

THE CONGRESSIONAL RESEARCH SERVICE SAYS THE SENATE CAN EXCLUDE BURRIS

Jane (here, here, and here) and bmaz (here, here, and here) have been diligently chronicling the continuing saga of seating Roland Burris. In the last week, we've seen Reid and Durbin scream Go! Stop! Go! at Burris.

But it turns out, since last Monday, they've had a Congressional Research Service study explaining whether or not they have to seat Burris, one they seem to have lost in all the excitement. It gives a basis I've not heard yet on which to exclude Burris (no link yet).

Under the Powell decision and rationale, and under the express constitutional grant of authority, the Senate (and House) may, in addition to examining "qualifications" of Members-elect, examine the "elections" and "returns" of their own Members, that is, whether an individual presenting valid credentials has been "duly" chosen. A few years after the Powell decision, the Supreme Court in *Roudebush v. Hartke*, 405 U.S. 15 (1972), clearly affirmed the right of the Senate to make the final and conclusive determination concerning the election process and seating of its own Members.

[snip]

Additionally, the Senate has from time-to-time examined the election or selection process (prior to the adoption of the Seventeenth Amendment in 1913, Senators were selected by state legislatures) to see if corruption or bribery has so tainted the process as to call into question its validity.

All that says, really, is to look beyond just *Powell* to *Roudebush* as well to see whether or not the Senate can exclude Burris if it wants (bmaz assures me he will look up *Roudebush* once he gets done with his actual lawyering today). And that corruption or bribery is fair game.

That said, even with Burris' admission that he talked to Lon Monk about the seat, the way in which Blago's defense-or-maybe-not lawyer Sam Adam Jr. brokered the appointment, and other dubious ties between Burris and Blago, it's not clear that Congress yet has a clear case that Burris' appointment—as distinct from Blago's earlier attempts to sell the seat—involved bribery or any corruption outside the norm in Chicago politics.

Update: Lawrence Tribe weighs in on the "they can exclude Burris" side. Note, this appears to have been published before Obama said he was staying out of this.