



Medical malpractice likely campaign issue for state Supreme Court justice

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SPRINGFIELD -- While Thomas Kilbride has made a host of decisions while serving as a justice on the Illinois Supreme Court for the past 10 years, just one will likely be the focus of his retention bid in November.

In February, Kilbride voted with the majority of the state's high court to limit how much a jury can award victims in medical malpractice suits. The controversial decision has some in the medical community fearing doctors will be pushed out of the state because of rising liability insurance rates.

This could lead them to funnel resources and money into the race in hopes of unseating Kilbride, said James Nowlan, a senior fellow in the Institute of Government and Public Affairs at the University of Illinois.

"The tort law reform groups have Kilbride in their crosshairs right now," Nowlan said.

Kilbride, a Rock Island Democrat, represents the Third Judicial District in northwestern Illinois, which includes the Quad Cities. He officially filed for retention as a justice last month.

Others applauded the decision by the court to strike down caps on non-economic damages like pain and suffering. Trial lawyers, for instance, are equally intrigued in making sure Kilbride stays on the court, Nowlan said.

"He is a critical vote on the medical malpractice issue," he said.

Kilbride's seat is all the more important because it holds the balance of power on the state's high court. Currently, the other six justices are split along party lines.

Kilbride did not wish to comment because a re-hearing on the malpractice case is still pending in court, said Joseph Tybor, spokesman for the Supreme Court.

Legislature approves medical malpractice caps

The court's decision on medical malpractice came after lawmakers enacted caps in 2005 that limited awards on malpractice suits to \$500,000 against doctors and \$1 million against hospitals.

"That law was enacted by the legislature after a long, drawn out battle," said Ed Murnane, president of the Illinois Civil Justice League.

But for third time in recent history, the court ruled caps unconstitutional. Four Democrats, including Kilbride, voted against caps, while two Republicans voted for them. One Republican abstained from voting.

Despite the court's split vote, medical malpractice hasn't always been a partisan issue, at least not in the legislature. Republicans were in control when the legislature enacted caps in 1995, and Democrats were in control in 2005.

"It's a patient issue," Murnane said.

Retention in Illinois

Unlike other candidates on the ballot, Kilbride will not face an opponent. Instead, he will be running against his own record. To keep his seat on the high court, Kilbride will need 60 percent of the vote.

Retention occurs every ten years and allows voters the option of re-electing justices. It is typically a slam dunk, but this year's court ruling on medical malpractice could be a hurdle for Kilbride, said Nowlan.

While justices up for retention don't have a formal opponent, many contend simply putting them on the ballot makes them too political. Namely, judges have the backing of political parties and don't have limits on how much they can spend on their own campaign.

"We elect judges the same way we elect legislators," Murnane said. "And judges are more powerful. They have more control."

This brings into question whether or not judges have an alliance to the law or their fundraisers, said Kent Redfield, political scientist at the University of Illinois Springfield.

"It degrades the legitimacy of the judicial office if people think they are partisan actors," said Redfield.

Kilbride was elected in 2000 with the help of more than a half a million dollars from the state Democratic Party.

Spokesman Steve Brown said the party will be working with Kilbride to develop a campaign.

2004 Supreme Court race

Medical malpractice has been the focal point of previous judicial races, including one of the nastiest and most expensive in history.

In 2004, Republican Lloyd Karmeier and Democrat Gordon Maag vied for a position on the Supreme Court in southern Illinois, which had been historically sympathetic to victims in medical malpractice suits.

Karmeier, who relied on support from medical groups, defeated Maag, who relied on trial lawyers. In all, the two candidates raised a combined \$8.5 million, smashing previous fundraising records.

If Kilbride's race sees that kind of money, it could get heated, said Redfield.

"If you're going to go after Kilbride's record, it is going to have to be negative," he said.

Opposition already mounting

While the election is still months away, some opponents are already going after Kilbride.

After the court issued their ruling in February, political consultant Jon Zahm started a committee entitled "Vote NO Kilbride" that will be trying to kick the justice out of office in November.

"Defeating Kilbride can turn the Supreme Court from a liberal Supreme Court to a conservative Supreme Court," said Zahm, founder of Goliath Slayer Communications.

His committee has already started soliciting money, including \$5,000 from conservative activist Jack Roeser.

Zahm anticipates the fundraising to continue, with millions of dollars being funneled into the race from interest groups across the state.

"I think there is going to be a ton of activity," Zahm said.