

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COURT OF APPEALS

STATE OF NEW YORK

MATTER OF GLICKMAN,

Respondent,

-against-

No. 187

LAFFIN,

Appellant.

20 Eagle Street
Albany, New York 12207
August 23, 2016

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA

Appearances:

JOHN CIAMPOLI, ESQ.
OF COUNSEL TO SINNREICH KOSAKOFF & MESSINA LLP
Attorneys for Petitioner
267 Carleton Avenue, Suite 301
Central Islip, NY 11722

ELIZABETH GARVEY, ESQ.
OF COUNSEL TO SINNREICH, KOSAKOFF & MESSINA, LLP
Attorneys for Petitioner
267 Carleton Avenue
Suite 301
Central Islip, NY 11722

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JAVIER R. TAPIA, ESQ.
OF COUNSEL TO SINNREICH, KOSAKOFF & MESSINA, LLP
Attorneys for Petitioner
267 Carleton Avenue
Suite 301
Central Islip, NY 11722

KAMRAN HASHMI, ESQ.
PHETERSON SPATORICO NEILANS LLP
Attorneys for Respondent
45 Exchange Street
Rochester, NY 14614

Meir Sabbah
Official Court Transcriber

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHIEF JUDGE DIFIORE: Good morning,
everyone.

Counsel, I understand that each of you have
requested ten minutes' time, correct?

MR. CIAMPOLI: Correct.

CHIEF JUDGE DIFIORE: Mr. Ciampoli. Are
you seeking to reserve rebuttal time, sir?

MR. CIAMPOLI: I'll reserve two minutes of
my time for rebuttal.

CHIEF JUDGE DIFIORE: Please proceed.

MR. CIAMPOLI: May it please the court.
John Ciampoli for the Appellant. With me today, of
counsel, is Elizabeth Garvey and Javier Tapia.

Your Honor, there is right and wrong, and the
Third Department's decision is clearly wrong. We trust
them with the Constitution of this state, and they broke
it; they wiped out provisions of the Constitution.

We trusted them with the Appellate decisional
law of this court, and they didn't even have the courage
in their decision to say that they were overruling this
court - - -

JUDGE PIGOTT: Well, they're a pretty
hardworking court; I wouldn't be too tough on them.
I think they worked pretty hard on this decision and

1 came to a decision obviously that you disagree with,
2 I take it.

3 MR. CIAMPOLI: Oh boy, do I disagree with
4 it, Your Honor. And let's start with the
5 Constitution. Okay. Let's start with the minutes of
6 the Constitutional convention. Okay.

7 Mr. Kozwalski (ph.) says, "Mr. Chairman, before
8 the vote's taken, I'd like to answer Mr. Reigleman (ph.)
9 in connection with his point that if a man lives in the
10 state for twenty years, and moves out to San Francisco,
11 and stays there for five years, I still contend that being
12 away for five years, he loses close touch with the local
13 situation, and he should live here another five years if
14 he wants to be a legislator in this state."

15 JUDGE RIVERA: Well, you're not suggesting
16 that he moved away and had absolutely no contact with
17 New York, was totally isolated and alienated from the
18 politics of New York, are you? I mean, that's a
19 fact-finding below about what his contacts are; we
20 can't revisit that, can we?

21 MR. CIAMPOLI: The fact here is, we have
22 residence; residence has been held by this state's
23 courts to be synonymous with domicile. What this
24 gentleman did - - -

25 JUDGE RIVERA: But we've also said that you

1 can have more than one residence, correct?

2 MR. CIAMPOLI: You can, but you can only
3 have one domicile. And what he did in Washington, DC
4 - - - and we have provided in our brief the link to
5 the form he filled out, he signed, he filed with a
6 public agency. Washington, DC Board of Elections
7 didn't want to give me the original form because they
8 don't want to give me anything with a signature on it
9 because of identity theft, but we know he filed it
10 there.

11 JUDGE ABDUS-SALAAM: Is that the
12 determinative factor, Mr. Ciampoli, or is that just a
13 factor to be considered?

14 MR. CIAMPOLI: Well, I've - - - I've urged
15 the court to consider that under - - - under the
16 holding in Thompson v. Hayduk, you can consider a lot
17 of factors. However, when we consider the scales,
18 they could put in electric bills, leases, car
19 registrations, driver's licenses. And once I put a
20 registration and a voting record on the other side of
21 the scale, it's the equivalent of putting Mount
22 Everest into the scale.

23 JUDGE PIGOTT: You think that's a bright
24 line, that - - - that if there's - - - if you voted
25 somewhere other than the State of New York, you now

1 have to start a new five years.

2 MR. CIAMPOLI: If it's not a bright line,
3 it's virtually a bright line. It - - - it is so
4 compelling, okay, it is so compelling that I cannot
5 fathom - - -

6 JUDGE RIVERA: I - - - I thought your
7 argument was the mere registration, not even - - - he
8 didn't even have to vote.

9 MR. CIAMPOLI: Correct.

10 JUDGE RIVERA: Just that he registered.

11 MR. CIAMPOLI: Correct.

12 JUDGE RIVERA: Have I misunderstood you?

13 MR. CIAMPOLI: Correct.

14 JUDGE RIVERA: Okay. What's the - - - is
15 there proof that he actually voted other than his
16 wavering testimony?

17 MR. CIAMPOLI: The Supreme Court found that
18 he voted. He said in - - - in - - - at trial that he
19 did vote, that he believed he voted; that's good
20 enough for me.

21 JUDGE FAHEY: Did the Appellate Department
22 - - -

23 MR. CIAMPOLI: The - - - the Appellate - -
24 -

25 JUDGE RIVERA: - - - determine that he

1 voted or did they - - -

2 MR. CIAMPOLI: The Appellate - - -

3 JUDGE RIVERA: - - - base this on
4 registration alone?

5 MR. CIAMPOLI: I - - - The Appellate
6 Division focused on the registration. And I - - - I
7 think that that's a very proper thing to do - - -
8 see, I'm not being that tough on them, because - - -

9 JUDGE RIVERA: Thank goodness.

10 MR. CIAMPOLI: - - - that is a sworn
11 statement, it's the equivalent of an affidavit in
12 every jurisdiction in this state, and it's filing an
13 instrument with a public agency and asking that
14 public agency to rely on it.

15 JUDGE RIVERA: Well, so - - -

16 JUDGE STEIN: Let me - - - I'm sorry.

17 JUDGE RIVERA: So if we agree with you that
18 registration can be a bright line, does it matter
19 what the registration law is in the other
20 jurisdiction? Isn't what matters here, from your
21 side, the fact that the DC registration statute and
22 how it defines residency is the functional equivalent
23 to New York's, because if it was different, it might
24 be a different case, right?

25 MR. CIAMPOLI: Well, more than that is that

1 both statutes - - -

2 JUDGE RIVERA: Um-hum.

3 MR. CIAMPOLI: - - - have you file with a
4 public agency a sworn statement that you are a
5 domiciliary of that jurisdiction. Okay. That ends
6 it. That, when - - - that - - - in Calcaterra, what
7 ended the court's inquiry was that Calcaterra had
8 gone to Pennsylvania, filed for a divorce in
9 Pennsylvania, and in her declaration to get a
10 divorce, she proclaimed that she was a domiciliary -
11 - -

12 JUDGE STEIN: What if - - -

13 MR. CIAMPOLI: - - - of Pennsylvania - - -

14 JUDGE STEIN: What if it was the - - -

15 MR. CIAMPOLI: - - - during the five-year
16 period.

17 JUDGE STEIN: What if it was the other way
18 around? What if the candidate, all of the indicia of
19 domicile are in Washington, DC, and the only thing
20 the candidate has is that he or she filed or
21 registered to vote at one particular time in New
22 York. Is that enough to prove domicile in New York?

23 MR. CIAMPOLI: Well, Judge Stein, that is
24 the crux of all the cases the Third Department and my
25 adversaries rely on.

1 JUDGE STEIN: Okay.

2 MR. CIAMPOLI: Stavisky v. Koo was an
3 attempt to impeach Peter Koo's voter registration.
4 He had re - - - he owned a condominium in Queens, he
5 had registered to vote there, and Stavisky went to
6 court to prove that that was a sham.

7 This is - - - first of all, this is not a case
8 of a voter; this is not a case of whether the candidate's
9 residence on his petition is true; this is a case of the
10 five-year Constitutional residency requirement. So could
11 it be impeached if I were to run for senator assembly and
12 registered in New York but really I lived in California?
13 Okay.

14 JUDGE FAHEY: But isn't it - - - is it - -
15 -

16 MR. CIAMPOLI: You could go - - -

17 JUDGE FAHEY: Hold on.

18 MR. CIAMPOLI: - - - and bring an action to
19 impeach - - -

20 JUDGE FAHEY: Hold on, hold on. It's
21 really a factors case, isn't it? It seems to me you
22 can go either one of two ways here. You can either
23 say definitively the act of registering, as Judge
24 Stein was saying, defines your - - - defines your
25 residence; that's it. That's the way I understand

1 your argument, and that's the way I understand the
2 dissent. Or it's a factors case, which means that
3 the Appellate Division weighs all the factors, and
4 the only way that we can touch that - - - and I'm not
5 even sure if we can in this case - - - is if there is
6 an abuse of discretion as a matter of law.

7 So we have two pathways that we can analyze
8 the case under: either clear bright line, you've
9 registered there, that's it, we're done, you know,
10 for within the five years; or we can do a factors
11 analysis. And let's say maybe in this case the
12 registration would - - - would - - - would establish
13 residency because of the Washington, DC statute or
14 because of certain other factors. But it doesn't
15 necessarily mean that in all cases registration must,
16 therefore, vitiate your New York residence.

17 And so either the dissent is right, and it's a -
18 - - it's a fact - - - it's a bright line rule one way or
19 the other, or it's a factors case and it's not really
20 something that we can touch.

21 MR. CIAMPOLI: Well, and I - - - I - - - I
22 respectfully submit that there is a third path.

23 JUDGE FAHEY: Okay.

24 MR. CIAMPOLI: And that is that it's a
25 factors case, but this is a compelling factor - - -

1 JUDGE FAHEY: So you aren't arguing for - -
2 -

3 MR. CIAMPOLI: - - - because it's for
4 electoral purposes.

5 JUDGE FAHEY: Let me just get this straight
6 so I understand your argument. You aren't saying
7 that it's a bright line rule's case; you're saying
8 that the factors here are so overwhelming that they
9 couldn't have gone this way?

10 MR. CIAMPOLI: I believe that it is a
11 bright line rule. However, in the alternative, I am
12 asserting that it is a factors case with one
13 compelling factor, and it's similar to Calcaterra.

14 JUDGE FAHEY: Um-hum.

15 MR. CIAMPOLI: In fact, though, this rises
16 above the evidence in Calcaterra because Calcaterra
17 declared her domicile for the purposes of getting a
18 divorce.

19 JUDGE ABDUS-SALAAM: Isn't this exactly
20 what the dissent found in this case - - -

21 MR. CIAMPOLI: Yes.

22 JUDGE ABDUS-SALAAM: - - - in the Appellate
23 Division, that it was factors plus?

24 MR. CIAMPOLI: Yes. I - - - I believe they
25 found that it was factors, and that - - - that they

1 were bound by Thompson v. Hayduk, which is the law of
2 this court.

3 CHIEF JUDGE DIFIORE: Thank you, Mr.
4 Ciampoli.

5 MR. CIAMPOLI: Thank you very much, Your
6 Honors.

7 CHIEF JUDGE DIFIORE: Mr. Hashmi.

8 MR. HASHMI: May it please the court.
9 Kamran Hashmi for Respondent, Steven Glickman.

10 Your Honors, we have to view this case from the
11 world that we live in, and we live in a world where
12 there's only one definition under the New York State
13 Election Law of residence, whether or not it's a voter,
14 whether or not it's a candidate. We have one - - -

15 JUDGE PIGOTT: Residence or domicile?

16 MR. HASHMI: Residence. There is one
17 definition for residence, and this court, in People
18 v. O'Hara, tells us that residence is akin to
19 domicile. So we start from there.

20 JUDGE STEIN: Yeah, but I guess my question
21 is, is does it make sense to have - - - to - - - to
22 be able to declare one residence for voting purposes,
23 while for that same time period, declaring another
24 residence for candidacy purposes. Isn't that what we
25 have here?

1 MR. HASHMI: What we have here is - - - is
2 a situation that we must consider with all of the
3 factors. That's what the case law guides us - - -

4 JUDGE STEIN: But - - -

5 MR. HASHMI: Sure.

6 JUDGE STEIN: - - - but how can they be two
7 different residences. Whichever way you go, whether
8 it's factors or anything else, how does it make any
9 sense to say, when we look at all the factors, for
10 voting purposes, you were a resident of DC because
11 you said you were a resident of DC, and you went to
12 vote there, but for candidacy purposes, you're a
13 resident of New York because of all these other
14 factors. How does that make any sense?

15 MR. HASHMI: Well, Your Honor, this court's
16 precedent guides us towards that making sense. We
17 have a combination of - - - of People v. O'Hara,
18 McNab, and Hosley telling us that dual residence is
19 permissible in the context of - - -

20 JUDGE FAHEY: The problem is, is that DC
21 statute is particularly tough for your position,
22 isn't it; I mean, doesn't it say something like, has
23 maintained a residence and does not claim voting
24 residence or right to vote in any state or territory?

25 MR. HASHMI: Your Honor, you raise a - - -

1 that's a great point. The danger here of
2 establishing a bright line rule is that, are we going
3 to make a state-by-state analysis with voter
4 registration; shouldn't it all be the same thing?

5 JUDGE PIGOTT: No. Why - - - why - - - why
6 wouldn't he vote absentee; if he was from New York
7 and - - - and, as he says, just, you know, resident
8 of DC for purposes of work and school - - -

9 MR. HASHMI: Correct.

10 JUDGE PIGOTT: - - - if he was really
11 domiciled in New York and that's where he wanted to
12 be, he could have filed for an absentee ballot and
13 voted in 2014 in New York.

14 MR. HASHMI: Again, Your Honor, we have to
15 - - - we have to look - - - respectfully, we have to
16 look at the intent component here, and that's - - -

17 JUDGE PIGOTT: No, what I'm suggesting is
18 he could have done that. He chose not to do that,
19 and the - - - and the alternative, then, is - - - is
20 where do we get the voter fraud. I mean, he could
21 have voted in both, the way - - - the way your
22 argument goes.

23 MR. HASHMI: Well, if - - - if we take a
24 look at, again, the facts and circumstances here,
25 this was same-day voting, November 4th, 2014, walking

1 down the street, walking into a polling place, and
2 registering. He did not take the extra act of
3 voting. The records show that Mr. Glickman did not
4 vote. And I'd like to refer to the - - -

5 JUDGE ABDUS-SALAAM: Which record is that,
6 counsel, because your adversary said that he tes - -
7 - Mr. Glickman testified at the trial that he did
8 vote, or he remembered voting.

9 MR. HASHMI: Mr. Glickman recalls he thinks
10 that he voted, but the certified record from the DC
11 Board of Elections says that he didn't vote. This
12 happened two years ago, Your Honor.

13 JUDGE PIGOTT: I - - - I - - - you don't
14 remember if you voted two years ago?

15 MR. HASHMI: That's what the testimony was
16 below, Your Honor.

17 JUDGE STEIN: If it's the one and only time
18 you ever maybe voted in one place, you wouldn't
19 remember?

20 MR. HASHMI: I - - - I - - - I couldn't
21 answer that question.

22 JUDGE PIGOTT: And he registers on that
23 day, and he says, I am now registering to vote in DC,
24 and I'm walking out because, why? I mean, it makes
25 no - - - well, go ahead.

1 MR. HASHMI: And we don't have the piece of
2 paper in front of us that Mr. Glickman may have
3 signed. That's not - - - that was never put into
4 eviden - - - evidence, and it was on them to present
5 clear and convincing evidence to the court.

6 JUDGE FAHEY: But there's no - - - it's not
7 contested that he registered, right?

8 MR. HASHMI: No, there is no - - - we're
9 not contesting that he registered.

10 JUDGE FAHEY: Just so I'm clear.

11 MR. HASHMI: I'd like to refer back to the
12 Calcaterra case that - - - that Mr. Ciampoli refers
13 to. I believe that he's mischaracterized the
14 Calcaterra case. In that case, Mr. Ciampoli is
15 saying that the key evidence was the divorce papers
16 where she - - - she declared a PA domicile. That's
17 not true.

18 If we take a look at what the actual court
19 below said, from the lower court and the Supreme
20 Court, we have - - - the court is saying, "Based upon
21 her conduct of surrendering her New York driver's
22 license, voting in Pennsylvania, and maintaining her
23 bank account in Pennsylvania, obtaining her divorce
24 in Pennsylvania, filing income taxes in Pennsylvania
25 listing herself as a nonresident of New York, it is

1 this court's reluctant opinion that for the period
2 from November 2005 until May of 2006, the candidate
3 was not a New York resident".

4 So the court took a multifactorial approach
5 despite the fact that there was a specific statement
6 regarding domicile in the context of her divorce
7 proceeding. And the Appellate Court essentially affirmed
8 that, and did not refer to the divorce being a key factor
9 whatsoever here.

10 CHIEF JUDGE DIFIORE: Mr. Hashmi, I'd like
11 to get back to the concept of the qualified elector
12 under the code, and the words that the elector does
13 not claim voting residence or right to vote in any
14 state or territory other than DC.

15 What's the practical import of those words;
16 what's the effect of those words?

17 MR. HASHMI: This is from the DC code?

18 Well, that's the danger here. If we delve
19 into the code of each specific locality that an
20 individual is voting in, these people are voting - -
21 - are registering to vote, maybe when they are not -
22 - - they have no designs of running for public - - -

23 CHIEF JUDGE DIFIORE: Mr. Glickman, though.

24 MR. HASHMI: Sure. He had - - - he had no
25 designs of running for public office at the time.

1 How was he supposed to know in the future that we
2 would be in the Court of Appeals today arguing about
3 this one small morsel of evidence?

4 CHIEF JUDGE DIFIORE: Is that
5 determinative, his future intention of whether or not
6 to vote - - - to run?

7 MR. HASHMI: Intent - - - intent is the
8 analysis. If we look at People v. O'Hara, if we even
9 look at the Thompson case, Thompson v. Hayduk, the
10 court there took everything in its entirety. If we
11 read the entire opinion, we see that the court took
12 all the evidence into account, and while they found
13 no domici - - - evidence of no domicile, they did
14 find evidence of that candidate voting outside of the
15 jurisdiction.

16 JUDGE RIVERA: I'm a little confused. What
17 are you indicating is his intent when he signs his
18 registration, the same-day registration but
19 apparently walks in and walks out without voting?
20 I'm not clear.

21 MR. HASHMI: Could you rephrase the
22 question, Your Honor?

23 JUDGE RIVERA: No, no, what are you indic -
24 - - what are you suggesting is the intent, his
25 intent?

1 MR. HASHMI: Well, you have to take - - -
2 the intent at that specific moment - - -

3 JUDGE RIVERA: Yes, yes.

4 MR. HASHMI: - - - may have been just
5 voting for an issue. We don't even know. We have no
6 idea - - -

7 JUDGE RIVERA: But that's the point of the
8 statute. And as you - - - as you say, with look at
9 every jurisdiction, that would be the rule, but even
10 you are arguing that this is a multifactor analysis.
11 So that is what a court does, it - - -

12 MR. HASHMI: Absolutely.

13 JUDGE RIVERA: What - - -

14 MR. HASHMI: I - - - I'm not arguing that -
15 - -

16 JUDGE RIVERA: Looking at the time - - -

17 MR. HASHMI: I am not arguing that this
18 should not go against Mr. Glickman. I feel like this
19 should go into the bag of other factors, and whatever
20 the court determines, overall intent over the course
21 of the last five years, that's what should control,
22 and that has been the analysis since - - - when
23 People v. O'Hara essentially - - -

24 JUDGE ABDUS-SALAAM: Oh, oh, I see. So
25 you're - - - you're saying you look at that and you

1 say, so his intent over five years, even if at any
2 moment in time there's a blip and there's a different
3 intent and a different - - - at a moment in time, it
4 doesn't matter.

5 MR. HASHMI: Correct.

6 JUDGE RIVERA: That was your - - -

7 MR. HASHMI: You take a multifactorial
8 approach just like the case that counsel cited.

9 JUDGE ABDUS-SALAAM: If Mr. Glickman had
10 registered and voted in Washington, DC more than once
11 during that five-year period, would you say, then,
12 that you'd have to look at the other factors, like he
13 had a residence in New York, kept a bike there, some
14 personal belongings? You would still say if he - - -
15 if he voted multiple times in Washington, DC, that we
16 would still have to do a multifactorial test?

17 MR. HASHMI: Correct. Just like the court
18 in Jones v. Blake in the First Department where it
19 was alleged that the candidate had voted twice in
20 Washington, DC, and filed income tax returns as well,
21 and had a peripatetic work history.

22 So this case is a lot lower than what
23 happened in Jones v. Blake. We have one isolated
24 incident, one morsel of evidence with a mountain of
25 other evidence completely overriding this morsel of

1 evidence. And I'm not saying that this evidence
2 should not be considered by the court. I believe it
3 is appropriate for the court to consider this small
4 piece of evidence in the context of the bigger
5 picture here.

6 JUDGE STEIN: But when - - - when - - -
7 when - - - I'm still bothered by the fact that when -
8 - - when a vote - - - when a voter signs an affidavit
9 saying that he or she has a residence or a domicile
10 in another jurisdiction, that's - - - that's his or
11 her statement of intent with regard to where he or
12 she is at that particular moment, and - - - and our
13 case law says you can have two domiciles, you can
14 have two residences, but only one for purposes of
15 voting.

16 So at that moment in time, is that not your
17 residence for purposes of voting?

18 MR. HASHMI: I do not believe so because -
19 - -

20 JUDGE STEIN: For purposes of the Election
21 Law.

22 MR. HASHMI: Sure.

23 JUDGE STEIN: So it means nothing that you
24 sign this affidavit - - -

25 MR. HASHMI: It means a lot.

1 JUDGE STEIN: - - - that says that's your
2 intent?

3 MR. HASHMI: It means a lot, but if you
4 have other evidence to overcome that, then you can
5 sort of swallow that intent with other evidence.

6 JUDGE STEIN: So then the candidate, him or
7 herself, is saying, yes, that was - - - is the one
8 saying, yes, that was my intent, but there's other
9 evidence to overcome that; does that make sense?

10 MR. HASHMI: It makes sense in the domicile
11 analysis for the tax law, for the Surrogate's Court
12 Procedures Act, for the domicile analysis for
13 personal jurisdiction. It makes sense in those cases
14 as well.

15 JUDGE STEIN: But as I understand some of
16 the other cases, though, they're looking at - - - you
17 say for purposes of the tax law, whether they file
18 taxes or whatever, but it's not - - - those things
19 question where you are a resident at a particular
20 point in time, whereas in this case we are looking at
21 a five-year span.

22 So it makes sense to say, okay, well,
23 maybe, you know, I, for - - - if I'm declaring my
24 residency in New York right now, I can say, well,
25 yes, in the past, I did have a driver's license

1 somewhere else, I did, you know - - - I did register
2 to vote or whatever, but when you are looking at when
3 you have a Constitutional requirement that says, for
4 this entire five-year period this must have been your
5 residence, doesn't it - - - doesn't it make sense
6 that if you - - - if you disclaim that, if you
7 declare someplace else to be your residence during
8 that time, you've broken the chain?

9 MR. HASHMI: Well, then we open the door to
10 driver's licenses, again - - -

11 JUDGE FAHEY: But see, those are all - - -
12 those aren't actual disclaimers of residency. I
13 think that's the point that's being made here. You
14 see the distinction?

15 A driver's license, a kid going to school
16 somewhere else, these are - - - these are modern
17 realities of the kind of society we live in, and the
18 five-year rule, maybe in this modern reality, doesn't
19 exactly fit, but it's a Constitutional rule, and so I
20 think the enforcement of it is pretty
21 straightforward.

22 But it's - - - it's - - - I guess is the
23 affidavit that makes it, it's not just the residency
24 question; it's the affidavit, the actual declaration
25 that concerns me.

1 MR. HASHMI: Your Honor, I would respond
2 that although counsel presents a hyperlink to what is
3 the 2016 version of what was possibly filled out, we
4 have nothing in evidence, and it was their duty to
5 put on clear and convincing evidence that Mr.
6 Glickman was essentially abandoning, specifically
7 abandoning New York State as his residence.

8 JUDGE FAHEY: I see.

9 MR. HASHMI: And that was never put into
10 evidence. We don't know what he signed or if he
11 signed anything at all.

12 JUDGE FAHEY: Okay.

13 CHIEF JUDGE DIFIORE: Thank you, sir.

14 MR. HASHMI: Thank you.

15 CHIEF JUDGE DIFIORE: Mr. Ciampoli.

16 MR. CIAMPOLI: By way of housekeeping,
17 we've alternatively, on the cross-appeal, made a
18 motion for leave. We think that issue is equally
19 important, and it's decided the same way. It's
20 decided by the words of the Second Department that
21 were affirmed by this court in Thompson, which is
22 that having registered in one county and voted in one
23 county, you may not be heard to say that you didn't
24 really live there.

25 JUDGE ABDUS-SALAAM: Counsel, is this

1 really an evidentiary problem that you didn't produce
2 enough evidence to show clear and convincingly that
3 Mr. Glickman had abandoned New York as his residence?

4 MR. CIAMPOLI: Well, hold on, let's - - - I
5 believe by voting there, by registering there - - -
6 and we know he registered there, and we know he voted
7 there, because on page 270 of the record, "Question:
8 And you voted?" "I thought that I voted," here comes
9 the good part, "yes." He voted; he admitted he voted
10 there.

11 He admitted that he registered there, even
12 though he didn't - - - he claimed that he didn't know
13 what the registration requirements were. What he's
14 saying is, I didn't read the form before I signed it
15 and filed it with the public agency.

16 Now, if you want to believe that, you could
17 believe that. This is not an unsophisticated man;
18 this is a man who had a master's degree in government
19 and public policy. This is a man who had worked for
20 the Congress of the United States, for a police
21 department, and had - - - by his own words, had
22 established a not-for-profit corporation to encourage
23 political participation which included registering
24 people to vote.

25 But he didn't know what he did, and we

1 heard it here in this argument. He didn't remember
2 voting? Well, he remembered voting. He said, yes,
3 and then he realized what he said, and he tried to
4 work his way back.

5 Let's not be fooled; let's protect the terms of
6 our Constitution, let's protect the decisional law of this
7 court, and let's have a ruling that he had to be a
8 resident of New York State for five continuous years.

9 His case parallels the case that was made in
10 Bourges v. LeBlanc in 2002. The candidate said he was
11 born here, he was raised here, he would go back to visit
12 his parents here, he was educated in California, he
13 decided to stay, he registered, he voted there. And then
14 he came back and he registered here. Okay.

15 The Court of Appeals took what I read to you
16 from the Constitutional minutes and applied it. If you
17 read those minutes, you can substitute the words
18 Washington, DC for San Francisco, and it gives you the
19 result; it gives you the intent of the framers. If we
20 want to amend the Constitution - - -

21 JUDGE RIVERA: In that case - - -

22 MR. CIAMPOLI: - - - there are ways to
23 amend the Constitution.

24 JUDGE RIVERA: - - - in that case, if the
25 person going back and forth, if the person has

1 property in New York - - -

2 MR. CIAMPOLI: The framers didn't - - -

3 JUDGE RIVERA: - - - he has ties that keep
4 him coming back.

5 MR. CIAMPOLI: The framers didn't say that;
6 they said he moved there. Okay. This goes further.
7 This was filing a statement with the Washington, DC
8 Board of Elections which renounced - - - and the
9 statute is, as was observed earlier, particularly
10 tough on Mr. Glickman. It says you must disavow your
11 domicile in any other state for electoral purposes.
12 He did it. He walked out. He now came back in 2015
13 and registered in Tonawanda. Five years from that
14 date, he could run for the senate again.

15 Thank you, Your Honors.

16 CHIEF JUDGE DIFIORE: Thank you.

17 (Court is adjourned)

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, Meir Sabbah, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Glickman v. Laffin, No. 187 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

Agency Name: eScribers

Address of Agency: 700 West 192nd Street
Suite # 607
New York, NY 10040

Date: August 28, 2016