



January 7, 2009

RESPONSE FILED WITH ILLINOIS SUPREME COURT TO MOTION FOR LEAVE TO FILE A COMPLAINT FOR A WRIT OF MANDAMUS

Chicago — Today, Secretary of State Jesse White and Attorney General Lisa Madigan filed a response in the Illinois Supreme Court. The filing is in response to the Motion for Leave to File a Complaint for Writ of Mandamus filed by Roland W. Burris, Lawrence A. Perlman and John Ruff last Wednesday, December 31, 2008, asking the Court to order Secretary White to sign and seal the U.S. Senate appointment submitted by Governor Rod Blagojevich.

The response makes it clear that the Secretary of State has done everything he is legally required to do regarding the Burris appointment.

On December 31, 2008 - the same day Governor Blagojevich submitted the U.S. Senate's recommended appointment form to the U.S. Senate - Secretary White registered Burris' appointment pursuant to the Secretary's only legal duty regarding appointments.

According to 15 ILCS 305/5:

Sec. 5. It shall be the duty of the Secretary of State:

2. To make a register of all appointments by the Governor, specifying the person appointed, the office conferred, the date of the appointment, the date when bond or oath is taken and the date filed. If Senate confirmation is required, the date of the confirmation shall be included in the register.

Instead, what is at issue here is a form that is not required by law, but is merely "recommended" by a Rule of the U.S. Senate. Moreover, a U.S. Senate Rule cannot impose a legal obligation on the Illinois Secretary of State.

Standing Rule II of the U.S. Senate provides, "The Secretary of the Senate shall send copies of the following recommended forms to the governor and secretary of state of each State wherein an election is about to take place or an appointment is to be made so that they may use such forms if they see fit." (Emphasis added.)

In contrast, when the U.S. Senate creates a mandatory requirement for a Secretary of State's signature and seal, they enact a law, and they have not done so in this case.

For example, under federal law, when a U.S. Senator is elected, the State must certify the election under state seal, and the law explicitly requires that the certification of election "shall be countersigned by the secretary of state of the State." 2 U.S.C. §§ 1(a), (b).

There is no law requiring the Secretary of State to sign a "recommended" form of the U.S. Senate.

The decision to treat the U.S. Senate's "recommended" form as a legal requirement is a decision of the U.S. Senate. It remains up to the U.S. Senate to seat Mr. Burris.

