

Essay on constitutional procedure to replace a senator

[Law](#), [Criminal Justice](#)



The Legal dispute: Constitutional Procedure to Replace a Senator in Illinois

According to Richey, the “ legal dispute” over the right “ constitutional procedure” to carry out the replacement of a senator calls for the involvement of “ a judicial determination of the 17th Amendment (Richey, 2011, p. 1). After the 2008 elections had been held in the United States, in order to have someone to complete Obama’s remaining term in the Illinois State as a senator, Mr. Burris was appointed by the Governor Blagojevich. Under the Illinois law, the governor had the power to appoint a new senator to serve for the remaining period of the term after any vacancy in the senate. But in the month of June, 2010, it was ruled that the procedure followed by Illinois state to carry out the replacement was not constitutional under the 17th Amendment “ unless the state also held a special election” (Richey, 2011, p. 1). This was according to the ruling that was made by a three-judge panel of the “ Seventh US Circuit Court of Appeals” in Chicago.

Early this month, the United States Supreme Court did not accept to enter a legal dispute over whether or not there was compliance with the constitution’s 17th Amendment by the officials in Illinois in filling up the vacant seat left by President Barrack Obama. The Supreme Court declined to take up the appeals which were filed by Illinois former senator Burris and Governor Quinn and “ let stand” the decision that was made by the federal appeals court that the procedure for filling the vacant senate position was not constitutional.

In the United States, there are nineteen states that have the same laws as that of Illinois in which there is exclusive reliance on the appointments instead of having a special election in case there is a senate vacancy. Basing on one of the analyses that have been carried out, if the application of such laws is carried out on the national level, the decision made by the appeals court would cast doubt on the procedure followed in filling the senate vacancies that are presently utilized by forty two states. It was said by a friend of court brief friend, “ filed in the case by the Louisiana attorney general’s office”, that ruling made by the “ Seventh Circuit” would cause appointed terms of 34 senators not to be constitutional and this includes George Mitchell (D) of Maine in 1980, Lisa Murkowski (R) of Alaska in 2002, among others (Richey, 2011).

President Barack Obama’s former senate seat has brought about unusual degree of controversy. On top of being “ unconstitutional dispute” over correct replacement procedures, it is as well at the core of the continuing corruption trial going on in Chicago in the federal court. Blagojevich, who was a former Illinois governor faces accusation of making attempts to “ trade” his power to fill the vacant senate seat in return for an influential seat in President Obama’s administration or “ a pledge of 1. 5 million dollars in campaign contributions” (Richey, 2011, p. 1). The governor has refused having engaged in whatever wrong-doing. Recently, he presented a testimony that he was just taking part in what he referred to as “ political horse trade”. This governor was impeached and lost his position in the office in the year 2009.

The adoption of the Amendment was carried out in the year 1913 and it served to replace a part of “ Article 1, Section 3 of the Constitution which provided for the election of the U. S senators by the state legislature” (Neal, 2009, p. 7). According to the Amendment, it is established that the election of the senators shall be carried out by the people and not by the legislature. In case a vacancy in the senate comes up, the Amendment gives the directions for the governor to “ issue writs of the election to fill such vacancies” (U. S Constitution, Amendment 17, Clause 2). Authorization may be carried out by the state legislature to a governor to make “ temporary appointments” “ until the people fill the vacancies by election as the legislature may direct” (U. S Constitution, Amendment 17, Clause 2.). The main issue in the case of Illinois State revolved around the idea as to whether or not the vacancy could be temporarily filled by the state by way of appointment, or whether there must be as well conducting of a special election by the state in order to fill the temporary vacant seat.

A lawsuit was filed by Illinois voters (Gerald Judge and David Kindler) in which they were challenging the Illinois law that gave authority to the governor to carry out the appointment of the senator to fill the vacant senate seat. The two voters presented claims that there was violation of the 17th Amendment terms by the state which, according to their argument, requires the vacant seat to be filled through a special election; implying that the law was not constitutional. However, the lawsuit was dismissed by the federal judge and according to his ruling, “ the 17th Amendment does not require a special election to the exclusion of a gubernatorial appointment” (Richey,

201, p. 1). The case was appealed to the “ Seventh Circuit” and the ruling that had been made by the federal judge was reversed. In the new ruling, it was put forward that the 17th amendment requires a special election. The decision made by this court was that there was necessity to have two elections for the United States senator. One of the elections was meant to fill the remaining term of the former senator, Obama, and the other election was intended to fill the fresh six-year term. The two elections were held at the start of November 2010. Both of them were won by Congressman Mark Kirk(R).

Basing on the fact that the Supreme Court declined to take up the appeals which were filed by Burriss and Quinn; and to back the federal appeals court’s decision regarding the case is a clear indication that the Illinois law is not constitutional.

References

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