

White refuses to certify Burris Senate appointment

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SPRINGFIELD, Ill.

Secretary of State Jesse White on Wednesday formally refused to sign paperwork appointing Roland Burris to the U.S. Senate, setting in motion what could be a lengthy fight over filling the seat left vacant by President-elect Barack Obama.

Clayton Harris of Gov. Rod Blagojevich's office went to White's Chicago office about 10 a.m. with the proclamation making the appointment. U.S. Senate rules require that it be signed by both Blagojevich and White.

White's legal counsel, Irene Lyons, read the proclamation and handed it back to Harris without comment, said White spokesman Dave Druker. Harris then left.

"We never had any intention of signing it," Druker said. "We got calls asking Jesse to sign it. The action the secretary is taking is something the public wants. The public does not want the governor to make appointments."

Blagojevich spokesman Lucio Guerrero said the administration is weighing its options.

"We're kind of in uncharted territory," Guerrero said. "We're having legal staff look into it, to see what the Constitution requires. It's too early to say if it will end up in court."

Even before the governor named Burris on Tuesday as his choice to fill the seat, controversy swirled about whether anyone appointed by Blagojevich was going to be allowed to serve. U.S. Senate Democrats told Blagojevich they would not seat anyone he appointed, after Blagojevich was arrested Dec. 9 on federal corruption charges. Among the charges is that Blagojevich was attempting to sell the seat for personal gain.

White followed with his vow not to sign the paperwork for any appointee named by the governor.

But legal experts are split on whether White's refusal to sign the paperwork will derail Burris' appointment, or if the Senate can get away with refusing to seat someone based on who made the appointment.

"If you read the simple text, it looks as though he meets all qualifications," Richard Epstein, a law professor at the University of Chicago, said of Burris, a former state attorney general and comptroller who would succeed Obama as the Senate's only black member. "In principle, it would be very difficult for them to find grounds to keep him out."

The simple text is from the U.S. Constitution that says only that a senator must be at least 30 years old, have been a citizen for at least nine years and must live in the state he or she will represent.

"The Senate is going to argue that it can't be forced to take into its ranks a member that is tainted," Epstein said. "That is not a frivolous argument. The Senate is on shaky ground, but it's not impossible to believe they will prevail."

The requirement that White sign the paperwork appointing Burris can also be questioned. "I assume it is designed as a pure formality," said Robert Bennett, a law professor and

former dean at Northwestern University. “He’s not supposed to make any judgments about if this is a good appointment or not.”

But Bennett also said White’s refusal to sign can give the Senate an excuse not to seat Burris by claiming that it does not have the proper paperwork to admit Burris.

“It might lead to a lawsuit,” Bennett said.

That would not be unprecedented. Adam Clayton Powell Jr. sued in 1967 when the U.S. House refused to seat him because of corruption allegations. The U.S. Supreme Court determined Powell was dutifully elected and met the qualifications to be in the House and ordered him seated.

If the Burris issue ends up in court, it could take a long time to resolve. Epstein noted that in 2000, it took a month to finally resolve that George W. Bush was the new president.

“You don’t have that same necessity here,” he said.

There are other possibilities. Epstein said Burris could even be seated, and lawmakers could still vote to have a special election. An appointment by Blagojevich doesn’t guarantee Burris would serve the entire two years remaining in Obama’s Senate term. Another possibility is for the U.S. Senate to simply try stalling, hoping Blagojevich will leave office, voluntarily or not, before the Burris issue is resolved. That would allow Lt. Gov. Pat Quinn to make his own appointment but also set up the possibility that two people would claim the same seat.

“You could come up with enough hypotheticals to fill a full semester of law school,” said Dennis Rendleman, assistant professor of legal studies at the University of Illinois at Springfield. “All of this is so brand new.”