

Governors Should Demand That Harry Reid Respect the Constitution

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The last time I checked, we had a Constitution that governed the election and appointment of Senators. America's governors should demand that Harry Reid comply with it. When it comes to Governor Rod Blagojevich's appointment of Roland Burris to the Senate, the Constitution requires Reid to comply with that decision and seat Burris. Frankly, anything short of honoring Illinois's decision should create a constitutional crisis. The only entities that may be able stop Blagojevich are in Illinois.

It goes without saying that Blagojevich is a despicable man. The voters of Illinois, however, despite evidence of his questionable character, reelected him in 2006. No matter how unseemly his alleged actions to "sell" Barack Obama's Senate seat are, he is, as every defendant in America, entitled to the presumption of innocence. Despite the now infamous wiretap recordings, the day after Burris's appointment, U.S. Attorney Patrick Fitzgerald had to file a motion requesting a 90-day extension to seek an indictment of Blagojevich. Hence, Reid seeks to deny Burris his appointment based upon the allegations against a governor who hasn't even been indicted.

From the dawn of the Progressive Era, politicians have sought to minimize the Constitution whenever it got in the way. When the Supreme Court rejected President Franklin D. Roosevelt's New Deal programs, he threatened to expand and pack the court with more progressive minds. Suddenly, what was previously unconstitutional became constitutional. After seventy years of emasculating the Constitution, it is time for politicians to respect it rather than roll it out as a media prop.

There are six parts of the Constitution that possibly apply to the issue of seating Burris. Article I, section 3 governs the structure and requirements of the Senate. It is silent on the appointments issue due to the passage of the Seventeenth Amendment. Article I, section 4 covers the election of senators. Again, silence. Article I, section 5 speaks of the Senate judging the qualifications of Members, but any qualification requirement must apply to all Members, not just Burris. With the possible appointment of the far less qualified Caroline Kennedy in New York, Michael Bennett in Colorado, and the appointment of Edward Kaufman in Delaware, it is doubtful Reid can manufacture a candidate qualification requirement, rather than some type of faux qualification pertaining to the circumstances of his appointment.

Section 3 of the Fourteenth Amendment prohibits an individual from being a senator if he has "engaged in insurrection or rebellion" or "given aid or comfort to

the enemies” of the United States. Based upon press reports, Burriss is guilty of neither disqualifying activity. In fact, there are no allegations thus far that Burriss was involved in any of the potentially illegal acts involving Blagojevich’s attempts to sell the seat.

That leaves the Seventeenth Amendment. Prior to its passage in 1913, senators were elected by state legislatures. This manner of election served as a check on the federal government’s ability to take power from the states. Specifically, because the senators were elected by state legislatures, they had to protect the interest of the states, which could be different from the interest of the people in the states. It isn’t surprising, therefore, that the growth of the federal government and the era of unfunded mandates started shortly after taking from states the only check they had against federal power. Senators now did what was popular with the voters who elected them without a thought to what impact their activity would have on the states.

As to the filling of vacancies, the Seventeenth Amendment explicitly states: “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 vacancies by election as the legislature may direct.” Pursuant to 10 ILCS 5/25-8, the Illinois Governor has the power to fill Senate vacancies. The final relevant part of the Constitution – the Tenth Amendment – therefore requires Reid to respect Blagojevich’s decision and seat Burriss save any action by Illinois entities.

No one wants to stand next to a politician going down. Nevertheless, the forty-nine other governors should show some political courage and come out in support – not of Blagojevich or Burriss – but of the Constitution and Illinois’s constitutional right to fill the Obama vacancy. If our Nation’s governors won’t defend the Constitution and the powers reserved to them in it, who will?

We know Reid and other politicians obsessed with federal power won’t.

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