

SUPREME COURT OF ILLINOIS

Maksym v. Board of Election Commissioners of the City of Chicago

242 Ill. 2d 303 (Ill. 2011) · No. No. 111773 · Decided January 27, 2011

SUMMARY

The Illinois Supreme Court reviewed whether Rahm Emanuel satisfied the statutory one-year residency requirement for candidacy for mayor of Chicago. The court held that established Illinois residency principles governed, including that residence is lost only through a combination of intent and acts demonstrating abandonment. It reversed the appellate court and upheld the determination that Emanuel remained a Chicago resident for purposes of eligibility.

CASE DETAILS

COURT	Supreme Court of Illinois
WRITING FOR THE COURT	Justice Thomas; Chief Justice Kilbride; Justice Garman; Justice Karmeier; Justice Theis; Justice Freeman; Justice Burke
JURISDICTION	Illinois
DECIDED	January 27, 2011
DOCKET	No. 111773
DISPOSITION	reversed
PROCEDURAL POSTURE	Petitioners objected to Rahm Emanuel's candidacy for mayor of Chicago. The Chicago Board of Election Commissioners dismissed the objections and permitted Emanuel's name to appear on the ballot. The circuit court of Cook County affirmed. The Illinois Appellate Court reversed and ordered Emanuel's name excluded or removed from the ballot. The Illinois Supreme Court allowed Emanuel's petition for leave to appeal.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo. An electoral board's factual findings are reviewed under the manifest-weight-of-the-evidence standard, and its decision on a mixed question of law and fact is reviewed for clear error. A decision is clearly erroneous only when the reviewing court is left with a definite and firm conviction that a mistake has been committed.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Illinois

PARTIES

The Board of Election Commissioners of the City of Chicago, Rahm Emanuel v. Walter P. Maksym, Jr., Thomas L. McMahon

TOPICS

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election administration

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QUESTIONS PRESENTED

1. What does the phrase 'has resided in the municipality at least one year next preceding the election' mean under section 3.1-10-5(a) of the Illinois Municipal Code?
2. Whether a candidate loses an established Chicago residence by temporarily relocating to Washington, D.C., leasing the Chicago home to another family, and serving as the President's Chief of Staff.
3. Whether the Board's factual findings were against the manifest weight of the evidence or its conclusion was clearly erroneous.

HOLDINGS

1. For purposes of section 3.1-10-5(a) of the Illinois Municipal Code, 'resided in' has the established Illinois meaning of residence. Establishing residence requires physical presence and an intent to remain as a permanent home; after residence is established, the relevant inquiry is abandonment, not continued physical presence. Residence continues presumptively until the contestant proves abandonment.
2. Emanuel did not abandon his established Chicago residence. His temporary service in Washington, D.C., his continued Chicago ties, his stated intent to return, and the circumstances of the leases supported the Board's finding that he remained a Chicago resident for purposes of the mayoral candidacy.

KEY QUOTATIONS

"Thus, in assessing whether the candidate has established residency, the two required elements are: (1) physical presence, and (2) an intent to remain in that place as a permanent home. Once residency is established, the test is no longer physical presence but rather abandonment, the presumption is that residency continues, and the burden of proof is on the contesting party to show that residency has been abandoned."
(242 Ill. 2d at 324-25)

"Appellate court judgment reversed; circuit court judgment affirmed." (242 Ill. 2d at 327)

FACTUAL BACKGROUND

Rahm Emanuel was born in Chicago and owned the Hermitage House there, where he lived with his family until January 2009. He then served as Chief of Staff to the President in Washington, D.C., where he and his family lived in leased housing from 2009 until October 2010, while the Hermitage House was also leased to another family. During his absence, Emanuel continued to own and pay taxes on the Chicago home, maintain an Illinois

driver's license and vehicle registration listing that address, vote from that address, use it on personal checks, retain substantial personal property there, and express an intention to return to Chicago after his temporary government service. He returned to Chicago in October 2010 and lived in a leased apartment there.

PROCEDURAL HISTORY

After an evidentiary hearing, the Board found that Emanuel had not abandoned his Chicago residence while serving as White House Chief of Staff and therefore satisfied the one-year municipal residency requirement. The circuit court confirmed the Board's decision, but the appellate court reversed, concluding that the statute required actual living or actual residence in Chicago. The Supreme Court reversed the appellate court and affirmed the circuit court's judgment confirming the Board's decision.

DISPOSITION

reversed

CASES CITED

- Cinkus v. Village of Stickney Municipal Officers Electoral Board, 228 Ill. 2d 200, 210, 218-19, 319 Ill. Dec. 887, 886 N.E.2d 1011 (2008)
- Smith v. People ex rel. Frisbie, 44 Ill. 16, 23-25 (1867)
- People ex rel. Madigan v. Baumgartner, 355 Ill. App. 3d 842, 847-48, 291 Ill. Dec. 558, 823 N.E.2d 1144 (2005)
- Pope v. Board of Election Commissioners, 370 Ill. 196, 200-01, 18 N.E.2d 214 (1938)
- Walsh v. County Officers Electoral Board, 267 Ill. App. 3d 972, 976, 204 Ill. Dec. 942, 642 N.E.2d 843 (1994)
- Dillavou v. County Officers Electoral Board, 260 Ill. App. 3d 127, 132, 198 Ill. Dec. 516, 632 N.E.2d 1127 (1994)
- Kreitz v. Behrensmeyer, 125 Ill. 141, 195, 17 N.E. 232 (1888)
- Bryson v. News America Publications, Inc., 174 Ill. 2d 77, 95, 220 Ill. Dec. 195, 672 N.E.2d 1207 (1996)
- People v. Ballhorn, 100 Ill. App. 571 (1901)
- People ex rel. Moran v. Teolis, 20 Ill. 2d 95, 104, 169 N.E.2d 232 (1960)
- In re Estate of Dierkes, 191 Ill. 2d 326, 330, 246 Ill. Dec. 636, 730 N.E.2d 1101 (2000)
- Devoney v. Retirement Board of the Policemen's Annuity & Benefit Fund, 199 Ill. 2d 414, 424-25, 264 Ill. Dec. 95, 769 N.E.2d 932 (2002)
- In re Christopher K., 217 Ill. 2d 348, 364, 299 Ill. Dec. 213, 841 N.E.2d 945 (2005)
- Hughes v. Illinois Public Aid Comm'n, 2 Ill. 2d 374, 380, 118 N.E.2d 14 (1954)
- Clark v. Quick, 377 Ill. 424, 427, 36 N.E.2d 563 (1941)
- Park v. Hood, 374 Ill. 36, 43, 27 N.E.2d 838 (1940)
- Stein v. County Board of School Trustees, 40 Ill. 2d 477, 479-80, 240 N.E.2d 668 (1968)
- Coffey v. Board of Election Commissioners, 375 Ill. 385, 387-88, 31 N.E.2d 588 (1940)

- In re Petition to Annex Certain Territory to the Village of North Barrington, 144 Ill. 2d 353, 362, 162 Ill. Dec. 66, 579 N.E.2d 880 (1991)
- People v. Smith, 236 Ill. 2d 162, 167, 337 Ill. Dec. 700, 923 N.E.2d 259 (2010)
- United Citizens of Chicago & Illinois v. Coalition to Let the People Decide in 1989, 125 Ill. 2d 332, 338-39, 126 Ill. Dec. 175, 531 N.E.2d 802 (1988)
- People v. Maya, 105 Ill. 2d 281, 286-87, 85 Ill. Dec. 482, 473 N.E.2d 1287 (1985)
- Moran v. Katsinas, 16 Ill. 2d 169, 174, 157 N.E.2d 38 (1959)
- People v. Estate of Moir, 207 Ill. 180, 186-87, 69 N.E. 905 (1904)
- Fagiano v. Police Board, 98 Ill. 2d 277, 282, 74 Ill. Dec. 525, 456 N.E.2d 27 (1983)
- Hayes v. Hayes, 74 Ill. 312 (1874)
- People v. Bull, 185 Ill. 2d 179, 222, 235 Ill. Dec. 641, 705 N.E.2d 824 (1998)
- McGuire v. Nogaj, 146 Ill. App. 3d 280, 282, 99 Ill. Dec. 945, 496 N.E.2d 1037 (1986)
- Willenbrock v. Rogers, 255 F.2d 236, 237 (3d Cir. 1958)