



**CITIZENS UNION ISSUE BRIEF AND POSITION STATEMENT**  
**Ensuring a Democratic and Timely Process for**  
**Filling Vacancies in the NYS Legislature**  
**May 2015**

**I. Introduction**

Citizens Union believes we must change the way in which special elections are held to fill vacant seats for state elected officials in order to remove the influence of party leaders and create greater voter choice and candidate competition. Special elections are essentially no more than a relatively few number of voters validating the appointment of favored candidates by political leaders; they are nothing but coronations as opposed to real elections. This is particularly important given that Citizens Union’s updated findings in this report show that nearly a quarter of state legislators – 23 percent – were first elected in special elections.

Special elections for the state legislature are also problematic because most legislative districts in New York are dominated by one party, and therefore the outcomes are nearly always a foregone conclusion. Coupled with New York State’s over 96 percent incumbency rate, voters are effectively losing the chance to choose their representative. Moreover, these elections have exceptionally low turnout.

Beyond the issue of voter choice, under current law, the governor has the discretion to not call special elections for state legislature in certain circumstances. If special elections are not called, New Yorkers in those districts lack representation in Albany and are unable to obtain formal constituent services, as occurred in 2014 when a total of 13 seats were vacant for nearly the entirety of the legislative session.<sup>1</sup> This too is an unacceptable situation.

Current law presents an unfortunate choice – either the governor can fill the seat through a special election, or choose not to fill the seat, potentially for a long period of time. Reforms to both processes as recommended by Citizens Union in this statement present a path forward to resolve these issues and create a more democratic process for filling vacancies.

This issue brief and position statement draws upon research and analysis conducted by Citizens Union Foundation for its report, “Circumventing Democracy: The Flawed System for Filling Vacancies for Elected Office in New York,” which was released in April 2007.<sup>2</sup> The statement examines how vacancies for state legislature in New York are filled, and presents policy recommendations to ensure a timely and democratic process for filling state legislative seats.

---

<sup>1</sup> For more information see Gotham Gazette’s election coverage at: <http://www.gothamgazette.com/index.php/contact-us/5142-ny-state-legislature-vacancies>

<sup>2</sup> Available at: [http://www.citizensunion.org/www/cu/site/hosting/Reports/CUReport\\_2007special\\_election.pdf](http://www.citizensunion.org/www/cu/site/hosting/Reports/CUReport_2007special_election.pdf)

## II. Current Process of Filling Vacancies for State Legislature

The laws for filling vacancies that occur during a term of office differ greatly from the usual process of electing representatives through traditional primary and general elections. Under state law, the governor has the option, though is not required, to call a special election when a state legislative office becomes vacant before April 1<sup>st</sup> in an election year. If the governor calls a special election, the election must be held between 70 and 80 days after the governor issues a proclamation calling for the election.<sup>3</sup> Should a special election not be called, the seat is filled in the next regularly scheduled election, which may be held during a local election cycle.<sup>4</sup>

During special elections, there are no primary elections. Candidates are nominated by party committees, which are effectively controlled by party leaders. A candidate may petition to get on the ballot as an independent candidate to compete with the party-backed candidates, but is unable to challenge another candidate to obtain a party line through the ballot box. The usual primary election is therefore replaced with the party nomination process, in which party members narrow the field of aspiring candidates down to one for each party, without any input from voters. Voters are, however, given the opportunity to choose from these few candidates at the special election. Individuals petitioning as independent candidates must provide voter signatures equaling the lesser of 5% of votes cast in the last gubernatorial election in the district or 3,000 signatures for State Senate, and 1,500 for State Assembly districts.<sup>5</sup> This number of signatures is often a barrier for grassroots candidates, who already have the hurdle of creating a new ballot line.

This system is problematic because most legislative districts in New York State are dominated by a single political party.<sup>6</sup> Thus, a candidate who wins the dominant party's nomination rarely faces a competitive election at the polls. Indeed, the average turnout for the state legislature's special elections from 2000 – 2010 was 6.58 percent of voters, with some races seeing turnout of only 2 to 3 percent.<sup>7</sup> More recently, turnout for the May 5, 2015 special election was projected at 12 percent, which is high for special elections, but still below the turnout that has been seen in regular elections.<sup>8</sup> In other recent special elections, turnout for the March 2012 special election in the 27<sup>th</sup> Senate district was only 8.4 percent, and the September 2011 special election in the 54<sup>th</sup> Assembly district had turnout of only 8.4 percent.<sup>9</sup> Once elected, a candidate can use the

---

<sup>3</sup> The timeframe for calling special elections was adjusted in 2011 in program legislation from Governor Cuomo which was supported by Citizens Union in order to comply with federal law regarding military and absentee voters, ensuring that these voters are sent ballots 45 dates prior to the election.

<sup>4</sup> §42 of the New York State Public Officers Law governs the process for filling vacancies.

<sup>5</sup> See §6-142 of the New York State Election Law.

<sup>6</sup> Due in part to the way in which legislative districts are gerrymandered to favor majority party incumbents.

<sup>7</sup> Citizens Union. "Voter Turnout Analysis: Nonpartisan City Council Special Elections vs. Partisan State Legislative Special Election." August 2, 2010. Available at:

[http://www.citizensunion.org/www/cu/site/hosting/Reports/NonPartisan\\_Special\\_Elections\\_Report\\_August3\\_2010\\_FINAL.pdf](http://www.citizensunion.org/www/cu/site/hosting/Reports/NonPartisan_Special_Elections_Report_August3_2010_FINAL.pdf)

<sup>8</sup> Yee, Vivian. "Working Families Candidate Diana Richardson Wins Brooklyn Assembly Post." The New York Times. May 5, 2015. Available at: [http://www.nytimes.com/2015/05/06/nyregion/working-families-candidate-diana-richardson-wins-brooklyn-assembly-post.html?\\_r=0](http://www.nytimes.com/2015/05/06/nyregion/working-families-candidate-diana-richardson-wins-brooklyn-assembly-post.html?_r=0)

<sup>9</sup> See the Board of Elections website for total votes cast

<http://www.elections.ny.gov/NYSBOE/elections/2011/Special/SpecialElectionVoteResults09132011.pdf>. Information on district voter registration can be found at <http://www.urbanresearchmaps.org/nystatelegislature/map.html>.

great advantage of incumbency to effectively fend off future challenges in both primary and general elections.

### III. Vacancies and Number of Legislators First Elected in Special Elections

#### Delayed Filling of Seats

As noted previously, leading up to the November 2014 General Election, there were a total of 13 vacant seats in the state legislature, as Governor Cuomo declined to call special elections for these seats. Many of these seats were vacant for months before they were eventually filled in the general election in 2014. During that time, thousands of New Yorkers were left without representation, in a situation that has become a regular occurrence and is preventable if reforms are enacted to require the governor to call special elections in certain time periods. This will ensure that constituents will not be without representation for extended periods of time and thus not miss out on getting their voices heard in important policy and budgetary decisions. Our detailed recommendations are in section IV.

#### Special Election Legislators

With the May 5, 2015 special election for Assembly District 43, the number of state legislators first elected in a special election will be nearly 23 percent – nearly a quarter – of all state legislative seats. While this is a decrease from 33 percent 2007 when Citizens Union first issued its report; this decrease is due to the previously mentioned 13 vacancies being filled in the General Election last year, dropping the overall number. The choice of not holding special elections, while allowing voters to pick the representatives in a regular primary and general election, meant that the residents of those districts lacked a necessary voice in Albany.

#### **New York's Special Election Legislators**

##### Assembly

- In the current State Assembly, **43 out of 150 current members**, or **29 percent** of the body, were **first elected in a special election**.

##### Senate

- In the current State Senate, **7 out of 63 members**, or **11 percent** of the body, were **first elected in a special election**

##### Both Houses

- **Taken together, 50 of the 213 members of the State Legislature, or 23 percent – nearly a quarter – were first elected in a special election.**

#### IV. Citizens Union's Recommendations

To ensure a more democratic and timely process for filling vacancies in the New York State Legislature, **reforms should be put in place prior to any special elections being called by the governor to fill any vacant seats**, specifically to:

- 1) **Change the procedure for filling vacancies, allowing for greater voter choice.** Two possible recommendations are to hold a:
  - a. **special election with a primary;** or
  - b. **nonpartisan special election.**
- 2) Regardless of which system of reforming special elections is implemented, Citizens Union believes that **signature requirements should be reduced to provide greater access to the ballot**, and that **an instant runoff voting (IRV) procedure be established** to ensure that the successful nominee or candidate receives a majority of the vote in the primary or special election.
- 3) **Require that special elections be held within a certain date of the vacancy occurring**, provided they occur a significant period of time before the next regular election for that seat. Currently a special election cannot be called on or after April 1<sup>st</sup> and there is no requirement that a special election be called before this point, even if the vacancy occurs in the first year of a two-year term. **The law should be amended to remove the governor's discretion to not call a special election if the vacancy occurs on or before January 1st of a year the state legislature faces election, instead requiring that special elections be held.**
- 4) **Both houses should formalize and publicize policies to ensure the continuity of constituent services** where there are vacant seats, so that constituents can count on their concerns and problems being addressed.