

1 Working memo by James Conner, 25 November 2014. The author is not an
2 attorney.

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5 <http://leg.mt.gov/bills/mca/13/25/13-25-202.htm>

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7 13-25-202. Vacancy in office of United States senator.

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9 History: En. Sec. 222, Ch. 368, L. 1969; amd. Sec. 52, Ch. 365, L. 1977; R.C.M. 1947,
10 23-4402.

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13 (1) If a vacancy occurs in the office of United States senator, an election to fill the
14 vacancy shall be held at the next general election. If the election is invalid or not
15 held at that time, the election to fill the vacancy shall be held at the next
16 succeeding general election.

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18 When Max Baucus resigned from the senate to become ambassador to
19 China, he was serving a term that expires at noon on 3 January. Governor
20 Bullock appointed John Walsh to fill the vacancy. The next general election
21 was scheduled for 4 November 2014.

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23 But the 4 November 2014 election did not include a special election to fill
24 the remainder of the Baucus/Walsh term that expires at noon on 3 January
25 2015.

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27 Instead, the 4 November 2014 ballot included an election to fill the senate
28 term beginning after noon on 3 January 2015 and expiring at noon on 3
29 January 2021.

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32 (2) The governor may make a temporary appointment to fill the vacancy until the
33 election.

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35 This section is ambiguous. There are at least three interpretations:

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37 **One.** The time frame in which the governor can make the
38 appointment opens with the creation of the vacancy and closes at
39 the next general election. That makes little sense, however, because
40 except on Election Day, it's always before the next general election.

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42 **Two.** The duration of the temporary appointment extends only to
43 the next general election, *whether or not a special election to fill the*
44 *remainder of the term is held.*

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Three. The appointment extends to the special election to fill the vacancy. If there is no special election at the next general election, the appointed senator continues to serve until the next general election or the expiration of the term, whichever comes first.

Interpretation Three of (2) makes the most sense to me. No special election was called, therefore Walsh's appointment remains valid and ends on 3 January 2015 at noon EST.

Bullock's an attorney, and by most accounts a very good administrator. He probably prepared, or had prepared for him, a legal memorandum explaining his options. I suspect one option was to fill the vacancy by appointment, but not to seek a special election given the term expired two months after the general election. That's a reasonable decision.