

CRS Report for Congress

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Vacancies and Special Elections: 109th Congress

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Summary

This report records vacancies in the offices of U.S. Representative and Senator that occur during the 109th 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. There have been three vacancies to date in the 109th Congress, all in the House. One, in the 5th District of California, was caused by the death of the incumbent before the convening of the 109th Congress, to which he had been re-elected. The other two vacancies were caused by the resignation of the incumbent in the 2nd District of Ohio and the 48th District of California. The first vacancy was filled by special election on March 8, 2005. The second vacancy was filled by special election on August 2, 2005. Third vacancy will be filled by a special open primary election on October 4, 2005, and if necessary, by a special general election on December 6, 2005. 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 governors until special elections are held.¹

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

¹ For House vacancies, see U.S. Constitution, Art. I, Sec. 2, cl. 4, and 2 U.S.C. 8. For Senate vacancies, see U.S. Constitution, Art. I, Sec. 3, and Amendment 17, paragraph 2.

the only states that do not provide for gubernatorial appointments; their Senate vacancies can be filled only 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 an election 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: 109th Congress (2005-2006)

State-District	Incumbent (party)	Cause and date of vacancy		Candidates (party) (winner in bold type)	Date elected	Date sworn in
		Cause	Date			
CA — 5 th ^a	Robert T. Matsui (D)	death	Jan. 1, 2005	Doris Matsui (D) Julie Padilla (D) Charles “Carlos” Peneda, Jr. (D) Serge A. Chernay (R) John Thomas Flynn (R) Michael O’Brien (R) Shane Singh (R) Bruce Robert Stevens (R) Pat Driscoll (G) Gale Morgan (L) John C. Reiger (P&F) Leonard Padilla (I)	Mar. 8, 2005 ^a	Mar. 10, 2005
CA — 48 th	Christopher Cox (R)	resignation	Aug. 2, 2005	^b	Oct. 4, 2005 ^b	^b
OH — 2 nd	Rob Portman (R)	resignation	Apr. 29, 2005	Jean Schmidt (R) Paul Hackett (D)	Aug. 2, 2005 ^c	Sept. 6, 2005

- a. In California, for the special open primary election, which was held on Mar. 8, 2005, the names of 12 candidates (regardless of party) appeared on a single ballot, and voters could choose any party candidate. Because a candidate received a majority of the votes, no special runoff general election was held. (If no candidate had received a majority of the votes, a special runoff general election would have been held on May 3, 2005.)
- b. In California, Rep. Christopher Cox resigned on Aug. 2, 2005, and was sworn in as Chairman of the Securities and Exchange Commission on Aug. 3, 2005. A special open primary election to fill the vacancy caused by his resignation will be held on October 4, 2005. The names of the candidates (regardless of party) will appear on a single ballot, and voters can choose any party candidate. If no candidate receives a majority of the votes, a special runoff general election will be held on December 6, 2005.
- c. In Ohio, Rep. Rob Portman resigned at noon on Apr. 29, 2005, and was sworn in as U.S. Trade Representative later that day; a special election to fill the vacancy caused by his resignation was held on Aug. 2, 2005.

Key to Abbreviations for Party Affiliation

D Democrat
G Green
I Independent
L Libertarian
P&F Peace & Freedom
R Republican