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Will Emanuel ruling escape political taint?

The 4 Democrats, 3 Republicans on state Supreme Court all have strong political ties

By Rick Pearson and David Kidwell, Tribune reporters

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The Illinois Supreme Court justices deliberating the fate of Rahm Emanuel's bid for Chicago mayor are sworn to uphold the state constitution without regard for special interests, yet that same document requires them to run for election in an inherently political system.

While much of the high court's work is done in relative anonymity, the pedigrees of the justices are fodder for debate whenever they tackle high-profile cases with political consequences — from deciding a close governor's race to ruling on the district maps that determine which party will control the Legislature.

In the Emanuel case, that debate may have been inevitable. Three of the four justices on the court's Democratic majority were endorsed during their careers by the Cook County Democratic Party.

The head of the party's judicial slating committee is powerful Ald. Edward Burke, 14th, who is supporting Gery Chico in the mayoral race. And Burke is the husband of Supreme Court Justice Anne Burke.

"The waters of politics and government have kind of converged on this spot," said former Democratic Illinois Senate President Philip J. Rock, long a proponent of an elected judiciary. "Sure, for some of the skeptics, this (Emanuel case) is right up their alley and they'll say 'people are plotting,' but I defy whoever says that to point out where they're plotting."

Emanuel, the former White House chief of staff, is seeking to overturn an Appellate Court ruling that tossed him from the Feb. 22 ballot on the grounds he failed to meet a one-year city residency requirement because he was in Washington.

Justice Burke has so far participated in two court orders in the Emanuel case — one that stayed the Appellate Court decision and put his name back onto ballots being printed by Chicago election authorities and another that agreed to hear the residency case.

A spokesman for the alderman did not return a call for comment. The justice, through a court spokesman, directed reporters to comments she made at a social service organization fundraiser

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Wednesday that were reported by Crain's Chicago Business.

In response to the issue of a potential conflict because of her husband's political support, Anne Burke was quoted as saying, "Aren't we beyond that? Women have minds of their own. We have spouses in every kind of business. Are we returning to the days of Myra Bradwell?" Bradwell became the state's first female lawyer after initially being denied the right to practice law because of her sex.

Anne Burke got a vote of confidence from one of the state's longtime proponents of selecting judges based on merit rather than by election.

"I think she's capable of making a free-standing, independent decision," said former Democratic state Comptroller Dawn Clark Netsch, a law professor at Northwestern University. "But it doesn't make any difference, the argument will be made, and there will be a hue and cry about it. That's going to happen as long as it's a political system."

The state's Circuit Court, Appellate Court and Supreme Court jurists, with the exception of associate circuit judges, are elected by running in partisan primaries and then the general election. Supreme Court justices are elected to 10-year terms on a partisan ballot and then run on a nonpartisan retention ballot after their initial terms.

Anne Burke's fellow Democrats from Cook County's Supreme Court district, Charles E. Freeman and Mary Jane Theis, were also the beneficiaries of party support on their way to the high court.

Freeman, a longtime friend of the late Mayor Harold Washington, was backed by the Democratic organization in 1984 in an unsuccessful bid for Appellate Court and again prior to becoming Illinois' first African-American Supreme Court justice in 1990.

Theis, who was just appointed to the Supreme Court last year and has not yet stood for election, was slated by the Democratic organization when she first became a countywide Circuit Court judge in 1988.

A fourth Democrat on the court, Justice Thomas Kilbride, whose 20-year labor practice in Rock Island was 150 miles from Chicago politics, was first elected to the Supreme Court with the blessing and support of longtime House Speaker Michael Madigan of Chicago, the head of the state Democratic Party.

Madigan funneled more than \$700,000 in campaign funds to help Kilbride defeat his Republican opponent in 2000. Last year, when Kilbride faced vitriolic opposition in his first retention bid, Madigan came to his rescue with \$1.2 million in campaign cash.

Republican Robert Thomas of Wheaton, who played 10 seasons as a kicker for the [Chicago Bears](#), won election to the court in 2000 after defeating appointed Justice Louis Rathje and another GOP primary candidate in the heavily Republican suburban and northwestern Illinois court district.

Republican Rita Garman of Danville was appointed to the court in 2001 and won election the following year, surviving a GOP primary challenge before securing a 10-year term by less than 30,000 votes over a Democratic opponent in the central and east central Illinois court district.

The third Republican on the court, Lloyd Karmeier, of downstate Nashville, previously was the state's attorney of Washington County. His 2004 election to the Supreme Court over Democrat Gordon Maag shattered national campaign fundraising records for a state high court seat with business interests and trial lawyers pumping in more than \$9 million.

"This is not something that is unique to these judges," said Malcolm Rich, executive director of the Chicago Council of Lawyers, a group that pushes for merit selection. "For all judges, there is a strong likelihood that once you are slated by the political organization, you will become a judge."

"Does that political influence find its way into decisions? I don't know. We may never know," Rich said. "But as long as we live in the political reality under which the election of judges operates, we will never be able to escape these kinds of inherent conflicts."

Charles Wheeler, a professor at the University of Illinois at Springfield and a longtime Capitol observer and writer, said there have been "very few issues" decided by the court along partisan lines — with approval of legislative redistricting maps a major exception.

In one of the court's most famous political decisions, Democratic Justice Seymour Simon joined with the court's Republicans to effectively hand Gov. James Thompson a 5,074 re-election victory over Democrat Adlai E. Stevenson III, just days before his 1983 inauguration.

Adding to the potential for political intrigue in such high-profile cases is that much of what the high court does — including deliberating over its decisions — occurs in private.

In the Emanuel case, the high court took steps to expedite its decision with early voting set to begin Monday — including declining to hear oral arguments from lawyers. That questioning can sometimes provide guidance on how individual justices might decide an issue.

Joseph Tybor, spokesman for the Supreme Court, said it would be unfair to imply the high court is tainted by politics simply because the constitution requires they be elected. "I challenge you to find one case, or two cases, in which a judicial decision was made because of improper political influence," he said.

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