

No. 10-821

In the Supreme Court of the United States

PAT QUINN, GOVERNOR OF THE STATE OF ILLINOIS,
Petitioner,

v.

GERALD JUDGE, DAVID KINDLER, AND
ROLAND W. BURRIS, U.S. SENATOR,
Respondents.

*On Petition for Writ of Certiorari to the United States
Court of Appeals for the Seventh Circuit*

**BRIEF OF THE STATES OF LOUISIANA, COLORADO,
IOWA, KENTUCKY, MAINE, MARYLAND,
MASSACHUSETTS, MISSOURI, NEW MEXICO,
NEVADA, OHIO, SOUTH CAROLINA, AND UTAH,
AMICI CURIAE IN SUPPORT OF PETITIONER**

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QUESTION PRESENTED

Whether, contrary to longstanding practice and the laws of many States, the Seventeenth Amendment requires a special election to fill a vacant Senate seat “every time that a vacancy happens in the state’s senate delegation”—as the decision below holds—even where the vacated term will expire in the normal course following the next, biennial Congressional election.

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INTERESTS OF *AMICI* STATES

This case poses a recurring question of critical importance to the states and their citizens: how to fill senate seats left vacant by death or resignation. Exercising their considerable discretion over the times, places, and manner of holding senate elections, every state has enacted laws for electing replacement Senators. These laws and derivative practices reflect nearly a century of state experience. The Seventh Circuit's decision in this case interprets the Seventeenth Amendment in complete isolation from that accumulated practical wisdom. Its unheard-of rule requiring a special election for every senate vacancy, regardless of its timing, threatens to upend the vacancy-election laws of every state.

In the face of this potentially significant disruption to nationwide election practices, the *amici* states urge the Court to grant Illinois' petition.

SUMMARY OF ARGUMENT

Senate vacancies are a historical certainty. Since the 1913 ratification of the Seventeenth Amendment, which provides for direct popular election of senators, vacancies have occurred, on average, once every 174 days.¹ States have long exercised their constitutional discretion to fill those vacancies in a manner that best protects compelling state and voter interests. That discretion derives

¹ There were 35,697 days between the ratification of the Seventeenth Amendment on April 8, 1913 and January 1, 2011. This calculation assumes 205 vacancies during that period.

from two sources. The Elections Clause empowers states to prescribe the “Times, Places and Manner of holding Elections for Senators and Representatives.” U.S. CONST. art. I, §4, cl. 1; *see also Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 451 (2008) (“The States possess a *broad* power to prescribe the Times, Places, and Manner of holding Elections for Senators and Representatives.”) (emphasis added) (internal quotation marks omitted). And the Seventeenth Amendment itself directs that

the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election *as the legislature may direct*.

U.S. CONST. amend. XVII para. 2 (emphasis added); *see also Valenti v. Rockefeller*, 292 F. Supp. 851, 856 (W.D.N.Y. 1968), *aff’d*, 393 U.S. 405 (1969) (reasoning that the Seventeenth Amendment’s drafters did not intend to depart from the normal rule of state discretion to regulate the time and manner of elections).

Vacancies occurring late in a six-year senate term pose unique problems for states. Elections to fill the soon-to-expire term are impractical given the fast-approaching regular election for the following term. While states have developed various strategies for filling these vacancies, one sensible option has always been to bypass a special replacement election and fill the vacancy via the regularly scheduled election for the following six-year term. This

practice has become nearly uniform in recent decades, *see infra* Part I(C), and no court has ever seriously disputed that it lies within the states' constitutionally guaranteed power to "direct" the filling of senatorial vacancies. Until now.

When President Obama resigned his senate seat, Illinois planned to fill the vacancy via the regular November 2010 election for the new term. That route was consistent with its vacancy-election law, and with those of most states. But the Seventh Circuit rejected that practice and, in doing so, announced an unprecedented and misguided rule of constitutional law: that states must always stage a replacement election for the unexpired senate term no matter the timing of the vacancy.

As detailed by petitioner, *see* Pet. 13-16, the Seventh Circuit's decision conflicts with this Court's decisions in *Valenti, supra*, and *Rodriguez v. Popular Democratic Party*, 457 U.S. 1 (1982). That conflict alone merits review. SUP. CT. R. 10(c). But the Seventh Circuit's error goes far deeper in its practical implications for state practice generally, making review particularly urgent.

Flatly stated, the Seventh Circuit's unprecedented rule contradicts the well-established interpretation of the Seventeenth Amendment as manifested by the longstanding laws and practices of the states. If applied nationwide, its rule would facially invalidate the vacancy-election laws of 19 states and cast serious constitutional doubt on the application of the laws of the remaining states. *See infra* Parts I(A) & I(B).

But the disruptive impact of the Seventh Circuit's rule is most dramatically illustrated by fact that it would nullify what has become the prevalent approach for dealing with late-term vacancies. *See infra* Part I(C). Since 1913, there have been 83 late-term² senate vacancies caused by resignation or death. In 34 of those instances, pursuant to a state's vacancy law, the governor has appointed a replacement senator to serve out the remainder of the term until election of a new senator at the next congressional election. The Seventh Circuit has now declared that common, and common-sense, historical practice flatly unconstitutional.

In other words, according to the rule adopted by the Seventh Circuit, the following 34 appointed senators—unbeknownst to them—have served unconstitutional senate terms:³

George B. Martin (KY), appointed 1919
Frank B. Willis (OH), 1921
Elijah S. Granmer (WA), 1932
Rose McConnell Long (LA), 1936
Thomas M. Storke (CA), 1938
Berkley L. Bunker (NV), 1940

² That is, vacancies occurring in the final two years of the term.

³ The state *amici* have set forth the full data for vacancies since 1913 in tabular form as an appendix to this brief. The data are derived from the Biographical Directory of the United States Congress, <http://bioguide.congress.gov/biosearch/biosearch.asp>; and Senate Historical Office, Senators of the United States 178-2011, <http://www.senate.gov/artandhistory/history/resources/pdf/chronlist.pdf> (sites last visited January 12, 2011).

G. Lloyd Spencer (AR), 1941
Wilton E. Hall (SC), 1944
Hugh B. Mitchell (WA), 1945
Frank P. Briggs (MO), 1945
Edward P. Carville (NV), 1945
Spessard L. Holland (FL), 1946
Ralph E. Flanders (VT), 1946
Vera C. Bushfield (SD), 1948
Charles E. Daniel (SC), 1954
Joseph H. Bottum (SD), 1962
Pierre Salinger (CA), 1964
Walter F. Mondale (MN), 1964
Robert P. Griffin (MI), 1966
Charles E. Goodell (NY), 1968
Elaine S. Edwards (LA), 1972
Howard M. Metzenbaum (OH), 1974
Wendell R. Anderson (MN), 1976
Kaneaster Hodges, Jr. (AR), 1977
Paul G. Hatfield (MT), 1978
George J. Mitchell (ME), 1980
Nicholas F. Brady (NJ), 1982
David K. Karnes (NE), 1987
Lincoln Chafee (RI), 1999
Dean Barkley (MN), 2002
Lisa Murkowski (AK), 2002
Robert Menendez (NJ), 2006
Michael F. Bennett (CO), 2009
George S. Lemieux (FL), 2009

An interpretation of the Seventeenth Amendment that overturns such a widespread, longstanding, and common-sense practice cannot be right.

Clarifying the proper scope of state discretion under the Seventeenth Amendment will remove the

cloud of uncertainty hanging over state election practices created by the Seventh Circuit's opinion. While no other circuit has (yet) adopted the Seventh Circuit's approach, waiting is not the wise course here. For when the next senatorial vacancy inevitably occurs, the Seventh Circuit's opinion virtually assures a challenge to the appointment. And however that challenge fares, it will inevitably sow chaos, confusion, and cost into the state's election machinery. The Court can avoid that unhappy and predictable result by reviewing the Seventh Circuit's decision now.

ARGUMENT

I. THE OPINION BELOW CONFLICTS WITH LONG-ESTABLISHED STATE LAWS AND PRACTICES.

A. Past practice is an indispensable guide to constitutional construction.

While the Seventh Circuit minutely parsed the inconclusive language of the Seventeenth Amendment, it did so in isolation from the most authoritative guide to what that language means: the long-established practices of the states in implementing it. On the one hand, the court relied on an abstract examination of the Amendment's text to craft an unheard-of rule requiring replacement elections in every instance. The states, on the other hand, have long interpreted the Amendment as affording them discretion to bypass special replacement elections under certain common-sense circumstances. When interpreting the text of the

Seventeenth Amendment, the Seventh Circuit simply “disregard[ed] the gloss which life has written upon it.” *Nashville, C. & St. L. Ry. v. Browning*, 310 U.S. 362, 369 (1940).

In contrast to the Seventh Circuit’s approach, this Court has long drawn on state practices to help construe open-textured constitutional language:

The framers of the constitution employed words in their natural sense But where there is ambiguity or doubt, or where two views may well be entertained, contemporaneous and subsequent practical construction [by the states] is entitled to the greatest weight.

McPherson v. Blacker, 146 U.S. 1, 7 (1892); *see also*, *e.g.*, *McCulloch v. Maryland*, 17 U.S. 316, 401 (1819) (reasoning that a “doubtful question” of constitutional construction, “if not put at rest by the practice of the government, ought to receive a considerable impression from that practice”). Most relevant to this case, for instance, the Court has deferred to states’ longstanding interpretation of their powers under the Elections Clause, cautioning that “the terms of the constitutional provision provide no such clear and definite support for a contrary construction as to justify disregard of *the established practices of the states.*” *Smiley v. Holm*, 285 U.S. 355, 369 (1932) (emphasis added).

These interpretive principles were on display in the three-judge panel opinion in *Valenti*, which this

Court affirmed. *See* Pet. at 13-15 (explaining significance of *Valenti*). In upholding the constitutionality of a New York vacancy-election law that would have resulted in a 29-month interim senate appointment before a replacement election, *Valenti* recognized that decades of practical experience had allowed the states to subject the vacancy-election problem to “careful scrutiny” and to adjust their laws accordingly. 292 F. Supp. at 859. The court relied heavily on the fact that New York’s statute was the product of a growing historical consensus. *Id.* at 858 (“there is ample authority for relying on this evidence [of historical practices] as one persuasive guide to constitutional construction”). Consistent with the court’s decision, no election was ever held to fill the unexpired term. The seat was instead filled in the already-scheduled election for the following six-year term.

Over 40 years after *Valenti*, New York’s 1968 approach to filling senate vacancies continues to represent that of a large majority of states, including Illinois. Thus, in rejecting Illinois’ common practice, the Seventh Circuit disregarded the same historical consensus that *Valenti* found determinative. An examination of the extent to which the Seventh Circuit’s unprecedented mandatory-election rule contradicts established state practices reveals the flaws in its constitutional interpretation.

B. More than a third of states have formally codified the very practice the Seventh Circuit has forbidden.

The clearest manifestation of the consensus against late-term replacement elections is that a third of the states have proscribed them. The vacancy-election laws of 19 states prohibit special replacement elections for senate seats under certain circumstances. Louisiana law, for example, provides that:

If a vacancy occurs in the office of United States senator and the unexpired term is one year or less, *no special election shall be called by the governor* and, if a senator is appointed to fill the vacancy, he shall serve for the remainder of the unexpired term, and his successor shall be elected at the next regular election for United States senator.

LA. REV. STAT. ANN. § 18:1278(C) (West 2011) (emphasis added).⁴ Other states, such as Alaska,

⁴ See also CAL. ELEC. CODE § 10720 (West 2010); CONN. GEN. STAT. ANN. § 9-211(a)(3) (West 2010); IOWA CODE §§ 69.8, 69.11, 69.13 (2010); MD. CODE ANN., ELEC. LAW § 8-602(a)(3) (West 2010); MASS. GEN. LAWS ch. 54, § 140 (2010); MINN. STAT. § 204D.28 (2010); MISS. CODE ANN. § 23 15-855(2) (West 2010); NEB. REV. STAT. § 32-565(2)(a) (2009); N.Y. PUB. OFF. LAW § 42(4-a) (McKinney 2010); N.D. CENT. CODE § 16.1-13-08 (2009); OHIO REV. CODE ANN. § 3521.02 (West 2011); 26 OKL. ST. ANN § 12-101(B) (West 2010); S.C. CODE ANN. § 7-19-20 (2010); S.D. CODIFIED LAWS § 12-11-6 (2010); W. VA. CODE § 3-10-3 (2010); WYO. STAT. ANN. § 22-18-111(a) (2009).

more explicitly time their cutoff dates to allow for primaries:

[I]f the vacancy occurs on a date that is less than 60 days before or is on or after the date of the primary election in the general election year during which a candidate to fill the office is regularly elected, the governor may not call a special election.

ALASKA STAT. ANN. § 15.40.140 (West 2010). Taking yet another approach, Missouri makes no mention of the length of the unexpired term, but instead requires appointees to serve until the January following the general election, precluding a special election in the interim:

[T]he person appointed . . . shall continue in office until the first Monday in January next following the first ensuing general election, at which general election a person shall be elected to fill the unexpired portion of the term, *or for the ensuing regular term*, as the case may be, and the person so elected shall enter upon the discharge of the duties of the office the first Monday in January next following his election

MO. REV. STAT. §§ 105.030, 105.040 (2010) (emphasis added).

Whatever their formulation, these provisions manifest states' judgments that holding multiple elections in close succession for the same senate seat

would do more harm than good. *See infra* Part II. The Seventh Circuit's departure from this formerly uncontroversial consensus could not be more radical: its rule, if applied nationally, would facially invalidate all 19 of these statutes. That sweeping rejection would, perhaps, be less disconcerting if the vacancy-election laws of the other two-thirds of the states took the opposite approach. But that is emphatically not the case. As explained in the following section, these 19 states have simply formalized the consensus position demonstrated by the practices of the remaining states.

C. The Seventh Circuit's rule conflicts with the practices of the overwhelming majority of the remaining states.

The provisions discussed above leave no doubt about those states' position on late-term vacancy elections: they categorically reject them. But even if states do not formally prohibit such elections, they can—and do—opt to bypass them in practice. Illinois' vacancy election law is, after all, silent on the issue. It reads, in its entirety:

When a vacancy shall occur in the office of United States Senator from this state, the Governor shall make temporary appointment to fill such vacancy until the next election of representatives in Congress, at which time such vacancy shall be filled by election, and the senator so elected shall take office as soon thereafter as he shall receive his certificate of election.

10 ILL. COMP. STAT. 5/25-8 (2010). Illinois sensibly interpreted its statute to allow it to fill President Obama’s vacant seat via the upcoming general election for the 2011-17 term—e.g., the “next election of representatives in Congress.” *Id.* This application of its law, rather than the explicit terms of that law, reflected the same considerations that led 19 other states to codify the practice.

States with laws similar to Illinois have, until now, had no reason to believe that they could not apply their laws as Illinois does. Twenty-two states⁵ laws are identical to Illinois’ in that they provide for the vacancy to be filled in the next regularly scheduled statewide general election.⁶ The eight

⁵ Out of the 33 states not already discussed in Part II(B), *supra*.

⁶ See ARIZ REV. STAT. ANN. § 16-222 (2010); COLO. REV. STAT. ANN. § 1-12-201 (West 2010); DEL. CODE ANN. tit. 15 § 7321 (West 2010); FLA. STAT. § 100.161 (2010); GA. CODE ANN. §21-2-542 (West 2010); HAW. REV. STAT. § 17-1 (2010); IDAHO CODE ANN. § 59-910 (2010); IND. CODE § 3-13-3-1 (2010); KAN. STAT. ANN. § 25-318 (2010); KY. REV. STAT. ANN. § 63.200 (West 2010); ME. REV. STAT. tit. 21, § 391 (2009); MICH. COMP. LAWS § 168.105 (2010); MONT. CODE ANN. § 13-25-202 (2009); NEV. REV. STAT. § 304.030 (2010); N.H. REV. STAT. ANN. § 661:5 (2010); N.J. STAT. ANN. § 19:3-26 (West 2010); N.M. STAT. ANN. § 1-15-14 (West 2010); N.C. GEN. STAT. § 163-12 (West 2010); 25 PA. STAT. ANN. § 2776 (West 2010); TENN. CODE ANN. § 2-16-101 (2010); UTAH CODE ANN. § 20A-1-502 (West 2010); VA. CODE ANN. § 24.2-207 (2010). All but three of these states mirror Illinois in defining “general election” to mean the biennial congressional election. Only Michigan, Pennsylvania, and Virginia tie the replacement election to a *yearly* statewide election, either the congressional election in even-numbered

remaining states require a special election within a certain time period after the vacancy, typically several months.⁷ But even those states, like Illinois, set the replacement election on the date of the general election whenever possible in light of the overall time limit. All of these laws demonstrate the flexibility inherent in vacancy statutes. Even if a particular state has not taken a firm position on how to handle late-term vacancies, Illinois' approach of bypassing the replacement election is always an implicit and common-sense option. The Seventh Circuit's rule would erase it.

This would be a cause for concern even if the limitation on state practice were purely theoretical. But it is not: the impact of the Seventh Circuit's rule would be widespread and concrete. Recent historical practice shows that most states would almost certainly apply their statutes exactly as Illinois does, and would therefore experience the same kind of disruption that Illinois has already faced from application of the Seventh Circuit's misguided rule.

The Seventh Circuit attempted to downplay the disruption its rule would cause. The court claimed that, out of 193 vacancies since the Seventeenth Amendment's ratification, there were only 27

years, or the gubernatorial or municipal election in odd-years.

⁷ See ALA. CODE §§ 36-9-7 to -9 (2010); ARK. CODE ANN. § 7-8-102 (West 2010); OR. REV. ST. § 188.120 (2010); R.I. GEN. LAWS § 17-4-9 (2010); TEX. ELEC. CODE ANN. §§ 203.004; 204.001 to 005 (West 2010); VT. ST. ANN. tit. 17, § 2621 (2010); WASH. REV. CODE § 29A.28.041 (2011); WISC. STAT. § 8.50 (2010).

instances in which a replacement election never occurred. App. 36a-37a. The court did not properly frame the data, however. Instead of looking at vacancies in general, the court should have focused on the far more relevant class of *late-term* vacancies. Out of 83 such vacancies since 1913, the term expired without a replacement election 34 times.⁸ Narrowing the focus to seats vacated in the final year shows the terms expiring without a replacement election in 18 of out of 37 instances. In other words, the Seventh Circuit's rule would have invalidated roughly *40 percent* of the appointments made in response to late-term vacancies since the ratification of the Seventeenth Amendment.

Even more significant than the raw numbers is the marked historical trend in state practice: over the past thirty years, late-term appointees have almost always filled out the term. Since 1980, there have been ten late-term vacancies. In all but three instances, the states opted to bypass a special replacement election. The last example of the sort of simultaneous regular and special election forced on Illinois in 2010 seems to have occurred in 1986. *See* Part II, *infra*.

⁸ In most of these cases, the appointee served out the remainder of the term. In some instances, however, the appointee resigned slightly early to allow the winner of the next full term to take office early and thus gain seniority. These cases are distinct from the so-called "technical resignations" that were excluded from both the Seventh Circuit's and petitioner's data, App. 36a; Pet. 21, in that the original vacancies in the seat took place prior to the election for the next term.

Simply put, experience matters. Decades of addressing the vacancy problem have led the states to a consensus that late-term vacancy elections are a bad idea. Whether manifested explicitly through statutes or implicitly through practice, this consensus is a “persuasive guide to constitutional construction.” *Valenti*, 292 F. Supp. at 858. The Seventh Circuit’s refusal to follow that guide casts critical doubt on the soundness of its novel reading of the Seventeenth Amendment.

II. STATES HAVE COMPELLING INTERESTS IN AVOIDING THE TYPE OF LATE-TERM ELECTION IMPOSED ON ILLINOIS.

The consensus against late-term vacancy elections did not develop in a vacuum. States have a powerful interest in ensuring a smoothly functioning election process. *See John Doe No. 1 v. Reed*, 130 S. Ct. 2811, 2819 (2010) (“The State’s interest in preserving the integrity of the electoral process is undoubtedly important.”); *Anderson v. Celebrezze*, 460 U.S. 780, 796 (1983) (“There can be no question about the legitimacy of the State’s interest in fostering informed and educated expressions of the popular will in a general election”). Avoiding redundant elections for soon-to-expire senate seats would further this overarching interest in a variety of significant ways. *See Pet.* at 19-20 (explaining that the Seventh Circuit’s rule would lead to unnecessary vacancies in other offices and would distort campaign contribution limits). This section highlights two of the most compelling: facilitating primary elections and avoiding voter confusion.

Direct primary elections serve the critical function of encouraging full democratic participation in choosing candidates. *See, e.g., Valenti*, 292 F. Supp. at 862. The need for a delay between a vacancy and the replacement election to allow for primaries is either explicit or implicit in most vacancy-election statutes.⁹ But the Seventh Circuit’s mandatory-election rule would force states faced with late-term vacancies to skip primaries in order to hold a replacement election before the term expires. That is exactly what happened in Illinois last November. Pet. at 10-11.

A state’s decision to select replacement candidates through primaries is “supported by policy considerations even more compelling than those which justify the prohibition of vacancy elections in ‘off-years.’” *Valenti*, 292 F. Supp. at 861. Indeed, as the *Valenti* court noted, “[t]he clear purpose of the Seventeenth Amendment was to give effect to the direct voice of the people in the selection of Senators.” *Id.* at 864 (citing Sen. Rep. No. 961, 61st Cong., 1st Sess. (1911)). In light of this goal, the

⁹ *See Valenti*, 292 F. Supp. at 861 (“surely the need for at least some delay to allow for the nomination of candidates is implicit in all of the statutes”). Some states’ statutes explicitly provide for a particular interval before an election can be held. *See, e.g.,* WISC. STAT. § 8.50 (2010) (election to be held between 62 and 77 days after vacancy). Others ensure for minimum intervals through rollover provisions. *See, e.g.,* ME. REV. STAT. tit. 21, § 391 (2009) (if a vacancy occurs less than 60 days before the statewide primary, the replacement election is deferred to the *second* successive general election).

Amendment’s drafters and ratifiers left it to the states to choose whether to delay—or forego—a replacement election in order to allow the public, rather than party-committee members, to select candidates for this important office. *Id.* at 862. The Seventh Circuit’s rule would take this discretion away from the states—exactly the result that *Valenti* rejected.

Beyond primaries, however, the Seventh Circuit’s rule also threatens the proper functioning of the elections themselves. Most states’ vacancy-election laws either require or prefer that a senate vacancy be filled in the next general election. *See supra* Part I(C). Thus, the only way for these states to comply with the Seventh Circuit’s rule without rewriting their laws would be to hold the same sort of simultaneous special and general elections Illinois was forced to hold in 2010. Such dual elections pose a significant threat of voter confusion. *See Bullock v. Carter*, 405 U.S. 134, 145 (1972) (holding that each state has a legitimate interest in regulating the number of candidates on the ballot in order to “prevent the clogging of its election machinery, [and] avoid voter confusion”).

Requiring voters to place two votes on the same ballot for a single senate seat virtually guarantees errors. Already-crowded ballots would include two lists of largely redundant names. Many voters are likely to be unsure whether the double listing is a printing error, or if they should select the same name twice. As petitioner noted, the results of Illinois’ 1970 election seem to document such voter

confusion. That year, a court order required the state to stage simultaneous general and special elections for the same House of Representatives seat. Returns showed that 2000 more votes were cast to fill the unexpired term, which was listed first on the ballot, than for the upcoming full term. Pet. at 18.

More recent elections bear out this concern. Voters in the Rochester, New York area were called upon in November 2010 to make two selections for the same House seat—one to fill out the remainder of the term and one for the following term. Local news reports warned of the potential for confusion and referred voters to sample ballots.¹⁰ Nonetheless, of 210,146 ballots cast in the election, 12,044 more contained “blank” or “void” entries for the replacement selection than for the full term.¹¹

That same day, voters in Pennsylvania’s 12th Congressional District participated in simultaneous special and general elections for John Murtha’s

¹⁰ See, e.g., *29th Congressional District: Vote Twice on Election Day*, WHEC.com, <http://www.whec.com/news/stories/s1809722.shtml?cat=565>; Sean Carroll, *Confusion Winning This Race*, WHAM.com, http://www.13wham.com/news/local/story/NY-29-Confusion-Winning-This-Race/a17fo4ISQkq_4V9aT_VEHw.csp (last visited January 7, 2011).

¹¹ Compare <http://www.elections.state.ny.us/NYSBOE/elections/2010/general/2010Congress.pdf> (results for general election, showing 11,204 “blank” or “void” votes out of 210,145 cast), with <http://www.elections.state.ny.us/NYSBOE/Elections/2010/Special/29thCDResults.pdf> (results for special election, showing 23,249 “blank & void” votes out of 210,146 cast).

former seat in the House of Representatives. Reporting on the earlier special primary—likewise a simultaneous general/special affair—a local newspaper commented:

Primary day is usually a cut-and-dried affair: Democrats vote for Democrats, Republicans vote for Republicans, and that's that. But there is nothing normal about Tuesday's vote in the 12th Congressional District. For starters, there are two ballots—a special and a primary—for the same congressional seat. There are six total candidates, but one of them appears only on the special ballot and three others appear only on the primary. Two candidates will be listed on both. People registered with third parties or those who are unaffiliated—voters who normally cannot participate in Pennsylvania primaries—can vote Tuesday, but only in the special election. Got all that?

Mike Faher, *Unusual Ballot May Cause Confusion in the 12th District*, Tribune-Democrat, May 15, 2010 (paragraphs condensed).¹² Voter confusion appears to have affected the November election day, as well: whereas 185,226 votes were tallied for candidates in the general election, candidates in the special

¹² Available at <http://tribune-democrat.com/local/x712209306/Unusual-ballot-may-cause-confusion-in-the-12th-district> (last visited January 12, 2011).

election only received 137,189 votes.¹³ The drop-off between the two votes was roughly 26%.

Voter participation statistics for simultaneous general/special senate elections are more difficult to come by. The last simultaneous such election before Illinois' 2010 court-ordered election appears to have occurred in North Carolina in November 1986. Voters chose between the same two candidates to fill the unexpired term ending in January 1987 as well as the following full term. Returns showed that 56,455 more votes were cast for the full term than for the replacement election.¹⁴

These statistics do not prove definitively that voter confusion affected these elections—voter confusion, after all, is notoriously difficult to document. But why else would voters leave their ballots blank for an office as important as United States senator? Such *de facto* disenfranchisement is exactly what states have hoped to avoid by

¹³ Compare <http://www.electionreturns.state.pa.us/ElectionsInformation.aspx?FunctionID=13&ElectionID=39&OfficeID=11> (general election returns), *with* <http://www.electionreturns.state.pa.us/ElectionsInformation.aspx?FunctionID=13&ElectionID=35&OfficeID=11> (special election returns). Note that the Pennsylvania Department of State's Elections website only displays votes recorded for candidates, and does not provide any information on votes counted as "blank" or otherwise.

¹⁴ Workbook #1: Voter Turnout, Voter Registration, Party Affiliation, and General Election Results, 1960-2004, University of North Carolina, http://southnow.org/research-and-data/datapacks/NC_VotingData (showing 1,591,330 votes cast in general election and 1,534,875 in special election) (last visited January 7, 2011).

developing the strategy of bypassing snap special elections altogether. The Seventh Circuit's rule would erase the states' discretion to do so by ignoring those many years of practical experience. Its novel rule therefore cannot be a correct interpretation of the Seventeenth Amendment.

CONCLUSION

The Court should grant the petition for certiorari.

Respectfully submitted,

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APPENDIX

APPENDIX

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Appendix A: Senate Vacancies Since 1913
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APPENDIX A

Senate Vacancies Since 1913

[Fold-out Exhibit, see next 6 pages]

SENATE VACANCIES SINCE 1913*

= Vacancy in last 2 years of term
 = Vacancy in final year of term

	Senator Vacating Seat (original term)	State	Date of Vacancy	Date Term Ended	Days Left in Term When Resigned	Appointed Replacement	Date Appointed	Appt. End Date	Term Expired w/o Election	Reason Appointment Ended
1.	Joseph W. Bailey	TX	1/3/1913	3/4/1913	60	Rienzi M. Johnston	1/4/1913	1/29/1913		Replacement elected to finish term
2.	Jeff Davis	AR	1/3/1913	3/4/1913	60	John N. Heiskell	1/6/1913	1/29/1913		Replacement elected to finish term
3.	Joseph F. Johnston	AL	8/8/1913	3/4/1915	573	None	N/A	N/A		Replacement elected to finish term
4.	Augustus O. Bacon	GA	2/14/1914	3/4/1919	1844	William S. West	3/2/1914	11/3/1914		Replacement elected to finish term
5.	William O. Bradley	KY	5/23/1914	3/4/1915	285	Johnson Camden	6/16/1914	3/3/1915		Appointee elected to finish unexpired term
6.	Benjamin F. Shively	IN	3/14/1916	3/4/1921	1816	Thomas Taggart	3/20/1916	11/7/1916		Replacement elected to finish term
7.	Edwin C. Burleigh	ME	6/16/1916	3/4/1919	991	None	N/A	N/A		Replacement elected to finish term
8.	James P. Clarke	AR	10/1/1916	3/4/1921	1615	None	N/A	N/A		Replacement elected to finish term
9.	Harry Lane	OR	5/23/1917	3/4/1919	650	Charles L. McNary	05/29/1917	11/05/1918		Replacement elected to finish term
10.	Paul O. Husting	WI	10/21/1917	3/4/1921	1230	None	N/A	N/A		Replacement elected to finish term
11.	Francis G. Newlands	NV	12/24/1917	3/4/1921	1166	Charles B. Henderson	1/12/1918	11/5/1918		Appointee elected to finish unexpired term
12.	James H. Brady	ID	1/13/1918	3/4/1921	1146	John F. Nugent	1/22/1918	11/05/1918		Appointee elected to finish unexpired term
13.	William Hughes	NJ	1/30/1918	3/4/1919	398	David Baird	02/23/1918	11/15/1918		Appointee elected to finish unexpired term
14.	Robert F. Broussard	LA	4/12/1918	3/4/1921	1057	Walter Guion	04/22/1918	11/05/1918		Replacement elected to finish term
15.	William J. Stone	MO	4/14/1918	3/4/1921	1055	Xenophon P. Wifley	04/30/1918	11/05/1918		Replacement elected to finish term
16.	Benjamin R. Tillman	SC	7/3/1918	3/4/1919	244	Christie Benet	07/60/1918	11/05/1918		Replacement elected to finish term
17.	Jacob H. Gallinger	NH	8/17/1918	3/4/1921	930	Irving W. Drew	09/02/1918	11/05/1918		Replacement elected to finish term
18.	Ollie M. James	KY	8/28/1918	3/4/1919	188	George B. Martin	09/07/1918	03/03/1919	Yes	Appointment lasted until end of term
19.	Frederick Mulkey	OR	12/17/1918	3/4/1919	77	Charles L. McNary	12/17/1918	3/4/1919		McNary was originally appointed as interim replacement, and was not a candidate for the special election to fill the unexpired term. He was later re-appointed, having won the election for the following full term, due to the winner of special election's "technical resignation."
20.	Thomas S. Martin	VA	11/12/1919	3/4/1925	1939	Carter Glass	11/18/1919	11/03/1920		Appointee elected to finish unexpired term
21.	Warren G. Harding	OH	1/13/1921	3/3/1921	49	Frank B. Willis	11/14/1921	3/3/1921	Yes	Appointment lasted until end of term (Willis had previously been elected to full 1921-27 term, but Harding's reservation was not "technical"—he resigned to become President)
22.	John H. Bankhead	AL	3/1/1920	3/4/1925	1829	Braxton B. Comer	03/05/1920	11/02/1920		Replacement elected to finish term
23.	Albert B. Fall	NM	3/4/1921	3/4/1925	1461	Holm O. Bursum	03/11/1921	09/20/1921		Appointee elected to finish unexpired term
24.	Josiah O. Wolcott	DE	7/2/1921	3/4/1925	1341	Thomas Coleman du Pont	07/17/1921	11/07/1922		Replacement elected to finish term
25.	Philander C. Knox	PA	10/12/1921	3/4/1923	508	William E. Crow	10/17/1921	08/2/1922		Appointee's death
26.	Boies Penrose	PA	12/31/1921	3/4/1927	1889	George W. Pepper	01/09/1922	11/07/1922		Appointee elected to finish unexpired term

* These figures exclude so-called "technical resignations," instances in which the outgoing senator resigned early and the governor appointed the winner of the election for the following full term to finish the final few days of the unexpired term. This practice allowed the appointee to gain seniority over the rest of the incoming freshman class. This table *does*, however, show "yes" in the "Term Expired Without an Election" column for cases in which *appointees* resigned early for this purpose. These scenarios are distinct from "technical resignations" because the original vacancies in the seat took place prior to the election for the next term and were unrelated to seniority issues.

	Senator Vacating Seat (original term)	State	Date of Vacancy	Date Term Ended	Days Left in Term When Resigned	Appointed Replacement	Date Appointed	Appt. End Date	Term Expired w/o Election	Reason Appointment Ended
27.	William S. Kenyon	IA	2/24/1922	3/4/1925	1104	Charles A. Rawson	02/24/1922	12/01/1922		Replacement elected to finish term
28.	William E. Crow	PA	8/2/1922	3/4/1923	214	David A. Reed	08/08/1922	11/07/1922		Appointee elected to finish unexpired term
29.	Knute Nelson	MN	4/28/1923	3/4/1925	676	None	N/A	N/A		Replacement elected to finish term
30.	William Dillingham	VT	6/12/1923	3/4/1927	1361	None	N/A	N/A		Replacement elected to finish term
31.	Thomas E. Watson	GA	9/26/1922	3/4/1927	1620	Rebecca L. Felton	10/03/1922	11/22/1922		Replacement elected to finish term
32.	Truman H. Newberry	MI	11/18/1922	3/4/1925	837	James Couzens	11/29/1922	11/04/1924		Appointee elected to finish unexpired term
33.	Samuel D. Nicholson	CO	3/24/1923	3/4/1927	1441	Alva B. Adams	05/17/1923	11/30/1924		Replacement elected to finish term
34.	LeBaron Colt	RI	8/18/1924	4/4/1925	229	None	N/A	N/A		Replacement elected to finish term
35.	Henry Cabot Lodge	MA	11/9/1924	3/4/1929	1576	William M. Butler	11/13/1924	12/06/1926		Replacement elected to finish term
36.	Frank D. Brandegee	CT	10/14/1924	3/4/1927	871	None	N/A	N/A		Replacement elected to finish term
37.	Selden P. Spencer	MO	5/16/1925	3/4/1927	657	George H. Williams	05/25/1925	12/05/1926		Replacement elected to finish term
38.	Robert La Follette, St.	WI	6/18/1925	3/4/1929	1355	None	N/A	N/A		Replacement elected to finish term
39.	Edwin F. Ladd	ND	6/22/1925	3/4/1927	620	Gerald P. Nye	11/14/1925	06/30/1926		Appointee elected to finish unexpired term
40.	Samuel M. Ralston	IN	10/14/1925	3/4/1929	1237	Arthur R. Robinson	10/20/1925	11/2/1926		Appointee elected to finish unexpired term
41.	Albert B. Cummins	IA	6/30/1926	3/4/1927	247	David W. Stewart	08/07/1926	11/02/1926		Appointee elected to finish unexpired term
42.	Andrius A. Jones	NM	12/20/1927	3/4/1929	440	Bronson Cutting	12/29/1927	11/06/1928		Replacement elected to finish term
43.	Woodbridge N. Ferris	MI	3/23/1928	3/4/1929	346	Arthur H. Vandenberg	03/31/1928	11/06/1928		Elected to finish unexpired term
44.	Frank B. Willis	OH	3/30/1928	3/4/1933	1800	Cyrus Locher	04/04/1928	12/14/1928		Replacement elected to finish term
45.	Frank R. Gooding	ID	6/24/1928	3/4/1933	1714	John Thomas	06/30/1928	11/06/1928		Appointee elected to finish unexpired term
46.	T. Coleman du Pont	DE	12/9/1928	3/4/1931	815	Daniel O. Hastings	12/10/1928	11/04/1930		Appointee elected to finish unexpired term
47.	Charles Curtis	KS	3/3/1929	3/4/1933	1462	Henry J. Allen	04/01/1929	11/30/1930		Replacement elected to finish term
48.	Lawrence D. Tyson	TN	8/24/1929	3/4/1931	557	William E. Brock	09/02/1929	11/04/1930		Appointee elected to finish unexpired term
49.	Theodore E. Burton	OH	10/28/1929	1/3/1935	1893	Roscoe C. McCulloch	11/05/1929	11/30/1930		Replacement elected to finish term
50.	Walter E. Edge	NJ	11/21/1929	3/4/1931	468	David Baird, Jr.	11/30/1929	12/02/1930		Replacement elected to finish term
51.	Francis E. Warren	WY	11/24/1929	3/4/1931	465	Patrick J. Sullivan	12/05/1929	11/20/1930		Replacement elected to finish term
52.	William S. Vare	PA	12/6/1929	3/4/1933	1184	Joseph R. Grundy	12/11/1929	12/01/1930		Replacement elected to finish term
53.	Frederick M. Sackett	KY	1/9/1930	3/4/1931	419	John M. Robinson	01/09/1930	11/30/1930		Replacement elected to finish term
54.	Lee S. Overman	NC	12/12/1930	3/4/1933	813	Cameron Morrison	12/13/1930	12/04/1932		Replacement elected to finish term
55.	Frank L. Greene	VT	12/17/1930	1/3/1935	1478	Frank C. Partridge	12/23/1930	03/31/1931		Replacement elected to finish term
56.	Dwight W. Morrow	NJ	10/5/1931	1/3/1937	1917	W. Warren Barbour	12/01/1931	11/08/1932		Appointee elected to finish unexpired term
57.	Thaddeus Caraway	AR	11/6/1931	3/4/1933	484	Hattie W. Caraway	11/13/1931	01/12/1932		Appointee elected to finish unexpired term
58.	William J. Harris	GA	4/18/1932	1/3/1937	1721	John S. Cohen	04/25/1932	01/11/1933		Replacement elected to finish term
59.	Charles W. Waterman	CO	8/27/1932	3/4/1933	189	Walter Walker	09/16/1932	12/06/1932		Replacement elected to finish term
60.	Wesley L. Jones	WA	11/19/1932	3/4/1933	105	Elijah S. Grammer	11/22/1932	03/03/1933	Yes	Appointment lasted until end of term
61.	Robert B. Howell	NE	3/1/1933	1/3/1935	673	William H. Thompson	05/24/1933	11/06/1934		Replacement elected to finish term
62.	Thomas J. Walsh	MT	3/2/1933	1/3/1937	1403	John E. Erickson	03/13/1933	11/06/1934		Replacement elected to finish term
63.	Cordell Hull	TN	3/3/1933	1/3/1937	1402	Nathan L. Bachman	02/28/1933	11/06/1934		Appointee elected to finish unexpired term
64.	Claude A. Swanson	VA	3/3/1933	1/3/1935	671	Harry F. Byrd	03/04/1933	11/07/1933		Appointee elected to finish unexpired term
65.	Sam G. Bratton	NM	6/24/1933	1/3/1937	1289	Carl Atwood Hatch	10/10/1933	11/06/1934		Appointee elected to finish unexpired term

	Senator Vacating Seat (original term)	State	Date of Vacancy	Date Term Ended	Days Left in Term When Resigned	Appointed Replacement	Date Appointed	Appt. End Date	Term Expired w/o Election	Reason Appointment Ended
66.	Porter H. Dale	VT	10/6/1933	1/3/1939	1915	Ernest W. Gibson	11/21/1933	01/16/1934		Appointee elected to finish unexpired term
67.	John B. Kendrick	WY	11/3/1933	1/3/1935	426	Joseph C. O'Mahoney	12/18/1933	11/06/1934		Appointee elected to finish unexpired term
68.	Bronson M. Cutting	NM	5/6/1935	1/3/1941	2069	Dennis Chavez	05/11/1935	11/03/1936		Appointee elected to finish unexpired term
69.	Huey P. Long	LA	9/10/1935	1/3/1937	481	Rose McConnell Long	01/31/1936	1/2/1937	Yes	Appointment lasted until end of term
70.	Thomas D. Schall	MN	11/22/1935	1/3/1937	408	Elmer A. Benson	12/27/1935	11/03/1936		Replacement elected to finish term
71.	Park Trammell	FL	5/8/1936	1/3/1941	1701	Scott M. Loftin	05/26/1936	11/03/1936		Replacement elected to finish term
72.	Duncan U. Fletcher	FL	6/17/1936	1/3/1939	930	William L. Hill	07/01/1936	11/03/1936		Replacement elected to finish term
73.	Peter Norbeck	SD	12/20/1936	1/3/1939	744	Herbert E. Hitchcock	12/29/1936	11/08/1938		Replacement elected to finish term
74.	Nathan L. Bachman	TN	4/23/1937	1/3/1943	2081	George L. Berry	05/06/1937	11/08/1938		Replacement elected to finish term
75.	Joseph T. Robinson	AR	7/14/1937	3/3/1943	1999	None	N/A	N/A		Replacement elected to finish term
76.	Hugo L. Black	AL	8/19/1937	1/3/1939	502	Dixie Bibb Graves	08/20/1937	01/10/1938		Appointee resigned
77.	Dixie Bibb Graves	AL	1/10/1938	1/3/1939	358	J. Lister Hill	01/10/1938	04/26/1938		Appointee elected to finish unexpired term
78.	A. Harry Moore	NJ	1/17/1938	1/3/1941	1082	John G. Milton	01/18/1938	11/08/1938		Replacement elected to finish term
79.	Frederick Steiwer	OR	1/31/1938	1/3/1939	337	Alfred E. Reames	02/01/1938	11/08/1938		Replacement elected to finish term
80.	Royal Copeland	NY	6/17/1938	1/3/1941	931	None	N/A	N/A		Replacement elected to finish term
81.	William Gibbs McAdoo	CA	11/8/1938	1/3/1939	56	Thomas M. Storke	11/09/1938	01/03/1939	Yes	Appointment lasted until end of term
82.	James Hamilton Lewis	IL	4/9/1939	1/3/1943	1365	James M. Slattery	04/14/1939	11/21/1940		Replacement elected to finish term
83.	Marvel Mills Logan	KY	10/3/1939	1/3/1943	1188	Albert B. Chandler	10/10/1939	11/05/1940		Appointee elected to finish unexpired term
84.	William E. Borah	ID	1/19/1940	1/3/1943	1080	John Thomas	01/27/1940	11/05/1940		Appointee elected to finish unexpired term
85.	Ernest W. Gibson	VT	6/20/1940	1/3/1945	1658	Ernest W. Gibson, Jr.	06/24/1940	01/03/1941		Replacement elected to finish term
86.	Ernest Lundeen	MN	8/31/1940	1/3/1943	855	Joeseph H. Ball	10/14/1940	11/17/1942		Replacement elected to finish term
87.	Key Pittman	NV	11/10/1940	1/3/1941	54	Berkley L. Bunker	11/27/1940	12/06/1942	Yes	Incumbent senator died after re-election to following term. Bunker was appointed to fill term expiring in 1941 and also to begin following term. (Replacement elected to finish term ending 1/3/1947)
88.	Matthew M. Neely	WV	1/12/1941	1/3/1943	721	Joseph Rosier	01/13/1941	11/17/1942		Replacement elected to finish term
89.	John E. Miller	AR	3/31/1941	1/3/1943	643	G. Lloyd Spencer	04/01/1941	01/03/1943	Yes	Appointment lasted until end of term
90.	Morris Sheppard	TX	4/9/1941	1/3/1943	634	Andrew J. Houston	04/21/1941	06/26/1941		Appointee died
91.	Pat Harrison	MS	6/22/1941	1/3/1943	560	James O. Eastland	06/30/1941	09/28/1941		Replacement elected to finish term
92.	James F. Byrnes	SC	7/8/1941	1/3/1943	544	Alva Moore Lumpkin	07/17/1941	08/01/1941		Appointee died
93.	Alva M. Lumpkin	SC	8/1/1941	1/3/1943	520	Roger C. Peace	08/05/1941	11/04/1941		Replacement elected to finish term
94.	Alva B. Adams	CO	12/1/1941	1/3/1945	1129	Eugene D. Millikin	12/20/1941	11/03/1942		Appointee elected to finish unexpired term
95.	W. Warren Barbour	NJ	11/22/1943	1/3/1947	1138	Arthur Walsh	11/26/1943	12/07/1944		Replacement elected to finish term
96.	Frederick Van Nuys	IN	1/25/1944	1/3/1945	344	Samuel D. Jackson	01/28/1944	11/13/1944		Replacement elected to finish term
97.	Henry Cabot Lodge, Jr.	MA	2/3/1944	1/3/1949	1796	Sinclair Weeks	02/08/1944	12/19/1944		Replacement elected to finish term
98.	Charles L. McNary	OR	2/25/1944	1/3/1949	1774	Guy Cordon	03/04/1944	11/07/1944		Appointee elected to finish unexpired term
99.	Ellison D. Smith	SC	11/17/1944	1/3/1945	47	Wilton E. Hall	11/20/1944	01/03/1945	Yes	Appointment lasted until end of term

	Senator Vacating Seat (original term)	State	Date of Vacancy	Date Term Ended	Days Left in Term When Resigned	Appointed Replacement	Date Appointed	Appt. End Date	Term Expired w/o Election	Reason Appointment Ended
100.	Monrad C. Wallgren	WA	1/9/1945	1/3/1947	724	Hugh B. Mitchell	01/10/1945	12/25/1946	Yes	Appointee's technical resignation [No election to finish term]
101.	Francis T. Maloney	CT	1/16/1945	1/3/1947	717	Thomas C. Hart	02/15/1945	11/05/1946		Replacement elected to finish term
102.	Harry S. Truman	MO	1/17/1945	1/3/1947	716	Frank P. Briggs	01/19/1945	01/03/1947	Yes	Appointment lasted until end of term
103.	John Moses	ND	3/3/1945	1/3/1951	2132	Milton R. Young	03/12/1945	06/25/1946		Appointee elected to finish unexpired term
104.	James G. Scrugham	NV	6/23/1945	1/3/1947	559	Edward P. Carville	07/24/1945	01/03/1947	Yes	Appointment lasted until end of term
105.	Hiram W. Johnson	CA	8/6/1945	1/3/1947	515	William F. Knowland	08/14/1945	11/05/1946		Appointee elected to finish unexpired term
106.	Harold H. Burton	OH	9/30/1945	1/3/1947	460	James W. Huffman	10/08/1945	11/05/1946		Replacement elected to finish term
107.	Albert B. Chandler	KY	11/1/1945	1/3/1949	1159	William A. Stanfill	11/19/1945	11/05/1946		Replacement elected to finish term
108.	John Thomas	ID	11/10/1945	1/3/1949	1150	Charles C. Gossett	11/17/1945	11/06/1946		Replacement elected to finish term
109.	Carter Glass	VA	5/28/1946	1/3/1949	951	Thomas G. Burch	05/31/1946	11/05/1946		Replacement elected to finish term
110.	John H. Bankhead II	AL	6/12/1946	1/3/1947	205	George R. Swift	06/15/1946	11/05/1946		Replacement elected to finish term
111.	Warren R. Austin	VT	8/2/1946	1/3/1947	154	Ralph E. Flanders	11/01/1946	01/03/1947	Yes	Appointment lasted until end of term
112.	Charles O. Andrews	FL	9/18/1946	1/3/1947	107	Spessard L. Holland	09/25/1946	01/03/1947	Yes	Appointment lasted until end of term
113.	Josiah W. Bailey	NC	12/15/1946	1/3/1949	750	William B. Umstead	12/18/1946	12/30/1948		Replacement elected to finish term
114.	Theodore Bilbo	MS	8/21/1947	1/3/1953	1962	None	N/A	N/A		Replacement elected to finish term
115.	John H. Overton	LA	6/14/1948	1/3/1951	933	William C. Feazel	05/18/1948	12/30/1948		Replacement elected to finish term
116.	Harlan J. Bushfield	SD	9/27/1948	1/3/1949	98	Vera C. Bushfield	10/06/1948	12/26/1948	Yes	Appointee's technical resignation [No election to finish term]
117.	Alben W. Barkley	KY	1/19/1949	1/3/1951	714	Garrett L. Withers	01/20/1949	11/26/1950		Replacement elected to finish term
118.	J. Melville Broughton	NC	3/6/1949	1/3/1955	2129	Frank P. Graham	03/29/1949	11/26/1950		Replacement elected to finish term
119.	Robert F. Wagner	NY	6/28/1949	1/3/1951	554	John Foster Dulles	07/07/1949	11/08/1949		Replacement elected to finish term
120.	J. Howard McGrath	RI	8/23/1949	1/3/1953	1229	Edward L. Leahy	08/24/1949	12/18/1950		Replacement elected to finish term
121.	Bert H. Miller	ID	10/8/1949	1/3/1955	1913	Henry C. Dworshak	10/14/1949	11/07/1950		Appointee elected to finish unexpired term
122.	Clyde M. Reed	KS	11/8/1949	1/3/1951	421	Harry Darby	12/02/1949	11/28/1950		Replacement elected to finish term
123.	Raymond E. Baldwin	CT	12/16/1949	1/3/1953	1114	William Benton	12/17/1949	11/07/1950		Appointee elected to finish unexpired term
124.	Virgil M. Chapman	KY	3/8/1951	1/3/1955	1397	Thomas R. Underwood	03/19/1951	11/04/1952		Replacement elected to finish term
125.	Arthur H. Vandenberg	MI	4/18/1951	1/3/1953	626	Blair Moody	04/22/1951	11/04/1952		Replacement elected to finish term
126.	Kenneth S. Wherry	NE	11/29/1951	1/3/1955	1131	Frederick A. Seaton	12/10/1951	11/04/1952		Replacement elected to finish term
127.	Brien McMahon	CT	7/28/1952	1/3/1957	1620	William A. Purtell	08/29/1952	11/04/1952		Replacement elected to finish term
128.	Richard M. Nixon	CA	1/1/1953	1/3/1957	1463	Thomas H. Kuchel	01/02/1953	11/02/1954		Appointee elected to finish unexpired term
129.	Willis Smith	NC	6/26/1953	1/3/1955	556	Alton A. Lennon	06/10/1953	11/28/1954		Replacement elected to finish term
130.	Charles W. Tobey	NH	7/24/1953	1/3/1957	1259	Robert W. Upton	08/14/1953	11/07/1954		Replacement elected to finish term
131.	Robert A. Taft	OH	7/31/1953	1/3/1957	1252	Thomas A. Burke	10/12/1953	12/02/1954		Replacement elected to finish term
132.	Dwight Palmer Griswold	NE	4/12/1954	1/3/1955	266	Eva Bowring	04/16/1954	11/07/1954		Replacement elected to finish term
133.	Clyde R. Hoey	NC	5/12/1954	1/3/1957	967	Sam J. Ervin, Jr.	06/05/1954	11/02/1954		Appointee elected to finish unexpired term
134.	Lester C. Hunt	WY	6/19/1954	1/3/1955	198	Edward D. Crippa	06/24/1954	11/28/1954		Replacement elected to finish term
135.	Hugh Butler	NE	7/1/1954	1/3/1959	1647	Sam W. Reynolds	07/03/1954	11/07/1954		Replacement elected to finish term
136.	Burnet R. Maybank	SC	9/1/1954	1/3/1955	124	Charles E. Daniel	09/06/1954	12/23/1954	Yes	Appointee's technical resignation [No election to finish term]

	Senator Vacating Seat (original term)	State	Date of Vacancy	Date Term Ended	Days Left in Term When Resigned	Appointed Replacement	Date Appointed	Appt. End Date	Term Expired w/o Election	Reason Appointment Ended
137.	Pat McCarran	NV	9/28/1954	1/3/1957	828	Ernest S. Brown	10/01/1954	12/01/1954		Replacement elected to finish term
138.	Harley M. Kilgore	WV	2/28/1956	1/3/1959	1040	William R. Laird, III	03/13/1956	11/06/1956		Replacement elected to finish term
139.	Strom Thurmond	SC	4/4/1956	1/3/1961	1735	Thomas A. Wofford	04/05/1956	11/06/1956		Replacement elected to finish term
140.	Alben W. Barkley	KY	4/30/1956	1/3/1961	1709	Robert Humphreys	06/21/1956	11/06/1956		Replacement elected to finish term
141.	Price Daniel	TX	1/14/1957	1/3/1959	719	William A. Blakley	01/15/1957	04/28/1957		Replacement elected to finish term
142.	Joseph McCarthy	WI	5/2/1957	1/3/1959	611	None	N/A	N/A		Replacement elected to finish term
143.	Matthew M. Neely	WV	1/18/1958	1/3/1961	1081	John D. Hoblitzell, Jr.	01/25/1958	11/04/1958		Replacement elected to finish term
144.	W. Kerr Scott	NC	4/16/1958	1/3/1961	993	B. Everett Jordan	04/19/1958	11/04/1958		Appointee elected to finish unexpired term
145.	William Langer	ND	11/8/1959	1/3/1965	1883	C. Norman Brunsdale	11/19/1959	08/07/1960		Replacement elected to finish term
146.	Richard L. Neuberger	OR	3/9/1960	1/3/1961	300	Hall Lusk	03/16/1960	11/08/1960		Replacement elected to finish term
147.	Thomas C. Hennings, Jr.	MO	9/13/1960	1/3/1963	842	Edward V. Long	09/23/1960	11/08/1960		Appointee elected to finish unexpired term
148.	Keith Thomson	WY	12/9/1960	1/3/1967	2216	J. Joseph Hickey	01/03/1961	11/06/1962		Replacement elected to finish term
149.	John F. Kennedy	MA	12/22/1960	1/3/1965	1473	Benjamin A. Smith	12/27/1960	11/06/1962		Replacement elected to finish term
150.	Lyndon B. Johnson	TX	1/3/1961	1/3/1967	2191	William A. Blakley	01/03/1961	06/14/1961		Replacement elected to finish term
151.	H. Styles Bridges	NH	11/26/1961	1/3/1967	1864	Maurice J. Murphy	12/07/1961	11/06/1962		Replacement elected to finish term
152.	Andrew F. Schoepfel	KS	1/21/1962	1/3/1967	1808	James B. Pearson	01/31/1962	11/06/1962		Appointee elected to finish unexpired term
153.	Francis Case	SD	6/22/1962	1/3/1963	195	Joseph H. Bottum	07/09/1962	01/03/1963	Yes	Appointment lasted until end of term
154.	Henry C. Dworshak	ID	7/23/1962	1/3/1967	1625	Len Jordan	08/06/1962	11/06/1962		Appointee elected to finish unexpired term
155.	Dennis Chavez	NM	11/18/1962	1/3/1965	777	Edwin L. Mechem	11/30/1962	11/03/1964		Replacement elected to finish term
156.	Robert S. Kerr	OK	1/1/1963	1/3/1967	1463	J. Howard Edmondson	01/07/1963	11/03/1964		Replacement elected to finish term
157.	Estes Kefauver	TN	8/10/1963	1/3/1967	1242	Herbert S. Walters	08/20/1963	11/03/1964		Replacement elected to finish term
158.	Clair Engle	CA	7/30/1964	1/3/1965	157	Pierre Salinger	08/04/1964	12/31/1964	Yes	Appointee's technical resignation [No election to finish term]
159.	Hubert H. Humphrey	MN	12/29/1964	1/3/1967	735	Walter F. Mondale	12/30/1964	11/08/1966	Yes	Appointment lasted until end of term
160.	Olin D. Johnston	SC	4/18/1965	1/3/1969	1356	Donald S. Russell	04/22/1965	11/08/1966		Replacement elected to finish term
161.	Harry F. Byrd, Sr.	VA	11/10/1965	1/3/1971	1880	Harry F. Byrd, Jr.	11/12/1965	11/08/1966		Appointee elected to finish unexpired term
162.	Patrick V. McNamara	MI	4/30/1966	1/3/1967	248	Robert P. Griffin	05/11/1966	1/3/1967	Yes	Appointment lasted to end of term
163.	Robert F. Kennedy	NY	6/6/1968	1/3/1971	941	Charles E. Goodell	09/10/1968	01/03/1971	Yes	Appointment lasted until end of term
164.	E.L. Bartlett	AK	12/11/1968	1/3/1973	1484	Theodore Stevens	12/24/1968	11/03/1970		Appointee elected to finish unexpired term
165.	Everett M. Dirksen	IL	9/7/1969	1/3/1975	1944	Ralph Tyler Smith	09/17/1969	11/03/1970		Replacement elected to finish term
166.	Richard B. Russell	GA	1/21/1971	1/3/1973	713	David H. Gambrell	02/01/1971	11/07/1972		Replacement elected to finish term
167.	Winston L. Prouty	VT	9/10/1971	1/3/1977	1942	Robert T. Stafford	09/16/1971	01/07/1972		Appointee elected to finish unexpired term
168.	Allen J. Ellender	LA	7/27/1972	1/3/1973	160	Elaine S. Edwards	08/01/1972	11/13/1972	Yes	Appointee's technical resignation [No election to finish term]
169.	William B. Saxbe	OH	1/3/1974	1/3/1975	365	Howard M. Metzbaum	01/04/1974	12/23/1974	Yes	Appointee's technical resignation [No election to finish term]
170.	Contested Election of 11/05/1974)	NH	9/18/1975	1/3/1981	1934	Norris H. Cotton	08/08/1975	09/18/1976		Replacement elected to finish term

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171.	Walter F. Mondale	MN	12/30/1976	1/3/1979	734	Wendell R. Anderson	12/30/1976	12/29/1978	Yes	Appointee's technical resignation [No election to finish term]
172.	Hubert Horatio Humphrey, Jr.	MN	1/13/1977	1/3/1983	2181	Muriel B. Humphrey	01/25/1978	11/07/1978		Replacement elected to finish term
173.	John L. McClellan	AR	11/28/1977	1/3/1979	401	Kaneaster Hodges, Jr.	12/10/1977	01/03/1979	Yes	Appointment lasted until end of term
174.	Lee Metcalf	MT	1/12/1978	1/3/1979	356	Paul G. Hatfield	01/22/1978	12/14/1978	Yes	Appointee's technical resignation [No election to finish term]
175.	James B. Allen	AL	6/1/1978	1/3/1981	947	Maryon P. Allen	06/06/1978	11/07/1978		Replacement elected to finish term
176.	Edmund S. Muskie	ME	5/7/1980	1/3/1983	971	George J. Mitchell	05/17/1980	11/02/1982	Yes	Appointment lasted until end of term
177.	Harrison A. Williams, Jr.	NJ	3/11/1982	1/3/1983	298	Nicholas F. Brady	04/12/1982	12/27/1982	Yes	Appointee's technical resignation [No election to finish term]
178.	Henry M. Jackson	WA	9/1/1983	1/3/1989	1951	Daniel J. Evans	09/08/1983	11/08/1983		Appointee elected to finish unexpired term
179.	John East	NC	6/29/1986	1/3/1987	188	James T. Broyhill	07/03/1986	11/04/1986		Replacement elected to finish term
180.	Edward Zorinsky	NE	3/6/1987	1/3/1989	669	David K. Karnes	03/11/1987	11/08/1988	Yes	Appointee resigned early [No election to finish term]
181.	J. Danforth Quayle	IN	1/3/1989	1/3/1993	1461	Dan Coats	01/03/1989	11/06/1990		Appointee elected to finish unexpired term
182.	Spark Masayuki Matsunaga	HI	4/14/1990	1/3/1995	1725	Daniel J. Akaka	04/30/1990	11/06/1990		Appointee elected to finish unexpired term
183.	Pete Wilson	CA	1/7/1991	1/3/1995	1457	John Seymour	01/07/1991	11/10/1992		Replacement elected to finish term
184.	Henry John Heinz, III	PA	4/4/1991	1/3/1995	1370	Harris Wofford	05/08/1991	11/05/1991		Appointee elected to finish unexpired term
185.	Quentin Northrop Burdick	ND	9/8/1992	1/3/1995	847	Jocelyn Burdick	09/12/1992	11/14/1992		Replacement elected to finish term
186.	Albert Arnold Gore, Jr.	TN	1/2/1993	1/3/1997	1462	Harlan Mathews	01/02/1993	12/01/1994		Replacement elected to finish term
187.	Lloyd Millard Bentsen	TX	1/20/1993	1/3/1995	713	Robert C. Krueger	01/21/1993	06/14/1995		Replacement elected to finish term
188.	David Boren	OK	11/15/1994	1/3/1997	780	None	N/A	N/A		Replacement elected to finish term
189.	Robert Packwood	OR	10/1/1995	1/3/1999	1190	None	N/A	N/A		Replacement elected to finish term
190.	Robert Dole	KS	6/11/1996	1/3/1999	936	Sheila Frahm	06/11/1996	11/05/1996		Replacement elected to finish term
191.	John H. Chafee	RI	10/24/1999	1/3/2001	437	Lincoln Chafee	11/02/1999	1/3/2001	Yes	Appointment lasted until end of term
192.	Paul Coverdell	GA	7/18/2000	1/3/2005	1630	Zell B. Miller	07/24/2000	11/07/2000		Appointee elected to finish unexpired term
193.	Mel Carnahan	MO	10/16/2000	1/3/2007	2270	Jean Carnahan	01/03/2001	11/25/2005		Replacement elected to finish term
194.	Paul D. Wellstone	MN	10/25/2002	1/3/2003	70	Dean Barkley	11/04/2002	01/03/2003	Yes	Appointment lasted until end of term
195.	Frank H. Murkowski	AK	12/2/2002	1/3/2005	763	Lisa Murkowski	12/20/2002	01/03/2005	Yes	Appointment lasted until end of term
196.	Jon S. Corzine	NJ	1/17/2006	1/3/2007	351	Robert Menendez	01/17/2006	01/03/2007	Yes	Appointment lasted until end of term
197.	Craig L. Thomas	WY	6/4/2007	1/3/2013	2040	John A. Barrasso	06/22/2007	11/04/2008		Appointee elected to finish unexpired term
198.	Chester Trent Lott	MS	12/18/2007	1/3/2013	1843	Roger F. Wicker	12/31/2007	11/04/2008		Appointee elected to finish unexpired term
199.	Barack Obama	IL	11/16/2008	1/3/2011	778	Roland Burris	12/31/2008	11/29/2010		Replacement elected to finish term
200.	Joseph R. Biden	DE	1/15/2009	1/3/2015	2179	Edward E. Kaufman	01/15/2009	11/15/2010		Replacement elected to finish term
201.	Kenneth L. Salazar	CO	1/20/2009	1/3/2011	713	Michael F. Bennet	01/03/2009	01/03/2011	Yes	Appointment lasted until end of term
202.	Hillary Clinton	NY	1/21/2009	1/3/2013	1443	Kirsten E. Gillibrand	01/23/2009	2010		Appointee elected to finish unexpired term
203.	Edward M. Kennedy	MA	8/25/2009	1/3/2013	1227	Paul G. Kirk, Jr.	09/24/2009	02/04/2010		Replacement elected to finish term
204.	Melquiades R. Martinez	FL	9/9/2009	1/3/2011	481	George S. Lemieux	09/09/2009	01/03/2011	Yes	Appointment lasted until end of term
205.	Robert C. Byrd	WV	6/28/2010	1/3/2013	920	Carte P. Goodwin	07/16/2010	11/15/2010		Replacement elected to finish term