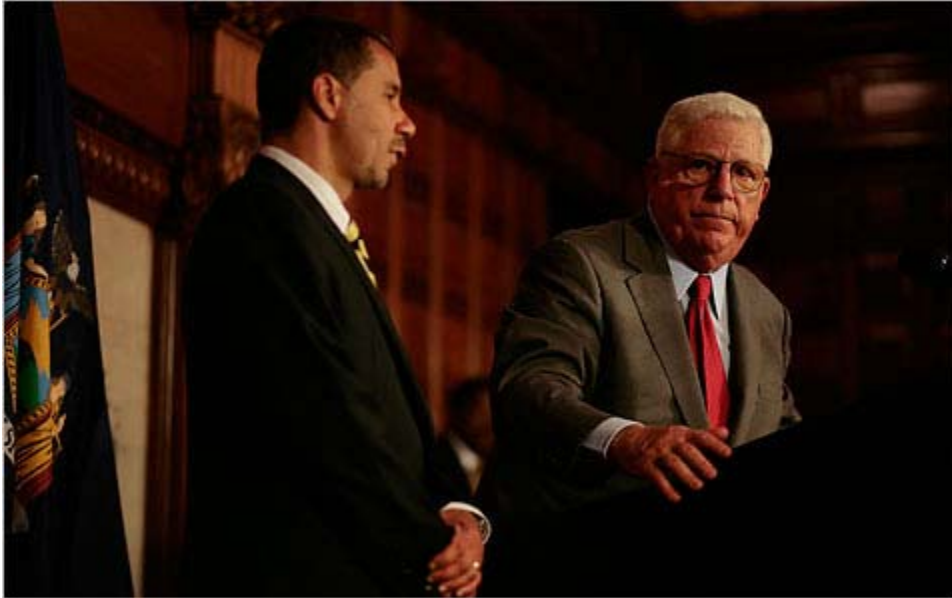


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## In 4-3 Vote, Court Says Paterson Can Appoint Lt. Governor

By [Jeremy W. Peters](#) AND [Sewell Chan](#)



Nathaniel Brooks for The New York Times Gov. David A. Paterson appeared with Richard Ravitch on July 9 after naming him lieutenant governor. Since the state's first Constitution was adopted in 1777, no New York governor had ever tried to fill a vacancy in the job of lieutenant governor.

### Documents

[The New York State Court of Appeals decision and dissent.](#)

Updated, 4:22 p.m. | In a stunning reversal, New York State's highest court on Tuesday upheld Gov. [David A. Paterson](#)'s authority to appoint a lieutenant governor.

Though the decision was divided — four judges agreed that Mr. Paterson exercised proper authority while three said he did not — it was unambiguous in its affirmation of the governor's authority. The 4-to-3 decision resolved a longstanding constitutional question, and makes [Richard Ravitch](#) the first appointed lieutenant governor in New York State's history.

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“The issue on this appeal is whether the governor of the state of New York has the authority to fill a vacancy in the office of lieutenant governor by appointment,” Chief Judge [Jonathan Lippman](#) wrote for the majority. “We now hold that he does.”

In a sharply worded dissent, Judge [Eugene F. Pigott Jr.](#) wrote that the decision was “contrary to the text of the New York Constitution and affords governors unprecedented power to appoint a successor.”

The ruling is certain to boost the political fortunes of the beleaguered governor, who was himself lieutenant governor before he replaced Gov. [Eliot Spitzer](#) in March 2008 after Mr. Spitzer was implicated in a scandal over his involvement in a prostitution ring.

Mr. Paterson is facing grave doubts from the highest ranks of the Democratic Party about his viability as a candidate for governor in 2010. In what amounted to a stinging embarrassment, word leaked out over the weekend that the White House had nudged Mr. Paterson to bow out of the race, fearing that he could not win. That would permit State Attorney General [Andrew M. Cuomo](#) to seek the party’s nomination for governor.

Mr. Paterson has vowed to stay in the race even as there were signs that some New York Democrats were backing away from him this week.

Asked about the court’s decision at a news conference in Upper Manhattan to announce new scientific research grants, Mr. Paterson, looking upbeat, chided those who had claimed the administration would never win the legal battle over Mr. Ravitch’s appointment and likened it to the conventional wisdom about his own political fate.

“You don’t give up,” Mr. Paterson said. “You don’t give up just because people tell you what they think is going to happen. You don’t give up because people tell you who’s running and who’s not before they ever announce to do it. You don’t give up because you’re unpopular when you feel you’ve made the right decisions.”

On a conference call with reporters on Tuesday afternoon, Mr. Ravitch said he was pleased with the court’s ruling.

“I can say very simply I always thought the legal theory of the governor’s lawyers was probably a wise one,” he said. “I hope very much in the ensuing months I’ll be able to be of help to the governor and the Legislature tackling the very deep and very dire problems the state faces.”

Senator [Dean G. Skelos](#) of Long Island, the Republican leader in the State Senate, who was the named plaintiff in the suit, said in a statement on Tuesday, “The court has given new power and authority to an unelected governor where no such power had existed under the State Constitution.”

He said Judge Pigott’s premise raised the troubling prospect that an unelected lieutenant governor could become governor and then appoint yet another unelected governor, without needing even confirmation by the State Senate. “The court’s decision to allow the state’s highest offices to be filled with no accountability whatsoever to the public or to their elected representatives in the Legislature, is dangerous to democracy,” Mr. Skelos said.

“One thing is clear — we must change the law,” he said. “We need to clarify the process of filling the office of lieutenant governor to ensure accountability to the people through election or, minimally, Senate confirmation.

Senator [John L. Sampson](#) of Brooklyn, the leader of the Democratic conference in the chamber, issued a statement congratulating Mr. Ravitch, saying that “today’s ruling will encourage all parties to end the political rancor and work together to meet the needs of all New Yorkers.”

Assemblyman Michael N. Gianaris, a Queens Democrat who had been among the first to call on Mr. Paterson to appoint a lieutenant governor, said of the ruling, “Most importantly, there is now a clear line of succession to the state’s highest office should the governor no longer be able to serve.”

Dick Dadey, the executive director of the government integrity group [Citizens Union](#), which had called on Mr. Paterson to appoint a lieutenant governor at the height of the Senate crisis, said the opinion was significant because it settled once and for all a governor’s right to fill a vacancy in the office. “That was the major victory here: that the court agreed that while it is not initially evident, the law provided for a selection process for the lieutenant governor,” Mr. Dadey said.

State courts had ruled against the governor at every step in the case, *Skelos v. Paterson*, which was filed by Republicans in the State Senate and by a dissenting Senate Democrat, [Pedro Espada Jr.](#), who broke with his party earlier this year and staged a leadership fight that paralyzed the Senate for more than a month.

In a move that was widely seen as a political and constitutional gamble, Mr. Paterson announced on July 8 that he was appointing Mr. Ravitch, a veteran of city and state politics for more than four decades, as lieutenant governor. Under the Constitution, the lieutenant governor has the power to cast tie-breaking votes in some cases, and Mr. Paterson hoped the appointment would pressure the Senate into resolving its power struggle.

There is debate about whether the appointment indeed helped spur a resolution, which was brokered on July 9, Mr. Ravitch’s first day on the job. Democrats have since returned to power in the Senate, enticing Mr. Espada back into the party. The Senate is split narrowly, with 32 Democrats and 30 Republicans.

But even as the power structure stabilized in the Senate, Republicans waged on with their legal battle against the governor and Mr. Ravitch. The results made Mr. Ravitch essentially an on-again-off-again lieutenant governor after different courts blocked and then reinstated his appointment.

Republicans initially won a preliminary injunction on July 21 that blocked Mr. Ravitch from carrying out any of the duties of the office. A higher court later reinstated him as the case worked its way through the appeals process but limited his ability to perform any duties that would affect business in the Senate.

The ruling by the Court of Appeals resolves a thorny constitutional dispute that had left legal scholars divided.

The State Constitution does not expressly give the governor power to appoint a lieutenant governor.

At issue in the decision and the dissent were two provisions in state law, which could be read as conflicting. One provides that the governor “shall appoint” a person to fill a vacancy in positions for which there is no other provision for the fulfilling the vacancy. The other provides that the temporary president of the State Senate “shall perform all the duties of the lieutenant governor” if the position is vacant.

Judge Lippman wrote that the two provisions “are complementary rather than duplicative” and that the latter provision provides only for “stopgap coverage” of the lieutenant governor’s function and cannot “be understood to state that the vacancy may not be filled.”

The confusion over how to fill the vacancy has not always existed. Judge Lippman noted that it was only after a 1943 ruling by the Court of Appeals that Gov. [Thomas E. Dewey](#) — a Republican who was concerned that the law could mean that the governor and lieutenant governor might be from opposing parties — persuaded the Legislature to exempt the lieutenant governor from a law providing for vacancies in elective offices to be filled in the next annual election.

A gubernatorial appointment “is entirely consonant” with the purpose of legal changes since 1943, Judge Lippman wrote, while keeping the job vacant “risked a scenario of the sort that the Legislature at Governor Dewey’s behest sought to avoid” — one in which the governor and lieutenant governor could come from opposing parties.

Judge Lippman wrote that the ruling “does create the possibility that an unelected official will, for a time, occupy the state’s highest office,” but added that the ruling was based on a reading of the law, not the “abstract question” of whether it would be best to fill the vacancy by election, by appointment, or by appointment subject to legislative confirmation.

Until now, there had only been two vacancies in the lieutenant governor’s job since 1943: in 1973, when Lt. Gov. Malcolm Wilson succeeded Gov. [Nelson A. Rockefeller](#), who resigned, and in 1985, when Lt. Gov. Alfred B. DelBello resigned. Both times, the job went unfilled.

“While it has been suggested that these vacancies were left unfilled because of some consensus as to the unavailability of the power of gubernatorial appointment, it is at least equally likely that they remained vacant for purely political reasons,” Judge Lippman wrote.

Judge Pigott’s dissent reached an entirely different conclusion. The relevant sections of state law, he said, “can only be reasonably interpreted to mean that the drafters of the Constitution intended that a vacancy in the office of lieutenant governor remain unfilled until the next general election, with the temporary president of the Senate performing the duties of the lieutenant governor in the interim.”

Judge Pigott said he joined the majority “in acknowledging the good faith and good intentions of all parties in this difficult and important case.” But he added that “neither the governor nor this court can amend the Constitution.”

Judge [Lippman](#) was joined in the majority by Judges [Carmen Beauchamp Ciparick](#), [Susan P. Read](#) and [Theodore T. Jones Jr.](#) Judge Pigott’s dissent was joined by Judges [Victoria A. Graffeo](#) and [Robert S. Smith](#).

All three dissenting judges were appointed to the high court by [George E. Pataki](#), a Republican who was governor from 1995 to 2006. Only one judge in the majority, Judge Read, was appointed by Mr. Pataki.