



# Judicial Watch

*Because no one is above the law!*

**VIA FACSIMILE (202) 224-7327**  
**AND U.S. MAIL**

January 12, 2009

The Hon. Harry Reid  
Senate Majority Leader  
U.S. Senate  
528 Hart Senate Office Bldg.  
Washington, D.C. 20510

**Re: Vincent v. U.S. Senate, et al., Case No. 09-00020 (RJL) (D. D.C.)**

Dear Senate Majority Leader Reid:

Judicial Watch, Inc. represents Mr. John Vincent, a long-time resident of the State of Illinois. As you may know, last week Mr. Vincent initiated a lawsuit against the U.S. Senate, the Secretary of the U.S. Senate, and the Sergeant at Arms of the U.S. Senate to remedy the U.S. Senate's unconstitutional rejection of Mr. Roland Burris as the junior U.S. Senator from the State of Illinois. A copy of Mr. Vincent's Complaint is enclosed.

As you also may know, last Friday, January 9, 2009, the Supreme Court of Illinois confirmed what is obvious from any plain reading of Illinois law:

Because gubernatorial appointments only require issuance of an actual commission when the governing law so provides and because no provision of law makes issuance of a commission necessary for the validity of a gubernatorial appointee to a United States Senate vacancy, no commission was required by law to effectuate the appointment of Mr. Burris to the United States Senate. And because the Secretary of State's "sign and seal" duty is triggered only in cases where commissions are required by law, it necessarily follows that the Secretary of State had no duty to sign and seal the certificate of appointment issued by the Governor in this case. Under section 5(s) of the Secretary of State Act (15 ILCS 305/5(2) (West 2006)), the Secretary of State's sole duty was to register the appointment, which he has done.

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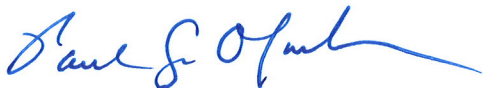
*Burriss v. White*, Case No. 108718, slip. op. at 607 (Ill. Sup. Ct. January 9, 2009). Because, under Illinois law, the Governor of the State of Illinois has sole responsibility for temporarily filling vacancies in the office of U.S. Senator from the State of Illinois when such vacancies occur (10 ILCS 5/25-8 (West 2006)), and because the current Governor has filled the vacancy created by President-elect Obama's resignation by temporarily appointing Mr. Burriss, there is no lawful justification or excuse for the U.S. Senate's refusal to seat Mr. Burriss.

With confirmation hearings on President-elect Obama's cabinet nominations beginning this week and with the U.S. Congress about to begin consideration of an economic stimulus package reportedly valued in excess of \$770 billion, among other important business, it is of the utmost importance that Mr. Vincent and the people of the State of Illinois be represented fully in the U.S. Senate. We therefore demand the U.S. Senate cease its unconstitutional refusal to allow Mr. Burriss to take his lawful seat as the junior U.S. Senator from the State of Illinois. If the U.S. Senate continues to refuse to seat Mr. Burriss, we intend to seek emergency relief from the Court.

Thank you for your immediate attention to this matter.

Sincerely,

JUDICIAL WATCH, INC.



Paul J. Orfanedes  
Director of Litigation

cc: The Hon. Richard Durbin (Fax: (202) 228-0400)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

JOHN VINCENT,  
1217 N. Ridge Avenue  
Arlington Heights, Illinois 60004,

Plaintiff,

v.

THE UNITED STATES SENATE,  
The Capitol Building  
Washington, D.C. 20510,

and

NANCY ERICKSON, in her official  
capacity as SECRETARY OF THE  
UNITED STATES SENATE,  
The Capitol Building  
Washington, D.C. 20510,

and

TERRANCE W. GAINER, in his official  
capacity as SERGEANT AT ARMS  
OF THE U.S. SENATE,  
The Capitol Building  
Washington, D.C. 20510,

Defendants.

Civil Action No.:

Case: 1:09-cv-00020

Assigned To : Leon, Richard J.

Assign. Date : 1/7/2009

Description: Civil Rights - Non. Employ.

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

Plaintiff, John Vincent, hereby sues the United States Senate, the Secretary of the United States Senate, and the Sergeant at Arms of the United States for declaratory and injunctive relief, and as grounds therefor alleges as follows:

## JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, as this action arises under the United States Constitution.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (e).

## PARTIES

3. Plaintiff John Vincent is a U.S. Citizen and has resided in the State of Illinois for approximately 32 years. Plaintiff resides at 1217 N. Ridge Avenue, Arlington Heights, Illinois 60004.

4. Defendant United States Senate is one of two legislative chambers that comprise the United States Congress and, as such, is an integral part of the United States Government. The United States Senate has its principal place of business at The Capitol in Washington, D.C.

5. Defendant Nancy Erickson is the Secretary of the United States Senate. Ms. Erickson's principal place of business is at The Capitol in Washington, D.C. She is being sued in her official capacity. The duties and responsibilities of the Secretary of the United States Senate include legislative, financial and administrative functions.

6. Defendant Terrance W. Gainer is the Sergeant at Arms of the United States Senate. Mr. Gainer's principal place of business is at The Capitol in Washington, D.C. He is being sued in his official capacity. The Sergeant at Arms of the United States Senate serves as the executive officer of the Senate for enforcement of all Senate Rules.

## FACTUAL ALLEGATIONS

7. On Thursday, November 13, 2008, U.S. Senator Barack Obama (D- Ill.) resigned his U.S. Senate seat, effective Sunday, November 16, 2008, after being elected President of the United States.

8. Illinois law gives the Governor of the State of Illinois the exclusive authority to fill any vacancy in the office of U.S. Senator from the State of Illinois until such time as the next election for representatives in the U.S. Congress is held. Illinois law specifically provides:

When a vacancy shall occur in the office of the United States Senator from this state, the Governor shall make temporary appointment to fill such vacancy until the next election of representatives in Congress, at which time such vacancy shall be filled by election, and the senator so elected shall take office as soon thereafter as he shall receive his certificate of election.

10 ILCS 5/25-8.

9. On Tuesday, December 30, 2008, Illinois Governor Rod R. Blagojevich appointed former Illinois Attorney General Roland Burris to fill temporarily the vacancy created by Senator Obama's resignation.

10. On information and belief, Mr. Burris satisfies all of the qualifications for serving as a U.S. Senator from the State of Illinois.

11. On January 6, 2009, Defendants refused to allow Mr. Burris to be sworn in as the junior U.S. Senator from the State of Illinois and to otherwise occupy his rightful position as a member of the U.S. Senate.

12. Mr. Burris has indicated that he desires to serve the people of the State of Illinois as the junior U.S. Senator from the State of Illinois and will serve the people of the State of Illinois in this capacity if he is allowed to do so.

**COUNT I**  
**(Declaratory and Injunctive Relief)**

13. Plaintiff realleges paragraphs 1 through 12 as if fully stated herein.

14. The U.S. Constitution guarantees Plaintiff the right to representation by two U.S. Senators in the U.S. Senate.

15. Defendants' refusal to allow Mr. Burriss to be sworn in as the junior U.S. Senator from the State of Illinois and to otherwise occupy his rightful position as member of the U.S. Senate is unlawful and in violation of the U.S. Constitution.

16. Defendants' unlawful and unconstitutional refusal to allow Mr. Burriss to be sworn in as the junior U.S. Senator from the State of Illinois and to otherwise occupy his rightful position as member of the U.S. Senate is depriving Plaintiff of his right to full representation in the U.S. Senate, as guaranteed by the U.S. Constitution.

17. Defendants' unlawful and unconstitutional refusal to allow Mr. Burriss to be sworn in as the junior U.S. Senator from the State of Illinois and to otherwise occupy his rightful position as member of the U.S. Senate also is depriving Plaintiff of his right to due process of law and to the equal protection of the laws.

18. Plaintiff is suffering and will continue to suffer significant, irreparable harm by reason of Defendants' deprivation of his constitutional rights.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against Defendants:

(1) declaring Defendants' refusal to allow Mr. Burriss to be sworn in as the junior U.S. Senator from the State of Illinois and to otherwise occupy his rightful position as member of the U.S. Senate is unconstitutional;

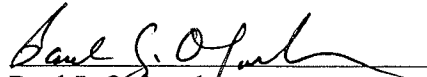
(2) enjoining Defendants from continuing to refuse to allow Mr. Burriss to be sworn in as the junior U.S. Senator from the State of Illinois and to otherwise occupy his rightful position as member of the U.S. Senate; and

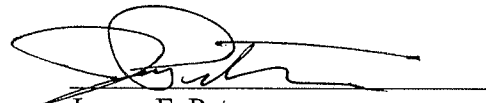
(3) granting any and all other relief the Court deems just and proper.

Dated: January 7, 2009

Respectfully submitted,

JUDICIAL WATCH, INC.

  
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(D.C. Bar No. 429716)

  
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*Attorneys for Plaintiff*