

Elections: Observations on State Laws and Perspectives on Holding Special Elections to Fill House Vacancies

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Q&A Report to Congressional Committees
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Why This Matters

In recent years, a growing number of threats have been made against members of Congress. In light of these threats and the COVID-19 pandemic, there has been increased interest in whether states are appropriately positioned to hold special elections to fill mass vacancies in the U.S. House of Representatives (House). The U.S. Constitution requires each state’s governor to issue written orders for special elections to fill House vacancies. In contrast with the constitutional provision related to filling U.S. Senate vacancies, there is no such provision for the temporary appointment of Representatives in the House.

Figure 1: U.S. Capitol Building, where the U.S. House of Representatives Assembles



Source: W.Scott McGill/stock.adobe.com. | GAO-25-107428

Following the terrorist attacks on September 11, 2001, a federal law was enacted in 2005 that generally requires states to hold special elections within 49 days of the Speaker of the House announcing that there are more than 100 vacancies in the House (2 U.S.C. § 8(b)). Under the statute, this is referred to as “extraordinary circumstances.”

We were asked to review state capabilities to hold special elections to fill vacancies in the House in extraordinary circumstances, consistent with the federal law. This report includes observations on state laws related to holding special elections to fill House vacancies. It also provides the perspectives of state election officials and subject matter experts on the capabilities of, and challenges facing, states in holding special elections to fill House vacancies consistent with the federal law, among other information.

Key Takeaways

- Nine states have laws for holding special elections to fill House vacancies in extraordinary circumstances, consistent with the federal law.
- The other 41 states do not have laws that adopt aspects of the federal law but still must follow its provisions in the event of extraordinary circumstances.
- Of the 33 respondents to our survey of state election officials in all 50 states, 19 reported that, prior to hearing about our study, they were not aware of the federal law that addresses holding special elections in extraordinary circumstances.
- In response to our survey, state election officials identified a range of challenges states might face in holding special elections consistent with the federal law. These challenges include those related to selecting candidates, identifying polling places and recruiting poll workers, and sending absentee ballots to uniformed services and overseas voters.
- State election officials also identified state practices that might help them hold special elections consistent with the federal law, such as assigning responsibility for candidate selection to political parties and allowing for electronic transmission and submission of absentee ballots.

What responsibilities do states and Congress have in the election process?

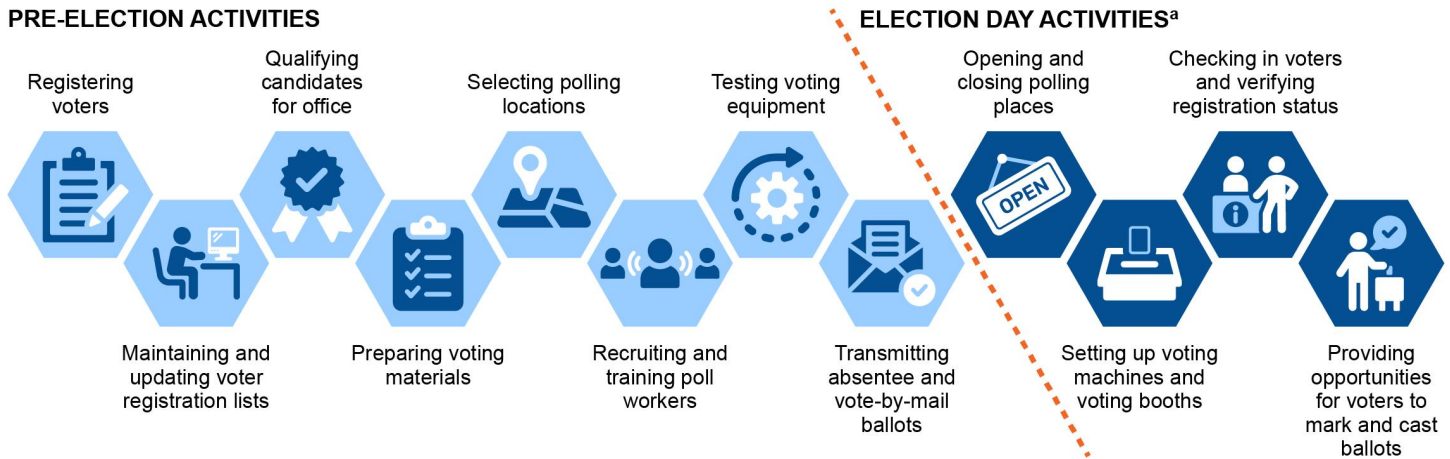
All levels of government share responsibility in the U.S. election process, and the election system is highly decentralized. States are responsible for the administration of their own elections as well as federal elections. Accordingly, states regulate various aspects of elections including, for example, registration procedures, absentee and early voting requirements, and Election Day procedures. States support local election jurisdictions in administering elections and oversee the conduct of elections in accordance with state and federal laws.

At the federal level, Congress's authority to regulate elections derives from various constitutional sources, depending on the type of election.¹ Congress has passed legislation to address voter registration, voter identification, absentee voting for uniformed service members and overseas citizens, accessibility provisions for elderly individuals and people with disabilities, and prohibitions against discriminatory practices, among other issues. For example, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), as amended, generally requires states to send absentee ballots to uniformed services and overseas voters at least 45 days before an election for a federal office.²

What activities are included in the process for holding elections?

The process for holding elections includes pre-election and Election Day activities.³ Figure 2 shows examples of these activities.

Figure 2: Examples of Pre-Election and Election Day Activities



Source: GAO analysis of elections-related reports; Icons-Studio/stock.adobe.com (icons). | GAO-25-107428

Notes: These examples are not presented in sequential order and do not constitute an all-inclusive list of election administration activities. In addition, certain pre-election activities may overlap with Election Day activities, such as in states that offer same-day voter registration, which allows any qualified resident of the state to register to vote and cast a ballot at the same time. Further, these activities may vary for states that have all-mail ballot or vote-by-mail elections. According to the National Conference of State Legislatures, as of January 2024, eight states allow all elections to be conducted entirely by mail, wherein ballots are automatically sent to every registered voter. These states may also provide options for in-person voting, both prior to and on Election Day.

³Election Day activities also apply to early in-person voting, which allows registered voters to cast their vote in person before Election Day without providing an excuse, either at one specific location or at one of several locations.

What time frames are in the federal law for filling House vacancies in extraordinary circumstances?

Federal law includes specific time frames for holding special elections to fill House vacancies in extraordinary circumstances, defined as when the Speaker of the House announces that there are more than 100 vacancies in state representation in the House.⁴ Specifically, the law requires that states in which vacancies exist do the following:

- Hold a special election within 49 days, unless within 75 days after the Speaker’s announcement that the vacancy exists, there is to be (a) a regularly scheduled general election for the same office or (b) another special election for the same office pursuant to a written order issued by the state’s chief executive prior to the date of the Speaker’s announcement.⁵
- Determine the candidates who will run by (a) political party nominations within 10 days of the Speaker’s announcement that the vacancy exists or (b) any other method, including holding primary elections, that ensures states can meet the 49-day deadline for holding the special election.⁶
- Ensure to the greatest extent practicable that absentee ballots are transmitted to uniformed services and overseas voters within 15 days of the Speaker’s announcement that the vacancy exists.⁷

How many states have laws that adopt aspects of the federal law for filling House vacancies?

While almost all states have laws for holding special elections to fill House vacancies in general, we identified nine states that have laws for holding such elections in extraordinary circumstances, consistent with the federal law.⁸ These states are Arizona, California, Colorado, Georgia, Indiana, Nebraska, New Mexico, North Dakota, and South Dakota. The federal law does not require states to enact laws to implement its provisions, but these states have taken

steps to do so. The other 41 states do not have laws that adopt aspects of the federal law but still must follow its provisions.

The laws in the nine states adopt aspects of the federal law, although most of them have not adopted all the federal law's requirements. Specifically:

- Seven states have laws that adopt the federal law's provision regarding the 49-day time frame.
- Five states have laws that adopt the provision regarding nominations of candidates.
- One state has a law that adopts the provision regarding transmitting absentee ballots to uniformed services and overseas voters.

Below are examples of state laws that adopt aspects of the federal law for holding special elections to fill House vacancies in extraordinary circumstances, such as those related to the 49-day time frame and candidate nominations.

- Arizona's state law generally requires a special election to fill a vacancy in the House to be held not more than 49 days after the declaration of the vacancy. There is an exception when a regularly scheduled general election or previously scheduled special general election is held within 75 days after the declaration of the vacancy.⁹
- Colorado's state law requires a special election to fill a vacancy in the House to be conducted on a Tuesday not more than 49 days after the declaration of the vacancy, unless a general election is to be held within 75 days of the declaration.¹⁰ In addition, the law requires political parties to nominate candidates no later than 10 days after the declaration of the vacancy.¹¹ It further provides the Secretary of State the authority to promulgate rules as may be necessary to administer and enforce any provision of the state law or to adjust statutory deadlines to ensure that a special election is held within the time required by the state law and the federal law.¹²
- Nebraska's state law requires the governor to issue an order specifying the date of a special election to fill a vacancy in the House to be held within 49 days after the announcement of the vacancy.¹³ In addition, the law requires the Secretary of State to notify each political party that polled at least 5 percent of the entire vote in the district where the vacancy occurs that the party may select a candidate within 7 days of the notification by the Secretary of State, following applicable procedures in state law.¹⁴

What are examples of timing provisions for filling House vacancies in the laws of the other states?

Below are examples of timing provisions for holding special elections to fill House vacancies in the 41 states that do not have laws that adopt an aspect of the federal law for their state. These provisions include specifying the number of days within which to hold an election or giving the governor discretion to order an election within a specific time frame. Specifically:

- Alaska's state law requires the governor to call a special primary election to be held not less than 60 and no more than 90 days after the vacancy occurs.¹⁵ Subsequently, the governor must call for a special election on the first Tuesday that is not a state holiday occurring not less than 60 days after the special primary election.¹⁶
- In Illinois, when a vacancy occurs more than 240 days before the next general election, state law requires the governor to order a special election

within 5 days after the occurrence of the vacancy and appoint a day within 180 days of issuance of the order to hold a special election.¹⁷

- Iowa's state law requires the governor to order a special election no later than 5 days from the date the vacancy exists with no less than 40 days' notice of the election if a vacancy occurs in the House when it is in session or will convene prior to the next general election.¹⁸ In addition, the special election must be held on a Tuesday and not be held the same day as a school election within the district.¹⁹
- Delaware's state law gives the governor discretion on whether to appoint a day for holding a special election before the next general election after the House vacancy exists.²⁰ If the governor appoints a day for holding a special election, the governor must issue a written order of election to the State Department of Elections commanding the department to hold the election on the appointed day.²¹ The written order must be delivered to the department at least 60 days before the day appointed for holding the election.²²

Because the requirements for holding a special election under the federal law may differ from relevant requirements in state law, meeting the federal requirements may entail adjustments to a state's usual election administration processes for holding special elections to fill vacancies in the House.

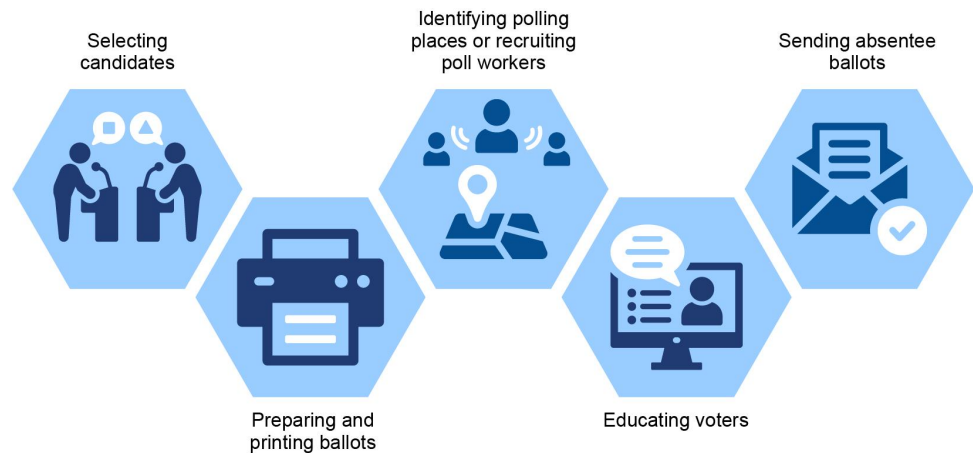
How many states were aware of the federal law prior to hearing about our study?

Of the 33 respondents to our web survey of state election officials in all 50 states, 19 said that they had not been aware of the federal law prior to hearing about our study.²³ Eleven respondents said they were already aware of it.²⁴ Eight of those 11 said they were aware of all three time frame requirements in the federal law related to holding a special election, determining the candidates who will run,²⁵ and transmitting absentee ballots to uniformed services and overseas voters.²⁶

What challenges might states face in holding special elections consistent with the federal law?

We asked the state election officials we surveyed and subject matter experts from four organizations we interviewed about the challenges states might face in holding special elections consistent with the requirements in the federal law.²⁷ They identified a range of challenges that states might encounter, examples of which are presented below.²⁸

Figure 3: Examples of Challenges that States Might Face in Holding Special Elections in Extraordinary Circumstances



Source: GAO analysis of state election officials' survey responses and interviews with subject matter experts; Icons-Studio/stock.adobe.com (icons). | GAO-25-107428

Note: Under federal law, states are generally required to hold special elections within 49 days of the Speaker of the U.S. House of Representatives announcing that there are more than 100 vacancies in the House (2 U.S.C. § 8(b)). Under the statute, this is referred to as “extraordinary circumstances.”

- **Selecting candidates.** In their survey responses, 14 state election officials identified selecting candidates as a key challenge—that, in some cases, state laws and procedures do not currently allow for candidate selection that would meet the time frame for holding a special election required by the federal law. For example, officials reported that because their states require primary or runoff elections, they would need to hold multiple elections in the 49-day window prescribed by the federal law, and the state time frames for these elections might create challenges in meeting the federal time frame. According to representatives from one organization we interviewed, determining the candidates who will run is one of the most important parts of the election process because it drives the time frames for printing ballots and programming voting machines.
- **Preparing and printing ballots.** Twenty-one state election officials reported challenges related to preparing and printing ballots in time to hold a special election consistent with the federal law. For example, an official from an all-mail ballot state said it could take 45 days after candidates are certified before ballots are printed and mailed to voters. Another respondent noted that vendors may not be able to meet the needs of multiple jurisdictions all at once on short notice. In addition, representatives from one organization we interviewed said there may be supply chain issues with getting ballot paper stock, as few vendors produce this type of paper and regular paper cannot be used. Representatives from another organization also told us that states had previously encountered shortages of ballot paper in regularly scheduled elections.
- **Identifying polling places or recruiting poll workers.** Thirteen state election officials noted challenges related to identifying polling locations or recruiting poll workers. More specifically, officials reported that they would expect to encounter difficulties identifying suitable polling places and recruiting and training a sufficient number of poll workers. For example, officials noted that schools normally serve as polling places in their states, and regularly scheduled elections are accommodated in school calendars, but expedited special elections may not be similarly accommodated.
- **Educating voters.** Ten state election officials reported challenges related to educating voters about the election. For example, one official reported that it may be difficult to publicize the election in such a short time frame, while

another noted that they would need to notify voters of any changes to polling place locations in a timely manner. Representatives from two organizations we interviewed also cited potential challenges with voter education, including informing voters about their assigned polling places or about the special election itself. In addition, representatives from one organization stated that voters may not have enough time to make informed choices about the candidates.

- **Sending absentee ballots, including to uniformed services and overseas voters.** Sixteen state election officials also noted challenges related to sending absentee ballots to voters subject to the requirements in the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). In particular, they cited the act's requirement that states send absentee ballots to uniformed services and overseas voters at least 45 days before an election for a federal office. For example, one official reported that meeting this 45-day requirement would be difficult, as selecting candidates in time for ballot production "would be a very tight window of time." Another official reported that holding a special election consistent with the requirements in the federal law for filling House vacancies in extraordinary circumstances would only be possible if the law "overrides" the 45-day requirement in UOCAVA. Similarly, a third official said that they would not have enough time to hold an election in 49 days and still meet the requirements in UOCAVA. Additionally, 11 officials noted that transmitting absentee ballots to voters more generally may be challenging.

State election officials we surveyed and experts we interviewed also identified additional challenges related to holding special elections consistent with the federal law. These include challenges with communicating and coordinating with candidates, campaigns, and local election officials regarding the election and challenges related to funding or resources required to hold a special election consistent with the federal law.

What effects might the challenges identified by states have on special elections?

State election officials we surveyed and experts we interviewed described various effects that the challenges they identified might have on special elections held to meet the requirements in the federal law. For example:²⁹

- **Accuracy and availability of voting materials.** In response to our survey, state election officials noted that identified challenges may affect the accuracy and availability of voting materials. For example, one official reported that, with reduced time to prepare ballots and related materials, errors in the text of these materials may occur. Another official reported that errors may occur during the programming and testing of voting machines. In addition to these issues, officials reported that it may be difficult to produce some materials normally required by law, such as translations of ballots and pamphlets, within the federal time frames.
- **Public perceptions of the election.** State election officials reported a range of perspectives related to potential public perception of an expedited special election. For example, one official noted that an expedited special election would create an opportunity for false information to spread and that this could damage confidence in both the process and the results. Another official reported that the challenges they identified in our survey—such as selecting candidates, preparing and printing ballots, or identifying polling places—could cast doubt on the election process and "result in a challenge to the legitimacy of the election." Another challenge officials noted was that their state laws

may have time frames for holding special elections that differ from the federal requirement, and one state official reported that diverging from state law may harm the credibility of an election.

- **Voting access.** Another effect state election officials identified in responding to our survey was related to voting access. For example, two officials reported that voters, including uniformed services and overseas voters, would have less time to request and receive their absentee ballots. One of these officials noted that compressed timelines generally could “disenfranchise voters.” Representatives from one organization we interviewed also noted that the shortened time frames may affect the number and location of available polling places and whether states would have enough time to prepare voting equipment accessibility mechanisms, such as audio assistance.

What practices might help states hold special elections consistent with the federal law?

Survey respondents and experts we interviewed identified several practices that states either currently utilize or could adopt to help states meet the time frames in the federal law for holding special elections in the event of extraordinary circumstances. For example:³⁰

- **Leveraging training and experience.** State election officials reported that state and local election officials had training or experience that would help them hold a special election consistent with the federal law. For example, officials from two states reported that their states hold expedited special elections to fill state legislative vacancies, and that this experience may be useful for holding special elections to fill House vacancies consistent with the federal law. Other state officials reported that local election officials in their states were trained and experienced in holding special elections, and one noted that “they would be fully capable of running the election on short notice.”
- **Candidate selection practices.** State election officials reported that, in some cases, states have procedures for selecting candidates for special elections that could be completed faster than holding primaries. One official reported that their state could accommodate online candidate filing for the special election and, as a result, candidates could be selected in 8 business days. An official from a state where signatures are required to file for candidacy reported that the required number of signatures in their state was relatively low, which could help the state meet the requirements in the federal law. In addition, officials reported that, in some cases, states assign candidate selection responsibility to political parties and noted that this could be done relatively quickly under a special election. One official reported that parties in their state have experience in quickly nominating candidates, which would “allow ballot production and printing to happen in an expedited fashion.”
- **Electronic transmission and submission of absentee ballots.** State election officials reported that allowing for the electronic transmission of absentee ballots could help states hold special elections consistent with the federal law. For example, one official reported that their state permits uniformed services and overseas voters to request, receive, and return ballots by email, characterizing this as an expedited option for ballot transmission and submission. Another official reported that in cases where mail ballots cannot reach voters, their state uses electronic transmission to allow voters to download and print their ballots. Representatives from an organization we interviewed told us that allowing individuals to return their

ballots electronically could help uniformed services and overseas voters and voters with disabilities cast ballots in expedited special elections. However, they added that expanding the use of electronic ballots could also pose security risks.

Notwithstanding the challenges they identified, a number of state election officials noted in their responses to our survey questions that they believed they could hold special elections consistent with the requirements in the federal law.³¹

Agency Comments

We provided a draft of this report to the U.S. Election Assistance Commission for review and comment. The commission did not have any comments on the report.

How GAO Did This Study

We identified and analyzed laws in all 50 states related to holding special elections to fill House vacancies and compared these laws with the federal law on filling House vacancies in extraordinary circumstances.³² We completed this state law research in June 2024.

In addition, we conducted a web survey of state election officials in all 50 states to gather (1) information about their awareness of the federal law and (2) their perspectives on the challenges states might face in holding special elections to fill House vacancies consistent with the federal law, the effects these challenges might have on such elections, and how state election administration practices might help states meet the time frames in the law. We also asked respondents to confirm the state laws we identified. We tested our questions for relevance and clarity with officials from three state election offices prior to fielding the survey. To encourage responses, we sent pre-notification emails prior to launching the survey, and during fielding, followed up multiple times with non-respondents by both phone and email. Thirty-three states responded to our survey, for a response rate of 66 percent.³³

To describe state election officials' perspectives, we conducted a content analysis of their responses to open-ended questions in our survey. We reported key themes from this analysis based on the number of times each was mentioned by our respondents. We established criteria for inclusion for each of the areas we asked about in the survey that would allow us to provide illustrative examples of the key themes that emerged.

We also reviewed relevant documents related to holding special elections to fill House vacancies (e.g., reports and Congressional testimony statements). Further, we interviewed subject matter experts from four organizations, selected based on their work on this topic, to help augment state perspectives. The organizations were the American Enterprise Institute, Bipartisan Policy Center, National Conference of State Legislatures, and U.S. Election Assistance Commission. In addition, we reviewed GAO reports on election administration to describe federal and state responsibilities and examples of election activities.³⁴

We conducted this performance audit from February 2024 to December 2024 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

List of Addressees

The Honorable Bryan Steil
Chairman
The Honorable Joseph D. Morelle
Ranking Member
Committee on House Administration
House of Representatives

The Honorable Laurel M. Lee
Chair
The Honorable Terri A. Sewell
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Committee on House Administration
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The Honorable Stephanie Bice
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The Honorable Derek Kilmer
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House of Representatives

The Honorable Barry Loudermilk
Chair
The Honorable Norma J. Torres
Ranking Member
Subcommittee on Oversight
Committee on House Administration
House of Representatives

We are sending copies of this report to the appropriate congressional committees, the U.S. Election Assistance Commission, and other interested parties. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

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Endnotes

¹Congress's authority to regulate congressional elections derives primarily from Article I, Section 4, Clause 1 of the U.S. Constitution (known as the Elections Clause).

²The Military and Overseas Voter Empowerment Act, enacted in 2009, amended UOVACA to establish new absentee ballot procedures, including the 45-day requirement, that states must follow in all federal elections. According to the act, if the chief state election official determines that the state is unable to meet the 45-day requirement due to an undue hardship under the act, the official must request the Department of Defense to grant a waiver to the state for that election. Pub. L. No. 111-84, div. A, tit. V, subtit. H, 123 Stat. 2318, 2318-35; see 52 U.S.C. § 20302(a)(8)(A), (g).

³Election administration also includes post-election activities, such as transferring physical ballots or records of vote counts to a central location for counting, determining the outcome of the election, certifying official election results, and performing recounts, if required.

⁴See Legislative Branch Appropriations Act, 2006, Pub. L. No. 109-55, tit. III, § 301, 119 Stat. 565, 588-90 (2005); see also 2 U.S.C. § 8(b)(4)(A). According to the law, the requirements related to holding special elections also apply to the District of Columbia and listed U.S. territories, but vacancies in these jurisdictions are not to be included by the Speaker in determining whether vacancies in state representation in the House exceed 100.

⁵2 U.S.C. § 8(b)(2).

⁶*Id.* § 8(b)(3).

⁷*Id.* § 8(b)(5)(A). The federal law also requires states to accept and process valid ballots or other election material from uniformed services and overseas voters so long as the ballot or other material is received by the appropriate state election official not later than 45 days from the date of transmittal to the voter. *Id.* § 8(b)(5)(B).

⁸We identified 48 states that have laws for holding special elections to fill House vacancies in general.

⁹Ariz. Rev. Stat. § 16-222(E).

¹⁰Colo. Rev. Stat. § 1-4-401.5(1).

¹¹*Id.* § 1-4-401.5(2).

¹²*Id.* § 1-4-401.5(4).

¹³Neb. Rev. Stat. § 32-564(2)(a).

¹⁴*Id.* § 32-564(2)(b). Each qualifying political party may select their candidate following the applicable procedures in Nebraska Revised Statute § 32-627(2).

¹⁵Alaska Stat. § 15.40.140.

¹⁶*Id.* Alaska's law also states that, in an election year in which a candidate for that office is not regularly elected, if a vacancy occurs on a date not less than 60 nor more than 90 days before the primary election, the special primary election shall be held on the date of the primary election and the special election is to be held on the date of the general election. If the vacancy occurs on a date not less than 60 nor more than 90 days before the general election, the special primary election shall be held on the date of the general election and the special election shall be held on the first Tuesday that is not a state holiday occurring not less than 60 days after the special primary election. *Id.*

¹⁷10 Ill. Comp. Stat. 5/25-7(a).

¹⁸Iowa Code § 69.14.

¹⁹*Id.* Under Iowa law, a school election shall be held biennially on the first Tuesday after the first Monday in November of each odd-numbered year to elect school district directors and merged area (community college) trustees and to vote on public measures for these school districts and merged areas. *Id.* § 277.1; Iowa Sec'y of State, *Candidate's Guide to the School Election* 1 (Nov. 7, 2023).

²⁰Del. Code Ann. tit. 15, § 7302.

²¹*Id.* §§ 101(6), 7303.

²²*Id.* § 7303.

²³As part of our review, we conducted a web survey of state election officials in all 50 states to gather information and perspectives on holding special elections to fill House vacancies in extraordinary circumstances, consistent with the federal law.

²⁴Additionally, three respondents answered “Don’t know” to our question asking if they were aware of 2 U.S.C. § 8(b) prior to hearing about our study.

²⁵Candidates are to be determined by political party nomination within 10 days of the Speaker’s vacancy announcement or by any other method that ensures the special election occurs within 49 days of such announcement. 2 U.S.C. § 8(b)(3).

²⁶Three of the 11 respondents who reported that they were aware of the federal law prior to our study answered “Don’t know” or “Not aware of requirement” regarding their awareness of at least one of the three time frame requirements in the law.

²⁷We interviewed representatives from the American Enterprise Institute, Bipartisan Policy Center, National Conference of State Legislatures, and U.S. Election Assistance Commission.

²⁸We included in the bulleted list any challenges that were mentioned in at least 10 survey responses to any of our open-ended questions.

²⁹We included in the bulleted list any effects that were mentioned in at least four survey responses to any of our open-ended questions.

³⁰We included in the bulleted list any helpful practices that were mentioned in at least five survey responses to any of our open-ended questions.

³¹Thirteen officials noted this in their responses to our open-ended questions regarding helpful practices, challenges, and the effects of these challenges on the accuracy, security, and credibility of holding special elections in extraordinary circumstances.

³²See 2 U.S.C. § 8(b).

³³We sent our survey to state election officials on July 26, 2024.

³⁴For example, see GAO, *Election Security: DHS Plans Are Urgently Needed to Address Identified Challenges Before the 2020 Elections*, GAO-20-267 (Washington, D.C.: Feb. 6, 2020) and GAO, *Elections: Issues Related to Registering Voters and Administering Elections*, GAO-16-630 (Washington, D.C.: June 30, 2016).