

# Gubernatorial Appointments & Buggy Whips

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*by Dr. G. Terry Madonna and Dr. Michael Young*

Eloquent messages can be delivered by inelegant messengers. Governor Rod Blagojevich of Illinois is the latest flawed messenger to remind us of that elemental truth. Blagojevich's ham-handed efforts to turn the Obama Senate vacancy into ready cash has inadvertently called attention to one of the last great constitutional scams perpetrated on the American people: the power we give most governors to make appointments to the U.S. Senate when a vacancy arises.

Blagojevich it turns out is only the most blatant of the reminders we have recently received. The possible appointment of Caroline Kennedy to replace Hillary Clinton continues to roil New York politics, while Vice President Biden's Senate replacement is becoming controversial in Delaware. In fact, since November's election at least four senate seats have or probably will become vacant, providing the governor of these states with an opportunity to appoint a temporary replacement.

This incidentally is far from a record. During Eisenhower's first term, there were nine senate vacancies filled by gubernatorial appointment. Indeed, appointing senators is a little told but very old story in American politics. Since 1913 some 180 U.S. senators have been appointed. That's an average of about two appointed senators a year, or almost twice as many senators as sit in that august body at any one time.

A question occurring to more and more Americans is just why so many U.S. senators are appointed to the "highest elective body" in the country. Why don't we elect them instead, as we do U.S. House vacancies and virtually every other legislative official holding office under federal or state jurisdiction? It's a good question and to answer it we must look to some constitutional history dating back to the early 20th century.

Until 1913 most states allowed their state legislatures to select U.S. senators rather than elect them directly by the voters. The 17th amendment, however, established direct (popular) election of senators as members of the House of Representatives had been since the adoption of the constitution.

The same amendment provides a mechanism for filling vacancies that occur between scheduled general elections. But unlike the House, the 17th amendment authorized legislatures to empower the executive to make temporary appointments until the vacancy is filled in the next special election.

Today forty-five of the fifty states still hold onto this archaic tradition of gubernatorial appointment - a system originally designed to ensure a state had continuous senate representation if the state legislature was not in session when a senate vacancy occurred.

The record of America's appointed senators is mixed at best. Nepotism has played a large part in many of the appointments. Four appointments were spouses of former senators. At least one governor appointed his own wife and three appointments were sons or daughters of the former senator. Nine appointments went to the governors themselves, who resigned their own office to be appointed by their successors.

Of the 180 appointees to the office since 1913, many chose not to seek election, while only about one in three (59) ran and won the subsequent election. It is true that a few appointed senators became major figures in the chamber; some even rose to iconic status in the institution itself. Names like Gerald P. Nye (R-ND), Arthur H. Vandenberg (R-MI), William F. Knowland (R-CA), Sam J. Ervin, Jr. (D-NC), Walter F. Mondale (D-MN), Harry F. Byrd, Jr. (D/I-VA) and George J. Mitchell (D-ME) come to mind. However the vast majority of appointed senators left no lasting legacy of their time in the Senate.

In short, the history of appointed senators now spanning almost a century is less than inspiring. Gubernatorial appointments have become the buggy whips of modern politics. As a consequence, we are laboring today under an outdated, undemocratic system subject to frequent abuse, producing only a few notable figures, and fundamentally flawed with respect to fairness and accountability.

Moreover, the appointment of U.S senators violates some of the most esteemed principles of American political life:

- In most states, there is little or no check on a governor's power to appoint (as Rod Blagojevich has so skillfully demonstrated).
- The appointment itself gives the incumbent an unnecessary and unfair advantage in any subsequent election over potential challengers and thus distorts electoral competition.
- For the length of the appointment, there is a denial to the people of the most fundamental right in a democracy - that of electing those who represent them in Congress.

How can we fix it?

Two main options exist. The most direct one would be a constitutional amendment, revising the 17th Amendment simply to require a special election when senate vacancies occur. This is probably the preferable way to end the practice. Alas, given the great obstacles to securing constitutional change, there is almost no likelihood the constitution will be amended for this purpose.

Fortunately a second good option presents itself. The states themselves can unilaterally end gubernatorial appointments and require a special election, as five states have already done. Even those state legislatures that retain the gubernatorial appointing power can institute appropriate checks and balances to remove the potential misuse of the appointment power.

This is a problem that need not go unfixed. The issues here are clear and compelling; the solutions are straightforward and practicable. The *BostonGlobe*, writing editorially, may have summed it up best: "Democracy is always worth the price of a special election." Indeed, in a country that sponsors an estimated one million elections every four years, a couple more every year or so would seem quite a bargain compared to the price we are paying now for their absence.

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