# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** **HON. CAROL R. EDMEAD** **PART** **IAS MOTION 35EFM**

***Justice***

----------X

PETER PATCH,

Plaintiff,

- v -

PATRICK BOBILIN, THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK

Defendant.

----------X

**INDEX NO.** 156231/2020

**MOTION DATE** 8/11/2020

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 64

were read on this motion to/for ELECTION LAW.

Upon the foregoing documents, it is

**ORDERED** that the application of Petitioner Peter Patch for an order: (i) declaring Respondent Patrick A. Bobilin ineligible to hold the office of Member of Assembly and as a candidate on the petition filed, on behalf of the Blue Wave Party with the New York City Board of Elections (BOE); and (ii) enjoining, restraining and prohibiting BOE from printing and placing the name of Mr. Bobilin on the official ballots to be used at the November 3, 2020 General Elections is denied, and the petition is dismissed; and it is further

**ORDERED** that the Clerk of the Court shall enter judgment accordingly; and it is further

**ORDERED** that counsel for Respondent Patrick A. Bobilin shall serve a copy of this order with notice of entry upon all parties within 20 days of entry.

## MEMORANDUM DECISION

Petitioner Peter Patch ("Petitioner") commenced this proceeding by Order to Show Cause seeking an order: (i) declaring respondent Patrick A. Bobilin ("Mr. Bobilin") ineligible to hold the office of Member of the Assembly from the 76th District, New York County, State of New York and as a candidate on the petition filed on behalf of the Blue Wave Party with the New York City Board of Elections ("BOE"); and (ii) enjoining, restraining and prohibiting the BOE from printing and placing the name of Mr. Bobilin on the official ballots to be used at the November 3, 2020 General Election (the "General Election").

## Background Facts

Mr. Bobilin is a candidate for the public office of Member of the Assembly from the 76th District, New York County, State of New York. Petitioner, a duly qualified voter in the upcoming General Election, alleges that Mr. Bobilin does not meet the five-year residency requirement under the New York State Constitution as Mr. Bobilin registered to vote and voted in the State of Illinois from 2010 to 2016 (*see* NYSCEF doc No. 2).

By Order dated August 24, 2020, this Court arranged for a Skype hearing on August 31st to determine the facts and circumstances relating to Mr. Bobilin's electoral residence within the five years preceding the General Election.[1]

[1] At the preliminary Skype conference on August 24, 2020, Respondent BOE, through Mr. Stephen Kitzinger, Assistant Corporation Counsel, manifested that the BOE does not take a position as to the merits of this case and would not be participating further in this matter.

***August 31, 2020 Hearing***

a. *Petitioner's evidence*

At the hearing, Petitioner sought to establish that Mr. Bobilin abandoned his New York residency when he moved to Illinois in August 2009. In support, Petitioner submitted copies of Mr. Bobilin's voter registration records and voting history information showing that Mr. Bobilin registered to vote in the State of Illinois in 2009 and participated in the state elections in 2010, 2012, 2014, 2015 and 2016 (*see* NYSCEF doc No. 2). In his direct examination, Mr. Bobilin did not deny that he moved to Chicago in August 2009, maintained a residence at 1418 West Superior Street in Chicago and registered to vote and voted in Chicago as reflected in his voting history (Tr., 16:1-2). Mr. Bobilin also admitted that his tax returns for the years 2010 to 2015 reflected his Chicago address as his residence (Tr., 25-29). Mr. Bobilin also confirmed Petitioner's allegations that he obtained a driver's license in Chicago in 2009 (Tr., 21:1-3), served on jury duty in Chicago between 2009 and 2016 (Tr., 22:6-17) and obtained his first cellphone in Chicago and has since maintained a number with a Chicago area code (Tr., 23:14-25 to 24:1-4).

b. *Mr. Bobilin's evidence*

In his affidavit dated August 21, 2020 (NYSCEF doc No. 13), as supplemented by his August 31, 2020 testimony, Mr. Bobilin argues that he was born and raised in New York State, and lived the majority of his life in New York State (NYSCEF doc No. 13, ¶ 4; Tr., 49:9 to 50:12). While he lived with his mother in Massachusetts for a time, he continued to visit his father in New York for the holidays (Tr., 50-51). In 2008, Mr. Bobilin pursued an apprenticeship in Germany, but used the address of his mother, who had moved back to New York, as his United States address (NYSCEF doc No. 13, ¶¶ 10-11; Tr., 53:16-18). When Mr. Bobilin's mother died in 2009, he came back to the United States and moved into his aunt's home at 26 Raymo Street, Albany, New York

(the "Raymo Residence") (Tr.,53:19-21). He has since used this address as his permanent address (NYSCEF doc No. 13, ¶ 5).

Mr. Bobilin further testified that he first moved to Illinois in August 2009 to complete his Master's degree at the School of the Art Institute of Chicago ("SAIC") (Tr., 59:11-17). Upon completing his degree, he returned to New York to pursue a second Master's degree at Bard College in Annandale-on-Hudson, New York from July 2011 to January 2012 (NYSCEF doc No. 13, ¶ 15; Tr., 59:22-24). In 2012, Mr. Bobilin returned to Chicago after receiving a job opportunity there, and worked as an art and music teacher from 2012 to 2013 and as a software developer from late 2013 to 2014 (NYSCEF doc No. 13, ¶¶ 16-17; Tr., 27:18-19). He then moved back to New York in March 2016 (NYSCEF doc No. 13, ¶ 25; Tr., 31:23-25; 33:6-7).

Mr. Bobilin alleges that he never considered Chicago his domicile as he never purchased property in Chicago nor ever planned to stay there (NYSCEF doc No. 13, ¶ 18). According to Mr. Bobilin, while he was out of New York State, he always considered New York his "home" (NYSCEF doc No. 13, ¶ 25). In support, Mr. Bobilin submitted evidence: (i) that he maintained the Raymo Residence as his mailing, shipping and/or billing address since 2009 (*see* NYSCEF doc Nos. 26, 27, 28, 29, 35) to 2014 (*see* NYSCEF doc No. 36); (ii) that while working in Chicago in 2012, he intended to return to New York to complete his degree at Bard College (*see* NYSCEF doc Nos. 33 and 34); (iii) that in 2015, he was interviewed by a Chicago Art Magazine about his plans to go home to New York (*see* NYSCEF doc No. 39); and (iv) that in late 2015, he started to look for an apartment in Manhattan (*see* NYSCEF doc No. 39) and finally moved back to New York in March 2016 (Tr., 31:23-25; 33:6-7).

To corroborate his testimony, Mr. Bobilin presented as witnesses his aunt Ms. Margarita Serrano, the owner of the Raymo Residence, and his friend, Mr. Christopher Moore. Ms. Serrano

testified that Mr. Bobilin moved in with her in 2009 (Tr., 86:25 to 87:4); that Mr. Bobilin moved out after 6 months but left behind "boxes with some belongings" (Tr., 88:15-17); that Mr. Bobilin continued to come back and visit her at the Raymo Residence four to five times a year (Tr., 89:12 to 89:19); and that she "had a bed for [Mr. Bobilin] to stay at all the time" (Tr., 93:4-5). Finally, Ms, Serrano testified that in her view, Mr. Bobilin's stay in Chicago was temporary (Tr., 91:17-22). Mr. Moore testified that he has known Mr. Bobilin since around 2012 (Tr., 94:10) and that he remembers that in October or November of 2014, he and Mr. Bobilin discussed their plans of returning to New York (Tr., 95:7-13; 21-25).

***Post-Hearing Arguments***

In his post-hearing memorandum, Petitioner summarizes the argument advanced during the hearing that upon Mr. Bobilin's relocation to the State of Illinois, Mr. Bobilin took "numerous and conclusive physical actions to sever his residential ties to the State of New York and coincidentally established an exclusive permanent residency in the State of Illinois" (NYSCEF doc No. 61, ¶ 5). Mr. Bobilin's actions consisted of the following: registering to vote in the State of Illinois (*Id.*, ¶¶ 6-10), obtaining an Illinois driver's license in 2009 which was maintained through April 2017 (*Id.*, ¶ ¶ 11-12), serving as a juror in Chicago between 2009 to 2016 (*Id.*, ¶12), pursuing University studies at SAIC from 2009 to 2011 (*Id.*, ¶ 15), acquiring a cellphone number with a Chicago area code which Mr. Bobilin maintains to date (*Id.*, ¶ 17), indicating his Chicago address in his tax returns (*Id.*, ¶ 18) and paying Illinois state income taxes while not paying New York state income taxes (*Id.*, ¶ 22).

Mr. Bobilin sets out in his post-hearing memorandum the evidence establishing that he was born and raised in New York (NYSCEF doc No. 64, p. 3), that after pursuing college at Massachusetts, he returned to New York State and made the Raymo Residence his permanent

address (*Id.*, pp. 4-5), that his detour to Chicago was never permanent (*Id.*, pp. 5-9). Mr. Bobilin concludes that any conflicting evidence presented by Petitioner "does nothing but inject an "ambiguity in the residency calculus" and where there are ambiguities, precedent dictates the invalidating petition must be denied (*Id.*, pp. 22).

**Discussion**

The New York State Constitution provides that "[n]o person shall serve as a member of the legislature unless he or she is a citizen of the United States and has been a resident of the State of New York for five years, and . . . of the assembly or senate district for the twelve months immediately preceding his or her election" (Art III, § 7). One's "residence" is defined by the Election Law as "that place where a person maintains a fixed, permanent and principal home and to which he [or she], wherever temporarily located, always intends to return" (§ 1-104 [22]). New York courts recognize that in a modern and mobile society, an individual can maintain more than one *bona fide* residence but can choose only one for Election Law purposes (*see People v O'Hara*, 96 NY2d 378 [Ct App 2001]). The "crucial determination" for electoral residency purposes "is that the individual must manifest an intent, coupled with physical presence 'without any aura of sham'" (*Id.*)

The act of registering to vote and voting in another jurisdiction, in and of itself, does not conclusively determine one's electoral residence. There is no bright-line rule; rather, as the Court of Appeals has held, "[r]esidency is generally a factual question, dependent upon the particular circumstances presented" (*Glickman v Laffin* (27 NY3d 810 [2016]), *citing Matter of Newcomb* (192 NY 238 [1908]).

As recently as this election cycle, the First Department addressed this issue in *Quart v Koffman* (183 AD3d 480 [2020]). In *Quart*, Koffman, who was born and raised in Manhattan,

attended Yale University in Connecticut as an undergraduate from August 2015 to May 2019 and registered to vote and voted in Connecticut while he was a student. After graduation, Koffman moved back to New York. In a petition to disqualify Koffman from running as Assembly Member, his opponent Quart argued that Koffman chose Connecticut as his electoral residence based solely on the fact that Koffman registered to vote and voted in Connecticut. The First Department rejected this argument, reiterating that there is no such bright-line rule in resolving electoral residency issues. In addressing the issue at hand, the First Department looked at Koffman's attachments to New York, the nature of his physical presence in Connecticut, and Connecticut voting laws. After examining the evidence presented by the parties, the First Department found that "there was ample proof that Koffman was a New York resident and that Koffman's presence in Connecticut as a college student was merely temporary, together with the fact that he was not required under Connecticut law to renounce any voter registration in another state in order to vote (as was the case in *Glickman* and *Marcantonio*)". Viewing all these factors together, the First Department concluded that Quart did not meet his burden of showing that Koffman did not meet the residency requirement.

The ruling of the First Department in *Quart* reflects the framework of analysis used in two earlier cases similarly involving candidates who previously registered to vote and voted in another jurisdiction. These cases, *Glickman v Laffin* (27 NY3d 810 [2016]) and *Matter of Notaristefano v Marcantonio* (164 AD3d 721 [2d Dept 2018]), are also instructive to the present analysis of this Court.

In *Glickman*, Glickman lived in New York prior to leaving for Maryland in 2007 where he attended college and graduate school. In 2013, Glickman moved to Washington D.C. where he obtained employment on a yearly contractual basis. In 2014, Glickman registered to vote in

Washington D.C. but moved back to New York in 2015. The trial court concluded that Glickman's registration to vote in Washington D.C and his attempt to cast his vote in that jurisdiction prevented him from meeting the New York State Constitution's five-year residency requirement. The Third Department reversed after finding that Glickman maintained legitimate and continuing attachments to New York while he was out of state. On appeal, the Court of Appeals revered, going a step further to consider how Glickman's registration to vote in Washington D.C. affected his electoral residence under Washington D.C. law. After finding that a "qualified elector" under Washington D.C. law is one who attests that he or she "[h]as maintained a residence in the District for at least 30 days preceding the next election and does not claim voting residence or right to vote in any state or territory," the Court of Appeals concluded that when Glickman registered to vote in Washington D.C., he was required to attest that Washington D.C. was his sole electoral residence. Consequently, Glickman "broke the chain of [his] New York electoral residency".

The analysis of the Second Department in *Matter of Notaristefano v Marcantonio* (164 AD3d 721 [2d Dept 2018]) is similar. In *Marcantonio*, Marcantonio moved to North Carolina for law school in 2012. While studying, Marcantonio registered to vote and voted in the state of North Carolina in 2012 and 2014. In addressing the issue of whether Marcantonio met the five-year residency requirement under the New York State Constitution, the Second Department considered the nature of Marcantonio's residence in North Carolina and North Carolina's voting laws. The Second Department held that while Marcantonio's mere presence in North Carolina as a student did not result in the automatic loss of his New York residency for electoral purposes, "by taking the affirmative steps of registering to vote in North Carolina and casting votes there in 2012 and 2014, Marcantonio effectively severed his New York electoral residence". The Second Department looked to North Carolina voter registration laws which require the cancellation of any prior

registration as part of the application process. The Court concluded that as North Carolina voter registration laws require new voters to abandon their prior residence, Marcantonio broke the chain of his New York electoral residency.

As set forth below, this Court finds that unlike the candidates in *Glickman and Marcantonio,* Mr. Bobilin is a New York resident who did not sever the chain of his New York residence by temporarily living and voting in Illinois. In so ruling, this Court considers the nature of Mr. Bobilin's physical presence in Illinois from 2009 to 2016, Mr. Bobilin's continuing attachments to New York while he was out of state and the consequences of his act of registering to vote and voting in Chicago under Illinois voting laws.

***Documentary Evidence***

In support of his argument that Mr. Bobilin does not meet the New York residency requirements, Petitioner submitted copies of Mr. Bobilin's voter registration records and voting history information showing that Mr. Bobilin registered to vote in the State of Illinois on November 13, 2009 and participated in the state elections in 2010, 2012, 2014, 2015 and 2016 (*see* NYSCEF doc No. 2). Petitioner also submitted Mr. Bobilin's tax returns for the years 2010 to 2015 that reflect his Chicago address as his residence (Tr., 25-29). Mr. Bobilin also obtained a driver's license in Chicago in 2009 (Tr., 21:1-3), served on jury duty in Chicago between 2009 and 2016 (Tr., 22:6-17) and obtained his first cellphone from Chicago and has since maintained a number with a Chicago area code (Tr., 23:14-25 to 24:1-4). The evidence submitted by Mr. Bobilin on his behalf is more testimonial in nature, but he did provide documentary evidence indicating that he maintained the Raymo Residence as his mailing, shipping and/or billing address from 2009 (*see* NYSCEF doc Nos. 26, 27, 28, 29, 35) to 2014 (*see* NYSCEF doc No. 36).

***Temporary Presence in Illinois and Intent to Return to New York***

The Court finds that the documentary evidence submitted by Petitioner is insufficient to override the conclusion that Mr. Bobilin's physical presence in Illinois from 2009 to 2016 was temporary, and most critically, Mr. Bobilin intended at all times to return to New York.

*First*, similar to *Quart*, the reason Mr. Bobilin first moved to Illinois in August 2009 was to pursue a degree at SAIC. Thus, his presence in Illinois from 2009 to 2011 as a student was temporary. In fact, he moved back to New York upon completion of his Illinois degree and proceeded to pursue another degree in New York in July 2011 (NYSCEF doc No. 13, ¶ 6; Tr., 59:22-24).

*Second*, while Mr. Bobilin returned to Chicago in 2012 to work, there is no evidence that his employment was of a permanent nature. Mr. Bobilin alleges, and Petitioner presented no contrary evidence refuting, that Mr. Bobilin's engagement as an art teacher in Chicago was on a semester-by-semester basis. In the *Matter of Jones v Blake* (120 AD 3d 415 [1st Dept 2014]), the court found that a candidate who had been temporarily working out of state satisfied the five-year residency requirement, giving weight to candidate's testimony regarding the temporary nature of his employment and living arrangements outside New York.

Most importantly, factoring in the ever-mercurial issue of "intent," at all times that Mr. Bobilin was in Chicago he demonstrated that he always intended to return to New York. This intention is supported by: (i) Mr. Bobilin's emails in 2012 setting out his plans to complete his program at Bard College (*see* email exchanges dated April 3-10, 2012 at NYSCEF doc No. 33 ["I am still planning on returning next spring. My failure to pay my maintenance fee is a purely logistical/financial issue, as was my leave in general."]; *see also* email exchanges dated August-September 2012 ["I've been carefully gauging my future in Chicago and while I do think that I

have much work to do here, I am forming a plan to return to Bard. I still need to sort out some of the financial details and will let you know where things land very soon. As of now though, my energies are focused on setting a course to return."]; *see also* Tr. 62:12-25); (ii) Mr. Bobilin's own statements in his interview with Chicago Art World in 2015 where he said "[a]t this point, Chicago has become just one of many stops, because I've tapped into a way to earn a little bit of money, given my patience for learning and writing [computer programming] code. Now, New York is accessible" (NYSCEF doc No. 39); and (iii) Mr. Bobilin's emails in October 2015 showing that he was looking for an apartment in Manhattan (NYSCEF doc No. 42).

As noted *supra*, the documentary evidence submitted by Petitioner is not sufficiently compelling so as to alter this Court's conclusion. While Mr. Bobilin's tax returns for the years 2010 to 2015 reflect Mr. Bobilin's Chicago address[2], the Court finds credible Mr. Bobilin's testimony that he understood the tax return forms to be asking for the address "where [he is] located at th[at] time and in some cases where [he is] earning income" (Tr., 46:24 to 47:1). As he was living in Chicago from 2010 to 2015, Mr. Bobilin had a rational basis to put his Chicago address on these forms. This also explains why during these years, Mr. Bobilin paid Illinois state income tax and not New York state income tax. Mr. Bobilin also testified that in the year 2011, when he worked and earned income in New York for a portion of the year, he filed both Illinois and New York state tax returns.[3] Regarding Mr. Bobilin's use of a cellphone number with a Chicago area code, the Court finds credible Mr. Bobilin's testimony that he first obtained a cellphone of his own when he started working in Chicago and that he simply has not changed his phone number since then (Tr., 23:14-25 to 24:1-3).

[2] In 2016, Mr. Bobilin moved to New York and listed his New York City address at 1586 York Avenue New York on his 2016 tax return, which he filed in 2017 (Tr., 30:14 to 32:14).
[3] Mr. Bobilin testified that for a part of 2011, he worked as manager of the museum café at Bard College and paid New York State income taxes arising from such income (Tr., 26:2-15).

Regarding Mr. Bobilin's Illinois State driver's license which was obtained in 2009, the Court finds that the license procurement was merely incidental to his living temporarily in Chicago to pursue a degree at SAIC. There is no evidence whether this Illinois driver's license was ever renewed as Petitioner only presented Mr. Bobilin's New York State driver's license which was obtained in 2017 (NYSCEF doc No. 62).[4] In the case of *Matter of Dilan v Salazar* (164 AD3d 713 [2d Dept 2018]), while Salazar renewed her Florida driver's license in 2016, which was just two years prior to her election, the Second Department found this fact only presented "ambiguities in the residency calculus". Finally, as to the fact that Mr. Bobilin served as a juror in Chicago, Petitioner failed to show the legal implication of this fact, *e.g.*, whether similar to New York law (Judiciary Law § 510[1]), only residents may serve on a jury under Chicago law. Besides, Petitioner was unable to identify the specific year when Mr. Bobilin served as a juror in Chicago. Sometime "between 2009 and 2016" is not sufficient as it is the five years preceding the subject election that is relevant in resolving electoral residency issues under the New York State Constitution.

The Court concludes that from 2009 to 2016, Mr. Bobilin maintained legitimate and continuous ties to New York. Mr. Bobilin presented evidence that he used the Raymo Residence as his billing address in September 2009 after he moved to Chicago the month prior (NYSCEF doc No. 35), and in June 2013 (NYSCEF doc No. 36);[5] that even after moving to Chicago in August 2009, he left "books, clothing, musical equipment [and] electronics" at the Raymo Residence (Tr., 70:11-15); that he would come back to the Raymo Residence four to five times a year (Tr., 89:12 to 89:19); and that he always considered New York as his home (NYSCEF doc

[4] Mr. Bobilin testified that he did not recall if he ever renewed his Illinois license prior to moving to New York (Tr., 21:4-7).

[5] The Court finds irrelevant Petitioner's evidence marked as NYSCEF doc Nos. 26-29 as they are dated April to June 2009, beyond the scope of the five-year time period of residence relevant to this matter (*see* Tr., 55-13 to 56:5).

No. 13, ¶¶ 5, 7, 17 and 20). The Court finds that these are legitimate ties that Mr. Bobilin maintained over the years given he never considered Chicago his permanent home. The Court gives particular weight to Mr. Bobilin's interview statements in 2015 that Chicago is "just one of many stops" in his journey and that he moved to Chicago to "tap[] into a way to earn a little bit of money" as he found himself limited by "access, education and money" in New York. As Mr. Bobilin testified, he was not able to complete his program at Bard College as the "cost of living [in New York] was prohibitive" and that he "took leave temporarily in hopes of saving enough money so that [he] could return and finish the program" (Tr., 60:9-13). Mr. Bobilin has thus demonstrated that at all times he lived in Illinois, his end goal was always returning home to New York.

***Illinois Voting Laws***

The Court writes separately to address Petitioner's contention that Mr. Bobilin fails to meet the five-year residency requirement because "the Illinois voter registration application provides, in salient part, that as an Illinois resident [one] must "…not claim the right to vote anywhere else" (NYSCEF doc No. 3, ¶ 13). This requirement, Petitioner explains, emanates from Article 5, Section 9 of the Illinois Election Code which provides that the voter executing the "Affidavit of Registration" must swear that he or she "[is] not registered to vote anywhere else in the United States" (*Id.*, ¶ 14). This Court finds this unpersuasive.

*First*, the voter's registration application form that was signed by Mr. Bobilin (NYSCEF doc No. 2) required him to only affirm that: (i) he was a citizen of the United States; and (ii) that he will be at least 18 years old on or before the next election. The form continues on to state as follows:

> "I will have lived in the State of Illinois and in my election precinct at least 30 days from the date of the next election. The information I have provided is true to the best of my

knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or if I am not a U.S. citizen, deported from or refused entry into the United States."

Nowhere in said form was Mr. Bobilin required to affirm that he is not registered to vote anywhere else. Mr. Bobilin does not recall ever seeing a form which required him to make such an affirmation or ever executing the "Affidavit of Registration" under Article 5, Section 9 of the Illinois Election Code (NYSCEF doc No. 13, ¶¶32-34; Tr., 45:23 to 46:7).

*Second*, similar to *Quart*, Mr. Bobilin was not required to abandon his New York electoral residence when he registered to vote in Illinois. Thus, this case can be differentiated from *Glickman* and *Marcantonio*. Unlike in *Glickman* where Washington D.C. law expressly defines a "qualified voter" as someone who does not claim voting residence in any other state or territory, Section 3-1 of the Illinois Election Code simply defines a qualified voter as someone who "has resided in [Illinois] and in the election district 30 days next preceding any election therein…and who is a citizen of the United States, of the age of 18 or more years". While Petitioner points to the "Affidavit of Registration" which contains similar language to the Washington D.C. law in *Glickman*, there is no evidence that Mr. Bobilin executed such affidavit. If, as Petitioner alleges, the signed affidavit is "statutorily required," Petitioner should have been able to obtain a copy, but Petitioner has produced no copy or otherwise demonstrated that the executed affidavit exists. Mr. Bobilin's case is also distinguishable from *Marcantonio.* Unlike North Carolina's voter registration laws, which require cancellation of any prior registration as part of the application process, Petitioner presented no evidence that the Illinois Election Code has a similar requirement that would have required Mr. Bobilin to abandon his New York electoral residence.

*Third*, to support his argument that Mr. Bobilin severed his residential ties to New York, Petitioner argues that Illinois laws require "permanent residency" and Illinois courts "do not

believe that a person may have a permanent residence in two places at the same time" (NYSCEF doc No. 61, ¶ 6). This argument, however, is unavailing. In *Quart*, while Connecticut law defines a qualified "elector" as a "bona fide resident", the First Department highlighted that to register in Connecticut, Koffman was required only to affirm, among others, that "he lived at the Connecticut address he provided on the form;" Koffman was never required to provide any additional evidence that he was a "resident" of Connecticut. Similarly, Mr. Bobilin here was only required to affirm that "[he] will have lived in the State of Illinois and in [his] election precinct at least 30 days from the date of the next election" (*see* NYSCEF doc No. 2). Like Koffman, Mr. Bobilin was never asked to provide proof of "residency," much less one of a "permanent" nature. In fact, Mr. Bobilin stated that had he been asked if Illinois was his permanent residence or domicile, he would have said "no" (*see* NYSCEF doc No. 13, ¶ 37). Moreover, following relevant precedent, to sever one's electoral residency requires an affirmative and knowing act, such as the execution of an attestation in the case of *Glickman* or cancellation of prior registration referred to in *Marcantonio*. Here, Mr. Bobilin did not do any similar acts or any act at all that is tantamount to severance, abandonment or renunciation of his electoral residency in New York.

On the basis of the foregoing, and guided by the principle that the party challenging residence has the burden of establishing the failure to meet constitutional residency requirements by clear and convincing evidence (*Glickman v Laffin* (27 NY3d 810 [2016*]), citing Matter of Weiss v Teachout*, 120 AD3d 701 [2d Dept, 2014]); *see also Matter of Dilan v Salazar*, 164 AD3d 713 [2d Dept, 2018]), this Court finds that Petitioner has failed to meet his burden. There is ample proof that Mr. Bobilin is a New York resident, his presence in Illinois was temporary, and he was not required under Illinois law to renounce any voter registration in another state. In the face of overwhelming evidence in favor of Mr. Bobilin, contrary evidence such as his tax returns, voting

records, driver's license and cellphone number only present ambiguities in the residency calculus. The Court finds that the evidence, viewed comprehensively, demonstrates that Mr. Bobilin meets the five-year residence requirement under the New York State Constitution and is therefore eligible to be placed on the ballot for the office of Member of the Assembly from the 76th District, New York County, State of New York.

## Conclusion

Based on the foregoing, it is hereby

ORDERED that the application of Petitioner Peter Patch for an order: (i) declaring Respondent Patrick A. Bobilin ineligible to hold the office of Member of Assembly and as a candidate on the petition filed, on behalf of the Blue Wave Party with the New York City Board of Elections (BOE); and (ii) enjoining, restraining and prohibiting BOE from printing and placing the name of Mr. Bobilin on the official ballots to be used at the November 3, 2020 General Elections is denied, and the petition is dismissed; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for Respondent Patrick A. Bobilin shall serve a copy of this order with notice of entry upon all parties within 20 days of entry.

9/10/2020
DATE

HON. CAROL R. EDMEAD J.S.C.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| CHECK ONE: | [x] | CASE DISPOSED | | [ ] | NON-FINAL DISPOSITION | | |
| | [ ] | GRANTED | [x] DENIED | [ ] | GRANTED IN PART | [ ] | OTHER |
| APPLICATION: | [ ] | SETTLE ORDER | | [ ] | SUBMIT ORDER | | |
| CHECK IF APPROPRIATE: | [ ] | INCLUDES TRANSFER/REASSIGN | | [ ] | FIDUCIARY APPOINTMENT | [ ] | REFERENCE |