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## Chief Judge Kaye reconfirmed over some Republican opposition

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ALBANY, N.Y. -- Several Republican senators on Tuesday declined to approve Chief Judge Judith Kaye's nomination to continue as the state's top judge citing concerns over rulings about school funding and the death penalty.

Still, Kaye was overwhelmingly approved by the Republican-led state Senate in a voice vote. Kaye can serve until the end of 2008, the year in which she turns 70.

"Judge Kaye has presided over the court with dignity, grace, integrity, passion and intelligence for 14 years," said state Sen. John Bonacic. "Interpreting the statutes made by any legislature can certainly be a challenge. ... Judge Kaye has done this with skill and savvy, recognizing the constitutional principles our founders laid and applied them to our laws today."

Sens. George Maziarz of Niagara County and Stephen Saland of Poughkeepsie voiced opposition to Kaye during debate on her nomination in the full Senate and voted no on her nomination. Sen. Andrew Lanza of Staten Island earlier in the day also voted no in committee on moving Kaye's nomination to the floor for a vote.

The "no" votes were rare for a body that often approves the governor's judicial nominees unanimously.

Kaye was appointed chief judge by Gov. Mario Cuomo in 1993. She was the state's first female chief and the first woman to serve on the Court of Appeals. Cuomo first appointed her as an associate judge of the court in September 1983. She is the longest serving chief judge in state history, outlasting Chief Judge Sanford Church, who served from 1870 to 1880.

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Maziarz said the Court of Appeals decision vacating the death sentence of James Cahill in 2003 as reason to oppose Kaye. The ruling was one of several by the court that left the state's death penalty statute in limbo.

Cahill, who was convicted of first-degree murder in 1998 for poisoning his wife Jill to death with potassium cyanide. She was in a hospital at the time, recuperating from a severe beating Cahill inflicted on her six months earlier with a baseball bat at their home near Syracuse.

"She has no compassion for crime victims in New York state," Maziarz said. "Her decision in overturning the death penalty, particularly in the case of Jill Cahill, was just her putting her personal opinion before what the law was and what the governor signed."

Saland said he found Kaye's opinions in the Campaign for Fiscal Equity case "troubling." In 2003, Kaye wrote the majority opinion in the landmark case that found the state's education funding system was unconstitutional because it did not provide New York City schoolchildren with a "sound, basic education." The court ordered the state to spend billions of dollars more on education.

Many Republicans, including former Gov. George Pataki, argued funding decisions are only to be made by the executive and legislative branches of government, not the judiciary.

"She is an extremely decent person with an exemplary sense of social consciousness, but I like judges to try to stick to the law and exercise judicial restraint," Saland told The Associated Press. "If I was looking for a 213th legislator, I would seek to amend the constitution."

Kaye said after her confirmation hearing Tuesday morning that she and her fellow judges always take the Legislature's wishes into account when making decisions.

"We are very mindful of the roles of the different branches of government," Kaye said. "I can't tell you the number of times ... we talk about the intent of the legislature when a statute is an issue. That rises to the top of our list. We are very mindful of our role and the role of the Legislature."

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