



Dems reach 60 with appointment to fill Ted Kennedy's seat; GOP cries foul

By Aaron Blake - 09/24/09 08:46 PM ET

Former Democratic National Committee Chairman Paul Kirk will become the 60th Democratic vote in the Senate and the first new Massachusetts senator in a quarter-century on Friday, unless a state court intervenes.

State Republicans are fighting the appointment, but Republicans in Washington indicated they would not intervene.

Gov. Deval Patrick (D) on Thursday named Kirk the temporary replacement for the late Sen. Edward Kennedy (D), who died last month.



Massachusetts Republicans called it a political power grab and questioned Patrick's legal authority to appoint Kirk so soon after the State Legislature granted him the power.

The state GOP is seeking an injunction to delay the appointment, and the injunction will be the subject of an 8 a.m. Friday hearing. Kirk is set to be sworn in later in the day, at 3:15 p.m. in Washington.

Patrick is moving up the appointment to help Democrats gain a filibuster-proof majority.

The GOP has cried foul because Democrats in the state were effectively giving Patrick appointment powers they had stripped from GOP Gov. Mitt Romney just five years ago, when Sen. John Kerry (D-Mass.) was the Democratic nominee for president.

Senate Republicans could block Kirk with a filibuster if they maintained party unity. Democrats would need 60 votes to quash a filibuster, and they control only 59 seats after Kennedy's death.

Senate Republican Whip Jon Kyl (Ariz.) said the constant tinkering with election law by Massachusetts Democrats was "hypocritical." But he said he doubts the GOP will filibuster Kirk in retaliation, because

“there’s a certain degree of comity in the Senate.”

Senate Republican Conference Chairman Lamar Alexander (Tenn.) said, “It’s blatantly cynical to say that if there’s a Republican governor there should be an election, and if there’s a Democratic governor there should be an appointment.”

Republicans kept one of Minnesota’s Senate seats vacant for months by threatening any effort to seat Sen. Al Franken (D-Minn.) after his race against former Sen. Norm Coleman (R-Minn.) ended in controversy. In that case, they were aided by Gov. Tim Pawlenty’s (R) refusal to certify Franken’s win; whereas now, Patrick isn’t giving them any such luxury.

Speaking at a press conference Thursday morning, Patrick said it was vital that Massachusetts be represented in the Senate at such a critical time. On Wednesday, the State Legislature passed a bill restoring his appointment powers, and earlier Thursday he sent a letter to the secretary of state declaring an emergency to expedite the process.

Republicans say state Supreme Court precedent doesn’t allow for an emergency declaration in this case. Without the declaration, Patrick would have had to wait 90 days to make the pick.

Patrick acknowledged that “for some in the Legislature, this was a difficult vote.” But he said he checked with legal counsel and was convinced he is acting within the law.

He accused Republicans of playing politics with the appointment powers as well.

“They thought it was a good idea then” to appoint a replacement, he said. “I question why they don’t think it’s a good idea now.”

“The issues before the Congress and the nation are simply too important to Massachusetts for us to be one voice short,” Patrick said.

Experts were divided on the merits of the GOP’s case.

Meredith McGehee, policy director of the Campaign Legal Center, said Republicans could have a point.

“It’s not going to be an impossible case to make [for Democrats], but it could be difficult,” McGehee said. “For the governor to say this is an emergency — an emergency in the legislative process?”

“They’ve presented the court with some interesting choices.”

Brenda Wright, the director of the Democracy Program at the Demos public policy research group, said the case doesn’t seem to hold much water, because the precedent cited isn’t clear.

“The opinion didn’t really address the precise question that they’re raising,” Wright said. “Generally, if you don’t have clear authority for your lawsuit, and the question could go either way, that makes it more difficult to get an injunction.”

University of Buffalo law Professor Jim Gardner said the courts are usually hesitant to override governors when it comes to emergency declarations, for fear of unnecessarily mixing branches of government.

But he said the amount of legal precedent in this case could give Republicans a chance.



"I would expect deference, but this is a situation where, if a court was not going to be deferential, this would be a good occasion for it," Gardner said.

Kirk, 71, is the head of the John F. Kennedy Library Foundation and a longtime former aide to Ted Kennedy. He was presented as someone who can easily pick up where Kennedy left off at a time when Kennedy's pet issue, healthcare, is before the Senate.

He will not run in the Jan. 19 special election, when Massachusetts voters will choose someone to serve out the rest of Kennedy's term. State Attorney General Martha Coakley (D) and Rep. Michael Capuano (D-Mass.) lead the field of competitors in that race.

Kirk said the appointment was a "profound honor, and I accept it with sincere humility."

In a brief statement, the White House, which had pushed for the appointment, praised the pick.

"Paul Kirk is a distinguished leader whose long collaboration with Sen. Kennedy makes him an excellent interim choice to carry on his work until the voters make their choice in January," President Barack Obama said in the statement.

Alexander Bolton contributed to this article.

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