided little room for meaningful public participation and have effectively disenfranchised voters. They are presented below for state-wide offices as well as state or federal legislative offices.

### *Governor*

Should the position of Governor become vacant, the Lieutenant Governor, who was elected by the voters, assumes the role for the remainder of the term and the Temporary President of the Senate performs the duties of the Lieutenant Governor. If the offices of both Governor and Lieutenant Governor become vacant, the Temporary President of the Senate assumes the role of Governor until the next general election that takes place at least three months after the vacancies first occur.

### *State Comptroller and Attorney General*

The State Legislature is given the responsibility of filling vacancies in the offices of Comptroller and Attorney General by a collective majority vote of both houses meeting in joint session. The newly appointed State Comptroller or Attorney General serves out the remainder of the four year term, as required by the New York State Constitution. This process was last used in January 2007, when with a majority in the Assembly, the Democratic Assemblymembers had an overwhelming influence on the selection of a new Comptroller after the resignation of then (November 2006) recently reelected State Comptroller Alan Hevesi. After wrangling with the Governor over the process, the Legislature appointed one of its own, Assemblymember Thomas DiNapoli, to serve as the watchdog over the state's finances through 2010. Though the Comptroller is an elected office, at no time during this four year term will voters have an opportunity to confirm or replace the Legislature's appointee.

### *State Legislature*

The selection process for filling vacancies in the State Legislature involves the closed nomination of candidates by party committees meeting privately followed by a special election scheduled at a date set by the governor. The party nomination process replaces the usual public primary election with a few hundred party members who narrow the field of candidates down to one for each party line without any input from rank-and-file voters. Individuals may also get on the ballot as independent candidates by providing voter signatures equaling the lesser of 5% of votes cast in the last gubernatorial election in the district or 3,000 signatures for State Senate and 1,500 for State Assembly districts. Voters then choose between the final candidates at the special election, but with so many legislative districts dominated by a single political party, the candidate who wins the dominant party nod rarely faces meaningful competition at the polls. These special elections provide voters with little choice and have abysmally low turnout – typically less than a quarter of the turnout in general election races at most.

### *U.S. Congressional Representative and Senator*

If a seat in the U.S. House of Representatives becomes vacant, the seat shall remain open until the next general election, unless the vacancy occurs before April of the last year of the term or if there is a special session of House, in which case a special election will be called. In the case of a vacated U.S. Senate office, the Governor fills the vacancy with a temporary appointee and the office would be up for election at the subsequent general election to fill the rest of the term.

## HOW NEW YORK STATE LEADERS FIRST ASSUMED OFFICE

In reviewing how New York's leaders in elected office first assumed their positions, Citizens Union Foundation found that a substantial and unusually high number of them first entered office to fill unexpected vacancies. This is especially true for the State Legislature and the Office of the State Comptroller.

In the past two decades, New Yorkers have witnessed two State Comptrollers resign before the end of their terms. The vacancy each time was filled by the Legislature with one of their former legislative colleagues. After fourteen years in office, then Comptroller Edward Regan resigned in 1994 and was replaced by former State Senator H. Carl McCall, who went on to win reelection twice before running for Governor. Former State Comptroller Alan Hevesi, who first won election in 2002, resigned on the first day of his second term in 2007, and was replaced by Assemblymember Thomas DiNapoli. In short, two of the past three Comptrollers have been initially appointed to office by the State Legislature.

### New York's Appointed State Comptrollers

- **2 out of the past 3** state comptrollers were first appointed by the legislature to fill a vacancy.
- Both replacement appointees were State Legislators.

Attorney General Robert Abrams likewise resigned in 1993 and the Legislature appointed Assemblymember G. Oliver Koppell to fill the vacancy. Koppell finished the last year of the term before losing his bid for election in the Democratic Primary. The last Governor to vacate office was Nelson Rockefeller who was chosen to be Vice President in 1974. He was succeeded by Lieutenant Governor Malcolm Wilson.

To examine the extent to which special elections have impacted the State Legislature, Citizens Union Foundation collected information about how the current class of legislators was first elected. Our research found that close to a third, or 32 percent, of State Legislators first came into office through a special election, with 49 out of 150 State Assemblymembers and 18 out of 62 State Senators having first been elected through a special election.

The special election process raises many red flags.

New York has one of the highest incumbency rates in the nation, with a near 95 percent reelection rate of incumbent legislators. Through special elections, dominant major party candidates that win the party's nod are practically assured a lifetime position in the state legislature should they seek it, due in part to the powers of incumbency and a system of filling vacancies that, particularly in areas dominated by one party (most of the State), has largely excluded voters from meaningful participation in the electoral process.

### New York's Special Election Legislators

#### Assembly

- In the current NY State Assembly **49 out of 150 members**, or **33 percent** of the body, were **first elected in a special election**.
- The initial vacancies occurred as follows: 32 legislators sought election or appointment to another office, 6 retired, 8 died and 3 left because of actual or alleged corruption.

#### Senate

- In the current NY State Senate **18 out of 62 members**, or **29 percent** of the body, were **first elected in a special election**.
- The initial vacancies occurred as follows: 12 legislators sought election or appointment to another office, 4 retired and 2 died.

## **TOWARD A MORE DEMOCRATIC PROCESS: POLICY RECOMMENDATIONS**

Citizens Union has reviewed the policy options presented by Citizens Union Foundation, and is recommending that the State Legislature and Governor enact legislation establishing new procedures for filling vacancies and clarifying residency requirements for city elected offices:

### **I. Filling a Vacancy in the Offices of Comptroller and Attorney General**

Should the position of Attorney General or State Comptroller become vacant, the State Legislature should have the power to appoint only an *interim* Attorney General or Comptroller, until a candidate is selected at the next general election by the voters of the state of New York, unless such a vacancy occurs within sixteen months of the next statewide election, in which case the interim appointment shall serve the remainder of the term. Any person elected at a general election to fill a vacancy that is not at the time of the quadrennial statewide elections shall serve the remainder of the four-year term.

### **II. Filling a Vacancy in the State Legislature**

Citizens Union supports abolishing the current process of holding only one special election in which the candidates are chosen by the party committee and replacing it with either one of two reforms:

- Holding a primary election at least thirty days in advance of the special election, or
- Holding one non-partisan special election along the lines of the current process for filling vacancies in the New York City Council in which the ballot is open to all who can petition on.

Regardless of which system is implemented, Citizens Union believes that signature requirements should be reduced to provide greater access to the ballot, and that an instant runoff voting (IRV) procedure be established to ensure that the successful nominee or candidate receives a majority of the vote in the primary or special election. IRV will ensure that the election winner doesn't win with a minority of votes and most accurately reflects the will of the electorate, because so few voters cast ballots during special elections.

### **III. Filling a Vacancy in the New York City Council**

Citizens Union also supports the establishment of an instant runoff voting (IRV) system for the city's non-partisan, municipal special elections. This would allow voters to rank candidates at the time of voting and ensure that should no candidate receive an outright majority of the vote, a candidate is elected that most accurately reflects the will of the electorate, as presented above.

### **IV. Residency Requirements for Municipal Office**

To correct the ambiguity in state law related to residency requirements for local office, Citizens Union believes that to serve in an office at the local level such as NY City Council, an elected official must be a resident of the jurisdiction or district he or she is seeking to represent only at the time the official is sworn into office. The official would sign an affidavit affirming permanent residency within the district, and must continue to maintain primary residence in that jurisdiction throughout the duration of the term of office. However, when filing papers as a candidate for office, a candidate who lives outside the district must indicate his or her current address, not an intended residency at a future address. CU believes that increases voter choice while providing information about a candidate's current residency.

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