

No. _____

IN THE
SUPREME COURT OF ILLINOIS

ROLAND W. BURRIS,)	
LAWRENCE A. PERLMAN)	COMPLAINT FOR <i>MANDAMUS</i>
)	
and JOHN RUFF,)	
)	
)	
)	
Petitioners,)	
)	
v.)	
)	
JESSE WHITE in his official capacity as)	
THE ILLINOIS SECRETARY)	
OF STATE,)	
)	
)	
Respondent.)	

COMPLAINT FOR *MANDAMUS*

Petitioners, Roland W. Burris, Lawrence A. Perlman and John Ruff, by and through their attorneys, the law firm of Gonzalez, Saggio and Harlan, L.L.C, hereby state the following as a Complaint for *Mandamus* against the defendant named above.

PARTIES

1. Petitioner, Roland W. Burris is an adult resident of the State of Illinois, currently residing at 8358 South Indiana, in Chicago, Illinois and is a registered voter in this state.

2. Petitioner, Lawrence A. Perlman is an adult resident of the State of Illinois, currently residing at 903 Scoville Street in Urbana, Illinois and is a registered voter in this state.

3. Petitioner, John Ruff is an adult resident of the State of Illinois, currently residing at 51 Holiday Drive in Somonauk, Illinois and is a registered voter in this state.

4. Respondent, Jesse White, currently holds the office of Illinois Secretary of State and is being sued in his official capacity.

JURISDICTION

5. Jurisdiction is proper in this Court pursuant to Article VI §4(a) of the Illinois Constitution and Illinois Supreme Court Rule 381(a).

FACTS

6. On November 2, 2004, Barack Obama was elected by the people of the State of Illinois to serve as one of its United States Senators. He was duly sworn in as a United States Senator in January 2005 for a 6-year term expiring in January, 2011.

7. On November 4, 2008, then Senator Obama was elected the 44th President of the United States, resigning his seat in the United States Senate effective November 16, 2008. Since the President-Elect's resignation, his senate seat has remained vacant. Pursuant to the 17th Amendment of the United States Constitution and 10 ILCS 5/25-8, the authority to make an appointment to fill President-Elect Obama's senate seat lies exclusively with the Governor of Illinois.

8. On December 9, 2008, United States Attorney Patrick Fitzgerald filed a criminal complaint against Governor Rod Blagojevich accusing him, among other things, of attempting to "sell" President-Elect Obama's Senate Seat. Thereafter, impeachment

proceedings were commenced against Governor Blagojevich in Illinois by the Illinois legislature. Despite these proceedings, however, Governor Blagojevich has neither resigned his office nor has he been disqualified in any way from exercising his authority as governor, including, but not limited to, the exercise of the power to name a replacement for President-Elect Obama. Moreover, Governor Blagojevich has publicly denied all allegations of wrongdoing which have been made against him both in the criminal complaint and in connection with the impeachment proceedings.

9. On December 12, 2008, Illinois Attorney General Lisa Madigan filed a Petition with the Illinois Supreme Court seeking to have Governor Blagojevich temporarily removed from office on the grounds of his alleged “disability” created by the allegations in the Criminal Complaint. The Illinois Supreme Court denied Attorney General Madigan’s petition on December 17, 2008

10. In early December, 2008, the Illinois legislature considered amending the Illinois Statutes to remove Governor Blagojevich’s authority to appoint President-Elect Obama’s successor and instead order a special election. This legislation has since been tabled and the Governor retains his authority to appoint President-Elect Obama’s successor in the United States Senate.

11. On December 30, 2008, Governor Blagojevich publically announced his intention to appoint Roland L. Burris to fill President-Elect Obama’s vacant senate seat. Governor Blagojevich confirmed this appointment by delivering his Letter of Appointment to Secretary White on December 31, 2008. A copy of the Letter of Appointment and Certificate of Appointment is attached hereto as Exhibit A.

12. Immediately after Governor Blagojevich appointed Mr. Burris to serve the remainder of President-Elect Obama's senate term, Secretary White publicly announced that he would refuse to certify the appointment. Upon information and belief, Secretary White's refusal relate to Governor Blagojevich's legal difficulties related to the criminal proceedings and the impeachment proceedings. Secretary White has not questioned Mr. Burris' qualifications to hold his appointed office; indeed, he has publically praised Mr. Burris.

13. Notwithstanding the delivery of the Letter of Appointment and Certificate of Appointment by Governor Blagojevich to Secretary White, Secretary White has refused and continues to refuse to certify Mr. Burris' appointment.

14. Pursuant to 10 ILCS 5/25-8 and the 17th Amendment to the United States Constitution, Mr. Burris' appointment as United States Senator is effective immediately and there is no need for further confirmation by any other official from the State of Illinois, including but not limited to, Secretary White. Nevertheless, 15 ILCS 305/5 § 5(1) requires the Secretary of State to "sign and affix the seal of the State to all commissions required by law to be issued by the governor." Accordingly, Secretary White is required to exercise these duties with respect to Mr. Burris' appointment. His failure to do so may cast doubt in the minds of the public as to the legitimacy of Mr. Burris' appointment, all to Petitioners' damage and in derogation of their rights.

CLAIM FOR RELIEF

(Mandamus)

15. Petitioners restate the allegations of Paragraphs 1 through 14, above.

16. The 17th Amendment to the United States Constitution provides as follows:

When 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 vacancies by election as the legislature may direct.*

(Emphasis added).

17. Upon the resignation of President-Elect Obama from the United State Senate, and pursuant to the 17th Amendment, 10 ILCS 5/25-8 imposes the following obligation upon Governor Blagojevich.

When a vacancy shall occur in the office of United States Senator from this state, the Governor shall make temporary appointment to fill such vacancy until the next election of representatives in Congress, at which time such vacancy shall be filled by election, and the senator so elected shall take office as soon thereafter as he shall receive his certificate of election.

(Emphasis added).

18. Notwithstanding the pending impeachment proceedings and the pending criminal proceedings, Governor Blagojevich is fully vested with all of the power and authority of the Governor of the State of Illinois, including but not limited to the power to make an appointment to fill the vacancy of the United States Senate pursuant to [and the 17th amendment. Accordingly, Governor Blagojevich's appointment of Roland Burris to fill the vacant term was a valid and legal exercise of Governor Blagojevich's authority as governor of the State of Illinois.

19. In accordance with 15 ILCS 305/5 § 5(1):

It shall be the duty of the Secretary of State:

1. To countersign and affix the seal of the state to all commissions required by law to be issued by the Governor.

20. Pursuant to 15 ILCS 305/5 § 5(1):

A. Petitioners have a clear legal right to have Secretary White certify Mr. Burris' appointment to fill the remainder of the term of the vacant United States Senate seat;

B. Secretary White has a clear legal duty to certify the appointment, and has the legal authority to perform this duty; and

C. An order from this Court requiring Secretary White to so certify that Mr. Burris' appointment will be effectual.

21. As Senator-Designate, Mr. Burris has a personal interest in the performance by Secretary White of his duty to certify his selection and has been injured by Secretary White's failure to perform his duty. Further, Senator-Designate Burris has complied with all legal pre-requisites on his part and it may be necessary for him to enforce this duty.

WHEREFORE, Petitioners demand judgment as follows:

1. For an Order in *Mandamus* requiring Secretary White to certify Governor Blagojevich's appointment of Mr. Burris to the office of United State Senator from the State of Illinois and to do all other acts required to confirm such appointment

2. For the costs, disbursements and attorney fees incurred in prosecuting this action.

3. For such other and further relief the court deems just and proper.

Dated this ____ day of December, 2008.

GONZALEZ, SAGGIO AND HARLAN
L.L.C.

Attorneys for Petitioners

By: 

Timothy W. Wright

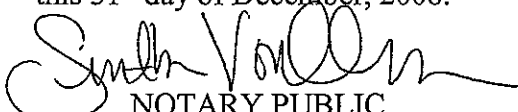
GONZALEZ, SAGGIO AND HARLAN, L.L.C.
35 East Wacker Drive, Suite 500
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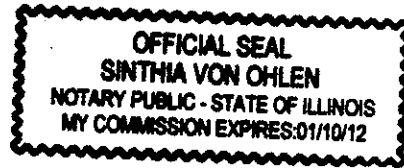
CERTIFICATION

Pursuant to Illinois Code of Civil Procedure, Section 5/1-109, 735 ILCS 5/1-109, the undersigned, under penalty of perjury, hereby certifies and swears that the foregoing is true and correct to the best of his knowledge.


Roland W. Burris

SUBSCRIBED and SWORN to before me
this 31st day of December, 2008.


NOTARY PUBLIC





OFFICE OF THE GOVERNOR

JRTC, 100 WEST RANDOLPH, SUITE 16
CHICAGO, ILLINOIS 60601

ROD R. BLAGOJEVICH
GOVERNOR

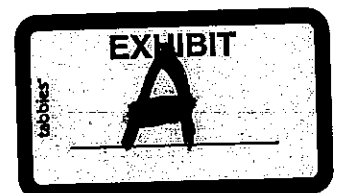
December 30, 2008

I, Rod R. Blagojevich, Governor of the State of Illinois, hereby appoint Roland Burris to the United States Senate to fill the vacancy left by President-Elect Barack Obama, who resigned his Senate seat to become President of the United States.

Sincerely,

A handwritten signature in black ink that reads "Rod Blagojevich". The signature is written in a cursive style with a large, prominent "R" and "B".

Rod R. Blagojevich





CERTIFICATE OF APPOINTMENT

To the President of the Senate of the United States:

This is to certify that, pursuant to the power vested in me by the Constitution of the United States and the laws of the State of Illinois, I, Rod R. Blagojevich, the governor of said State, do hereby appoint Roland Burriss a Senator from said State to represent said State in the Senate of the United States until the vacancy therein caused by the resignation of Barack Obama, is filled by election as provided by law.

Witness: His excellency our governor Rod R. Blagojevich, and our seal hereto affixed at Chicago, Illinois this 31st day of December, in the year of our Lord 2008.

By the governor:


Rod R. Blagojevich
Governor.

Jesse White,
Secretary of State.