



GENTNER DRUMMOND
ATTORNEY GENERAL

ATTORNEY GENERAL OPINION
2026-18

The Honorable J. Kevin Stitt
Governor of Oklahoma
State Capitol Building
2300 North Lincoln Boulevard, Suite 212
Oklahoma City, OK 73105

October 29, 2026

The Honorable Lonnie Paxton
President Pro Tempore
Oklahoma State Senate
2300 North Lincoln Boulevard, Suite 422
Oklahoma City, OK 73105

Dear Governor Stitt and President Pro Tempore Paxton:

This office has received two requests for an Attorney General Opinion on the vacancy created by Senator Markwayne Mullin's resignation from the United States Senate. The Governor and the President Pro Tempore each ask three questions. The questions overlap and turn on the same provisions, so this opinion answers both requests together and restates the questions as follows:

- 1. Does the third paragraph of title 26, section 12-101(C) of the Oklahoma Statutes apply to a vacancy in the office of United States Senator that occurred after March 1 of an even-numbered year in which the office was already scheduled to appear on the ballot for a full six-year term, so that the candidate elected at that year's General Election is "deemed to also have been elected to fill the vacancy" and is "eligible to assume the office upon the official certification of the election by the State Election Board"?**
- 2. Does the appointment of a United States Senator made under title 51, section 10(C) of the Oklahoma Statutes to fill such a vacancy terminate upon the election of the candidate elected at the General Election to the succeeding six-year term, upon the certification of that election, or upon that candidate's qualification by taking the oath, or does the appointee remain in office until the existing term expires at noon on January 3, 2027, when the successor's term begins under the Twentieth Amendment and 2 U.S.C. § 1?**
- 3. Once the State Election Board has certified the results of the General Election, does the Governor retain any discretion under Oklahoma or**

federal law to decline or delay certifying the election of the successful candidate to the President of the Senate under 2 U.S.C. § 1a, and what term must that certificate reflect?

**I.
SUMMARY**

The candidate elected on November 3, 2026, is deemed elected to fill the vacancy created by Senator Mullin’s resignation and may assume the office once the State Election Board certifies the election. The Governor’s appointment ends when that successor takes the oath before the Senate, not on January 3, 2027. The Governor has no discretion to decline or delay certifying the election. Because the candidate is elected to two terms, the Governor must transmit two certificates: one for the unexpired term ending January 3, 2027, and one for the six-year term beginning that same day.

The third paragraph of title 26, section 12-101(C) of the Oklahoma Statutes controls. When “the vacant office is already scheduled to be filled for a full term at the next available regularly scheduled election,” no special election is called. The candidate elected “shall be deemed to also have been elected to fill the vacancy and shall be eligible to assume the office upon the official certification of the election by the State Election Board.” The seat Senator Mullin held was already scheduled to be filled for a full term on November 3, 2026.

Subsection C, paragraph 2 does not change that result. It fixes the timing of a special election when one is required; paragraph 3 dispenses with the special election when the office is already on the ballot. Reading paragraph 2 to push this vacancy to a 2028 special election, for a term that expires in January 2027, would require an election to fill a term that no longer exists. It would reverse a rule in place since 1994 under which a Senate vacancy arising in the final year of a term is filled by the winner of that year’s General Election.

Section 10(C) of title 51 of the Oklahoma Statutes directs that the appointee serve “until a successor is elected.” Section 15 does not extend that tenure. Section 10(C) is the specific and later enactment, and the Seventeenth Amendment itself allows temporary appointments only “until the people fill the vacancies by election as the legislature may direct.” Federal law does not interfere. 2 U.S.C. § 1 fixes the term to which a regular election elects a Senator. Still, the Seventeenth Amendment leaves the manner of filling a vacancy to the State, and the States have long filled Senate vacancies at elections held with the regular election. In short, the questions reduce to two: whether the November 3 election fills the vacancy, and when the appointment ends. It does, and the appointment ends when the successor takes the oath.

**II.
BACKGROUND**

Senator Mullin resigned on March 23, 2026, to serve as Secretary of Homeland Security. He won the seat at a special election on November 8, 2022, for the remainder of the term to which Senator James Inhofe had been elected in 2020. That term expires at noon on January 3, 2027.

On March 24, 2026, Governor J. Kevin Stitt appointed Alan S. Armstrong to fill the vacancy under title 51, section 10(C) of the Oklahoma Statutes. The Order of Appointment, filed with the

Secretary of State, appoints him “until the vacancy therein, caused by the resignation of Senator Markwayne Mullin, is filled by election as provided by law, pursuant to the provisions of Article 1, Section 5 of the United States Constitution and 51 O.S. § 10(C).” Order of Appointment (Mar. 24, 2026) (Okla. Sec’y of State No. 54078). The Certificate of Appointment transmitted to the President of the Senate, countersigned by the Secretary of State, states the same: the appointee is to serve “until the vacancy therein caused by the resignation of Markwayne Mullin, is filled by election as provided by law.” Certificate of Appointment (Mar. 24, 2026) (Okla. Sec’y of State No. 54079). Senator Armstrong took the oath the same day. 172 Cong. Rec. S1568 (daily ed. Mar. 24, 2026). Neither instrument states when the Senator’s term ends or mentions the November 3, 2026, General Election.

Before his appointment, Senator Armstrong submitted the oath required by title 51, section 10(D), affirming that he would not file as a candidate for the office when it next appeared on the ballot. United States Senate, Governor’s Appointee Affirmation (51 O.S. § 10(D)) (Mar. 24, 2026) (Okla. Sec’y of State No. 54077). He has honored that oath.

No special election has been called. The Governor issued no proclamation under title 26, section 12-102, issued no writ of election, and opened no special filing period. The office of United States Senator appears on the 2026 General Election ballot because the Inhofe term expires in January 2027, and a Senator must be elected for the succeeding term. The terms of office schedule that the Secretary of the State Election Board furnished with the 2026 filing packets lists the office as a six-year term beginning January 3, 2027.¹ It lists no unexpired term and no special election.² Candidates filed for the office as so described.

Three provisions of Oklahoma law bear on the questions. The first is title 51, section 10(C)–(D):

C. When a vacancy occurs in the office of a member of the United States Senate from Oklahoma, the Governor shall, within thirty (30) days of occurrence of the vacancy:

1. Appoint a person eligible to hold such office, who has been a registered voter of the party of the predecessor in Oklahoma for at least five (5) years preceding the date that the vacancy was created, to serve in such office until a successor is elected; and

2. Call a special election, if necessary, to fill such vacancy, as provided in Section 12-101 of Title 26 of the Oklahoma Statutes.

D. Prior to an appointment pursuant to paragraph 1 of subsection C of this section, a person who is a prospective appointee shall submit to the Secretary of State an

¹ *State of Oklahoma Terms of Office*, OKLA. STATE ELECTION BD. (Mar. 2025), <https://oklahoma.gov/content/dam/ok/en/elections/terms-of-office/2025-terms-of-office.pdf>.

² The terms of office schedule is published by the State Election Board and furnished to candidates with the filing packet. Candidate filing for the 2026 elections ran April 1 through April 3, 2026. *See* 26 O.S.Supp.2023, § 5-110 (filing period opens the first Wednesday of April of an even-numbered year and closes the next succeeding Friday). Nothing in this opinion turns on a factual determination beyond the public record described here.

oath affirming that the person will not file as a candidate for the office when it next appears on the ballot.

The second is title 26, section 12-101(C),³ the special-election provision to which title 51, section 10(C) refers. This opinion refers to its numbered provisions as paragraphs 1 through 4, as the statute itself does:

C. If a vacancy or irrevocable resignation occurs in the office of a member of the United States Senate from Oklahoma, the vacancy shall be filled as provided in subsection C of Section 10 of Title 51 of the Oklahoma Statutes. The special election called by the Governor shall be subject to the following provisions:

1. A Special Primary, Runoff Primary and General Election shall be held concurrently with the next available regularly scheduled statewide Primary, Runoff Primary and General Election, and a special candidate filing period shall be on the same dates as the regular candidate filing period for those elections;
2. Provided, if a vacancy occurs in an even-numbered year on or before March 1, then the special election, if necessary, shall be held that same year in the manner provided in paragraph 1 of this subsection. However, if the vacancy occurs after March 1 in an even-numbered year, then the special election shall be held at the next subsequent regularly scheduled statewide regular Primary, Runoff Primary and General Elections;
3. Provided, if the vacant office is already scheduled to be filled for a full term at the next available regularly scheduled election, then no special election shall be called. In such case, the candidate elected to the office at the regularly scheduled election shall be deemed to also have been elected to fill the vacancy and shall be eligible to assume the office upon the official certification of the election by the State Election Board.
4. An irrevocable resignation shall occur when a member of the United States Senate from Oklahoma provides a written letter of resignation to the Secretary of State as provided in Section 12-119 of this title that serves notice of the Senate member's resignation on a date certain.

The third provision is title 51, section 15, a general statute on appointed officers: “[E]very appointed officer shall hold his office until the end of the term for which the officer whom he succeeds was elected or appointed, and until his successor is elected and qualified.”

Federal law also bears on these questions. The Seventeenth Amendment provides that “[w]hen vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the

³ Subsection (C) in its present form was enacted by Senate Bill 959, 2021 Okla. Sess. Laws ch. 582, § 1, which also enacted the current text of 51 O.S.2021, § 10(C)–(D). *Id.* § 2. The history is discussed in Part III.A. This opinion does not address the Governor’s duties respecting a vacancy in the office of Representative in Congress under 26 O.S.2021, § 12-101(A)–(B).

vacancies by election as the legislature may direct.” U.S. CONST. amend. XVII. The Twentieth Amendment provides that Senators’ terms end “at noon on the 3d day of January” and that “the terms of their successors shall then begin.” U.S. CONST. amend. XX, § 1.

Congress has provided that at the last regular election before a Senator’s term expires, a Senator “shall be elected by the people thereof for the term commencing on the 3d day of January next thereafter.” 2 U.S.C. § 1. Congress has also made it “the duty of the executive of the State from which any Senator has been chosen to certify his election, under the seal of the State, to the President of the Senate of the United States,” and has required that the secretary of state countersign the certificate. *Id.* §§ 1a–1b. And the Constitution makes the Senate “the Judge of the Elections, Returns and Qualifications of its own Members.” U.S. CONST. art. I, § 5, cl. 1.

Both requests arise from a disagreement over when the appointment ends. Counsel for Representative Kevin Hern, a candidate for the office, and counsel for Senator Armstrong have each submitted memoranda to this office. An Attorney General Opinion is not the product of an adversarial proceeding, and this opinion answers the questions of law that the requesting officers have asked rather than deciding a contest between those submissions. Because the disagreement frames the questions, the two positions are described here. Counsel for Representative Hern contend that under paragraph 3 the candidate elected on November 3, 2026, is deemed elected to fill the vacancy and may assume the office upon certification, ending the appointment then. Counsel for Senator Armstrong contend that paragraph 3 does not reach a vacancy that arose after March 1, 2026, that no one will be elected to the unexpired term, and that the appointment runs to January 3, 2027. No court has decided the question. The 2022 litigation over the special election at which Senator Mullin was elected did not reach it. *See Jones v. Ziriaux*, No. MA-120253 (Okla. Mar. 24, 2022) (denying original jurisdiction); *Jones v. Stitt*, 606 F. Supp. 3d 1117, 1123–26 (W.D. Okla. 2022), *appeal dismissed as moot*, No. 22-6094, 2023 WL 1463247 (10th Cir. Feb. 2, 2023).

Absent ambiguity or conflict with another enactment, a statute is applied according to the plain meaning of the words the Legislature chose, which presumptively express its intent. *Broadway Clinic v. Liberty Mut. Ins. Co.*, 2006 OK 29, ¶ 15, 139 P.3d 873, 877. Related provisions are read together, and “all statutory provisions must be given effect if possible.” *City of Sand Springs v. Dep’t of Pub. Welfare*, 1980 OK 36, ¶ 28, 608 P.2d 1139, 1151. Under those principles, paragraph 3 applies to this vacancy, the November 3 election fills it, and the appointment ends when the successor qualifies.

III. DISCUSSION

A. Paragraph 3 of Section 12-101(C) Applies to This Vacancy.

Paragraph 3 of section 12-101(C) states a condition and a consequence. The condition: “the vacant office is already scheduled to be filled for a full term at the next available regularly scheduled election.” 26 O.S.2021, § 12-101(C)(3). The consequence: “no special election shall be called,” and “the candidate elected to the office at the regularly scheduled election shall be deemed to also have been elected to fill the vacancy and shall be eligible to assume the office upon the official certification of the election by the State Election Board.” *Id.*

The condition is met. The office Senator Mullin vacated on March 23, 2026, was already scheduled to be filled for a full six-year term on November 3, 2026. Candidates filed in April. Voters will decide in November. No earlier regularly scheduled election could fill the office, and nothing points to a later one. The November 3 election is the next regularly scheduled election available for this office. The winner of that election is therefore deemed elected to fill the vacancy and may assume the office upon certification.

A contrary reading would treat “next available regularly scheduled election” differently. On that reading, paragraph 2 defines the phrase. For a vacancy arising after March 1 of an even-numbered year, paragraph 2 points to the next cycle, so the phrase in paragraph 3 means 2028. To be sure, the argument has surface appeal. But it does not survive when the subsection is read as a whole.

The subsection has a simple structure. Paragraph 1 states the default: a Senate vacancy is filled at a special election held with the nearest regular election, with filing on the regular dates. Paragraph 2 adjusts the timing of that special election by reference to a March 1 cutoff. Paragraph 3 removes the special election altogether when the office is already on the ballot for a full term and, in that case, treats the regular election as the election that fills the vacancy. Paragraphs 2 and 3 thus answer different questions. Paragraph 2 says when a special election is held, if one is needed. Paragraph 3 says whether one must be held at all.

The argument that paragraph 3 points to 2028 depends on treating paragraph 3 as a proviso whose meaning derives from the proviso before it. Each is introduced by “Provided,” and each qualifies paragraph 1 in its own way. But a proviso, while it ordinarily reaches only the matter it qualifies, “need not be confined to the immediately preceding subject where it clearly appears to have been intended to apply to some other matter,” *Hill v. Bd. of Educ.*, 1997 OK 111, ¶ 6, 944 P.2d 930, 932, and “if the context requires, it may be considered tantamount to an independent enactment,” *Searcy v. State*, 1917 OK 416, ¶ 1, 167 P. 476, 477.

The Legislature’s word choice confirms the division of labor. Paragraph 1 speaks of the “next available regularly scheduled” election, and paragraph 3 repeats that phrase. Paragraph 2 does not. For a vacancy arising after March 1 in an even-numbered year, paragraph 2 sends the special election to the “next subsequent” regularly scheduled election. Thus, one phrase applies to the nearest regular election, and a different phrase applies to the one after it. Paragraph 2 does not redefine “next available.” It displaces that phrase, for the special election only, with “next subsequent.” Paragraph 3 borrows nothing from paragraph 2. It asks its own question: is the office already on the ballot for a full term at the nearest regular election? An election at which the office is already on the ballot is, by definition, available to fill it.

Reading paragraph 3 to mean 2028 also produces a result the Legislature cannot have intended. If paragraph 2 governs, its second sentence commands that “the special election shall be held at the next subsequent regularly scheduled statewide regular Primary, Runoff Primary and General Elections,” that is, in 2028. But the current term expires at noon on January 3, 2027. A 2028 special election would fill a term that ended twenty-two months earlier.

That result is avoided only by adding a gloss: a special election is not “necessary,” so none is held. The words “if necessary” do appear in section 10(C)(2) and in the first sentence of paragraph 2. But neither provision says when a special election is unnecessary. Paragraph 3 does. It is the only provision in the subsection that identifies a case in which “no special election shall be called,” and that case is the one in which the office is already scheduled to be filled for a full term. “If necessary” thus points to paragraph 3. It does not create an unwritten rule under which a late-term vacancy goes unfilled by any election.

And the sentence actually invoked for that gloss, the second sentence of paragraph 2, has no “if necessary” qualifier at all. It is mandatory. So the argument requires that a mandatory sentence be read as permissive and that the vacancy be filled by no election at all. Where one construction yields an absurd result and another does not, the latter governs. *Gilbert Cent. Corp. v. State*, 1986 OK 6, ¶ 6, 716 P.2d 654, 658 (ordinary rules of construction apply “unless they lead to an absurd result”).

The March 1 cutoff in paragraph 2 serves a purpose that is absent here. Candidate filing opens on the first Wednesday of April. 26 O.S.Supp.2023, § 5-110. A special election for an office not otherwise on the ballot needs a special filing period, which paragraph 1 places on the same dates as the regular one. A vacancy arising after March 1 leaves too little time to give notice and open that filing period for the current cycle, so paragraph 2 carries the vacancy forward.

None of that machinery is needed when the office is already scheduled to be filled for a full term. The candidates have filed. The contest is on the ballot. The regular election can do the special election’s work without adding anything to the ballot. Paragraph 3 recognizes as much. It applies without regard to the March 1 cutoff because the reason for the cutoff is absent. For the same reason, it applies whenever the vacancy arises during the election year. A vacancy arising in October 2026, after filing has closed and ballots have been printed, would be handled the same way: the contest is already on the ballot, nothing needs to be added to it, and the winner is deemed elected to fill the vacancy.

The closing clause of paragraph 3 confirms the reading. The winner is “eligible to assume the office upon the official certification of the election by the State Election Board.” 26 O.S.2021, § 12-101(C)(3). That clause matters only if the winner can take the seat before the new term begins on January 3. A Senator elected to a full term takes office that day by force of the Twentieth Amendment and 2 U.S.C. § 1, with no help from Oklahoma law. The Legislature added the certification clause because it expected the winner to take the seat in the weeks between certification and the new Congress.

And paragraph 3 ties that consequence to a condition about the office, not the date of the vacancy. It has no March 1 cutoff of its own, and nothing in its text turns on when the vacancy arises. Reading a March 1 cutoff into paragraph 3 imports a limitation the Legislature placed only in paragraph 2. When the Legislature includes a limitation in one provision and omits it from another, the omission is presumed deliberate. *Broadway Clinic*, 2006 OK 29, ¶ 16, 139 P.3d at 877.

The provision’s history removes any doubt. In 1994, the Legislature provided that “[n]o special election shall be called if the vacancy occurs after March 1 of any even-numbered year if the term

of said office expires the following year,” and that in such a case “the candidate elected to said office at the regular General Election shall be appointed by the Governor to fill the unexpired term.” 26 O.S.Supp.1994, § 12-101(B); Senate Bill 770, 1994 Okla. Sess. Laws ch. 260, § 27. That rule addressed, in express terms, the vacancy at issue here: one arising after March 1 of an election year in which the term expires. It remained substantively unchanged through 2011. *See* 26 O.S.Supp.2002, § 12-101(B); Senate Bill 826, 2002 Okla. Sess. Laws ch. 380, § 1.

In 2012, the Legislature dropped the March 1 limitation, so that the rule reached any Senate or House vacancy arising in an election year in which the term expires. Senate Bill 91, 2012 Okla. Sess. Laws ch. 3, § 1. In 2019, it confined the appointment rule to Senate seats and moved House seats to a deemed-election form. House Bill 1070, 2019 Okla. Sess. Laws ch. 341, § 1; 26 O.S.Supp.2019, § 12-101(B)–(C). For twenty-seven years, then, a Senate vacancy arising after March 1 of an election year was the paradigm case for filling the seat through the regular election. Under the rule in force from 1994 to 2021, the winner of the November 3 election would have been appointed to this unexpired term.

The 2021 Act, Senate Bill 959, rewrote the Senate-vacancy provisions into their present form. 2021 Okla. Sess. Laws ch. 582, § 1. It kept the policy. It restated the rule in broader terms, so that it applies whenever the vacant office is “already scheduled to be filled for a full term at the next available regularly scheduled election,” and it replaced the Governor’s post-election appointment of the winner with a deemed election that operates “upon the official certification of the election.” *Id.* The change eliminated the Governor’s role in seating the winner. It did not eliminate the rule that the regular election fills the vacancy. For twenty-seven years, the Legislature had directed that late-term Senate vacancies be filled through the regular election. Nothing in the 2021 Act suggests that it meant to reverse course and leave those vacancies to appointment alone.

The rest of the Election Code reflects the same policy. For a House vacancy arising in an even-numbered year, the regular election “shall be deemed to also serve as a Special Election to fill the unexpired term.” 26 O.S.2021, § 12-101(B). That deemed-election rule replaced, in 2019, a rule under which the Governor appointed the regular-election winner to the unexpired term. House Bill 1070, 2019 Okla. Sess. Laws ch. 341, § 1. Governor Fallin applied the earlier rule in 2018. After Representative Hern won the regular election for the seat Representative Bridenstine had vacated, she appointed him to the unexpired term, 26 O.S.Supp.2012, § 12-101(B), and he was sworn in a week later. 164 CONG. REC. H9499 (daily ed. Nov. 13, 2018).

County offices work the same way. *See* 26 O.S.2021, § 12-111(A)–(B); 51 O.S.2021, § 10(E). Whether by appointing the winner or by deeming the winner elected, the Legislature has consistently let an election already on the calendar fill a vacancy that arises too late for a separate contest. Paragraph 3 is the Senate provision that carries out that choice.

Paragraph 3 therefore applies. The candidate elected on November 3, 2026, is “deemed to also have been elected to fill the vacancy” and is “eligible to assume the office upon the official certification of the election by the State Election Board.” 26 O.S.2021, § 12-101(C)(3).

B. No Additional Act Is Required Before the Successor Assumes the Office.

The President Pro Tempore asks whether anything beyond certification is required before the winner may assume the office. Nothing is. The statute ties eligibility to one defined event: the State Election Board's official certification. No further act of any Oklahoma officer is required. The Governor's certificate to the President of the Senate under 2 U.S.C. § 1a follows as a ministerial duty imposed by federal law, discussed in Part III.E, and leaves no discretion to delay. The only remaining step is the oath, which the Senate administers. *See* U.S. CONST. art. I, § 5, cl. 1; *Roudebush v. Hartke*, 405 U.S. 15, 25–26 (1972).

That is how Oklahoma has treated a candidate elected to fill a congressional vacancy at a regular election. Representative Inhofe was elected to Senator Boren's unexpired term on November 8, 1994, under a statute providing that the person elected "shall take office on the date the resignation of the incumbent becomes effective," 26 O.S.Supp.1994, § 12-101(C), and took the Senate oath when the Senate next convened, on November 30. 140 CONG. REC. S15076 (daily ed. Nov. 30, 1994). Representative Hern was elected on November 6, 2018, and took the House oath on November 13. 164 CONG. REC. H9499 (daily ed. Nov. 13, 2018). "Eligible" denotes capacity to take the office. It creates no waiting period, and it conditions the successor's title on nothing but certification and the oath.

C. The Appointment Ends When the Successor Is Elected and Qualifies.

Title 51, section 10(C)(1) of the Oklahoma Statutes directs the Governor to appoint a person "to serve in such office until a successor is elected." Section 10(C)(2) in turn refers to title 26, section 12-101, and paragraph 3 of that section identifies the successor: the candidate elected at the regularly scheduled election, who "shall be deemed to also have been elected to fill the vacancy." The two provisions were enacted together in 2021 and are read together. Senate Bill 959, 2021 Okla. Sess. Laws ch. 582, §§ 1–2. Together, they provide that the appointment lasts until the November 3 election produces a successor, who may assume the office upon certification. The appointment ends when the successor takes the oath. Until then, the appointee serves, so the State is never without a Senator. That is the ordinary rule for Oklahoma officers. The general statute on appointed officers states the same, providing that an appointee holds office "until his successor is elected and qualified." 51 O.S.2021, § 15. Senator Armstrong's appointment was made under section 10(C)(1). He submitted the oath that section 10(D) requires "[p]rior to an appointment pursuant to paragraph 1 of subsection C," the Order of Appointment invokes section 10(C) by name, and he holds the office for the term section 10(C)(1) prescribes.

That reading follows the Seventeenth Amendment. The Amendment permits a legislature to empower the Governor "to make temporary appointments until the people fill the vacancies by election as the legislature may direct." U.S. CONST. amend. XVII. The appointment is temporary by constitutional design. *Judge v. Quinn*, 612 F.3d 537, 554 (7th Cir. 2010) ("The temporary appointment ends when the people fill the vacancy in an election."). The Legislature has directed that this vacancy be filled on November 3, 2026. When the people fill it, the appointment ends.

The Governor's own instruments say the same. They appoint Senator Armstrong "until the vacancy therein caused by the resignation of Markwayne Mullin, is filled by election as provided by law." Certificate of Appointment (Mar. 24, 2026); *see also* Order of Appointment (Mar. 24, 2026) (same, "pursuant to the provisions of Article 1, Section 5 of the United States Constitution

and 51 O.S. § 10(C)"); *Senate Manual*, S. Doc. No. 118-1, Rule II, ¶ 3, at 3 (2024) (recommended form). Neither instrument appoints him for the remainder of the term nor mentions January 3, 2027. The Governor fixed the end of the appointment at the moment the vacancy is filled by election, and Oklahoma law fills it on November 3, 2026.

Title 51, section 15 does not extend the appointment. Section 15 has two clauses. The second, "until his successor is elected and qualified," matches section 10(C). The first, "until the end of the *term* for which the officer whom he succeeds was elected or appointed" (emphasis added), is the clause relied on for a January 3, 2027, end date. Read in isolation, that clause would carry the appointment to that date. But section 10(C) is the specific statute. It addresses one office and one event, a vacancy in the United States Senate, and it states the appointee's tenure in express terms: "until a successor is elected." Section 15 addresses appointed officers as a class. The specific statute controls. *Multiple Inj. Tr. Fund v. Coburn*, 2016 OK 120, ¶ 23, 386 P.3d 628, 635–36; *Morton v. Mancari*, 417 U.S. 535, 550–51 (1974).

Section 10(C) is also the later statute. It dates from 2021; section 15 has stood unchanged since 1910. R.L. 1910, § 4282. Where two statutes conflict, the later modifies the earlier. *City of Sand Springs*, 1980 OK 36, ¶ 28, 608 P.2d at 1151. And section 10(C) has no "end of the term" clause. The Legislature knows how to guarantee an appointee the balance of a term; section 15 shows as much. It chose different words for a Senate appointee, and that choice is presumed deliberate. *Broadway Clinic*, 2006 OK 29, ¶ 16, 139 P.3d at 877.

This office's recent opinion on district-judge vacancies does not point the other way. That opinion concluded that a person appointed under section 10(B) holds office "until the end of that term and until a successor is elected and qualified," citing section 15. 2026 OK AG 16, ¶¶ 32, 37 & concl. 4. Section 15 supplied the appointee's tenure there because section 10(B) says nothing about tenure; it prescribes only the manner of appointment. Section 10(C)(1) is different. It states the Senate appointee's tenure in its own words, "until a successor is elected." Under the specific-over-general rule that the opinion applied, 2026 OK AG 16, ¶ 24, those words control over section 15's general clause.

Section 15 could not, in any event, carry a Senate appointment past the election that fills the vacancy. The Seventeenth Amendment fixes the outer limit of a temporary appointment at the point "the people fill the vacancies by election." A state statute that kept an appointee in office past that point would exceed the authority the Amendment delegates. *See Judge*, 612 F.3d at 554.

The Nevada Supreme Court rejected the same contention in *Brown v. Georgetta*, 275 P.2d 376 (Nev. 1954) (per curiam), where a taxpayer argued that the appointed Senator's tenure covered the entire unexpired term and no vacancy election could be held. So read, the court explained, "the appointment in no sense could be regarded as temporary," and the legislature "must be regarded as having directed that [vacancies] shall not be so filled. We can conceive of no more direct opposition to the clear intent of the Constitution." *Id.* at 378. Title 51, section 15 of the Oklahoma Statutes was enacted in 1910, three years before the Seventeenth Amendment was ratified. A

statute written before the Amendment cannot have been meant to fix how long an appointment under the Amendment may last; the power to make such appointments did not yet exist.⁴

Nor do the Oklahoma decisions on state and county officers compel a different result. *Ferguson v. Lawrence*, 1916 OK 1, ¶ 5, 157 P. 1038, 1039, and *King v. Paxton*, 1938 OK 290, ¶¶ 13–16, 79 P.2d 207, 208–09, held that an officer elected at a general election to a new term could not displace an appointee before the new term began. But the Court said why. It was “unaware of any statute providing for the election of a county officer to fill an unexpired term,” *Ferguson*, 1916 OK 1, ¶ 5, 157 P. at 1039, and absent such a statute the general election “is not for the purpose of filling a vacancy.” *King*, 1938 OK 290, ¶ 0, 79 P.2d at 207.

This office recently read those decisions the same way in concluding that a judge-elect may not displace an appointee to a vacant district judgeship: “No provision of article VII of the Oklahoma Constitution, the Election Code, or title 51 of the Oklahoma Statutes provides for electing a district judge to an unexpired term, and the only mechanism for filling one is appointment.” 2026 OK AG 16, ¶ 36. The question, in other words, is one of legislative direction. Where the Legislature provides that the regular election fills the vacancy, it does. For district judges it has not, which is why that opinion also said that a candidate who files for a term is elected “only to the term for which he or she filed” and that the unexpired term and the succeeding term are “distinct tenures, filled in different ways.” *Id.* ¶ 3; *see also id.* ¶ 37. For United States Senators, the Legislature has provided otherwise, in paragraph 3 of section 12-101(C), which is the legislative direction the judicial-vacancy opinion found missing. The two opinions apply the same rule to different statutes.

This reading never leaves the State without a Senator. The appointee serves until the successor qualifies. In past practice, the oath has followed certification within days. The Seventeenth Amendment’s purpose, that the people rather than the Governor choose who represents them, is served at the earliest moment the law allows.

D. Federal Law Does Not Prevent the Regular Election from Filling the Vacancy.

The Governor asks whether section 12-101(C), paragraph 3, so applied, conflicts with 2 U.S.C. § 1 or the Twentieth Amendment. It does not. 2 U.S.C. § 1 provides that at the regular election preceding the expiration of a Senate term, a Senator “shall be elected by the people thereof for the term commencing on the 3d day of January next thereafter.” That fixes the term to which the regular election elects a Senator. It does not speak to whether the regular election may also elect the Senator to fill a vacancy. The Twentieth Amendment fixes the moment one term ends and the next begins. It says nothing about who holds the office in the weeks before. Neither provision addresses vacancies.

⁴ Oklahoma’s own history agrees. When Senator Robert S. Kerr died on January 1, 1963, with four years left in his term, Governor George Nigh appointed former Governor J. Howard Edmondson to the seat, and Edmondson served only until Fred Harris was elected to the unexpired term in November 1964, not until the term expired in 1967. *Biographical Directory of the United States Congress*, Edmondson, James Howard, <https://bioguide.congress.gov> (last visited Oct. 29, 2026) (served “from January 7, 1963, to November 3, 1964”); *id.*, Harris, Fred Roy. So read, Section 15 would have kept the appointee in office two years after the voters chose a successor. That has never been the law.

The Seventeenth Amendment does speak to vacancies, and it commits the manner of filling them to the State: temporary appointments continue “until the people fill the vacancies by election as the legislature may direct.” That phrase gives the legislature power to direct the election in which the people fill the vacancy, *Judge*, 612 F.3d at 550, and the Elections Clause independently confers “broad power” over the times, places, and manner of Senate elections. *Id.* at 552–53.

The only court to consider Oklahoma’s concurrent-election procedure upheld it on both grounds, holding that the Amendment “does not mandate a particular and different sequence of events.” *Jones*, 606 F. Supp. 3d at 1124–25. The Tenth Circuit dismissed the appeal as moot, described the judgment as one “dismissing [the] Seventeenth Amendment claims for lack of standing and alternatively rejecting such claims on their merits,” and declined to vacate it. *Jones v. Stitt*, No. 22-6094, 2023 WL 1463247, at *1 (10th Cir. Feb. 2, 2023). That ruling stands.

The States have long filled Senate vacancies at elections held on the same day as the regular election, placing a separate contest for the unexpired term on the ballot. Oklahoma did so in 1994, 2014, and 2022.⁵

Illinois did so in 2010 under court order, and the same candidate won both contests. Voters elected Mark Kirk to the final weeks of the term held by appointed Senator Roland Burris and to the full term beginning January 3, 2011, on a special-election ballot limited to the candidates already slated for the full-term contest. *Judge v. Quinn*, 624 F.3d 352, 354 (7th Cir. 2010); *Judge*, 612 F.3d at 556–57. Senator Kirk took the oath for the unexpired term on November 29, 2010, when Senator Burris’s appointment ended, and again for the full term on January 5, 2011. 156 CONG. REC. S8227 (daily ed. Nov. 29, 2010); 157 CONG. REC. S5 (daily ed. Jan. 5, 2011). The Seventeenth Amendment and 2 U.S.C. § 1 operate in sequence, not in conflict.

Paragraph 3 differs from those examples in one respect. Rather than placing a separate contest for the unexpired term on the ballot, it treats the single full-term contest as the one to fill the vacancy as well. This office does not minimize this point. No court has passed on a provision of this kind for a Senate seat, and the Seventeenth Amendment requires that the vacancy be filled “by election.”

But the difference is one of ballot form, not substance. The candidates, the electorate, and the outcome are the same. In *Judge*, the Seventh Circuit itself suggested that the State might satisfy the Amendment by “using the candidates who have already qualified for the election for the 112th Congress,” 612 F.3d at 556, and the remedy the district court adopted and the Seventh Circuit affirmed did exactly that. 624 F.3d at 354–56. Paragraph 3 reaches the same result by statute, in advance. It is a legislative direction of the manner in which the people fill the vacancy, and the Amendment leaves that manner to the Legislature.

A construction under which no one is elected to the vacancy, moreover, raises a federal question that this one does not. Under it, Oklahoma would hold no election at all to fill this vacancy, and an appointed Senator would serve through the lame-duck session of the 119th Congress. The Seventh Circuit has held that the Seventeenth Amendment requires an election to fill every Senate

⁵ Okla. State Election Bd., *Election Results*, <https://oklahoma.gov/elections/elections-results/election-results.html> (last visited Oct. 29, 2026) (official results of the General Elections of Nov. 8, 1994, Nov. 4, 2014, and Nov. 8, 2022).

vacancy. *Judge*, 612 F.3d at 546–47. And it refused to dismiss the weeks between a November election and January 3 as *de minimis*. *Id.* at 556.

This office does not decide whether such a construction could be squared with that holding. It need not. The text, structure, and history of section 12-101(C) resolve the question of state law. Two points suffice. The reading adopted here gives the people an election to fill the vacancy, as the Seventeenth Amendment requires. And paragraph 3 is a duly enacted statute, presumed valid, that “will be upheld unless it is clearly, palpably and plainly inconsistent with the Constitution.” *Liddell v. Heavner*, 2008 OK 6, ¶ 16, 180 P.3d 1191, 1200. The Senate, as judge of its members’ elections, returns, and qualifications, U.S. CONST. art. I, § 5, cl. 1, will make the final determination. This office does not declare any provision of Oklahoma law invalid, and the authoritative determination of a statute’s validity rests with the courts in any event. *State ex rel. York v. Turpen*, 1984 OK 26, ¶ 10, 681 P.2d 763, 767.

E. The Governor’s Duty to Certify the Election Is Ministerial.

The President Pro Tempore asks whether the Governor retains any discretion to decline or delay certifying the election once the State Election Board has certified the results. The Governor does not. “It shall be the duty of the executive of the State from which any Senator has been chosen to certify his election, under the seal of the State, to the President of the Senate of the United States.” 2 U.S.C. § 1a. The certificate “shall be countersigned by the secretary of state of the State.” *Id.* § 1b.

The duty is federal and mandatory, leaving nothing to the Governor’s judgment. In performing it, the Governor acts “not . . . pursuant to state law but in response to duties imposed by federal statute.” *Phillips v. Rockefeller*, 321 F. Supp. 516, 521 (S.D.N.Y. 1970), *aff’d*, 435 F.2d 976 (2d Cir. 1970). Once the State Election Board certifies the November 3 results, the Governor must certify the winner’s election to the President of the Senate without delay.

Because the candidate is elected both to the unexpired term and to the succeeding six-year term, one certificate will not do. The Senate’s Standing Rules direct the Secretary of the Senate to furnish each State with recommended forms of credentials, and those forms treat the two elections as distinct events. The “Certificate of Election for Unexpired Term” certifies election “for the unexpired term ending at noon on the 3d day of January, 20—, to fill the vacancy in the representation from said State in the Senate of the United States.” The “Certificate of Election for Six-Year Term” certifies election “for the term of six years, beginning on the 3d day of January, 20—.” *Senate Manual*, S. Doc. No. 118-1, Rule II, ¶ 3, at 2–3 (2024).

Each attests to one election and one term. A six-year-term certificate says nothing about the weeks before January 3, 2027, and the Senate, which seats a member on the credentials presented for the term in question, would have no credential on which to administer the oath for the unexpired term. The duty under 2 U.S.C. § 1a is to certify the Senator’s “election.” Where one ballot contest elects the candidate to two terms, the duty runs to both, and the Governor discharges it by transmitting both certificates.

That is how the States have proceeded when one candidate won an unexpired term and a full term on the same day. The Senator presents credentials for the unexpired term and takes the oath when the Senate next convenes, then presents credentials for the full term and takes the oath again on January 3. Illinois did so for Senator Kirk in 2010: he took the oath for the unexpired term on November 29, 2010, and again for the full term on January 5, 2011. 156 CONG. REC. S8227 (daily ed. Nov. 29, 2010); 157 CONG. REC. S5 (daily ed. Jan. 5, 2011).

The Governor may transmit both certificates together as soon as the State Election Board certifies the election. The unexpired-term certificate matters first. It informs the Senate that, under Oklahoma law, the November 3 election filled the vacancy, and it is the credential on which the Senate will administer the oath for the unexpired term. The Senate will judge both under Article I, Section 5.

F. The Remaining Contentions Do Not Alter the Conclusion.

The terms of office schedule that the Secretary of the State Election Board furnished with the 2026 filing packets might be thought to control, because it lists the office as a six-year term beginning January 3, 2027, and lists no unexpired term. The schedule accurately describes the office as it appears on the ballot. It does not, and could not, alter the effect the Legislature has given the election. Paragraph 3 operates by declaring the winner elected to the vacancy. It does not require that the unexpired term be separately designated, filed for, or printed on the ballot; the paragraph's purpose is to fill the vacancy without those steps. An administrative schedule prepared in 2025, before the vacancy arose, cannot narrow a statute enacted in 2021.

Nor does it matter that no writ of election or proclamation issued under title 26, section 12-102 after Senator Mullin's resignation. None was required. Paragraph 3 directs that "no special election shall be called," and section 12-102 governs the proclamation "[i]n calling such an election." If no special election is called, no proclamation is issued. Paragraph 3 supplies what a proclamation would otherwise announce.

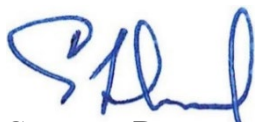
The President Pro Tempore notes that this opinion will help the Legislature evaluate whether clarifying legislation is warranted. Whether to amend the statute is a policy question for the Legislature, and this office does not advise on it. Paragraph 3, as written, answers the questions presented. Should the Legislature wish to place the matter beyond dispute, the House provision in section 12-101(B), which states expressly that the regular election "shall be deemed to also serve as a Special Election to fill the unexpired term," illustrates one form a clarification could take.

It is, therefore, the official Opinion of the Attorney General that:

- 1. The third paragraph of 26 O.S.2021, § 12-101(C) applies to the vacancy in the office of United States Senator created by Senator Mullin's resignation on March 23, 2026, because that office was already scheduled to be filled for a full term at the November 3, 2026, General Election, which is the next available regularly scheduled election for the office. The candidate elected at that election "shall be deemed to also have been elected to fill the vacancy and shall be eligible to assume the office upon the official certification of**

- the election by the State Election Board.” No act of any Oklahoma officer beyond that certification is required before the candidate may assume the office. The Governor’s certificate of election to the President of the Senate is a ministerial duty under 2 U.S.C. §§ 1a–1b, and the candidate assumes the office by taking the oath before the Senate.
2. The Senator appointed by the Governor under 51 O.S.2021, § 10(C) serves “until a successor is elected.” The appointment terminates when the candidate elected at the November 3, 2026, General Election qualifies by taking the oath, and not on January 3, 2027. 51 O.S.2021, § 15 does not extend the appointment beyond that point, and the Seventeenth Amendment does not permit it. Neither 2 U.S.C. § 1 nor the Twentieth Amendment prevents the November 3, 2026, General Election from filling the vacancy as the Legislature has directed. The candidate elected serves the unexpired term until noon on January 3, 2027, when the six-year term to which he or she was also elected begins.
 3. Once the State Election Board has certified the results of the November 3, 2026, General Election, the Governor has no discretion under Oklahoma or federal law to decline or delay certifying the successful candidate’s election to the President of the Senate. Because the candidate is elected both to the unexpired term ending at noon on January 3, 2027, and to the six-year term beginning at that time, the Governor must transmit two certificates of election, countersigned by the Secretary of State: one for the unexpired term and one for the six-year term, in the forms recommended by the Standing Rules of the Senate.

This opinion construes Oklahoma law for the guidance of the officers of this State. It does not declare any provision of Oklahoma law invalid. The Senate of the United States remains the judge of the elections, returns, and qualifications of its own members, U.S. Const. art. I, § 5, cl. 1, and nothing in this opinion purports to bind that body.



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