Galloway v Kenny
2026 NY Slip Op 32053(U)
May 5, 2026
Supreme Court, Albany County
Docket Number: Index No. 904388-26
Judge: Thomas Marcelle

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF ALBANY

JULIE GALLOWAY,

Petitioner-Objector,

v.

THOMAS J. KENNY,

Respondent-Candidate, and

THE NEW YORK STATE BOARD OF ELECTIONS,

Respondent-Board

DECISION AND ORDER

Index No.: 904388-26

Appearances: GREENBERG TRAURIG, Albany NY (*Joshua L. Oppenheimer*, of counsel) for Petitioner Julie Galloway

HACKER MURPHY LLP, Schenectady NY (*Benjamin F. Neidl*, of counsel) for Respondent Thomas J. Kenny

NEW YORK STATE BOARD OF ELECTIONS, Albany NY (*Kevin G. Murphy and Brian L. Quail*, of counsel) for Respondent The New York State Board of Elections

This case is about residency. Precisely the question is whether Respondent-Candidate Thomas Kenny resided in the 113th Assembly District on or before November 3, 2025—that is, will he have resided in the 113th Assembly District for a year prior to the election as mandated by the New York State Constitution (N.Y. Const. art. III, § 7)?

Respondent grew up and lived with his parents in Queensbury, a perfectly nice place to live; however, one not located within the confines of the 113th Assembly District. In October of 2025, then 21, respondent moved to Glens Falls, which is in the 113th Assembly District. There is no question about that. The proof conclusively demonstrated that respondent signed the lease

that commenced on October 1, 2025. Accordingly, he packed up and moved all his things into the apartment. He then purchased internet from Spectrum as well as electricity from National Grid for his new home. He did not vote in 2025. These points were uncontested.

Now, if that was all there was to the case, this would not be much of a case. But there is more. On February 11, 2026, respondent accessed the Department of Motor Vehicles' (DMV) website to change his party registration to the Working Families Party. As those in their 20s often do, respondent used his cell phone to make the change. The address that respondent indicated on his voter registration form was his parents' Queensbury address and not his Glens Falls address.

On February 26, 2026, at the prompting of a friend, respondent wanted to ensure the registration reflected his current residence. And so, that same day, February 26, he went to the Warren County Board of Elections and changed his address from mom's and dad's house to his apartment. Thereafter, he circulated and filed designating petitions with the New York State Board of Elections for the office of Assembly Member for the 113th District.

Foundational to this case is the residency requirement contained in our State's Constitution. Article III, Section 7 commands that a person cannot "serve as a member of the legislature unless he … has been a resident … [of] the assembly … district for the twelve months immediately preceding his or her election."

Petitioner says this case is simple. Petitioner argues that on February 11, 2026, when respondent filled out and submitted his voter registration form, he swore that his residence was in Queensbury. This fact, according to petitioner, at least means that from February 11 until February 26, he resided in Queensbury, making him ineligible to run for assembly in the 113th district.

Determination of residency by reference to an online voter registration would be simple, expedient and certain. However, it is not the law. The question of residence is a factual one, dependent upon a variety of factors and the particular circumstances presented (*Dilan v Salazar*, 164 AD3d 713, 715 [2d Dept 2018]). Thus, residency involves a holistic examination of various factors and cannot be determined or expressed at a fixed point (*see Matter of Weiss v Teachout,* 120 AD3d 701, 702 [2d Dept 2014]; *cf Matter of Willkie v Delaware County Bd. of Elections,* 55 AD3d 1088, 1090–1091 [3d Dept 2008]). As such, while a voter's registration is a factor in the residency calculus, it is just one factor among others that must be examined and weighed by the fact finder (*cf Notaristefano v Marcantonio*, 164 AD3d 721, 722 [2018] [focusing on a number of facts like where respondent lived, the duration of living out of state, registering to vote out of state and, most significantly, voting out of state to determine the lack of New York electoral residency]).[1] In the end, "[t]he crucial determination for electoral residency purposes is that the individual must manifest an intent, coupled with physical presence without any aura of sham" (*Quart v Koffman*, 183 AD3d 480, 481 [1st Dept 2020]).

So, the court will examine and weigh the evidence to determine if respondent resided in Glens Falls for the last year. Let's start with the basics. As noted, "residence" is "that place where a person maintains a fixed, permanent and principal home and to which he, wherever temporarily located, always intends to return" (Election Law § 1–104[22]). (*see also* Black's Law Dictionary (12th ed. 2024) defining domicile as "[t]he place at which a person has been physically present and that the person regards as home").

Petitioner's argument is logically predicated upon the theory that respondent had two residences and that his February 11 registration was an expression of his intent to vote from his

[1] As noted above respondent never voter in Queensbury after moving.

parents' residence. Petitioner must prove two facts: (1) that February 11 registration was an expression of respondent's intent and (2) that respondent's parents' residence was where he maintained a fixed, permanent and principal home to which he intended to return.

Petitioner has a high burden of proof to establish these facts. "The burden in this proceeding is not on [respondent] to establish residency, but rather, upon [petitioner] to establish *by clear and convincing evidence* that [respondent] does not meet the residency requirements established by article III, § 7 of the New York Constitution" (*Dilan*, 164 AD3d at 715 [emphasis added]). Petitioner failed to meet her burden.

Starting with petitioner's first contention—that respondent's February 11 voter registration on the DMV website constituted an intentional selection of Queensbury as his residence from which to cast his vote. This is strong evidence, at least in the abstract. However, the establishment of residency must be an intentional act and not an inadvertent one. According to respondent, this was not intentional—the court accepts this testimony.[2]

Respondent explained why he did not intentionally mean to have his mom's and dad's house counted as his residence. He testified that his phone auto-populated the registration form. This is not an unusual occurrence. Our electronic devices, in an effort to make our lives easier, as soon as we start typing our names, will automatically populate name, street address, town, city, zip code, and telephone number. This, according to respondent, is what happened. While respondent's memory was hardly crystal clear—this much was evident from his testimony—

[2] It is important to note that the court paid careful attention to respondent's facial expressions, the rising and falling volume of his voice along with its tone and timbre. A dry transcription does not fully capture this evidence. Indeed, these non-verbal cues were significant to the court's findings of credible factual, reasonable inferences and conclusions.

respondent himself did not type his address into the form. This, in the court's estimation, fits the credible testimony and the record as a whole.

That said, even if the court was inclined to doubt his testimony (which it does not), the most neutral view of the evidence is that neither party established whether the form was auto-populated or whether respondent typed it in. This is a problem for petitioner because she bears the burden to prove respondent's intent by clear and convincing evidence—and she failed.

Petitioner places great weight on the fact that to submit the voter registration form, respondent had to swear to its truth. This is nothing to sneeze at. But this must be considered against the other evidence in the case—indeed. The question of residence depends on the unique circumstances presented (*Dilan*, 164 AD3d at 715). In this case, there are many facts, and as well as significant evidentiary gaps, for the court to consider, assess, and evaluate.

To begin with, petitioner failed to offer any proof that respondent's parents' residence was where he maintained a fixed, permanent and principal home to which he intended to return. Rather, respondent said that his parents wanted more space and utilized his former bedroom for their purposes. In fact, while he visits his parents, he never stays overnight because his parents tossed his bed. He says that he no longer has any intention to reside with his parents.

This testimony is consistent with the objective facts. Respondent moved to Glens Falls in October 2025. He testified that he took his possessions with him leaving little behind. He has lived there continuously. His parents took over his bedroom and got rid of his bed, making respondent's return distinctly unlikely.

This then leaves the February 11 registration to be weighed against the competing proof. In the face of the undisputed and credible evidence establishing respondent's physical presence in Glens Falls and his intent to make that location his residence, the registration, standing alone,

does not amount to clear and convincing evidence that respondent's Glens Falls apartment was not his residence. Moreover, respondent took no actions consistent with having Queensbury be his residence.

The court finds that the best and fairest view of the evidence is that respondent made a mistake—a mistake likely caused by a habitual reliance on technology, inadvertence, and lack of focus. The evidence and the reasonable inference that the court draws from that evidence shows that respondent's Glens Falls residence was not asserted merely for running for office. It is where he has lived without looking to live anywhere else. Indeed, where no fraud or deception has been practiced and where there is a history of the residence employed, the courts have upheld a determination of residency (*People v O'Hara*, 96 NY2d 378, 385 [2001]). "The record herein is devoid of any suggestion that [respondent] herein has attempted to create an address solely for the purpose of circumventing residency requirements" (*Willkie v. Delaware Cnty. Bd. of Elections*, 55 AD3d 1088, 1091 [3d Dept 2008]).

Accordingly, the court holds, based upon the credible testimony and proof presented to it, that petitioner failed to prove by clear and convincing evidence that respondent's February 11, 2026 voter registration established his intention to declare that his parents' Queensbury address was his residence. Therefore, the court finds that respondent has resided in the 113th Assembly District since October 1, 2025. Consequently, since respondent has "manifest[ed] an intent, coupled with physical presence without any aura of sham" for a period in excess of the constitutional requirement, the court declares that his designating petitions are valid (*Stavisky v Koo*, 54 AD3d 432, 434 [3d Dept 2008]).

Finally, petitioner argues that respondent's change of party was done too late. To effectively change party enrollment for this election cycle, the change of enrollment must be

received by the County Board of Elections no later than February 16 (*Saini v New York State Bd. of Elections*, 70 Misc 3d 344, 352 [Albany County Sup Ct 2020]). As noted, respondent changed his party enrollment on the DMV website on February 11. There is no evidence whatsoever that the Warren County Board of Elections failed to receive this change of enrollment before February 16. To the contrary, the County Board has changed respondent's enrollment, which strongly implies that the Board received the change of enrollment before the 16th (see exhibit D to the Petition). Petitioner's argument on this score fails.

Therefore, it is

ORDERED, that the petition is dismissed.

The foregoing constitutes the Decision and Order of the court.

DATED: May 5, 2026

Thomas Marcelle
Supreme Court Justice

05/05/2026