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Opinion: Vacancy appointments have become Colorado's new pipeline to office, undermining democracy

Colorado has the highest number of lawmakers in the nation who did not enter the legislature through normal elections



In this 2023 file photo, Colorado state lawmakers in the House, as well as friends and family, take part in the presentation and posting of the colors during the opening day of the 74th General Assembly. More lawmakers than ever were appointed to office by a vacancy committee rather than being elected through a primary and general election. (Photo by Helen H. Richardson/The Denver Post)

By **BOB MARSHALL** | Guest Commentary

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"Everybody talks about the weather, but nobody does anything about it." – Mark Twain

The same is true for vacancy committees. Vacancy committees are small groups of party insiders who select replacements for legislators who voluntarily (e.g., resign) or involuntarily (e.g., die) vacate office.

These groups can be composed of more than 100 individuals. But recent committees consisted of fewer than 20, including one committee where 19 people determined who represented 165,000 people in the Colorado Senate and another where nine decided who would represent 88,000 people in the House.

And these vacancy committees are not composed of randomly selected voters from the electorate. Committee members must belong to the party controlling the vacated seat, eliminating more than half a district's voters in the first instance. Invariably, these committees are composed of the most politically active party members; the most conservative Republican apparatchiks and most progressive Democrats, creating committees composed of unrepresentative slices of an unrepresentative slice of the electorate.

Colorado has used this process since 1951.

If only a half-dozen legislators obtained seats by this method, few would notice. But over the past 20 years, obtaining seats through vacancy appointments increased to where in the last session 30% of Colorado's legislators obtained seats at some point through vacancy appointments.

Colorado has the highest number of lawmakers in the nation who did not enter the legislature through normal elections. And it has become self-perpetuating: two senators who had been appointed by vacancy committees resigned in January with their successors chosen by . . . vacancy committees.

This undemocratic system is an unintended consequence of Colorado imposing term limits in the 1990s. With hard dates by which legislators must leave office, it dramatically increases the incentive and ability for insiders to manipulate the system to choose representatives for the people, rather than voters making that choice.

Status quo supporters claim voters still choose because the appointee must run for election to retain the seat. But the power of incumbency provides anointed legislators powerful inside tracks asking voters to ratify the vacancy committee's selection rather than allowing voters to choose a replacement in normal democratic processes.

Any "reform" leaving this self-perpetuating incumbent selection system in place is cosmetic: slapping lipstick on a pig.

Two methods could address these issues with real reform: special elections or by appointing interim officials who finish the term but cannot run in the next general election for that office.

Special elections, used by half the states, are the best reform ... in theory. In practice, special elections would not serve Colorado well. Any fair special election process requires 60-120 days. With Colorado's 120-day legislative session, there would be cases where vacant seats overlap the session, depriving districts of representation during critical law-making periods. Additionally, "off-year" elections will produce "off" results with low turnout not representative of the district; while costs to run one-off special elections would be fiscally burdensome to many districts.

Therefore, I introduced House Concurrent Resolution 1002 with 14 cosponsors (seven Republicans/ seven Democrats) to provide voters a choice to limit vacancy appointees to the term of office of their appointment. Appointees could run for a different office or run for the same appointed office in the next cycle. However, they would be ineligible to run for the appointed office in the subsequent election.

This preserves voters' and candidates' expectations that elected representatives obtain seats through normal democratic processes without pre-selected insiders chosen for the people. And the best part? It would be voters deciding the issue, not politicians and special interests conspiring behind closed doors against Colorado's citizens to preserve the status quo.

That final issue is an acute concern given that the same day we introduced HCR-1002, a competing leadership-directed bill came forward which undercuts real reform. This bill proposes financial disclosures, live-streaming vacancy committees and ensuring appointees would stand for election within a year.

These elections would potentially include voters from the party controlling the vacant seat and unaffiliated voters (but exclude voters from other parties). None of these reforms were concerns of average citizens; they simply do not want a third of Colorado's legislators appointed by political insiders.

Additionally, excluding voters of an opposing party from otherwise open elections has serious constitutional concerns. But it also violates simple fairness. I'm a conservative Democrat representing a district with more registered Republican than Democratic voters. Under this bill, if I died tomorrow, my most progressive constituents would choose my replacement, excluding conservative constituents and yielding a representative unlikely reflective of Highlands Ranch's median voter.

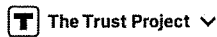
Sponsors admit their bill is "complicated." But one thing it ensures: unrepresentative party insiders will continue choosing vacancy appointees for voters to later ratify, rather than allowing voters to choose their representatives in the open electoral process they expect.

State Rep. Bob Marshall represents Colorado House District 43. He's a Democrat from Highlands Ranch.

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