ILLINOIS SUPREME COURT RULES FOR RAHM EMANUEL BALLOT INCLUSION

Monday's decision by the Illinois Court of Appeals to strike Rahm Emanuel from the ballot for the Chicago Mayoral election set for February 22 caused quite an alarm. The Court of Appeals decision appeared on its face to be quite well reasoned and well taken in light of the wording of the statute at issue. Mr. Emanuel immediately (by Monday night) filed an emergency Motion for Stay and Petition for Leave to Appeal to the Illinois Supreme Court.

The Illinois Supreme Court has just issued its opinion on the Emanuel emergency appeal and, in a decision authored by Justice Thomas, has reversed the Court of Appeals and fully reinstated Rahm's eligibility for the ballot and office of Mayor of Chicago:

> Thus, from April 1867 through January 24 of this year, the principles governing the question before us were settled. Things changed, however, when the appellate court below issued its decision and announced that it was no longer bound by any of the law cited above, including this court's decision in Smith, but was instead free to craft its own originalstandard for determining acandidate'sresidency. See No. 1–11–0033, slip op. at 6-8 (dismissing the foregoing authority in its entirety). Thus, our review of the appellate court's decision in this case begins not where it should, with an assessment of whether the court accurately applied established Illinois law to the particular facts, but with an assessment of whether the appellate court was justified in tossing out 150

> years of settled residency law in favor of its own preferred standard. We emphatically hold that it was not.
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> All of that said, and putting aside the appellate court's conclusion that Smith is not binding in this case, the appellate court's residency analysis remains fundamentally flawed. This is because, even under traditional principles of statutory analysis, the inevitable conclusion is that the residency analysis conducted by the hearing officer, the Board, and the circuit court was proper.
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> Second, this court has twice stated explicitly that related provisions of the Election Code and of the Illinois Municipal Code are to be considered in pari materia for purposes of statutory construction. See Cinkus v. Village of Stickney Municipal Officers Electoral Board, 228 Ill. 2d 200, 218 (2008); United Citizens of Chicago and Illinois v. Coalition to Let the People Decide in 1989, 125 Ill. 2d 332, 338-39 (1988).
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> So where does all of this leave us? It leaves us convinced that, when determining whether a candidate for public office has "resided in" the municipality at least one year next preceding the election or appointment, the principles that govern are identical to those embodied in Smith and consistently applied in the context of determining whether a voter has "resided in" this state and in the election district 30 days next preceding any election. 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. Both the establishment and abandonment of a residence is largely a question of intent, and while intent is shown primarily from a candidate's acts, a candidate is absolutely competent to testify as to his intention, though such testimony is not necessarily conclusive.
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> Given the record before us, it is simply not possible to find clearly erroneous the Board's determination that the objectors failed to prove that the candidate had abandoned his Chicago residence. We therefore reverse the decision of the appellate court and affirm the decision of the circuit court, which confirmed the Board's decision.
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> So there will be no mistake, let us be entirely clear. This court's decision is based on the following and only on the following: (1) what it means to be a resident for election purposes was clearly established long ago, and Illinois law has been consistent on the matter since at least the 19th Century; (2) the novel standard adopted by the appellate court majority is without any foundation in Illinois law; (3) the Board's factual findings were not against the manifest weight of the evidence; and (4) the Board's decision was not clearly erroneous.
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> Appellate court judgment reversed; circuit court judgment affirmed.

Well, although I found the Court of Appeals decision persuasive, the Illinois Supreme Court certainly did not. And they ruled unanimously in Mr. Emanuel’s favor (although two, Justices Freeman and Burke, concurred on distinguished grounds). That will end this debate once and for all. Welcome Mayor Emanuel.