

# Court Rejects Governor's Appointment

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Published: August 20, 2009

Gov. [David A. Paterson](#) acted beyond his authority last month when he named [Richard Ravitch](#) lieutenant governor, a state appeals court ruled Thursday in blocking Mr. Ravitch from serving in the post.



Chester Higgins Jr./The New York Times

Richard Ravitch was named lieutenant governor by Gov. David A. Paterson in July, while the State Senate was paralyzed by a struggle between parties.

The decision, which was unanimous and unambiguous in its rejection of the governor's arguments, dealt Mr. Paterson both a legal and political setback. A four-justice panel issued the decision, refuting all of Mr. Paterson's key legal claims and leaving the administration open to criticism that it had gone outside the bounds of the State Constitution.

"The governor simply does not have the authority to appoint a lieutenant governor," the decision said.

It concluded, "The governor's purported appointment of Mr. Ravitch was unlawful because no provision of the Constitution or of any statute provides for the filling of a vacancy in the office of lieutenant governor other than by election."

The Appellate Division of the Second Judicial Department, in Brooklyn, which [heard arguments](#) in the case on Tuesday, was the highest so far to decide on the constitutionality of the governor's appointment. The decision moved the case, *Skelos v. Paterson*, before the state's highest court, the Court of Appeals.

A spokeswoman for the governor said that Mr. Paterson had not decided whether to seek a stay to temporarily allow Mr. Ravitch to serve while the Court of Appeals considers the case.

The appointment has been in dispute since the governor [appointed Mr. Ravitch](#) on July 8, while state government was paralyzed by a political power struggle that left Republicans and Democrats both making claims to control the State Senate.

Mr. Paterson on Thursday said he was dismayed by the ruling and offered, as a compromise, to have the State Legislature vote to confirm Mr. Ravitch.

“I’m obviously disappointed,” he told reporters outside his Midtown Manhattan office. “I chose Richard Ravitch, an outstanding citizen for the last two decades who’s been a public servant and a civic leader. And I think at this time, so as to avoid what went on in the Senate in June and July, that a lieutenant governor would be the solution.”

Senate Republicans, who brought the case against the governor, hailed the decision and predicted they would ultimately prevail before the Court of Appeals.

“The appellate court today upheld the position I have taken all along, that the governor acted recklessly and unconstitutionally when he put his own political interests ahead of the public interest,” [Dean G. Skelos](#), the Senate minority leader, said in a written statement.

Republicans have argued that by appointing a lieutenant governor, whose powers include presiding over the Senate and casting tie-breaking votes in some cases, Mr. Paterson threatened their free speech. A presiding officer has the power to recognize speakers on the Senate floor.

Mr. Paterson argued that state law allowed governors to appoint a lieutenant governor in the event of a vacancy. He pointed to a provision of state law that says governors can fill vacant positions unless the Constitution explicitly defines how those position should be filled. The

Constitution is silent on how a vacancy in the lieutenant governor's office should be handled.

Mr. Paterson also argued that such an extraordinary move — no governor had ever before tried to appoint a lieutenant governor when the post became vacant — was necessary because of the extraordinary circumstances facing the state. Not only was Albany mired in political crisis when the governor made the appointment, but the state also remains in a severe economic downturn.

The appeals court panel rejected those claims outright.

The panel disputed Mr. Paterson's reading of the law that governs replacement appointments, saying that in the case of a vacancy in the lieutenant governor's office, the Constitution says that the duties are to be carried out only by the Senate president.

The panel also dismissed the governor's argument that extraordinary circumstances legitimized his move. "No considerations of the state's financial difficulties or of political strife in the Senate allow us to find authority for Mr. Ravitch's appointment where none exists," the opinion said.

Despite the court's ruling that his appointment was unconstitutional, Mr. Ravitch worked from the governor's office in Midtown all day on Thursday and was still answering the phone at his desk into the evening.

"It's a roller coaster — sort of a hard way to live," he said of the legal battles over his position. Then, bristling at Mr. Skelos's comment that the governor had appointed him for political purposes, Mr. Ravitch said: "This isn't political. I have no constituency."