

SENATOR ROLAND BURRIS

Senator Roland Burris (D-IL) is a first-term senator from Illinois, appointed to the U.S. Senate in December 2008 by former Governor Rod Blagojevich to fill the vacancy created by the resignation of then-President-elect Barack Obama. Sen. Burris' ethics issues stem from the circumstances surrounding his appointment.

Conflicting Statements on Senate Appointment

On December 9, 2008, former Gov. Blagojevich was arrested by federal agents for what was described at the time as a "political corruption crime spree."¹ One of the central allegations against the governor was that he attempted to sell an appointment to the Senate seat vacated by then President-elect Obama.²

Sen. Burris was elevated to the Senate seat by the governor on December 30, 2008.³ When questions were raised about the appointment, Sen. Burris proclaimed, "I don't have any taint from Gov. Blagojevich."⁴ Over the next several months, Sen. Burris offered at least three different explanations under oath of how he came to be appointed to the Senate.⁵

On January 5, 2009, Sen. Burris voluntarily submitted an affidavit to the Illinois House of Representative's Special Investigative Committee looking into impeaching Gov. Blagojevich.⁶ In that disclosure, Sen. Burris claimed "there was not any contact between myself or any of my representatives with Governor Blagojevich or any of his representatives regarding my appointment to the United States Senate."⁷

On January 8, 2009, Sen. Burris appeared in front of the Special Investigative Committee to explain his relationship with Gov. Blagojevich.⁸ At that hearing, Sen. Burris admitted that prior to the November election he had told Gov. Blagojevich's former chief of staff he was interested in the Senate seat should it become open.⁹

¹ Jeff Coen, Rick Pearson, John Chase and David Kidwell, Illinois Gov. Rog Blagojevich Arrested on Federal Charges, *Chicago Tribune*, December 10, 2008 (Exhibit 1).

² Id.

³ Rick Pearson and Ray Long, Gov. Rod Blagojevich Picks Former Attorney General to Replace Obama, *Chicago Tribune*, December 31, 2008 (Exhibit 2).

⁴ Id.

⁵ Id.

⁶ Monica Davey, Burris Now Says He Was Asked to Donate, *New York Times*, February 15, 2009 (Exhibit 3); Affidavit of Roland W. Burris, filed January 5, 2009 (hereinafter "Burris Affidavit, Jan 5, 2009") (Exhibit 4).

⁷ Burris Affidavit, Jan 5, 2009.

⁸ Ray Long and Ashley Rueff, Roland Burris Asked ex-Rod Blagojevich Aide About Senate Seat, *Chicago Tribune*, January 9, 2009 (Exhibit 5).

⁹ Id.

On February 4, 2009, Sen. Burris submitted an affidavit to “supplement” his responses to questions posed by the Special Investigative Committee.¹⁰ In that document, Sen. Burris admitted to speaking with Rob Blagojevich - the governor’s brother - three times throughout October and November.¹¹ Sen. Burris said he was asked to raise money for the governor.¹² In the affidavit, Sen. Burris claimed he told Mr. Blagojevich he could “not contribute to Governor Blagojevich because it could be viewed as an attempt to curry favor.”¹³ Sen. Burris did not mention these discussions at the impeachment panel hearing despite being specifically asked about speaking to Mr. Blagojevich.¹⁴

The Senate Ethics Committee launched an investigation into Sen. Burris on February 17, 2009, for repeatedly altering his statements regarding his appointment to the Senate and his contacts with Gov. Blagojevich and the governors’ associates.¹⁵

On May 26, 2009, transcripts of a conversation between Sen. Burris and Rob Blagojevich, captured on a federal wiretap related to the corruption probe of Gov. Blagojevich were released.¹⁶ In the transcripts, Sen. Burris mentioned his interest in the Senate seat and potentially raising money for the governor.¹⁷ Sen. Burris offered to “give him [Gov. Blagojevich] a check” and “do something at the [Burris’] law firm.”¹⁸ Later in the conversation he pledged to “personally do something.”¹⁹ Sen. Burris also discussed having his attorney make a donation – potentially in violation of Illinois election law – but the attorney later advised against it.²⁰

For several months, the Illinois State’s Attorney for Sangamon County investigated Sen. Burris’ testimony to state lawmakers regarding whether Sen. Burris offered to fundraise for Gov. Blagojevich before he was appointed to the Senate.²¹ On June 19, 2009, the prosecutor decided

¹⁰ Letter from Timothy W. Wright III, Counsel to Senator Roland Burris, to Rep Barbara Flynn Currie, State Representative, 25th District, February 5, 2009; Affidavit of Roland W. Burris, filed February, 4 2009 (hereinafter “Burris Affidavit, Feb. 4, 2009”) (Exhibit 6).

¹¹ Davey, *New York Times*, Feb. 15, 2009.

¹² Id.

¹³ Burris Affidavit, Feb. 4, 2009.

¹⁴ Davey, *New York Times*, Feb. 15, 2009.

¹⁵ Monica Davey and Dirk Johnson, 2 Investigations Into Burris Are Begun, *New York Times*, February 17, 2009 (Exhibit 7).

¹⁶ Jeff Coen and John Chase, Burris Talks Cash on Wiretap, *Chicago Tribune*, May 27, 2009 (Exhibit 8).

¹⁷ Id.

¹⁸ In re: Motion to Disclose Intercepted Communication to the United States Senate Select Committee on Ethics, No. 08 CR 888, (N.D.IL 2008) (Exhibit 9).

¹⁹ Id.

²⁰ Coen and Chase, *Chicago Tribune*, May 27, 2009.

²¹ Andrew Harris, Illinois Prosecutor Reviews Burris’ Statements to Lawmakers, *Bloomberg*, February 18, 2009 (Exhibit 10).

Sen. Burris' statements were "insufficient" to charge him with perjury.²² The Senate Ethics Committee inquiry, however, remains open.²³

In the first half of 2009, Sen. Burris did not report paying legal fees. His campaign reported raising \$41,230, but carried \$138,085 in debt.²⁴ On April 9, 2009, Sen. Burris revealed that he had "rung up" \$500,000 in legal expenses resulting from the investigation into his ties with the indicted governor.²⁵ According to a spokesperson, Sen. Burris began setting up a legal defense fund but is awaiting Senate approval.²⁶

Perjury

Although a prosecutor found insufficient evidence to file state charges against Sen. Burris for perjury, federal perjury charges may still lie. Under federal law, anyone who takes an oath that he will testify, declare or offer written testimony that he subscribes to be true, but deliberately offers untrue statements about a material matter is guilty of perjury. 18 U.S.C. § 1621. If Sen. Burris was questioned by federal investigators in the course of the prosecution of former Gov. Blagojevich and provided false information regarding conversations he may have had about potential campaign contributions to the governor in return for appointment to the Senate seat, he may have committed perjury.

False Statements

Anyone who knowingly and willfully falsifies, conceals, covers up or makes a material false representation regarding any matter within the jurisdiction of the United States government is guilty of making a false statement in violation of 18 U.S.C. § 1001. Sen. Burris, by lying to members of the Senate regarding his efforts to persuade Gov. Blagojevich to appoint him to the Senate seat, and by deliberately lying about his conversations with the governor and his brother about funds Sen. Burris might raise for the governor in return for the appointment, may have made false statements in violation of 18 U.S.C. § 1001.

Senate Rule Prohibiting Improper Conduct

The Senate Ethics Manual provides that "[c]ertain conduct has been deemed by the Senate in prior cases to be unethical and improper even though such conduct may not necessarily have violated any written law, or Senate rule or regulation. Such conduct has been characterized

²² Perry Bacon, Prosecutor Says Sen. Burris Will Not Face Perjury Charge, *Washington Post*, June 19, 2009 (Exhibit 11).

²³ Id.

²⁴ Burris for Senate, FEC Form 3, July Quarterly Report 2009, Jul. 13, 2009, pp. 1-4 (Exhibit 12).

²⁵ Burris' Legal Fees Top \$500,000, *Associated Press*, April 9, 2009 (Exhibit 13).

²⁶ Ray Gibson, Sen Burris to Hold Chicago Fundraiser, *Los Angeles Times*, April 17, 2009 (Exhibit 14).

as improper conduct that may reflect upon the Senate.”²⁷ This rule is intended to protect the integrity and reputation of the Senate as a whole.²⁸ The Ethics Manual explains that “improper conduct” is given meaning by considering “generally accepted standards of conduct, the letter and spirit of laws and Rules . . .”²⁹ Notably, the Senate may discipline a member for any misconduct, including conduct or activity that does not relate to official duties when that conduct unfavorably reflects upon the Senate as a whole.³⁰

The Senate has disciplined other members for violating this prohibition in the past. In 1967, the Select Committee on Ethics investigated the first case of improper conduct involving Senator Thomas Dodd who was censured for converting campaign funds to personal use.³¹ In 1990, the Senate denounced Senator David Durenberger, in part, based on his financial arrangements in connection with a condominium he owned in Minneapolis and in 1991, Senator Alan Cranston was severely reprimanded for improperly linking fundraising and official activities.³² And, as previously stated, in 1995, the Committee recommended Senator Robert Packwood be expelled for repeated sexual misconduct.³³

Just last year, the Committee issued letters of admonition to two senators, Larry Craig and Pete Domenici for improper conduct reflecting discreditably upon the Senate. In February 2008, the Committee found Sen. Craig engaged in improper conduct by committing disorderly conduct in a public restroom, attempting to use his official position to influence the arresting officer, and attempting to withdraw his guilty plea to evade the legal consequences of his actions.³⁴ In April 2008, the Committee found that by contacting a prosecutor about a pending corruption case that might have influenced an upcoming election, Sen. Pete Domenici created an appearance of impropriety that reflected unfavorably on the Senate.³⁵

On some occasions, the Committee has stopped short of finding alleged conduct was “improper conduct reflecting upon the Senate,” but has found “that the conduct should not be condoned or should otherwise be criticized in a public statement by the Committee.”³⁶ For example, the Committee has found that a senator’s “interven[tion] with regulators gave the

²⁷ *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432 (108th Cong. 2003 ed.).

²⁸ Id.

²⁹ Id. at 433; *and* fn. 10, citing a 1964 investigation into the activities of Bobby Baker, then-Secretary to the Majority of the Senate, in which the Committee on Rules and Administration issued a report stating, “It is possible for anyone to follow the ‘letter of the law’ and avoid being indicted for a criminal act, but in the case of employees of the Senate, they are expected, and rightly so, to follow not only the ‘letter’ but also the ‘spirit’ of the law.” S. Rep. No. 1175, 88th Cong., 2d Sess. 5 (1964).

³⁰ Senate Ethics Counsel, The Packwood Report, *Times Books* (1995), p. 28 (*citing* S. Rep. 2508, 83rd Cong., 2d Sess. 20, 22 (1954)).

³¹ Senate Ethics Manual at 434.

³² Id. at 434-35.

³³ Id. at 432.

³⁴ Letter from Senate Select Committee on Ethics to Senator Larry Craig, February 13, 2008.

³⁵ Letter from Senate Select Committee on Ethics to Senator Pete Domenici, April 24, 2008.

³⁶ Id. at 435.

appearance of being improper and was attended with insensitivity and poor judgement,” that a senator “exercised poor judgment in intervening with regulators,” and that another senator conducted office business “in an inappropriate manner . . .”³⁷ Most recently, the Committee severely admonished Senator Robert Torricelli for creating at least an appearance of impropriety by accepting gifts in violation of the gift rules.³⁸

Sen. Burris, by deliberately lying to senators about the conversations he had with Gov. Blagojevich and others connected to the governor in order to be appointed to a seat in the Senate, clearly engaged in improper conduct reflecting upon the Senate.

³⁷ Id., fn. 19.

³⁸ Letter from Senate Select Committee on Ethics to Senator Robert Torricelli, July 30, 2002.