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### Op-Ed

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# A Power No Governor Should Have



By [Jerry H. Goldfeder](#)

**N**ewly-inaugurated Governor Kathy Hochul has just announced her appointment of New York's 64th lieutenant governor, who, if calamity strikes, would succeed to the top job. This is not an ideal process and should be changed.

I'm not complaining about who she has chosen. I know the new governor, and respect her intelligence, judgment and political savvy; and the new LG, Brian Benjamin, is an experienced state senator. It's about the fact that there are no checks on a governor's authority to name a potential successor.

It wasn't always this way. Prior to the most recent lieutenant governor becoming governor — David Paterson, after Eliot Spitzer resigned — no governor thought they had such authority. Eight governors before Paterson had ascended from the Number 2 position, and the lieutenant governor position remained vacant for the remainder of their terms, with the majority leader of the state senate next in line.

Because there was a power struggle in the state senate at the time, Democrat Paterson was nervous about leaving the state, prompting him to concoct a legal theory to simply appoint a

potential successor. So he did, tapping Richard Ravitch. Paterson's creative action was challenged, and a sharply divided court of appeals, by a 4-3 vote, sided with him. A dozen years later, Hochul followed suit.

At the time Gov. Paterson appointed Ravitch, I was chair of the New York City Bar Association's Election Law Committee, and we issued a report urging Albany to adopt an alternative procedure, modeled after the U.S. Constitution's 25th Amendment. Ratified in 1967, it enables a president to fill a vice-presidential vacancy — but only after each house of Congress confirms his choice. The procedure has been used twice: in 1973, when President Richard Nixon replaced disgraced Spiro Agnew with Gerald Ford, and then a year later, when Nixon resigned and new President Ford appointed former New York Gov. Nelson Rockefeller as vice president. Congressional participation provided the check by other public officials that instilled confidence in the electorate that the process was a legitimate rite of succession.

The state Constitution should be amended to replicate the federal advise-and-consent procedure, requiring the state Assembly and Senate to confirm a governor's nominee for lieutenant governor when there is a vacancy.

An even better alternative, though, would be for a gubernatorial vacancy to be filled by the voters. Provided the vacancy occurs before the last year of a governor's four-year term, voters should be able to choose a replacement. While the lieutenant governor temporarily serves as acting governor, a special election can be held relatively quickly. New Yorkers are used to special elections; we routinely go to the polls to fill vacancies in a variety of offices, including district attorneys, mayors and other local offices, and members of the House of Representatives. Just a few weeks ago, Gov. Cuomo signed a bill requiring special elections for state legislative seats. It stands to reason, then, that the state's chief executive should always be directly elected.

Most states follow the current succession model of New York without a special election. But one of the many takeaways from the last few months is that New York State government would benefit from reform, and visionary solutions are in order. Let's start with democratizing how the next gubernatorial vacancy is filled.

Let's be clear. This is about more than the lieutenant governor. As we recently saw when former Attorney General Eric Schneiderman resigned, the way we choose replacements for that office is also flawed. Rather than hold a special election for AG, the legislature votes in a new person. In Schneiderman's case, the vacancy occurred on the cusp of an election — so the legislature's temporary appointment made sense. And they tapped Barbara Underwood, an excellent choice (and a friend). Had Schneiderman resigned earlier in the term, it would have been much better for the voters to choose a new attorney general.

These electoral reforms — and plenty others — may not be high on our new governor's agenda. After all, she has to deal with COVID, the economy, the criminal justice system, you name it. I hope, though, that she will have time to improve our election laws and expand New Yorkers' voting rights.

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