

# CRS Report for Congress

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## Vacancies and Special Elections: 108<sup>th</sup> Congress

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### Summary

There have been five vacancies to date in the 108<sup>th</sup> Congress, all in the House. One, in the 2<sup>nd</sup> District of Hawaii, was caused by the death of the incumbent, who had been re-elected posthumously to the 108<sup>th</sup> Congress. The other four vacancies were caused by the resignation of the incumbent in the 19<sup>th</sup> District of Texas, the 6<sup>th</sup> District of Kentucky, the at-large district of South Dakota, and the 1<sup>st</sup> District of North Carolina. The first vacancy was filled by special election on January 4, 2003, three days before the 108<sup>th</sup> Congress convened. For further information, see CRS Report RS20814, *Vacancies and Special Elections: 107<sup>th</sup> Congress*. The second vacancy was filled by special election on June 3, 2003. The third vacancy was filled by special election on February 17, 2004. The fourth vacancy was filled by special election on June 1, 2004. The fifth vacancy was filled by special election on July 20, 2004. This report records vacancies in the offices of U.S. Representative and Senator that occur during the 108<sup>th</sup> Congress. It provides information on the former incumbents, the process by which these vacancies are filled, and the names of Members who fill the vacant seats. This report will be updated as events warrant. For additional information, see CRS Report 97-1009, *House and Senate Vacancies: How Are They Filled?*

### Procedure for Filling Vacancies in Congress

Vacancies in Congress occur when a Senator or Representative dies, resigns, declines to serve, or is expelled or excluded by either house. The Constitution requires that vacancies in both houses be filled by special election; but in the case of the Senate, it empowers the state legislatures to provide for temporary appointments to the Senate by the governor until special elections can be scheduled.<sup>1</sup>

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<sup>1</sup> For House vacancies, see U.S. Constitution, Article I, Section 2, clause 4, and 2 U.S.C. 8. For Senate vacancies, see U.S. Constitution, Article I, Section 3, and Amendment 17, paragraph 2.

**Senate.** Prevailing practice for Senate vacancies is for state governors to fill them by appointment, with the appointee serving until a special election can be held. The winner of the special election then serves for the balance of the term. In the event that the seat becomes vacant between the time of a statewide election and the expiration of the term, the appointee usually serves the remainder of the term. Oregon and Wisconsin are the only states that do not provide for gubernatorial appointments; their Senate vacancies can only be filled by election.

**House of Representatives.** All House vacancies are filled by special election. Scheduling for special elections is largely dependent on the amount of time remaining before the next regular elections for the House. When a vacancy occurs during the first session of Congress, a special election is always scheduled for the earliest possible time, preferably to coincide with elections regularly scheduled for other purposes in the district.

If, however, a seat becomes vacant within six months of the end of a Congress, some states hold a special election for the balance of the congressional term on the same day as the regular election. Winners of special elections in these cases are sometimes not sworn in immediately as Members of the House, Congress having often adjourned *sine die* before election day. They are, however, accorded the status of incumbent Representatives for the purposes of seniority, office selection, and staffing. Other states do not provide for a special election in these circumstances, and the seat remains vacant for the balance of that particular Congress.

For additional information, see CRS Report 97-1009, *House and Senate Vacancies: How Are They Filled?* by Sula P. Richardson and Thomas H. Neale.

**Table 1. Special Elections in the U.S. House of Representatives: 108<sup>th</sup> Congress (2003-2004)**

State-District	Incumbent (party)	Cause and date of vacancy		Candidates (party) (winner in bold type)	Date elected	Date sworn in
		Cause	Date			
HI — 2 <sup>nd</sup> <sup>a</sup>	Patsy Mink (D)	death	Sept. 28, 2002	<b>Ed Case (D)</b> <sup>a</sup>	Jan. 4, 2003 <sup>a</sup>	Jan. 7, 2003
KY — 6 <sup>th</sup> <sup>b</sup>	Ernie Fletcher (R)	resignation	Dec. 9, 2003	<b>Albert Benjamin “Ben” Chandler III (D)</b> <sup>b</sup> Alice Forgy Kerr (R) Mark Gailey (L)	Feb. 17, 2004	Feb. 24, 2004
NC — 1 <sup>st</sup> <sup>c</sup>	Frank Ballance (D)	resignation	June 11, 2004	<b>G.K. Butterfield (D)</b> Greg Dority (R) Tom Eisenmenger (L)	July 20, 2004	July 21, 2004
SD — AL <sup>d</sup>	William Janklow (R)	resignation	Jan. 20, 2004	<b>Stephanie Herseith (D)</b> Larry Diedrich (R)	June 1, 2004	June 3, 2004
TX — 19 <sup>th</sup> <sup>e</sup>	Larry Combest (R)	resignation	May 31, 2003	<b>Randy Neugebauer (R)</b> <sup>e</sup> Mike Conaway (R) <sup>e</sup>	June 3, 2003 <sup>e</sup>	June 5, 2003

<sup>a</sup> Three days before the 108<sup>th</sup> Congress convened on January 7, 2003, a special election was held to fill the vacancy caused during the 107<sup>th</sup> Congress by the death of Rep. Patsy Mink, who had been re-elected posthumously to the 108<sup>th</sup> Congress. (Rep. Patsy Mink died two days after the deadline for replacing her name on the ballot for re-election to the 108<sup>th</sup> Congress.) On January 4, 2003, Ed Case defeated 43 other candidates in a special election to fill that vacancy. The other candidates in the open special election were: Kabba Anand (N), Whitney T. Anderson, Paul Britos (D), John S. (Mahina) Carroll (R), Brian G. Cole (D), Charles (Lucky) Collins (D), Doug Fairhurst (R), Frank F. Fasi (R), Michael Gagne (D), Alan Gano (N), Carolyn Martinez Golojuch (R), G. Goodwin (G), Richard H. Haake (R), Chris Halford (R), Colleen Hanabusa (D), S. J. Harlan (N), Herbert Jensen (D), Kekoa D. Kaapu (D), Moana Keaulana-Dyball (N), Kimo Kaloi (R), Jeff Mallan (L), Barbara C. Marumoto (R), Sophie Mataafa (N), Matt Matsunaga (D), Bob McDermott (R), Mark McNett (N), Nick Nikhilananda (G), Richard (Rich)Payne (R), John (Jack) Randall (N), Jim Rath (R), Mike Rethman (N), Art P. Reyes (D), Pat Rocco (D), Bartle Lee Rowland (N), Bill Russell (N), John L. Sabey (R), Nelson J. Secretario (R), Steve Sparks (N), Steve Tataii (D), Marshall (Koo Koo) Turner (N), Dan Vierra (N), Clarence H. Weatherwax (R), and Solomon (Kolomona) Wong (N). Prior to winning the January 4, 2003 special election, Mr. Case had also won the special election that had been held on November 30, 2002, to fill the remainder of Rep. Mink’s term for the 107<sup>th</sup> Congress. He was not sworn in, however, as the 107<sup>th</sup> Congress was not in session. (For further information on the 107<sup>th</sup> Congress vacancy and special election see CRS Report RS20814, *Vacancies and Special Elections: 107<sup>th</sup> Congress*.)

<sup>b</sup> In Kentucky, Rep. Ernie Fletcher resigned from the House on December 9, 2003, and was sworn in as Governor of Kentucky. A special election to fill the vacancy caused by Rep. Fletcher’s resignation was held on February 17, 2004, at which time the House was in recess until Feb. 24, 2004. Representative Albert Benjamin “Ben” Chandler was sworn in on Feb. 24, 2004.

<sup>c</sup> In North Carolina, a special election to fill the vacancy in the 1<sup>st</sup> congressional district was held on July 20, 2004, to coincide with the state’s primary elections.

<sup>d</sup> In South Dakota, a special election to fill the vacancy in the at-large district was held on June 1, 2004, to coincide with the state’s primary elections.

<sup>e</sup> In Texas for the special election, which was held on May 3, 2003, the names of 17 candidates (regardless of party) appeared on a single ballot and the voters could choose any of these candidates: Richard Bartlett (R), John D. Bell (R), Jamie Berryhill (R) William M. (Bill) Christian (R), Mike Conaway (R), Thomas Flournoy (C), Kaye Gaddy (D), E.L. “Ed” Hicks (I), Carl H. Isett (R), David R. Langston (D), Donald May (R), Randy Neugebauer (R), Julia Penelope (G), Richard (Chip) Peterson (L), Jerri Simmons-Asmussen (D), Vickie Sutton (R), and Stace Williams (R). A candidate who received a majority of the votes would have been elected to the office. Because no candidate received a majority of the votes, a special runoff election was held on June 3, 2003, and the names of the two top vote getters were on that ballot.

**Key to Abbreviations for Party Affiliation**

C	Constitution	D	Democratic	G	Green	I	Independent
L	Libertarian	N	Nonpartisan	R	Republican		