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New York Court Backs Governor on Deputy Pick

By [JEREMY W. PETERS](#)

In a surprising reversal, New York State's highest court on Tuesday affirmed Gov. [David A. Paterson's](#) contested appointment of a lieutenant governor, handing him a decisive victory at a time when he is facing the lowest moment of his governorship.

In a divided decision, the high court, the New York Court of Appeals, ruled that Mr. Paterson did not abuse his authority when he named [Richard Ravitch](#), a four-decade veteran of city and state politics, to the post in July, a move both politically risky and legally questionable.

While the job has been open in the past, no New York governor had attempted to fill it by appointment. But the Court of Appeals, in a 4-to-3 decision, overturned a lower court ruling, saying the State Legislature and the drafters of the state's Constitution would never have envisioned leaving the position unfilled for an extended amount of time.

"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."

The decision appeared to embolden Mr. Paterson, who faced the embarrassing disclosure over the weekend that the White House wanted to nudge him out of the 2010 governor's race. Asked about the court's decision, Mr. Paterson, looking upbeat, chided those who had claimed the administration would never win the legal battle, and likened it to the conventional wisdom about his 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."

The ruling sent ripples through New York political circles, not only because of its political import for the governor, but because few thought Mr. Paterson could prevail. Lower courts had ruled against him at nearly every step of the legal process. Attorney General [Andrew M. Cuomo](#) — who some Democrats believe would make a stronger gubernatorial candidate than Mr. Paterson — had also weighed in against the governor, saying he believed the appointment of Mr. Ravitch was unconstitutional.

The ruling even seemed to surprise many inside the Paterson administration, who privately expressed relief over the victory.

Republicans, meanwhile, accused the court of expanding the governor's authority beyond the bounds of the Constitution.

Senator [Dean G. Skelos](#) of Long Island, the Republican leader in the State Senate, who was the plaintiff in the suit, said in a statement, "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."

Hours after Mr. Paterson announced on July 8 that he would appoint Mr. Ravitch, Republicans challenged the governor in court. They were able to win a series of injunctions blocking Mr. Ravitch from carrying out the duties of the office on the grounds that state law and the Constitution did not explicitly grant governors the power to appoint lieutenant governors if the post was vacant.

The case, *Skelos v. Paterson*, was filed by Republicans in the State Senate and by a dissenting Senate Democrat, [Pedro Espada Jr.](#), who broke with his party in June, igniting a leadership fight that paralyzed the Senate for more than a month. Mr. Paterson saw the appointment of a lieutenant governor, who has the power to cast tie-breaking votes in the Senate in some instances, as a way to pressure senators into resolving their power struggle.

There is debate about whether the appointment helped spur a resolution, which was brokered on July 9, Mr. Ravitch's first day on the job. Democrats, after enticing Mr. Espada back to their party, have since returned to power in the Senate, though the margin is slim, with 32 Democrats and 30 Republicans.

Though the Court of Appeals decision was divided, it was unambiguous in its affirmation of the governor's authority. The majority expressed concern about the possibility that the lieutenant governor's office could be left vacant for a portion of a four-year term, as could have been the case when Mr. Paterson, [Eliot Spitzer's](#) lieutenant governor, was elevated to the governorship after Mr. Spitzer resigned following the disclosure that he patronized a prostitution service.

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 "can best provide only for stopgap coverage" of the lieutenant governor's function and cannot "be understood to state that the vacancy may not be filled."

The decision ends the legal dispute. Republicans do not plan to appeal to the federal courts because the legal issues pertain only to state law. The only redress for Republicans would be to amend the law, which Mr. Skelos called for on Tuesday.

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

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.”

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, Susan P. Read, was appointed by Mr. Pataki.

Some legal scholars responded with surprise at the decision, given the lack of precedent and the lower court rulings.

“Even if you don’t know a lot about the law, it does seem a little strange that the governor would be able to appoint his own successor without the involvement of anyone else,” said James A. Gardner, a law professor at the [State University at Buffalo](#). “There are plenty of other models of gubernatorial appointment, but they all require some kind of participation by the Legislature or some official other than the governor himself.”

Kathleen Sullivan, who argued the case before the court on the governor’s behalf, said the decision clarified something that was intuitive but not explicitly spelled out in state law. “The idea that this is the one office in New York State, from dog catcher to governor, in which a vacancy can never be filled, the Legislature didn’t intend that,” she said. “And the majority found the dysfunction and illogic in that position.”

Sewell Chan and Nicholas Confessore contributed reporting.

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