

THE REID/DURBIN FABRICATION ON BURRIS

✖ By now you know how poorly Harry Reid and Dick Durbin have played their aces and eights hand on the Roland Burris appointment to Barack Obama's former Senate seat. Reid and Durbin went all in with their chips on the Illinois Secretary of State and, predictably, lost their pleated dandy shirts.

Illinois law and the Constitution have always been contra to Reid and Durbin's intransigence on Burris, but the disingenuous duo have always fallen back on their precious ancient Senate Rule II. They have steadfastly portrayed themselves as honorable protectors of the high ground of ethics, and citizens and the rubes in the media have bought off on it. To wit, Durbin grandly proclaimed late Friday:

...the Senate seat could remain vacant until Blagojevich is removed from office and the lieutenant governor takes over, making a fresh appointment.

He said the Senate cannot waive a 125-year-old rule requiring the signatures of both the governor and the secretary of state on any election or appointment.

Now, it is hard to tell whether these lustrous paragons of virtue are being intentionally dishonest, or are simply tragically ignorant of the questionable foundation of the argument they rely on. But it is one or the other. First off, as Jane pointed out Friday,

the 1884 Senate rule Durbin and Reid rely on was promulgated before the passage of the 17th Amendment as well as before the Supreme Court decision in *Powell v McCormack*. Reid and Durbin are duplicitous in thinking their antiquated

Senate rule trumps the official selection pursuant to the 17th Amendment and Illinois statutory law.

So, there is that. But, guess what? After all this, it turns out the vaunted Senate Rule II isn't even the bright line mandate they have been stating. In fact, Senate Rule II is simply an antiquated suggestion for a document template. While subparagraph 2 of Rule II mandates that the Secretary of the Senate keep a journal of all certificates signed by the governor and secretary of state of the appointing electing and/or appointing state for each Senator, the operative language on the form of the certificate is, contrary to what Reid and Durbin have been stating, not mandatory in the least. From the official Senate Rules:

3. 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)

So, not only has any "mandatory" effect of Rule II been modified and/or abrogated by the 17th Amendment and *Powell v. McCormack*, but the thing is suggestive at best in the first place.

But, wait, there's more! The Senate Pinocchios are at it again when they say the Senate "cannot waive" strict compliance with, and that there has never been any diversion from, Senate Rule II. Indeed, the Senate has done just that, and quite recently too. And it was in another case of a highly dubious cronyish appointment in a hotbed of corruption state. Yep, it's our old friends in Alaska. Go figure.

When Frank Murkowski was elected Governor of Alaska in 2002, he resigned his Senate seat and appointed his daughter Lisa to fill the seat. There was no countersignature from the Alaska

Secretary of State on the appointing certificate. There couldn't be, because Alaska is one of six states that do not have a Secretary of State. Now, in fairness, there is reason to believe the Alaska Lieutenant Governor countersigned Murkowski's nepotistic appointment certificate; however, the episode is proof of the complete intellectual dishonesty of the position that Reid and Durbin have been publicly peddling. If the Senate can accept the technically non-compliant countersignature of a Lt. Governor, exactly how do Reid and Durbin intend to refuse the word of the Illinois Supreme Court and the independent acknowledgement of authenticity just supplied by the actual Illinois Secretary of State?

There is not one single aspect of this imbroglio in which Roland Burris, and master tormenter Blagojevich, have not handed Reid and Durbin their rear ends on a silver platter. Now it turns out even their vaunted fallback is founded on vapor. It is time for them to quit while they are only terminally behind.