

Background: Gov. Nikki Haley Appoints Congressman Tim Scott to the U.S. Senate

On December 6, 2012, United States Senator Jim DeMint announced his resignation. On December 17, 2012, South Carolina Governor Nikki Haley announced Congressman Tim Scott as her appointee to fill the vacant U.S. Senate seat.

This document provides background information and answers to frequently asked questions regarding the gubernatorial appointment process.

QUESTION: What is the process for making an appointment to the U.S. Senate?

ANSWER: The Governor must send a Certificate of Appointment to both the President and the Secretary of the U.S. Senate.

According to Rule II of the Standing Rules of the Senate, a “Certificate of Appointment” must be sent from a governor to the President of the U.S. Senate, which includes the following text:

To the President of the Senate of the United States:

This is to certify that, pursuant to the power vested in me by the Constitution of the United States and the laws of the State of [South Carolina], I, [Nikki R. Haley], the governor of said State, do hereby appoint [----] a Senator from said State to represent said State in the Senate of the United States until the vacancy therein caused by the [resignation] of [Jim DeMint], is filled by election provided by law.

Witness: [Her] excellency our governor, _____, and our seal hereto affixed at _____ this [17th] day of [December], in the year of our Lord 20[12].

By the governor:

Secretary of State:

Source: Rule II of the Standing Rules of the Senate: www.rules.senate.gov

QUESTION: How long would the newly-appointed U.S. Senator serve?

ANSWER: The newly-appointed U.S. Senator would serve from the effective date of Senator DeMint’s resignation to January 3, 2015.

The newly-appointed Senator would serve beginning the date of appointment until January 3, 2015. Section 7-19-20 of the South Carolina Code of Laws allows the appointee to serve from the date of appointment to “January third following the next succeeding general election.” (A general election in S.C. is held in November of even-numbered years.)

The new U.S. Senator could choose to run for election in November 2014 to fill Senator DeMint’s remaining two years of his unexpired term until 2016.

Source: Section 7-19-20 of the S.C. Code of Laws

QUESTION: Is our state’s appointment law different from other states?

ANSWER: No, South Carolina’s law is similar to 45 other states.

South Carolina is one of 45 states permitting the governor to make a temporary appointment until either the next regularly-scheduled general election or a special election. Four states require a special election to fill Senate vacancies (Massachusetts, Oregon, Wisconsin, and – in a related subcategory, Oklahoma), while the status of the fifth (Alaska) is unclear because of two conflicting laws passed in the same year.

Source: The Congressional Research Service, “Filling U.S. Senate Vacancies: Perspectives and Contemporary Developments”; Neale, Thomas. H. (2009)

QUESTION: What happens when a Representative of the U.S. Congress is appointed?

ANSWER: The U.S. Representative’s vacated seat must be filled by special election.

Article I, Section 2 of the U.S. Constitution provides that the executive of a state may issue a new election upon the vacancy of a member of the U.S. House of Representatives.

South Carolina state law pertaining to new – or special – elections is found in Section 7-13-190 of the South Carolina Code of Laws, which provides for holding a special election “...whenever a vacancy occurs in office by reason of death, resignation, or removal and the vacancy in office is one which is filled by a special election to complete the term of office... ”

Special election dates are as follows: “A primary must be held on the eleventh Tuesday after the vacancy occurs. A runoff primary must be held on the thirteenth Tuesday after

the vacancy occurs. The special election must be on the eighteenth Tuesday after the vacancy occurs.” (Time for primary election would be mid-March).

The newly-elected Congressman would serve the remaining years of the former Congressman’s unexpired term.

Source: Article I, Section 2 of the U.S. Constitution and Section 7-13-190 of the S.C. Code of Laws

QUESTION: Will the seniority of Senator DeMint’s seat be affected?

ANSWER: Possibly; based on U.S. Senate rules.

There are two lines of seniority in the U.S. Senate: (1) within the Republican caucus, which determines committee assignments; and (2) within the full Senate, which determines office space selection and seat assignment on the Senate floor. U.S. Senate Rules govern this process.