



Written by [Jack Kenny](#) on September 25, 2009

## Mass. Judge Okays Kirk Senate Appointment

A Massachusetts judge on Friday dismissed a Republican Party appeal for an injunction to delay the swearing in of Paul G. Kirk, Jr. as the state's interim U.S. Senator. Suffolk Superior Court Judge Thomas Connally's ruling cleared the way for Kirk to be sworn in by Vice President Joe Biden later in the day.



The Republicans filed for an injunction after Governor Deval Patrick signed a bill passed by the Legislature on Wednesday requiring him to appoint a temporary successor to Sen. Edward M. Kennedy, who died of brain cancer on August 25. Republicans and some Democrats claimed that Patrick exceeded his constitutional authority by adding an emergency preamble to the bill to avoid the 90-day waiting period required between passage and signing of non-emergency legislation. A request for the emergency preamble was defeated in the House on Wednesday when the vote in favor fell short of the two-thirds needed for passage. But Judge Connally rejected the constitutional argument and focused instead on the question of what irreparable harm the plaintiffs would suffer if the appointment were not delayed.

"We believe the irreparable harm is the misuse of the Constitution," said the Republicans' attorney James O'Brien. "The governor's power to declare an emergency is not absolute," O'Brien argued. "By granting the governor the power to appoint by way of an unconstitutional maneuver, this establishes a dangerous precedent."

Assistant Attorney General Peter Sacks, representing the Governor, said the emergency the state faced was a shortage of representation during the healthcare and other debates underway in Washington. "There is simply no reason to delay (the appointment) and every reason in the world, your honor, to make it as quick as possible."

In addition to denying the injunction, Connally also granted the state's motion to dismiss the case. "The party has not shown that it has a chance to succeed on the merits and, therefore, any risk of harm to the party will not outweigh the risk of harm to the governor and the commonwealth," the Judge wrote in his decision.

The Republicans did not say whether they would appeal. Kirk's appointment is brief, since he will serve



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only until January's special election. But the Republicans appear ready to turn their case into an election year issue against both Patrick, who is expected to run for a second term next year, and the Democrats in general. The party chairman issued a statement saying the battle shows the need for a greater partisan balance at the State House.

"It is up to the voters of Massachusetts to finally decide enough is enough and to refuse to re-elect the entrenched incumbents responsible for raising our taxes in the middle of a recession, turning a blind eye to public corruption and manipulating the law to keep their grip on power," said Jennifer Nassour. Whether that and similar arguments will persuade voters in the heavily Democratic Bay State next year remains to be seen. But with only 21 Republicans among the 200 members of the state's Legislature, the GOP may believe it has nowhere to go but up.

*Photo of Paul Kirk: AP Images*



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