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House of Representatives Vacancies: How Are They Filled?

Vacancies in the office of U.S. Representative occur when an incumbent Member dies, resigns, or leaves office for any reason before the end of their term. Multiple special elections to fill vacancies in the House of Representatives typically take place in each Congress, through processes established by the state where the vacant seat is located. The same procedures apply if a Member-elect dies between the election and the day on which the new Congress to which they were elected convenes, or if the Member-elect is otherwise unable or unwilling to be sworn in.

Constitutional Provisions

The Constitution addresses House vacancies in Article I, Section 2, clause 4:

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

Typically, state governors—“the Executive Authority”—are authorized to issue orders for special elections to fill House vacancies. In contrast with the Senate, there is no constitutional provision for the appointment of interim Representatives.

Scheduling Special Elections

The *U.S. Code* (2 U.S.C. §8(a)) authorizes state legislatures to provide for scheduling of special elections to fill House vacancies:

the time for holding elections in any State, District, or Territory for a Representative to fill a vacancy, whether such vacancy is caused by the death, resignation, or incapacity of a person elected, may be prescribed by the laws of the several States and Territories respectively.

Responsibility for ordering a special election is thus vested in the governors of the states, and scheduling is prescribed in state law. Once a vacancy has occurred, most state laws set a window of time, or prescribe an exact number of days after the vacancy occurs, in which nomination procedures begin and the special election must be held. In the 118th Congress, 11 special elections were held to select successors for vacant House seats; these special elections were held, on average, 120 days after the vacancy occurred, with a range of 67 to 195 days.

The timing of a vacancy may affect how a special election is scheduled. Scheduling for elections for House vacancies that occur earlier or later during a Congress presents different issues to state authorities and may be treated differently under state laws. Additionally, some vacancies (due to resignation or retirement) may be anticipated in

advance of a Member’s departure from the House, whereas others (such as those due to death) may be unexpected.

Scheduling for First Session Vacancies

State election authorities generally, though not always, seek to schedule special elections for House vacancies to coincide with some regularly scheduled election date in the affected district (often, a local election that regularly occurs in an odd-numbered year). By holding a special election on the same date as other regularly scheduled elections in the district, state and local governments can avoid the cost and logistical effort associated with conducting a separate election on a one-time basis. They can also arguably expect greater voter turnout than for a free-standing election.

States may also schedule special elections for a separate date. For example, in the first session of the 118th Congress, a special election was held in the Fourth District of Virginia on February 21, 2023, to fill the vacancy created 85 days prior by the death of Representative A. Donald McEachin on November 28, 2022.

Scheduling for Second Session Vacancies

Procedures governing House vacancies occurring during the second session of a Congress differ from state to state, and may differ from state procedures governing first session vacancies. In some states, processes for filling second session vacancies are dependent on the amount of time between the vacancy and the next general election. For instance, if a House seat becomes vacant within six months of the end of the Congress, some states provide that the seat shall remain vacant for the balance of the term.

Other states may seek to combine special election dates with regular election dates; for example, they may schedule special primaries to be held the same day as the regular primary and special general elections to be held the same day as the regular general election, when the seat is filled for the next Congress. In these cases, the winner of the special general election is sworn in for the remainder of the term, unless Congress has adjourned sine die before election day. If the same nominee wins both the simultaneous special and regular general elections, they will also be a Representative-elect for the next Congress, sworn in when the new Congress convenes.

Winners of House special elections held, as noted above, concurrently with those for the next Congress may not be sworn in as Representatives in the expiring Congress if that Congress has adjourned sine die before election day. They are, however, accorded the status of incumbent Representatives for the purposes of seniority, office selection, and staffing.

Some states may also hold separate special elections for second session vacancies. For example, in the second session of the 118th Congress, a special election for New Jersey's Tenth District was held on September 18, 2024, to fill the vacancy created by the death of Representative Donald Payne, Jr., 147 days earlier on April 24, 2024.

Scheduling Special Elections in Extraordinary Circumstances

Following the terrorist attacks of September 11, 2001, Congress enacted provisions in the *U.S. Code* (2 U.S.C. §8(b)) for special elections to fill House vacancies in extraordinary circumstances, defined as occurring any time the Speaker of the House of Representatives announces that vacancies in House membership exceed 100. Under these circumstances, the special elections to fill House vacancies shall take place not later than 49 days after the Speaker's announcement, unless the regular general election for the House, or another special election for the office involved, is to be held within 75 days of the vacancy announcement.

Nominations

Nomination procedures for special elections to fill House vacancies vary widely among the states. Several of the approaches states use for these nominations are briefly summarized below for illustrative purposes, but this is not intended to provide a comprehensive discussion of all options states use to select candidates for House vacancies.

Some states, for example, require a special primary election to determine the major party nominees, while minor party and independent candidates generally qualify by filing petitions, the required number of which is set by state law, to gain placement on the general election ballot. A plurality of votes is sufficient to win the nomination in most states, but some require a majority—50% or more of the votes cast—to win nomination in the primary. In these states, if no candidate attains a majority, then a runoff, or second, primary is held at a later date, in which the two candidates winning the most primary votes compete for the nomination.

In another variation, the “top-two” primary, all candidates are listed on the same primary ballot. The two candidates winning the most votes, regardless of their partisan affiliations, advance to the general election.

Other states provide for nomination by party-established procedures, such as party congressional district caucuses and conventions, or meetings of party committees or interested party members in jurisdictions comprising the affected congressional district.

General Elections

In nearly all states, a plurality is sufficient to elect in general elections to fill House vacancies. Some states, however, require a majority to elect in congressional special elections.

Staff Disposition

House Rule II, cl. 2(i) provides that “[t]he Clerk shall supervise the staff and manage the office of a Member, Delegate, or Resident Commissioner who has died, resigned, or been expelled until a successor is elected.” The *U.S. Code* further provides that staff of a deceased or resigned Representative are compensated until a successor is elected to fill the vacancy, performing duties under the direction of the Clerk of the House, or until the term expires (2 U.S.C. §5324).

House Vacancies in the 118th Congress

During the 118th Congress, to date, there have been 16 House vacancies. Five vacancies occurred during the first session of the 118th Congress, and nine vacancies have occurred in the second session (to date). Five of the vacancies from the second session of the 118th Congress remain at the time of this writing.

In recent Administrations, Presidents beginning their first term in office have sometimes nominated incumbent Representatives to executive branch positions. For example, in 2009, incoming President Barack Obama selected Representative Rahm Emanuel to serve as his chief of staff; Representative Ray LaHood to serve as Secretary of Transportation; and Representative Hilda Solis to serve as Secretary of Labor. At the beginning of his first term in 2017, President Donald Trump nominated Representative Tom Price to be Secretary of Health and Human Services and Representative Mike Pompeo to be the director of the Central Intelligence Agency. In 2021, incoming President Joe Biden selected Representative Cedric Richmond to serve as senior advisor; Representative Deb Haaland to serve as Secretary of the Interior; and Representative Marcia Fudge as Secretary of Housing and Urban Development.

Representatives who are selected to join an incoming President's Administration typically resign their House seats early in a new Congress, and then their replacements in the House are chosen by special elections. The timing of these vacancies may vary, depending on when the President's announcement is made, and whether or not the new position requires Senate confirmation.

At the time of this writing (December 16, 2024), President-elect Donald Trump has indicated he is considering two incumbent House Members for executive positions in his Administration. Representative Michael Waltz of Florida is expected to be appointed as national security advisor, a position that does not require Senate confirmation. President-elect Trump has also announced his intent to nominate Representative Elise Stefanik of New York as United Nations ambassador, a position that will require Senate confirmation.

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