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Voters, not lawmakers, should pick interim officeholders



By [Jerry H. Goldfeder](#), Commentary

With the resignation of Eric Schneiderman as New York's attorney general, we once again confront how undemocratic our replacement elections are.

We went through this twice in 1993, when then-Attorney General Robert Abrams left office to practice law and Comptroller Ned Regan went on to head Baruch College. In 2006 Comptroller Alan Hevesi was forced to leave office. According to the law since 1849, when either of these offices is vacant, the state Legislature, when in session, selects a temporary successor.

Previously, governors appointed replacements, and, in fact, can still do so if the Legislature is not in session. In either case, the interim office holder serves until the end of the current term.

Although the law was a reform at the time, it is currently inconsistent with modern voting rights jurisprudence. Vacancies in most other offices require a special election. Instead, 213 members of the Assembly and Senate make the choice — obviously an anachronistic procedure. Yet the Legislature has not seen fit to permit voters to elect a successor when such a vacancy occurs. Bills have been introduced from time to time mandating a swift special election, but all have died on the vine.

As luck would have it, Schneiderman's term expires this year, so the Legislature's impending choice for interim attorney general will serve only several months, until December 31. New Yorkers will have full-fledged primaries this September and a general election in November for the next four-year term starting January 1. If Schneiderman's situation had unfolded next January, however, after he was presumably re-elected, an interim attorney general selected by the Legislature would actually have served until the end of 2022 without the casting of even one ballot by the voters.

It would be far more preferable to have a special election. This is not to say that special elections in New York are ideal. They are held without primary elections, allowing party insiders to nominate their candidates. And many vacancies are in one-party districts, thus enabling a party clubhouse-chosen standard bearer to skate into office. Indeed, more than two dozen legislators were originally elected in such special elections.

So, before another unexpected vacancy occurs in the attorney general's or comptroller's office, the manner of replacement should be reformed. Similar to the way we fill a vacancy for the U.S. Senate, the governor should appoint an interim placeholder and immediately call a special election unless an already-scheduled general election is upon us. And if there is a special election, party primaries should be required — just as in regular elections. This would allow maximum voter participation.

While the Legislature is considering whom to choose as interim attorney general, it ought to divest itself of its authority to fill a vacancy in these important state offices. Voters should be making the choice, and the Legislature should enact this reform for the next time.

For More Information

[Jerry Goldfeder](#), an election lawyer at *Stroock & Stroock & Lavan LLP*, teaches election law at *Fordham Law School* and the *University of Pennsylvania Law School*. He served as special counsel for public integrity to former Attorney General Andrew Cuomo.

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