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CHARLES D. LAVINE
Assemblymember 13th District

CHAIR
Judiciary Committee

December 31, 2022

Via Email
Speaker@nyassembly.gov
Honorable Carl E. Heastie
Speaker, New York State Assembly
Room 932
Legislative Office Building
Albany, NY 12248

Re: Matter of Lester Chang's Qualifications to Serve as Member of Assembly

Dear Mr. Speaker:

Per your directive dated December 1, 2022, a hearing was held on this matter on December 21, 2022 and enclosed herein are reports and documentation gathered by the Committee on the Judiciary in regards to the qualifications of Lester Chang to serve as Member of the Assembly for your review and distribution to the Assembly Members of the House in this new term commencing January 4, 2023.

The document encompasses the Report of Special Counsel to the Committee by Stanley K. Schlein, Esq. dated December 29, 2022, the written submission by Counsel for Lester Chang dated December 30, 2022, Committee Member remarks, and all related exhibits and hearing transcript.

I submit these documents and report that the Committee stands ready and able should you deem any further work necessary.

Sincerely,

CHARLES D. LAVINE
Chair, Standing Committee on the Judiciary

cc: Members of the Judiciary Committee (Via Email)

JUDICIARY COMMITTEE ON THE MATTER OF LESTER CHANG

TAB 1 : Report of Special Counsel to the Committee by Stanley K. Schlein, Esq. dated December 29, 2022

TAB 2 : Exhibit A, Speaker Carl E. Heastie letter dated December 1, 2022

TAB 3 : Exhibit B, Chairman Charles D. Lavine letter dated December 5, 2022

TAB 4 : Exhibit C, Subpoena for Lester Chang

TAB 5 : Written submission by Lester Chang dated December 30, 2022

TAB 6 : December 21, 2022 Hearing Transcript

TAB 7 : Remarks by Minority Committee Members

PLEASE NOTE: All other Exhibits referenced throughout including Exhibits “A” through “K” introduced by Special Counsel and Exhibits delineated by Numbers “1” through “35” introduced by Mr. Chang’s Counsel were previously submitted to the Committee Members at the hearing. *Copies of same can be provided upon request.*

TAB 1 : Report of Special Counsel to the Committee by
Stanley K. Schlein, Esq. dated December 29, 2022

Report of the Special Counsel to the
Judiciary Committee

Re: Lester Chang's Qualifications to Serve as Member of
Assembly

Stanley K. Schlein, Esq.

December 29, 2022

Jurisdiction and Procedural History

On December 1, 2022, Speaker Carl E. Heastie issued a letter to Chair Charles Lavine directing the Assembly Judiciary Committee to, “. . . look into the question of whether Lester Chang meets the constitutionally-established qualifications to serve as a Member of the Assembly . . .” See Exhibit A. Reference was particularly made to Article III, §7 of the New York State Constitution that provides in part that, following a legislative redistricting, to serve in the Assembly, a person must have resided in the county in which the person’s district is located for a period of one year immediately prior to the person’s election and service. *NY Const.* art. III, § 7.

Article III, Section 9 of the New York State Constitution provides that, “[e]ach house [of the legislature] shall determine the rules of its own proceedings, and be the judge of the elections, returns and qualifications of its own members . . .”

It is imperative to note that Article III, Section 7 of the Constitution specifically obligates the legislature to reach an independent judgment, as whether an individual, “. . . if elected . . .” is “. . . eligible to serve as such . . .” subsequent to his or her election. The plain text of this provision demonstrates that the Assembly has a constitutional obligation to determine whether a person meets the constitutionally-established prerequisite to *serve* in the Assembly, which is distinct from a person’s eligibility to *run* for office.

Here, Mr. Chang, must have established his Brooklyn residence as his bona fide electoral residence by November 7, 2021, one year prior to the date of the general election which was held on November 8, 2022. To facilitate the Judiciary Committee’s inquiry into this matter, I Stanley K. Schlein, Esq. was appointed as Special Counsel to comprise the relevant and probative documentation for review and consideration and participate in the examination of Mr. Chang at the Committee hearing.

Per the authority and direction of the Speaker to make inquiry, on December 5, 2022, Chair Lavine transmitted a letter to Mr. Chang acknowledging the certification of his election by the New York State and New York City Boards of Election for the public office of Member of Assembly from the 49th Assembly District, Brooklyn, New York and reiterated public concerns that Mr. Chang has not been a resident of Kings County for the 12 months immediately preceding the November 8, 2022 General Election. See Exhibit B. Chair Lavine's communication to Mr. Chang also requested that he provide the Committee with all documents, including, but not limited to utility, cell phone and insurance invoices, employment records, motor vehicle documentation (driver's license, vehicle registrations, and insurance card) credit card and bank statements, ". . . setting forth [his] residential address and bearing a date of **November 7, 2021** and earlier." See Exhibit B. The Committee requested this documentation be provided no later than December 12, 2022. See Exhibit B.

Thereafter I communicated with Mr. Chang's respective counsel, via telephone and email, regarding the proposed date and structure of the Committee's hearing. When no documents were forthcoming from Mr. Chang, in response to the Committee's request for voluntary production, the Committee issued a subpoena through his counsel directing the production of the documents referred to hereinabove on or before the hearing date of December 21, 2022. See Exhibit C.

On December 21, 2022, Mr. Chang appeared before the Judiciary Committee to testify under oath as to his compliance with Article III, § 7 of the New York State Constitution in that he established and maintained an electoral residence in Kings County, New York for the twelve months immediately preceding his election to the New York State Assembly at the November 8, 2022 General Election.

Significant comment has been made, both in the media, and at the December 21, 2022 hearing, by members of the committee, as well as counsel for Mr. Chang, that the challenge to Mr. Chang's residency should have been initiated as an election law proceeding. The Committee was called and empowered to make inquiry to assist the Assembly that convenes on January 4, 2023, in fulfilling its constitutional mandate. The Committee hearing was not a discretionary election law proceeding instituted by either a voter objector or an aggrieved opposition candidate pursuant to the election law. It was and remains the responsibility of the committee to review the totality of this evidence and make a considered judgment based upon the facts and the law to determine if Mr. Chang is in compliance with the constitutional requirements that applies to each and every member of the Assembly.

The Committee received documents in evidence from Special Counsel that were responsive to subpoenas and FOIL requests issued by Chair Lavine. These documents called into question Mr. Chang's compliance with the twelve-month constitutional requirement. In addition, documents were introduced by Mr. Chang's counsel purportedly supporting the proposition of his timely Kings County residence. The testimonial record of the Committee hearing also reflects for the examination of Mr. Chang and Special Counsel by the members of the Committee.¹

Applicable Law

As Chair Lavine has consistently noted, the applicable legal standard to be applied to determine that Mr. Chang does not possess the requisite electoral residence in Kings County is "clear and convincing evidence." "The clear and convincing evidence standard is satisfied when the party bearing the burden of proof has established that it is highly probable that what he or she

¹ Due to the compressed timeframe established for the issuance of this report, any reference herein to the hearing transcript will be to the Draft Transcript provided by the Assembly's Official Stenographer to each side. This Draft Transcript is also being provided to all members of the Committee.

has claimed is actually what happened” *Home Ins. Co. of Ind. v Karantonis*, 156 AD2d 844, 845 [3d Dept 1989].

“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.” *Election Law* § 1-104[22]. “As used in the Election Law, the term ‘residence’ is synonymous with ‘domicile’” *Matter of Markowitz v. Gumbs*, 122 AD2d 906, 907 [2d Dept 1986]. “A person is permitted to have more than one residence, but is not permitted to have more than one electoral residence.” *Glickman v. Laffin*, 27 NY3d 810, 816 [2016].

The First Department in *Quart v. Koffman* held, “The crucial determination for electoral residency purposes is that the individual must manifest an intent, coupled with physical presence without any aura of sham. 183 AD3d 480, 481 [1st Dept 2020] citing *Glickman*, 27 NY3d at 815 [2016]. Further elaborating on this definition, the Court in *Koffman*, citing once again to *Glickman*, stated “[r]esidency is generally a factual question, dependent upon the particular circumstances presented.” *Id.*

The courts of the State of New York have applied these bright line rules to different sets of facts in the leading cases that have determined where an individual’s electoral residence is properly situated. In *Matter of Camardi v. Sinawski*, 297 AD2d 357 [2d Dept 2002] the Second Department found that a candidate did not satisfy the 12-month preceding his election date of November 5, 2002 because,

“ . . . Sinawski's **driver's license and attorney registration** filed with the Office of Court Administration still list his address as West 43rd Street in New York County. Furthermore, Sinawski, a practicing Election Law attorney, did not change his voter registration to Nassau County until October 12, 2001, and **admitted to voting on November 7, 2000, from New York County while ostensibly residing in Nassau County**. In addition, on his 2000 New York State Resident Income Tax Return, filed in 2001, Sinawski listed New York as his county of residence and Manhattan as his School District. Accordingly, the appellant met her burden of proving by clear and convincing

evidence that Sinawski was not a resident of Nassau County during the requisite time period.” (*Emphasis added*).

In *Eisenberg v. Strasser*, 768 NYS2d 773, 778 [Kngs. Cty. Sup. Ct. Aug. 18, 2003] the Court found that Eisenberg did not satisfy the 12-month residency requirement because,

“The testimony adduced at trial and the relevant subpoenaed documents produced including petitioner’s **driver’s license, car leases, federal tax returns, property deeds, a utility bill for the period of July 11 through August 12, 2003, an application for the New York State property tax relief program known as the ‘*’ program**--demonstrate that 3821 Avenue S is petitioner’s permanent and principal residence in Kings County. Notably, petitioner has failed to produce a number of subpoenaed documents, including New York State income tax returns, property leases, and phone, gas, electricity and cable bills for both premises. To the extent that **petitioner has failed to produce these documents, and offers no plausible excuse for the failure to do so, an adverse inference is taken that had such documents been produced they would have supported respondents’ position** that Mr. Eyzenberg did not reside at 621 Brighton Beach Avenue for Election Law purposes (*see Mylonas v Town of Brookhaven*, 305 A.D.2d 561 (2d Dept 2003), 759 N.Y.S.2d 752 [2003]; *Wilkie v New York City Health & Hosps. Corp.*, 274 A.D.2d 474 (2d Dept 2000), 711 N.Y.S.2d 29 [2000]; *Love v New York City Hous. Auth.*, 251 A.D.2d 553, 554 (2d Dept 1998), 674 N.Y.S.2d 750 [1998]).” (*Emphasis added*).

Furthermore, in *Patch v. Bobilin*, 86 AD3d 1181, 1184 [1st Dept 2020], the First Department held that,

“Petitioner presented evidence that, in April 2009, respondent left Germany and briefly relocated to Albany, New York, the home of his father and aunt. He visited there for approximately four months until August 2009, at which time he moved to Chicago, Illinois. Respondent took up residence at 1418 W. Superior Street, Chicago, Illinois, from which he: **obtained an Illinois driver’s license; registered to vote in the State of Illinois; enrolled in a graduate school program; obtained employment; paid Illinois state and Federal income taxes using the Chicago residence address; and obtained a cell phone with a Chicago area code.**

We note that respondent’s **having voted in Illinois during the five year period preceding the upcoming election is inconsistent with his claim to have maintained New York as his residence** throughout that five year period.” *citing to Matter of Glickman v Laffin*, 27 NY3d 810, 816 [1st Dept 2016]. (*Emphasis added*).

In his opening statement at the hearing, Ranking Member of the Committee Tannousis declared that, “. . . you will see evidence presented by special counsel which . . . has been the type

of evidence that has been litigated before a court of law and the court of law has consistently found that that type of evidence is not determinative or dispositive of an individual's electoral residence.”

See Hearing Transcript, pg. 5.

As illustrated hereinabove and will be specifically delineated in the subsequent section of this report, it is precisely this type of evidence that was found to be probative by the courts and decisive in determining which one of Mr. Chang's residences was his valid electoral residence from the period of November 7, 2021 through November 8, 2022.

Facts

Mr. Chang testified under oath that he met the constitutionally established residency requirement to serve as a Member of the Assembly. Taking into consideration the testimony of Mr. Chang, the statements and questions put forward by respective counsel and members of the Judiciary Committee, and Exhibits introduced into evidence by both Mr. Chang and Special Counsel, set forth below is a chart summarizing the various probative indicia of proof historically considered by the courts to be determinative of an individual's electoral residence in compliance with Article 3, §7 of the New York State Constitution.

Please note that all Exhibits delineated by Letters “A” through “K” were provided to the Members of the Committee in advance of the hearing and introduced by Special Counsel. All Exhibits delineated by Numbers “1” through “35” were provided to the Committee on the day of the hearing by Counsel for Mr. Chang and introduced into evidence. An overwhelming number of these documents were nonresponsive to the subpoena issued and were not probative or determinative of his electoral residence in the applicable time period. By way of example, counsel provided a copy of Mr. Chang's birth certificate (Exhibit 18), Uncle's Driver's License (Exhibit

13), Uncle’s Doctor’s Note (Exhibit 12), Mother’s Doctor’s Note (Exhibit 11), and family photos (Exhibit 34), et al.

Indicia of Residency	Exhibit/Transcript Reference	Address	Date	Comment
Board of Elections Voter Registrations	Exhibits D and 21	19 Cleveland Place, Apt. 4C New York, NY ----- 1015 East 29 th Street, Brooklyn, NY	May 4, 1994 – February 17, 2022 ----- February 18, 2022 – Present	Mr. Chang initially registered to vote on 5/4/94 in New York County and transferred his registration to Kings County on 2/18/22.
Board of Elections Voter Activity	Exhibit D	19 Cleveland Place, Apt. 4C New York, NY ----- 1015 East 29 th Street, Brooklyn, NY	November 8, 1994 – November 2, 2022 ----- June 28, 2022, November 8, 2022	Mr. Chang voted from his address in New York County on 31 consecutive occasions until the two dates he voted from Kings County in 2022.
Lester Chang Candidacies	Exhibit D, Transcript pg. 69	19 Cleveland Place, Apt. 4C New York, NY ----- 19 Cleveland Place, Apt. 4C New York, NY	November 3, 2020 (Senate District 26) ----- November 2, 2021 (City Council District 1) *Filed for office – candidacy invalidated ----- November 8, 2022 (Assembly District 49)	Mr. Chang declared his candidacy for elections from New York County in calendar years 2020 and 2021. Ran for Assembly from Kings County in 2022.
Lester Chang Candidacies	Exhibit D, Transcript pg. 69	----- 1015 East 29 th Street, Brooklyn, NY	----- November 8, 2022 (Assembly District 49)	

Indicia of Residency	Exhibit/Transcript Reference	Address	Date	Comment
Board of Elections Payroll Records	Exhibits E (pg. 10 – 12), 20, Transcript pg. 34	19 Cleveland Place, Apt. 4C New York, NY	November 18, 2021 – August 25, 2022	The totality of Mr. Chang’s employment history with the New York City Board of Elections from 2004 through and including 2022 demonstrates payments to him at the New York County residential address.
City of New York Payroll Management System Summary	Exhibit F, Transcript pg. 34	19 Cleveland Place, Apt. 4C New York, NY	January 10, 2010 – December 13, 2022	
NYC BOE Payroll Checks (7) Issued to Lester Chang ²	Exhibit G, Transcript pg. 34	19 Cleveland Place, Apt. 4C New York, NY	November 12 – 2021 – September 2, 2022	
W2s Issued by the City of New York for the 2021 Tax Year	Exhibit H, Transcript pg. 34	19 Cleveland Place, Apt. 4C New York, NY	2021 Tax Year	
Lester Chang’s DMV Records	Exhibits I, 31, 32, 33 (Driver’s License, Motor Vehicle Registration, Insurance ID Card), Transcript Pgs. 28-29, 37	19 Cleveland Place, Apt. 4C New York, NY ³ ----- 1015 East 29 th Street, Brooklyn, NY	December 27, 1996 – November 23, 2022 ? – November 23, 2022 ? – November 23, 2022 ----- November 24, 2022 - Present	The documents Foiled by the Committee from DMV, introduced by Mr. Chang, and testified to by Mr. Chang all reveal a residential address in New York County through and including November 23, 2022.

² Seven checks dated November 12, 2021, November 26, 2021, January 21, 2022, February 4, 2022, June 8, 2022, July 22, 2022, and December 2, 2022 were all deposited by Mr. Chang in New York County banks.

³ Section 505 of the New York State Vehicle and Traffic Law states “It shall be the duty of every licensee to notify the commissioner in writing of any change of residence of such licensee within ten days after such change occurs.”

Indicia of Residency	Exhibit/Transcript Reference	Address	Date	Comment
Military Call Up Notices	Exhibits J, 24, 25, Transcript pgs. 34-36	19 Cleveland Place, Apt. 4C New York, NY	November 16, 2021, January 7, 2022, January 13, 2022, October 3, 2022	Mr. Chang was ordered to active military service by the New York Naval Militia on dates induced herein by notice transmitted to his New York County Residence. Mr. Chang claimed, in his testimony, that he received a telephone call and/or email of such notice.
2021 Income Tax Filings	Exhibit 28, Transcript pg. 28, 32	1015 East 29 th Street, Brooklyn, NY	October 18, 2022	Mr. Chang filed of his Federal, State, and City tax returns, for calendar year 2021 (pursuant to an extension that was granted in April 2022) in October 2022 from his Kings County residence. However, he did not provide to this committee, as requested and directed by subpoena, the application for an extension that had to be filed in April of 2022. Accordingly, we do not have the applicable address set forth on that document at that time.

Indicia of Residency	Exhibit/Transcript Reference	Address	Date	Comment
Jet Blue and American Airlines Credit Card Statements	Exhibit 30, Transcript pgs. 38-39	1015 East 29 th Street, Brooklyn, NY	August 27, 2022 – December 4, 2022	Although Mr. Chang provided to the Committee five sequential credit card statements issued in calendar year 2022, bearing his Kings County address, he acknowledged that the card was in his possession for at least a year and in particular, the statements were issued to him from November 2021 until Summer of 2022 at his New York County Residence. To date, he has failed to comply with the subpoena, and provide copies of those statements.
New York State Board of Elections Political Contribution Ledger	Exhibit K, Transcript pgs. 40, 84 - 86	19 Cleveland Place, Apt. 4C New York, NY	November 29, 2021	At page 40 of the transcript, Mr. Chang acknowledges that his New York Residence is listed with the aforesaid contribution. At pages 84 to 86 of the transcript, Mr. Tannousis questions the manner of the collection of that address by the NYS BOE.
March 2002 Midwood High School Alumni Newsletter	Exhibit 19	1015 East 29 th Street, Brooklyn, NY	March 2002	The sole piece of personal mail produced by Mr. Chang to the Committee as an exhibit was a 2002 “Midwood High School Alumni Newsletter.” This single document has

Indicia of Residency	Exhibit/Transcript Reference	Address	Date	Comment
Newsletter contd.				little, if any, probative value.
Insurance Company Dividend Check	Exhibit 27, Transcript pgs. 27-28	1015 East 29 th Street, Brooklyn, NY	May 21, 2021	This check was the product of a joint investment account between Mr. Chang and his mother. The check is payable jointly to Mr. Chang and his mother.
Chase Bank Statements for Joint Account	Exhibit 29, Transcript pgs. 40-41	1015 East 29 th Street, Brooklyn, NY	January 1, 2021 – August 31, 2021	This account is a joint checking account between Mr. Chang and his mother and bears both of their names on the statements provided to this Committee. It should be noted that these statements received by the Committee pre-date the applicable constitutional review period from November 7, 2021 – November 8, 2022.
TD Bank, Chase Bank Accounts	Transcript pgs. 40-41	New York County	Unknown – present	Mr. Chang testified that he maintains two other individual accounts in New York County banking institutions. Further, he has not provided any documentation of statements requested and subpoenaed by the Committee.

Indicia of Residency	Exhibit/Transcript Reference	Address	Date	Comment
Affidavits and Letter of Support in Support of Lester Chang's Residency	Exhibits 2 - 10, 35	1015 East 29 th Street, Brooklyn, NY	N/a	<p>Mr. Chang submitted various letters and affidavits in support of his Kings County Residency. These documents, that were mostly pre-printed in significant fashion, are not particularly probative of the determination to be made herein. They reiterate his alleged intent to establish a Kings County electoral residence, but do not speak to any overt action taken in furtherance thereof.</p> <p>Exhibit 2, executed by Mr. Chang's sister, states in salient part in paragraph 24 that, "Over the past three years, Lester found it difficult to live in his Manhattan Apartment after he lost Bowie and was staying most of the time at the Brooklyn House to alleviate his grief, loneliness, and to be close with our mother and uncle."</p>

Indicia of Residency	Exhibit/Transcript Reference	Address	Date	Comment
Chang Testimonial Declarations	Transcript pgs. 16, 20-23, 31	1015 East 29 th Street, Brooklyn, NY	End of 2019 – Present	Mr. Chang expressed two diverse declarations regarding the establishment and maintenance of the Kings County electoral residence. Taken in the aggregate, he seems to express a transitioning of his New York County residence to Kings County at the end of 2019 yet, he more affirmatively states that he effectuated a Kings County electoral residence on or about November 2, 2021.
Rent Stabilized Apartment Lease	Exhibit 2, para. 28, Transcript pgs. 42, 51-52, 64-66	19 Cleveland Place, Apt. 4C New York, NY	1993 – Present	In his testimony, Mr. Chang acknowledged that he maintained a rent stabilized apartment from 1993 through and including the present date. In fact, he executed a two-year renewal lease for this unit on October 1, 2021. The law, as the members are aware, requires a leaseholder of a rent stabilized unit in New York City to maintain such unit as their primary residence. Mr. Chang’s sister, in her affidavit, avers that Mr. Chang has, “. . . maintained his Manhattan Apartment due to the fact that it is rent-

Indicia of Residency	Exhibit/Transcript Reference	Address	Date	Comment
Rent Stabilized Apartment Lease contd.				stabilized, convenient when he is Manhattan, and he does not want to give up a valuable asset.”
New York State Military and Naval Affairs Certification of Home of Record	Exhibit J (last page)	19 Cleveland Place, Apt. 4C New York, NY	June 18, 2022	This document reflects that Mr. Chang has made an application for Basic Allowance for Housing benefits to the Bureau of New York State Military and Naval Affairs applicable to his tenancy at the New York County address. His statement is made under oath and states that, “. . . I will remain a tenant of same for the duration of my service on the SAD COVID-19 mission” and “. . . that any intentionally false statement or willful misrepresentation is a violation and will result in the loss of BAH allowance, possible separation from the SAD mission and may be subject to prosecution as allowable by law.”

The chart set forth hereinabove provides a comprehensive review of the record of the Committee’s hearing held on December 21, 2022. It is important to note several glaring testimonial contradictions made by Mr. Chang when examining the documents introduced into evidence. Most particular, Mr. Chang stated, and his sister averred in her affidavit, that he began to transition his electoral residence to Kings County upon the passing of his wife at the end of 2019. To reiterate,

these statements are belied by the facts that Mr. Chang voted in New York County in calendar years 2020 and 2021 and, further, sought election to State Senate and New York City Council from districts located in New York County in those respective calendar years.

Reviewing the totality of the indicia of residency presented in the chart, it is significant that Lester Chang voted in New York County in the General Election on November 2, 2021 and there is not a single attendant surrounding circumstance (voter registration, financial payments, Department of Motor Vehicle records, military call up documents, credit card statements, independent bank account records, political contribution records) that reflects Mr. Chang's designated residence in Kings County for the period commencing on November 7, 2021. At most, it can be stated that Mr. Chang's nexus to the Kings County address during the applicable time period was one of a visitor. In fact, most of these documents indicate a residential address in New York County through and including November 2022. The sole explanation given by Mr. Chang for his failure to effectuate a change of address in establishment of a proper electoral residence in Kings County is "I know what's it's like for change of address. It's a convoluted process." See Hearing Transcript, p. 36.

In rebuttal to the standards of law cited by Special Counsel set forth in this report, it should be noted that Counsel Fusco, for Mr. Chang, cites to *Willkie v. Delaware Bd. of Elections*, 55 A.D.3d 1088 (3d Dept. 2008) for the purpose of asserting that one may have multiple residences and choose one for election purposes. However, it is unequivocal that the *Willkie* case interpreted and applied Election Law § 5-104 (2) as to the qualifications of voters to vote from a particular residence. See *Id* at 1090. This is not consistent with the constitutionally mandated prerequisite that a candidate for Assembly maintain an electoral residence in the county for the twelve months preceding the general election.

The foregoing constitutes the report of Special Counsel for review by the Chair of the Judiciary Committee and his referral to the Speaker and Members of the incoming 2023 Assembly.

TAB 2 : Exhibit A, Speaker Carl E. Heastie letter dated
December 1, 2022



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

CARL E. HEASTIE
Speaker

Room 932
Legislative Office Building
ALBANY, NEW YORK 12248
(518) 455-3791

December 1, 2022

Honorable Charles Lavine
Chair
Assembly Judiciary Committee
Room 831
Legislative Office Building
Albany, New York 12248

Dear Chuck:

Article III, §7 of the New York State Constitution provides that, following a legislative redistricting, to serve in the Assembly a person must have resided in the county in which the person's district is located for a period of one year prior to the person's election and service. Credible and serious questions have been raised regarding whether Lester Chang meets this constitutionally-established requirement for serving as a Member of the Assembly.

Pursuant to my powers under Assembly Rule I, §1(c)(11), I am directing the Assembly Judiciary Committee to look into the question of whether Lester Chang meets the constitutionally-established qualifications to serve as a Member of the Assembly, including the authority to issue any subpoena necessary to assist the Committee in its work. I expect the Committee's report by the end of the month and will refer the report to the new Assembly convening in January to assist it with its deliberations under Article III, §9 of the State Constitution.

Sincerely yours,

A handwritten signature in black ink that reads "Carl E. Heastie". The signature is written in a cursive, flowing style.

CARL E. HEASTIE
SPEAKER

TAB 3 : Exhibit B, Chairman Charles D. Lavine letter dated
December 5, 2022



CHARLES D. LAVINE
Assemblyman 13th District

CHAIR
Judiciary Committee

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

COMMITTEES
Codes
Ethics and Guidance
Insurance
Rules

December 5, 2022

Mr. Lester Chang
1015 East 29th Street
Brooklyn, New York 11210

Dear Mr. Chang:

On December 2, 2022, the New York City Board of Elections certified the results of the November 8, 2022 General Election and declared you to be the candidate who received the most votes for the Public Office of Member of Assembly from the 49th Assembly District, Brooklyn, New York.

As it has been reported in the media and through other sources received by this Committee, you have not been a resident of Kings County "... for the twelve months immediately preceding [his or her] election." See New York State Constitution Article 3 Section 7.

In accordance with Article 3, Section 9 of the New York State Constitution, "each house shall...be the judge of the elections, returns and **qualifications** of its own members." (emphasis added) The Speaker of the Assembly has directed this Judiciary Committee to begin a review of your qualifications to constitutionally serve in office pursuant to the aforesaid mandate and to complete its work by the end of the month. The completed review will be forwarded to the new Assembly for consideration when it convenes in January.

Consistent with this mandate, I have scheduled a public hearing of the Judiciary Committee for Monday, December 19, 2022 at 9:30 a.m. in the Assembly Hearing Room, Hearing Room C, Legislative Office Building, Albany, New York 12248. You are requested to attend such hearing and provide the Committee with any such documentation you may possess to establish the validity of your Kings County residence in the applicable time frame established by the New York State Constitution. You may also be represented by counsel at such hearing and should be prepared to answer questions under oath put forward to you by members of the Committee and/or committee staff. Furthermore, you may have witnesses attend the hearing and present relevant testimony on this subject.

To advance the Committee's review of the relevant information you are specifically requested to provide the undersigned with copies of any and all of the following documents setting forth your residential address and bearing a date of **November 7, 2021** and earlier: utility invoice, cellphone, medical or any other insurance invoices, employment records referencing your residential address, drivers license and/or motor vehicle

Mr. Lester Chang
Page 2
December 5, 2022

registration and bank and other financial statements (financial data redacted). The Committee would appreciate receiving these materials no later than December 12, 2022. Confirmation of your attendance at this hearing on/before December 9, 2022 will be appreciated.

Very truly yours,

A handwritten signature in black ink, appearing to read "Charles D. Lavine". The signature is fluid and cursive, with a prominent initial "C" and "L".

Charles D. Lavine, Chairman

TAB 4 : Exhibit C, Subpoena for Lester Chang

**In the Matter of the Investigation and Public
Hearing by the New York State Assembly
Standing Committee on the Judiciary
Into the Qualifications of Lester Chang
To Serve as a Member of the New York
State Assembly**

**SUBPOENA
AND
SUBPOENA DUCES TECUM**

THE PEOPLE OF THE STATE OF NEW YORK

**TO: Lester Chang
1015 E. 29th Street
Brooklyn, NY 11210**

WE COMMAND YOU, that all business and excuses being laid aside, you appear and attend the Public Hearing sponsored by the New York State Assembly Standing Committee on the Judiciary at the Assembly Hearing Room, Hearing Room C, Legislative Office Building, Albany, New York on the 21st day of December, 2022, at 9:30 o'clock in the forenoon, and at any recessed or adjourned date thereafter to give testimony relevant to information related to the subject matter of the Public Hearing (Hearing Notice Attached). You are also directed to produce and bring with you the following documents and provide a list or description of all documents or communications called for by this subpoena duces tecum which have or may have been destroyed, altered, amended, or transferred:

1. All materials and documents relating to and tending to demonstrate that you, Lester Chang, established residency within the county of Kings on or before November 7, 2021, as required by Section 7 of Article III of the New York State Constitution including, but not limited to: (a) any utility bills including, but not limited to, TV, internet, streaming services, telephone (including cellphone), gas and/or electric; (b) medical or insurance invoices; (c) employment records referencing your residential address; (d) driver's license and/or motor vehicle registration documentation; and (e) bank, credit and/or debt card, or other financial statements. To the extent you believe that such documents are subject to a legally recognized privilege, please identify the document for which the claim is made, the nature of such claim, and the persons who had access to the document or documents at any time. To the extent that you believe any document or material subject to production pursuant to this subpoena has already been produced to the Committee, please identify the identity of the document and the time and manner of transmittal. Previously produced documents are not subject to the demands contained herein.

This request shall include, but not be limited to, any and all computer-generated information,

hand or typewritten documentation, emails, phone logs and any other logs or records, and all drafts or copies of said documents.

FAILURE TO COMPLY WITH THIS SUBPOENA AND SUBPOENA DUCES TECUM IS PUNISHABLE AS A CONTEMPT OF COURT AND SHALL MAKE YOU LIABLE TO THE PERSON(S) ON WHOSE BEHALF THIS WAS ISSUED FOR A PENALTY NOT TO EXCEED FIFTY DOLLARS AND ALL DAMAGES SUSTAINED BY REASON OF YOUR FAILURE TO COMPLY.



CHARLES D. LAVINE

Member of Assembly

Chair

Standing Committee on the Judiciary

**GENERAL STATEMENT OF THE SUBJECT
OF THE INQUIRY AND INVESTIGATION**

This is to advise you that the New York State Assembly Standing Committee on the Judiciary pursuant to Section 9 of Article III of the State Constitution, Section 60 of the Legislative Law, and pursuant to Paragraph (c) of section 1 of the Rule IV of the Rules of the Assembly, is holding a hearing concerning the qualifications of Lester Chang under Section 7 of Article III of the State Constitution to serve as a member of the New York State Assembly, specifically whether the said Lester Chang was a resident of the county of Kings for the constitutionally-established one year period as authorized and directed by the letter of Speaker of the Assembly Carl E. Heastie dated December 1, 2022, pursuant Assembly Rule I, §1(c)(11) (attached and incorporated herewith).

TAB 5 : Written submission by Lester Chang dated
December 30, 2022

Final Legislative Report:

**Review of Qualifications of Lester Chang to Serve as a
Member of the New York State Assembly**

Pursuant to the December 21, 2022 Public Hearing of the Assembly Standing
Committee on Judiciary and Rule IV Section 2(f) of the Rules of the Assembly

Dated: December 30, 2022

Submitted by:

The Law Firm of Hugh H. Mo, P.C.

By: Hugh H. Mo, Esq.
and Elizabeth L. Mo, Esq.

Messina Perillo & Hill, LLP

By: John Ciampoli, Esq.

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Questions Presented & Answers

1. Is Assemblyman-Elect Lester Chang eligible to serve as an Assemblymember pursuant to the New York State Constitution? *YES, because Assemblyman-Elect Lester Chang duly won his election which was certified by the New York City Board of Elections. Further, the New York State Constitution's language is written in the present tense, thereby precluding any lookback to his qualifications at the time the instruments placing him on the ballot were filed.*

2. Did the Committee's Counsel prove by clear and convincing evidence that Assemblyman-Elect Lester Chang's electoral residency was not in the County of Kings on or before November 7, 2021 through November 8, 2022? *NO. Assemblyman-Elect Lester Chang's electoral residency is in Brooklyn. The Committee's Counsel failed to prove by clear and convincing evidence that Chang did not manifest a clear intent to establish Brooklyn as his electoral residency and did not physically reside in Brooklyn on or before November 7, 2021 through November 8, 2022. The unrebutted evidence at the December 21, 2022 Committee Hearing was that Chang made the decision to establish his electoral residence in Brooklyn at his childhood home more than one year before the date of the 2022 election. Further, the only evidence before the Committee as to Chang's physical*

presence was that he was in Brooklyn and that the Manhattan apartment was kept vacant.

3. Does the New York State Assembly Committee on the Judiciary (hereinafter “Committee”) have authority to review the qualifications of a Member of another Legislature that has not yet come into existence? *NO, the Constitution limits the Legislature to judging the qualifications of its own members. Assemblyman-Elect Lester Chang is not a member of this Legislature.*
4. May this Committee issue a report on the qualifications of an Assemblymember of a successor Legislature without a vote authorizing or adopting the findings of the said report? *NO, for all intents and purposes, a report by this Committee is *functus officio*.*
5. Can the Legislature, or a committee thereof, be barred from reviewing the past electoral residency of a member of the successor Legislature under (1) the doctrine of laches; or (2) on the grounds that such action is premature? *YES, the appropriate time to challenge durational residency of prospective members of the New York State Legislature is triggered by Section 16-102 of the New York State Election Law by the filing of designating petitions or a certificate of substitution. Here, this statute of limitations ran out in April of 2022, so laches is applicable. YES, this action is also premature, because*

the successor to the sitting legislative body, while elected and certified, has not yet come into existence.

Preliminary Statement

Where is Assemblyman-Elect Lester Chang’s electoral residency? The answer is Kings County (“Brooklyn”). He is a Brooklynite. Assemblyman-Elect Lester Chang (“Chang”) made history in Brooklyn, as the first Asian-American, decorated U.S. Navy veteran, to be elected to the New York State Assembly for the 49th Assembly District. Out of respect for the New York State Assembly, Chang appeared before the Assembly Standing Committee on Judiciary (“Committee”), provided documents, and gave sworn credible testimony. He did this even though it was his right not to.

This sudden, untimely and baseless challenge against Chang’s electoral residency fails. Instead, Chang’s credible evidence – that he was under no burden to put forth – all demonstrate Chang’s intent to establish Brooklyn as his electoral residency and that he was physically present, living in Brooklyn from no later than November 7, 2021 through and including November 8, 2022 (“relevant period”).

The test to be applied here is whether a candidate has an intent to establish electoral residency accompanied by the candidate’s physical presence. This is a fact-based inquiry measured by a totality of the circumstances, and no single factor

or document is dispositive of one’s electoral residence. Contrary to the “Committee Counsel’s”¹ assertion, the standard is not the indicia of documents, but rather actual documentary evidence which provides and indicia of proof.² See Tr. at 72. Section 1–104(22) of the New York State Election Law defines residence 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.” See N.Y. Elec. Law § 1-104(22); see also People v. O’Hara, 96 N.Y.2d 378, 384 (N.Y. 2001). “Thus, to be a resident of a place, a person must be physically present with the intent to remain for a time.” See id. While “New York Courts have recognized that in this modern and mobile society, an individual can maintain more than one bona fide residence . . . , for the purposes of the Election Law, one cannot create an address solely for the purpose of circumventing residency requirements.” See id. at 384-385. “As used in the Election Law, the term ‘residence’ is synonymous with ‘domicile.’” See Matter of Markowitz v. Gumbs, 122 A.D.2d 906, 907 (App. Div. 2d Dep’t 1986); see also Matter of Fernandez v. Monegro, 10 A.D.3d 429, 430 (App. Div. 2d Dep’t 2004). “The crucial [factor in the] determination [of] whether a particular residence complies with the requirements of the Election Law is that the individual must manifest an intent, coupled with physical presence ‘without

¹ The “Committee Counsel” was retained without a vote or a meeting of the members of the Committee.

² Citations to the hearing transcript (“Tr.”) refer to Transcript of the December 21, 2022 Public Hearing of the New York State Assembly Standing Committee on Judiciary to review the qualifications of Lester Chang to serve as a Member of the New York State Assembly.

any aura of sham.” See People v. O’Hara, 96 N.Y.2d 378, 385 (N.Y. 2001), quoting Matter of Gallagher v. Dinkins, 41 A.D.2d 946, 947 (App. Div. 2d Dep’t 1973); see also Matter of Stavisky v. Koo, 54 A.D.3d 432 (App. Div. 2d Dep’t 2008).

In order to determine that Chang is not a resident of Kings County, the Committee would have to find that his Brooklyn residence is a sham. See People v. O’Hara, supra. No evidence indicating that Chang did not have a bona fide residence in Brooklyn was proffered by the Committee’s counsel.

Chang is a Brooklynite. He never abandoned his Brooklyn residency. Chang is a proud graduate of Brooklyn public schools from elementary school through post-secondary education. Chang’s current residence is his Brooklyn childhood home, where he lives with his 95-year-old mother and visually impaired uncle. While Chang moved to Manhattan prior to the relevant period, his childhood home remained and was where his heart was – Brooklyn. At all junctures of his life, since 1972, he had a physical presence at his home in Brooklyn. During the “relevant period,” that was - with the exception of compulsory military service - the only place that he had maintained a personal presence at on a daily basis. It remains completely un rebutted that the apartment he formerly shared with his wife was and is vacant. See Tr. at 65.

Chang also clearly intended to establish electoral residency in Brooklyn prior to the relevant period. It is well settled that Assemblymembers are permitted to have multiple residences, so long as their electoral residence is within their district, and in re-districting years, within the county. Until his wife Bowie's untimely and tragic death in 2019, Chang did live in Manhattan for several years - all prior to the "relevant period". Keeping his unoccupied apartment in Manhattan was not in contravention of any requirements for Chang to run for New York State Assembly.

Chang determined to make and establish his electoral residency in Brooklyn prior to the "relevant period." This was prior to October of 2021. See Tr. at 21. From then to the present, Chang lived in Brooklyn, and made it his sole electoral residence.

Most importantly, the Committee Counsel's evidence fails to prove by clear and convincing evidence that Chang's electoral residency was not Brooklyn during the relevant period. The challenger has failed to satisfy the requisite burden of proof. Specifically, the Committee Counsel presented documents merely bearing Chang's Manhattan address. Chang also did not change his address on these documents, including from the New York State Department of Motor Vehicles ("DMV"), New York City Board of Elections ("BOE") and U.S. Navy records. However, these documents do not rebut the overwhelming evidence that

demonstrates Chang’s intent to establish his Brooklyn electoral residence prior to and during the “relevant period.” And, many of these documents – whether they had Chang’s Manhattan or Brooklyn address do not outweigh the fact that by a totality of the circumstances, Chang’s electoral residence is in Brooklyn. Moreover, the Committee Counsel alleges that Chang’s 2022 campaign contribution to Lee Zeldin’s gubernatorial campaign is proof positive of Chang’s Manhattan electoral residency. It is not. It merely shows an unauthenticated document created by a third party that auto-filled Chang’s Manhattan address. Chang himself did not enter his Manhattan address on this form. The Committee’s Counsel conceded that there was no evidence to show that Chang ever entered the Manhattan address himself to complete this campaign contribution.

The Committee Counsel also had an obligation to demonstrate that Chang’s Brooklyn childhood home was somehow tainted with an “aura of sham.” See People v. O’Hara, supra. No such evidence was presented. Rather, the Committee’s Counsel conceded that there is no concrete evidence to refute Chang’s physical presence in his Brooklyn childhood home during the relevant period.

The testimony elicited during the December 21, 2022 Public Hearing of the New York State Assembly Standing Committee on Judiciary to review the qualifications of Chang to serve as a Member of the New York State Assembly

clearly demonstrates that Chang maintained a physical presence in Brooklyn prior to and throughout the “relevant period.” More importantly, Chang clearly intended to establish Brooklyn as his electoral residence during the “relevant period.” The failure of the Committee Counsel prosecuting this case to present any evidence showing that the Brooklyn residence was a sham is dwarfed by the veritable mountain of evidence showing and demonstrating that Chang had a physical presence at 1015 East 29th Street, Brooklyn, New York for the entire “relevant period.” See, e.g., Tr. at 18-24; see also Exs. 2; 3; 4; 5; 6; 7; 8; 9; 10; and 35.

With respect to certain procedural objections, Assemblyman - Elect Lester Chang has entered into the record of these proceedings’ objections relating to the jurisdiction of the Committee over him and the subject matter of the hearing. Counsel’s December 7th, 2022 letter to the Committee Chair is incorporated herein by reference, and Chang respectfully reserves all of his objections made to this process made in correspondence(s), and at the hearing, including objections raised on the record by Minority Members of the Committee, for the appropriate forum(s).

Assemblyman-Elect Chang, and Members of the Committee raised objections to the proceedings based upon the New York State Constitution, Consolidated Laws of New York, and Rules of the Assembly. Assemblyman-Elect

Chang’s right to proceed against improper or illegal actions were stated for the record and were preserved for the appropriate forum.

The fact is that this Legislature is limited to judging the qualifications of its “own” members. Assemblyman-Elect Chang is not a member of the 245th New York State Assembly. The inescapable conclusion is that he cannot be judged by this Legislature or one of its committees. This Committee’s report and its issuance is, and must be considered to be, an *ultra vires* act. See Jastrzemski v. Public Campaign Financing and Election Commission et al., 68 Misc.3d 1205(A), 129 N.Y.S.3d 628 (2020).

For all intents and purposes, this Committee is now *functus officio* with regard to the review of the elections, returns, and qualifications of incoming members. See, e.g., Settineri v. DiCarlo, 82 N.Y.2d 813 (1993). As the new Legislature has not come into existence, the impossibility exception applied by the Court of Appeals (on the basis of the dissent at the Appellate Division) is completely inapposite.

Background and Procedural History

This untimely electoral residency challenge takes root in baseless and biased allegations against a duly elected Assemblymember-Elect Chang. There is no accusatory instrument beyond a press statement issued by the Speaker of the New

York State Assembly stating that “serious questions” had been raised regarding Chang’s residency. Indeed, the nameless and faceless accusers have failed to step forward with their claims. Chang must have the right to confront his accusers. His electoral residency was never challenged during the ballot access process in April 2022. No objections were filed against Chang’s Certificate of Substitution or the underlying designating petition. No lawsuit was filed to invalidate his designation for public office. This “issue” was raised during the 2022 campaign. Nothing came of the conclusory allegations. Only when Chang achieved a historic and unexpected upset victory did anyone take action to deprive Chang of the election he had won. This is an unprecedented attack on the will of the voters who elected Chang to be the first Asian-American to represent the 49th Assembly District in the New York State Assembly. Moreover, it shows fundamental unfairness against Chang’s due process rights. This is evidenced by such a sudden race to assemble a document that could serve as a basis for a Legislature that has not yet come into existence to utilize in depriving Chang of the public office he has won. The extremely short time frames utilized here provide Chang with less rights to confront his accusers and aid in his own defense than the State affords criminal defendants charged with heinous offenses.

Nor is the current inquiry against Chang in anyway an impartial inquiry, as the Committee’s Counsel candidly admitted during the December 21, 2022

Hearing that he believes that Chang lives in Manhattan. See Tr. at 82-83. It is fair to say, that despite the protestations of the Majority, this Committee Hearing was little more than an exercise to confirm a prejudged bias against Chang.

Statement of Facts

Chang, a lifelong Brooklynite, is the first Asian-American U.S. Navy veteran duly elected to the New York State Assembly for the 49th Assembly District on November 8, 2022. Chang’s historic win was certified by the BOE on December 2, 2022. See Ex. 1. There was no timely challenge to Chang’s electoral residency by any person, objector, party committee or candidate, after petitions were filed or Chang was substituted onto the ballot.

Chang is a product of Brooklyn. He graduated from Brooklyn public schools, from elementary through college. See Ex. 19. Chang’s Brooklyn home is the one he grew up in and still lives in with his elderly mother and uncle. See Exs. 10-13. While Chang and his wife moved to Manhattan prior to the relevant period, he never abandoned his childhood home in Brooklyn.

Chang moved to Manhattan in 1993 and then lived in Manhattan with his late wife, Bowie Wong, (prior to the “relevant period”) from 2000 to 2019. After being tragically widowed in 2019, he moved back to his Brooklyn childhood home. See Exs. 14-17, 35; see also Tr. at 21. Chang never fully left Brooklyn and always intended to return. See Tr. at 20. Chang lived in his Brooklyn childhood home

with his visually impaired uncle and elderly, frail mother. Chang also became his mother's caregiver with his sister Laurie Chang-Kisacky. See Exs. 2; 13.

Robert L. Morgan III, 1st Vice Chair of the Manhattan Republican Party, supported Chang's candidacy for New York State Assembly (2016) and New York State (Senate (2020)). See Ex. 3. On or about November 2021, Morgan attempted to recruit Chang to run for 2022 electoral seats in Manhattan, to which Chang advised he must decline because he now considered his electoral residence to be Brooklyn and should therefore, run in Brooklyn. See id.

In fall 2021, Brooklyn Republican Chairman, Ted Ghorra inquired with Chang as to his residence in Brooklyn to assess both his qualification to run in Brooklyn and his availability to be a candidate. See Ex. 35. As Chang, a retiree, spent the vast majority of his time living in his Brooklyn electoral residence and caring for his mother, he confirmed his residency as to his qualifications to run in Brooklyn. See Ex. 35. Subsequently, Ghorra conferred with Morgan regarding potential candidates for 2022 elections and discussed Chang running in Brooklyn since Chang's residency was in Brooklyn. See id.

At the Hearing, Chang provided the Committee overwhelming evidence to prove his Brooklyn electoral residency, despite the paucity of time. His Chase Bank account records his Brooklyn address. See Ex. 29. Chang filed his 2021 tax returns with his Brooklyn address, declaring to the United States Internal Revenue

Service that his 2021 residence was his Brooklyn childhood home. See Ex. 28. Chang's two Barclays Bank credit cards are also addressed to his Brooklyn residence. See Ex. 30. Chang testified that his community is Brooklyn, he supports the local small businesses and shops at the local Key Food. Tr. at 21. Chang's longtime Brooklyn neighbors, Abraham and Rachel Abramov, Frieda Knopfler, Sarah Rosenbaum, Stella Cerruti, Nachman Rosten and Rabbi Joseph Rabinowitz, all provided sworn affidavits to support Chang's Brooklyn residency. See Exs. 4-9. Contrarily, the Committee's Counsel offered no affidavits establishing or rebutting Chang's physical presence. Committee Counsel offered as evidence of electoral residency that Chang was assigned to work as a poll worker in Manhattan, though the City Board of Elections assigns workers to any of the five boroughs regardless of their residence. See Ex. E; Tr. at 43.

Chang received mail from the Board of Elections as to the November 2022 general election at his Brooklyn residence. See Ex. 23. The Committee questioning Chang's electoral residency mailed their letter dated December 5, 2022 to Chang's Brooklyn childhood home. See Ex. B.

Chang is a Brooklynite. His electoral residency – and heart – is in Brooklyn.

Statutory Electoral Residency and Qualification Provisions

The New York State Constitution at Article III, Section 7 provides that:

“No 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, except as hereinafter otherwise prescribed, of the assembly or senate district for the twelve months immediately preceding his or her election; if elected a senator or member of assembly at the first election next ensuing after a readjustment or alteration of the senate or assembly districts becomes effective, a person, to be eligible to serve as such, must have been a resident of the county in which the senate or assembly district is contained for the twelve months immediately preceding his or her election....”

The term “residency” is defined in the New York State 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. See N.Y. Elec. Law § 1-104(22). A person can have more than one residency but may not have more than one “electoral residency.” The crucial determination in questions of electoral residency is whether the individual manifested the intent that this be their residence coupled with physical presence “without any aura of sham.” See Matter of Glickman v. Laffin, 27 N.Y.3d 810, 815 (N.Y. 2016). Questions to a person’s residency are generally factual questions that depend on the circumstances being raised, but in all cases proof that a person failed to meet their residency requirement must be established by clear and convincing evidence, with the burden of proof being on the moving party to prove that electoral residency was not satisfied. See id. For example, the New York State Court of Appeals has

held that a candidate fails the constitutional residency requirement when he or she registers to vote in another jurisdiction during the required residency period. See id. at 816.

With respect to the judging of the qualifications of its members, the New York State Constitution at Article III, Section 9 provides that:

A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the elections, returns and qualifications of its own members; shall choose its own officers; and the senate shall choose a temporary president and the assembly shall choose a speaker. (Formerly Section 10. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938. Amended by vote of the people November 5, 1963.)

Further, Section 3 of the New York State Legislative Law empowers each house of the legislature to expel any of its members, after the report of a committee to inquire into the charges made against the member. See N.Y. Legis. Law § 3. It should be noted that expulsion is not a common sanction used by the legislature. Finally, the Rules of the Assembly of the State of New York state that any contest of election must be referred to the Judiciary Committee for investigation and report. See Rules of Assembly of State of NY, 2022-2023, Rule V § 8. It is only in the above cases that a member of the legislature can be removed from office once they have been elected and taken and filed their oath of office.

Section 30 of the New York State Public Officers Law states that a public office is deemed vacant if one of the following events occurs before the expiration of the term of the office:

- The death of the incumbent;
- The incumbent's resignation;
- The incumbent's removal from office;
- The conviction of a felony or a crime involving a violation of the incumbent's oath of office;
- The entry of a judgment or order of a court of competent jurisdiction declaring him to be incompetent;
- The judgment of a court, declaring void his election, or that his office is forfeited or vacated; or
- The incumbent's refusal or neglect to file an official oath or undertaking if one is required. See N.Y. Pub. Off. Law § 30.

Although challenges to a candidate's residency are fairly common during the petition process, there is no precedent for failing to seat a Member-Elect following a legislative review of their electoral residency. There are recent examples in other states of residency complaints being brought against state lawmakers, but none have resulted in the removal of the lawmaker after he or she was seated.³

In an analogous circumstance, over a century ago, New York's legislature decided to judge the qualifications of a select group of duly elected members. On

³ In Colorado, State House Representative Tracey Bernett is being investigated by the Boulder County District Attorney's Office related to her residency, but no results of the investigation have been announced. Also in Colorado, in 2018, a complaint filed against State House Representative Matt Soper alleged he did not live in the appropriate House District for the required amount of time, but these complaints failed to result in removal from office. Then, in 2016 a Minnesota court deemed State House Representative Bob Barrett ineligible to run for a fourth term because he did not live in the district, but the decision was made prior to the election, albeit so close to the election that a special election was required, and Bob Barrett's name remained on the ballot.

the opening day of session, January 7, 1920, Speaker Thaddeus C. Sweet (Republican – Oswego) called five Socialist members before the House (August Claessens, Louis Waldman, Charles Solomon, Samuel Orr, and Samuel DeWitt) and accused them of having been “elected on a platform that is absolutely inimical to the best interests of the State of New York and of the United States.”⁴ There was no presumption of innocence. There was no standard of proof. There was no due process. Five duly-elected legislative members were ousted following a trial by ambush.

Such short-sighted partisanship was proven to be undoubtedly folly when all five legislators won re-election by a vote of their disenfranchised constituents.

With respect to statutes and case law on the issue of electoral residence, Section 6-122 of the New York State Election Law simply prohibits a person from being designated or nominated for public office who cannot meet the statutory or constitutional qualifications at the “commencement of the term of such office.” See N.Y. Elec. Law § 6-122. Section 3(1) of the New York State Public Officers Law adds that candidates satisfy residency requirements as of the time they are elected. See N.Y. Pub. Off. Law § 3(1); see also Weidman v Starkweather, 80 N.Y.2d 955, 956 (N.Y. 1992).

⁴ THE POLITICS OF REPRESSION, A CASE STUDY OF THE RED SCARE IN NEW YORK, Thomas E. Vadney, *New York History*, January 1968, Vol. 49, No. 1 (January 1968), pp. 56-75; <<https://www.jstor.org/stable/23167932>>.

Typically, candidates for the public office of Member of Assembly must meet two constitutional residency requirements: (1) five years of residency in the state and (2) residency in the district for “twelve months immediately preceding his or her election.” See Bourges v. LeBlanc, 98 NY2d 418, 420 (N.Y. 2002). The residency period must be continuous, not intermittent. See id. However, in redistricting years, a person must have been a resident of the county in which the Assembly district is contained for 12 months immediately preceding his or her election.

A person may have multiple residences, but they may only have one electoral residence. A person with two residences “may choose one to which she has legitimate, significant and continuing attachments as her residence for purposes of the Election Law.” See Ferguson v. McNab, 60 NY2d 598, 600 (N.Y. 1983); see also Matter of Willkie v. Delaware County Board of Elections, 55 AD3d 1088 (App. Div. 3d Dep’t 2008) (authorizes a choice of voting place for those who own or maintain dual residences and rejecting a limited interpretation that voting rights may only be premised upon “domicile”).

In Matter of Shafer v. Dorsey, in the context of a candidate challenge under Section 16-102 of the New York State Election Law, the Court denied the challenge on grounds of dual residency affording the candidate the right to choose from which of his residences he would run, “with emphasis on Dorsey’s ‘expressed

intent and conduct’... and finding no fraudulent or deceptive motive in Dorsey’s choice of residence.” See Matter of Shafer v. Dorsey, 43 AD3d 621, 623 (App. Div. 3d Dep’t 2007), lv. denied 9 NY3d 804 (N.Y. 2007) (quoting People v O’Hara at 384); see also Matter of Johnson v Simpson, 43 AD3d 478 (App. Div. 2d Dep’t 2007), lv. denied 9 NY3d 804 (2007); see also Maas v. Gaebel, 129 AD3d 178 (App. Div. 3d Dep’t 2015) (holding “fact that one’s position on a specific political issue may serve as a motivating factor to register to vote in a place where he or she has established a bona fide residence does not render such a residence a ‘sham’”).

The Court of Appeals for the Second Circuit observed in Wit v. Berman that “New York has responded to this administrative difficulty [persons with multiple homes] in a pragmatic way. See Wit v. Berman, 306 F3d 1256, 1262 (2d Cir. 2002). New York courts have held that, rather than compel persons in appellants’ circumstances to establish to the satisfaction of a registrar of voters or a court that one home or the other is their principal, permanent residence, they can choose between them.” See id.; see also People v. O’Hara, 96 NY2d 378, 385 (N.Y. 2001) (“[a]n individual having two residences may choose one to which she has legitimate, significant and continuing attachments as her residence for purposes of the Election Law”) (quoting Matter of Ferguson v. McNab, 60 NY2d 598, 600 (N.Y. 1983)). “This pragmatic approach lessens the burdens on registrars, who in

most cases need only verify an address, and on people like appellants, who otherwise might be turned down at both places and have to go to court in order to be able to vote anywhere” See Wit v. Berman, 306 F3d 1256, 1262 (2d Cir. 2002).

With respect to the electoral residence of a candidate, such challenges are brought by a special proceeding in accordance with the provisions of the Election Law. Such challenges must be commenced shortly after the filing of a designation for office, not months after the election.

In measuring electoral residency, the Bourges court held that the residency period must be continuous and not intermittent. See Bourges v. LeBlanc, 98 NY2d 418 (N.Y. 2002). We note that Members elected in a redistricting year must move into their district within one year of being elected.

The New York State Court of Appeals, in applying a “clear and convincing” evidentiary standard, held that a candidate fails the Constitutional residency requirement when he or she registers to vote in another jurisdiction during the required residency period. See Matter of Glickman v. Laffin, 27 N.Y.3d 810 (N.Y. 2016). In Glickman, the New York State Court of Appeals held that a candidate’s prior voter registration in Washington, D.C. precluded him from establishing the required continuous five-year residency in New York. See id. The Glickman court held that the Washington D.C. voter registration broke the chain of his New York

electoral residency which did not recommence until he registered again to vote in New York. See id.

Similarly, in Hoose v Malick, the trial court found that an Upstate candidate for New York State Senate failed the one-year district residency requirement because the candidate was registered to vote in New York City until July of 2016 (two months before the primary), and the candidate testified that she had made no plans to change her election residency until July of 2016. See Hoose v Malick, Sup Ct, Albany County, October 19, 2016, Connolly, G, Index No. 5800/16; see also Notaristefano v Marcantonio, 164 AD3d 721 (App. Div. 2d Dep't 2018).

In Matter of Stavisky v. Koo, the Appellate Division, Second Department ruled where a candidate established two bona fide residences. See Matter of Stavisky v. Koo, 54 A.D.3d 432 (App. Div. 2d Dep't 2008). Koo occupied a condominium in Queens, as well as a private home in Nassau County. See id. He registered to vote and ran from his Queens residence. See id. The record included his tax return, driver's license, vehicle registration, and pharmacists' license all listing his Queens address along with property records from Nassau County. See id. The court gave great weight to Koo and his wife's testimony, both stating that they lived in Queens during the week (which was also near Koo's pharmacy) and spent the weekends at their home in Nassau County. See id.

The Appellate Division reversed the trial court's decision invalidating Koo's petitions due to the Constitutional residency requirement, holding: "Here, the evidence adduced at the trial did not warrant the Supreme Court's conclusion that the petitioner met her evidentiary burden of establishing that the appellant did not reside at the address listed as his residence on his designating petitions. See Matter of Stavisky v. Koo, 54 A.D.3d 432, 434-435 (App. Div. 2d Dep't 2008); see also Matter of Thompson v. Karben, 295 A.D.2d 438, 440 (App. Div. 2d Dep't. 2002).

Accordingly, the Supreme Court should have denied the petition to invalidate Koo's designating petitions, and granted Koo's cross-petition to validate his designating petitions. See Matter of Diamondstone v. Connor, 32 A.D.3d 482, 483; cf. Matter of Eisenberg v. Strasser, 100 N.Y.2d 590, 591; People v. O'Hara, 96 N.Y.2d 378; see also Matter of Fernandez v. Monegro, 10 A.D.3d 429, 780).

Following Matter of Glickman v. Laffin and its line of cases, courts have shifted to a totality of the circumstances test to determine electoral residency, rather than rely on the bright-line rule of voting in another jurisdiction. For example, in Matter of Dilan v. Salazar, the candidate's residency was deemed to satisfy the residency requirement. See Matter of Dilan v. Salazar, 164 AD3d 713 (App. Div. 2d Dep't. 2018). In Salazar, the candidate appeared on the rolls as a registered voter in Florida during the residency period, though the candidate did not first register to vote in Florida during the residency period nor did the

candidate cast a vote in Florida during the residency period. See id. Salazar was found to have satisfied her electoral residency. See id.

In the Matter of Polenz v. Marcantonio, the court denied a challenge to Marcantonio's electoral residence. See Matter of Polenz v. Marcantonio, 67 Misc. 3d 1207(A) (Sup. Ct. 2020). Despite having spent time and voted in two districts, the Court gave great weight to Marcantonio's Northport tax return, contrary to the position that he lived in Manhattan and also severed his electoral residency by voting in North Carolina. See id. The court found that Marcantonio satisfied residency, and that the testimony and evidence presented failed to establish petitioners' burden to prove by clear and convincing evidence that Marcantonio should be disqualified for failing to be a resident of the state of New York for five continuous years prior to the election of November 3, 2020. See id.

The Marcantonio Court specifically held that: "Other evidence was submitted that tended to establish the credibility of his renunciation/abandonment of his residency and voting registration in North Carolina after the November 2014 election, as well as his continuing ties to his residence in Northport, including both his Federal and New York State 2014 and 2015 income tax returns, his 2015 W-2 from Kirkland and a 2015 pay check from them, the registration for his Jeep in North Carolina that expired in March 2015, his car insurance bill, his banking

statements, and his New York State driver's license, all of which bore his address in Northport." See id.

Similarly, in Matter of Quart v. Koffman, the Appellate Division reversed the trial court, and found Dan Quart's primary opponent to have satisfied residency even though he voted in Connecticut. See Matter of Quart v. Koffman, 183 A.D.3d 480 (App. Div. 1st Dep't. 2020). There, "the candidate presented an affidavit and documentary evidence showing that the candidate was born and raised in New York, returned to New York to live and work after graduation, maintained a New York driver's license, paid New York taxes, and had served on a jury in New York." See id.

During the subject hearing, there was reference to the case of Patch v. Bobilin, wherein the petitioner successfully challenged the designation of Patrick A. Bobilin as a candidate for the office of Member of the Assembly in the 76th Assembly District in the election held on November 3, 2020. See Patch v. Bobilin, 186 A.D.3d 1183 (App. Div. 1st Dept. 2020). Petitioners brought the proceeding pursuant to Section 16-102 of the New York State Election Law to declare invalid the designating petitions naming respondent. See id. Petitioners alleged that, because respondent lived continuously in Illinois from 2009 until 2016, he failed to satisfy the New York residency requirements of Article III, Section 7 of the New York State Constitution, which, inter alia, provides: "No person shall serve as a

member of the legislature unless he or she . . . has been a resident of the state of New York for five years”. See id.

The most important issue to note from this case is that Assembly member Rebecca A. Seawright, who presently represents the 76th Assembly District and actively participated in the subject Hearing as a member of the Assembly Judiciary Committee, retained the Committee Counsel to invalidate her opponent’s ballot access. This information was never disclosed to the Committee prior to the publication on this Report.

Argument and Analysis

The challenge against Chang’s electoral residency is untimely and undemocratic. Allowing this untimely challenge would most certainly cause a floodgate of post-election electoral residency challenges by candidates who lost their election, such as here. And, there is no precedent for failing to seat a Member-Elect following a legislative review of their electoral residency. That precedent need not be established here.

Chang’s electoral residence is Brooklyn. He is lifelong Brooklynite. While he moved to Manhattan, he always intended to – and did indeed return to Brooklyn. He consistently manifested his intent for Brooklyn to be his electoral residency and was physically present there without any aura of sham. Chang’s credible testimony satisfies all that. No member of the Committee could rebut any of

Chang's actual intent to establish Brooklyn as his electoral residency or his physical presence in Brooklyn.

Chang clearly intended to establish electoral residency in Brooklyn prior to the relevant period. He stated this to Chairman Theodore Ghorra. He even declined to run for office in Manhattan when recruited. Similar to Marcantonio and Matter of Koffman, Chang disclosed his 2021 tax returns, car registration, banking and credit card statements, voter registration and even his high school alumni magazine, that all bear his Brooklyn residence address. Chang has provided photos with his elderly mother, together with affidavits from neighbors who know him as a resident there. Taking the evidence presented by Chang in its totality, Chang's sworn testimony provides the crucial element - his 'expressed intent and conduct' to establish Brooklyn as his electoral residency.

Chang's documents bearing his Manhattan address do not refute his intent to establish Brooklyn as his electoral residency. They are no more relevant to the inquiry here than the address of a UPS Store, or Mailboxes, etc., or a Post Office would be for a person utilizing multiple mailing addresses. Nor do they demonstrate any fraudulent or deceptive motive in Chang's choice of residence. He has openly admitted the apartment in Manhattan is not occupied and that he returned to Brooklyn after his wife's tragic death from cancer. The Committee Counsel cast no doubt on the bona fide nature of the Brooklyn residence which

Chang's family has owned since 1972. Certainly, there is no "aura of sham." See People v. O'Hara, supra; see also Matter of Stavisky v. Koo, supra; see also Matter of Glickman v. Laffin, supra. Rather, the evidence here demonstrates that Chang has two addresses, but only one electoral residency - Brooklyn.

In addition, the Committee's Counsel may argue that Chang's Manhattan address coupled with his early voting in Manhattan on October 23, 2021, New York State Senate run in 2020 and New York City Council petitioning in March 2021, are all indicia of his intent to establish Manhattan as his electoral residency. These conclusions are rebuffed by applying the rule in Marcantonio. See Matter of Polenz v. Marcantonio, supra. Moreover, the facts here show that Chang, after voting in October of 2021, came to a final decision to make Brooklyn his residence for electoral purposes and to run for the New York State Assembly from his Brooklyn home. See Tr. at 21; see also Exs. 3, 35.

The proof before this Committee demonstrates beyond any doubt that Chang has a bona fide electoral residence at 1015 E 29th Street, Brooklyn, New York. Further, the proof shows that he made a choice to establish this home as his electoral residence on or before November 7, 2021. There is no showing of sham, fraud, charade or fakery with regard to Chang's residence in Midwood, Brooklyn. The Committee simply cannot meet its burden to disprove the residence Chang has claimed as his own.

Most importantly, the Committee’s evidence fails to prove by clear and convincing evidence that Chang’s electoral residency was not Brooklyn during the “relevant period.” All of the evidence presented bearing Chang’s Manhattan address shows nothing more than what is permissible for a candidate, or anyone else, who has multiple addresses and residences but only one electoral residency. That person is Assemblyman-Elect Chang – he is from Brooklyn, New York. Chang is a Brooklynite.

Conclusion

As demonstrated, Lester Chang is eligible to serve as an Assemblymember pursuant to the New York State Constitution. His qualifications to serve in this position will stand when he appears in January 2023 to be seated as a member of the 246th Assembly of the State of New York.

Chang is a Brooklynite. The Committee failed to produce clear and convincing evidence that Chang’s electoral residency was not Brooklyn. The Brooklyn residence was demonstrated to be bona fide. Chang testified as to his intent to make this home his electoral residence. Records, testimony and affidavits clearly established his actual presence at the residence.

Any report presented to or on behalf of the Committee against seating Chang must be found to be a nullity. No proceedings based upon the fatally flawed record

developed herein may be allowed to serve as a basis for denying Lester Chang the seat that he was duly elected to.

Our American rule of law and fundamental precepts of fairness dictate that this Committee close its proceedings and make no adverse findings as to Chang's Brooklyn residence. Chang must be seated on January 4, 2023 to represent the 49th Assembly District and the people who voted for and elected him.

TAB 6: December 21, 2022 Hearing Transcript

DECEMBER 21, 2022 **ROUGH DRAFT**

9:13 a.m.

CHAIRMAN LAVINE: I'm going to welcome everyone to the Assembly Judiciary Committee public hearing with respect to the constitutional qualifications of Lester Chang. This meeting of the Judiciary Committee is being convened in accordance with the direction of the Speaker of the New York State Assembly to inquire as to whether Lester Chang meets constitutionally established qualifications to serve as a member of the Assembly. Simply stated Article III, Section 7 of our New York State Constitution provides in salient part that quote if elected a Senator or a member of the Assembly at the first election next ensuing after a readjustment or alteration of the Senate or Assembly District become effective a person to be eligible to serve as such must have been a resident of the county in which the Senate or Assembly District is contained for the 12 months immediately preceding his or her election. According, Mr. Chang would have to have established a bonafide electoral residence in Kings County on or before November the 7th, 2021 which is 12 months immediately preceding the general election of November 8, 2022. Article III, Section 9 of the Constitution goes on to state that each House, Senate and Assembly shall be the judge of the election returns and qualifications of its own member. Let me be abundantly clear. This inquiry that the Committee is being called on to conduct is to assist the Assembly that convenes on January 4th, 2023 in fulfilling

its constitutional mandate and is not a discretionary election law proceeding that is instituted by either a voter objector or an aggrieved opposition candidate pursuant to the Election Law. The sole question before this Committee is whether Lester Chang is eligible to serve as an Assembly member pursuant to the New York State Constitution and it is up to this Committee to determine if there is clear and convincing evidence that Mr. Chang was a resident of the County of Kings in the State of New York on or before November 7th, 2021 which is 12 months immediately preceding the General Election of November 8th, 2022. The Committee will be presented with various pieces of documentary evidence and testimony for review and consideration. It should be noted that in my December 5, 2022 letter to Mr. Chang I specifically stated quote, to advance the Committee's review of the relevant information you're specifically requested to provide the undersigned with copies of any and all of the following documents setting forth your residential address and bearing a date of November 7th, 2021 and earlier; utility invoices, cell phone, medical or other insurance invoices, employment records referencing your residential address, driver's license and/or motor vehicle registration and bank and other financial statements with financial data redacted. The Committee would appreciate receiving these materials no later than December 12th, 2022. Confirmation of your attendance at this hearing on or before December 9th, 2022 will be appreciated unquote. The request for documentation was reiterated to Mr. Chang's counsel in my December 13th letter of Mr. Chapoli (phonetic) wherein I stated

we also renew our request for the voluntary disclosure of any and all documents and materials that are in Mr. Chang's possession that will provide the Committee with guidance as to the determination in this matter. Moreover a subpoena for this material was served upon Mr. Chang and his counsel on December 13th and as of -- and at 6:15 last night our Committee received an index of 35 documents that counsel for Mr Chang will offer into evidence at this hearing. It is our responsibility to consider the totality of this evidence and make a considered judgment based on the facts and the law to determine if Mr. Chang is in compliance with the constitutional requirements that apply to each and to every one of us. Again, the objective here is for this Committee to prepare a report for the consideration of next year's Assembly and not to make a final determination in this matter. To that end, neither this Committee or the leadership of the Assembly has made any prejudgment as to the propriety of Mr. Chang's constitutional required qualifications to serve. Again, nor it is our job. We are here to gather evidence and ultimately to prepare a report that may be of use to our colleagues including some of us here next year. Let me describe to you the procedure we are going to pursue today.

After the conclusion of my opening statement, Mr. Tannousis will address the Committee as well. Mr. Tannousis is our ranking member. Upon the conclusion of the opening remarks, I will ask special counsel Stan Schlein to give a brief opening statement. I will then afford counsel for Mr. Chang to give a brief opening statement as well. After opening statements I will turn it over to Mr.

Schlein for presentation and to place in evidence before the Committee the relevant documentation from various government agencies received pursuant to subpoena or Freedom of Information Law requests. Upon completion of Mr. Schlein's introduction of the subpoena and FOIed material, I will call upon Hugh Mo, counsel for Mr. Chang, to make his presentation including the introduction of any documents he deems relevant for consideration of this matter and the examination of Mr. Chang as a witness in this hearing. At the conclusion of Mr. Chang's testimony special counsel will have the opportunity to examine him and thereafter I will call upon any member of this Committee who may seek to question Mr. Chang as well. At the conclusion of the questioning of Mr. Chang, I will direct our special counsel to draft a report for review and consideration by the members of this Committee before the end of the year for transmittal to the new legislature to be seated on January 4th, 2023. As I stated to Mr. Tannousis earlier this week, pursuant to Rule 4 of our Assembly rules Section 2f quote, any report may include a brief statement of the opinion of any member or members of the Committee, unquote.

Mr. Tannousis.

MR. TANNOUSIS: Thank you. Thank you very much. My name is Michael Tannousis and I'm the ranking member on the Judiciary Committee here in the State Assembly. And I'm going to be very brief. I just want to be clear about one thing. The issue here today is about electoral residency, electoral residency and

the law is clear that at no point does Mr. Chang have any burden. The burden is on the special counsel to prove by clear and convincing evidence that Mr. Chang did not reside in the residence of issue for one whole year. That is the issue. It never -- the burden never moves to Mr. Chang. Now what is the standard here. It is subjective intent coupled with presence. You will see evidence here today that it was very clear that Mr. Chang's intent was to reside in Brooklyn.

Additionally, you will see evidence presented by special counsel which we have reviewed all the evidence presented by special counsel today has been the type of evidence that has been litigated before a court of law and the court of law has consistently found that that type of evidence is not determinative or dispositive of an individual's electoral residence. The process for this type of situation is after the petitions are filed in an election. Here Mr. Chang's opponent did not file the adequate lawsuit that is prescribed by the law to be done after, after the petition process. Let's be very clear about one thing. Mr. Chang was duly elected by the residents of the 49th Assembly District and he is here because those residents have spoken. Thank you.

CHAIRMAN LAVINE: Thank you, Mr. Tannousis. I'm now going to call upon Stan Schlei for an opening statement.

MR. SCHLEIN: Thank you very much, Mr. Chairman and Mr. Tannousis. I'm Stanley Schlein. I've been retained as special counsel by this Committee to help facilitate the production of relevant and probative materials for consideration by this Committee in its determination as to the qualifications of Mr. Chang

to serve as a member of the Assembly. Let me be clear, counsel and members of the Committee. It is the obligation of this Committee to in fact make this determination. The Constitution says that with specificity under Article III, Section 7. It starts in salient part. If elected it requires the election of a person before this Committee can convene and consider the issues as to the compliance with the New York State Constitution. As the Chairman has indicated this is not an election law proceeding under Article 16 or any other statute. It's a Constitutional proceeding. The documentation that has been introduced and will be introduced into evidence is probative and will be reviewed by the members and for their determination. We have no question about what the law is. The law enables any person or member of the legislative Body in particular to maintain more than one residence. It is the question of which residence has been duly ordained as that person's electoral residence and that is determined by clear and convincing evidence with probative documents being extremely relevant to the determination and I believe this Committee after reviewing all those documents hearing the testimony will come to a conclusion that is unequivocal with respect to Mr. Chang's electoral residence or domicile. Thank you, Mr. Chairman.

CHAIRMAN LAVINE: Thank you, Mr. Schlein.
Mr. Mo.

MR. MO: Thank you, Mr. Chairman as well as
Minority Leader Michael Tannousis. I am proud and honored to be
here before this Body as a Chinese American and I'm proud that I'm

here representing Lester Chang who made history on November 8, 2022 as the first Asian American ever elected to the Assembly in the County of Kings. For those of us who have struggled for the last century to seek elective office we all know being a Minority the burden is high, the barrier is high and we are subjected to scrutiny and in this case, ladies and gentlemen, on a cold -- bitter cold day in Albany we convene this hearing, a fact-finding hearing. It is a historic hearing in the sense that it is unprecedented. Lester Chang stands before you as duly elected as a member of the State Assembly representing the 49th Assembly District of Kings County. And this proceeding is unprecedented in the fact that yes, we are giving him due process. Yes, we are going through this process of determining his qualifications, but why are we doing this after the election? Why are we doing this after he has been duly certified as the winner? To all of you who are here, as well as to the incoming Assembly members that will be sworn in early next month, each one of you carries a burden to respond to this question, why are we trying to undue his election? Why are we going against the will of the people of the 49th Assembly District who duly casted their vote to elect him? This is an issue that goes beyond which aisle you're on. This issue goes to the heart of our electoral process. This issue goes into what we as Americans who cherish the right to vote, who cherish our democracy, the essence of a democracy that every vote counts. That when you cast that vote that vote will determine who is going to be the leader to represent you. So let me give you a little bit of history and let us not

forget, let not repeat history. As we know the Judiciary is a permanent branch of government. It is the forum for challenging electoral residency. A court of law conducted a fact-finding after a member is nominated and before they are selected. So what does one do when the time to commence a court action has come and gone? Come and gone. Certain members of this Legislature have now decided to challenge Lester Chang's residency for one reason and one reason only, because he won and the incumbent lost. Subverting the will of the voters in the interest of inherent bias and political ominous as well as based on the New York State Constitution. It's a story of a moment in time and history repeats itself today.

Over a century ago this Body decided to judge the qualifications of a selected group of duly-elected members. Shortsighted partisanship met undoubtedly with the following: On the opening day of the Session on January 7th, 1920 the Speaker Thaddeus C. Sweet, a Republican from Oswego called five socialist members before the House. And then go into history with immortality they are August Claessens, Louis Waldman, Charles Solomon, Samuel Orr and Samuel DeWitt and accused them of being elected on a platform that is absolutely inimical to the best interest of the State of New York and of the United States. There were no presumption of innocence. There was no standard of proof. There was no due process. Five duly-elected legislative members were ousted following a trial by ambush. But democracy prevailed. The will of the people overcame gamesmanship, manipulation and one party rule. All five

legislators, one reelection by a vote of their fateful constituents. Let's fast forward. On November 8th of this year the people of the 49th Assembly District made a choice. Voters elected Lester Chang, the first Asian-American elected to the State Assembly from the County of Kings. He was certified as a winner. The incumbent of 36 years lost fair and square. There was no challenge of Lester Chang's residency throughout the petition, throughout the long campaign. It was -- there were rumors flying around but there were no factual support. The voters of the 49th Assembly District religiously went to the poll, exercised their right as Americans and voted for Lester Chang. And let's not forget. Each one of their vote counts. Anyone who chooses to deny this election by whatever reason, whatever reason will be usurping the electorates and disenfranchise that majority that voted for Lester Chang. Denying Mr. Chang his seat by the incoming Assembly would send a terrible, terrible cynical message to the community and the rest of the electorate not only in the County of Queens, the 49th Assembly District or the electorate in this great State of New York as well as across the country that every person vote count. Not a political body that is partisan that is going to make a decision to remove a duly-elected elected official. The voters decided, ladies and gentlemen, and today this esteemed Committee is invited to reach the same conclusion in the form of a recommendation. Honorable Lester Change, Assembly member elected, 49th Assembly District, 246th Legislative Session should be seated and should represent the people of the 49th Assembly District. Ladies and

gentlemen, we are making history today and we should be mindful of history, let's not repeat the storied history of a hundred years ago.

Thank you for your kind attention.

CHAIRMAN LAVINE: Thank you, Mr. Mo.

Mr. Schlein, will you commence your presentation?

MR. SCHLEIN: Thank you, Mr. Chairman. There are exhibits that have been distributed to the members of this Committee comprising of letters A through K for introduction as being probative of the issues of Mr. Chang's residence in the period commencing on November 7th, 2021 through and including November 8th, 2022. The applicable period for which Mr. Chang has to establish and maintain an electoral residence in the County of Kings. I will annunciate what these exhibits are and ask the reporter to introduce them in the aggregate upon the completion of this delineation. Letter A is the referral letter from Speaker Heastie to Chairman Lavine giving the jurisdiction for this Committee to hear and consider the issues that Mr. Lavine is in fact articulated in his opening statements. And again, that is the reference emanating from Article III, Section 7 and Section 9 of the New York State Constitution which directs the Legislature to be the judge of the credentials of its member and requires an election as the predicate act to consider not a petition, not a substitution but in fact an election of a member or a candidate for this Committee to consider, that is Exhibit A and ask for its introduction. Exhibit B is Chairman Lavine's letter to Mr. Chang inviting him to attend the hearing and requesting him to

provide relevant documents to this Committee for consideration that the Chairman has delineated in his opening statement what those documents are and that letter was in fact excerpted to Mr. Lavine's statement and we ask that to be introduced as Exhibit B. Exhibit C is a reiteration of the request for those exhibits and was contained within a subpoena issued to Mr. Chang through his counsel agreed to accept the subpoena on behalf of Mr. Chang and that constitutes Exhibit C. That was sent to Mr. Campoli (phonetic) at that time on December 13th of this past week. Exhibit D is a document of significant number of pages constituting the Board of Elections documents obtained and introduced and are certified and I will go through them briefly what they contain there before the members of this Committee and were received by counsel for Mr. Chang as well. The initial components are a two-page document announcing the voting record of Mr. Chang meaning by that's when and where he voted from. There were 33 votes cast by Mr. Chang in his lifetime from various primary, general and special elections, 31 of them consecutively cast from the Borough of Manhattan and Mr. Chang's residence on Cleveland Place. The last two votes cast by Mr. Chang only which were on the June 28, 2022 primary and the November 8, 2022 General Election were cast by Mr. Chang in the Borough of Brooklyn, County of Kings. The second document is a Republican designating petition for the first council district in New York County for which Mr. Chang was a candidate and for which he filed a cover sheet he signed and executed at his address on Cleveland Place in Manhattan. That document was filed

on March 22, 2021. We understand proceeding with the November 7, 2021 date, but it is in fact of significance indicating Mr. Chang's adherence to and desire to be a representative of the County of New York. The third component of the Board of Election documents that are being introduced as Exhibit D is the registration and enrollment history of Mr. Chang. It constitutes three separate documents. His original registration to vote dating back to 1994 from the address of Cleveland Place in New York County. That document remains in effect through and including a change of enrollment of Mr. Chang to the Republican party which was filed in 2005 and November 3rd and also reflecting his residence in Cleveland Place, New York County. And finally that last change which was a transfer of registration from Cleveland Place, New York County to Kings County which was filed with the Board of Elections signed by Mr. Chang on February 16th, 2022 past the November 7th date. It was clocked in by the Board of Elections on November, excuse me, on February 18th, 2022 and confirmed by the Board of Elections on March 1st, 2022. And the last component of this portion of the Board of Elections' records is a document entitled Activity to the Voter Records constituting two pages reiterating this last transfer of registration in the months of February and March of 2022. Again, through and including that date Mr. Chang was duly registered to vote and voted from the Borough of Manhattan on the occasion of 31 consecutive times. Documents E, which I seek to introduce at the conclusion of my presentation are New York City Board of Elections' payroll records reflecting Mr.

Chang's service in numerous elections over the last two decades as a poll worker, coordinator, poll watcher and various polling sites all of which were in New York County. And what is interesting to note these representations and participation by Mr. Chang continued through and including calendar year 2022. The payroll records of the Board of Elections set forth in this portion of the exhibit reflect that all payments to Mr. Chang serving as a poll worker for the New York City Board of Elections were transmitted to his residence at 19 Cleveland Place, Apartment 4C, New York, New York. Document F is a document entitled Payroll Management System of the City of New York. Bearing on the first page Mr. Chang's address and salary history of moneys received from the Board of Elections for services and again bearing the address of 19 Cleveland Place, New York, New York. This is there for the totality of his service to the Board of Elections including service in calendar year 2022. Forgoing my redundancy the applicable date that Mr. Chang had to establish a domicile for purposes of serving as a member of the Assembly is November 7th, 2021. Lastly, as the Board of Elections' documentation is Exhibit G. Exhibit G which is before the members of the Committee is a list document by document of checks issued to Mr. Chang for such services, ten separate checks dating from June 25, 21 through and including September 2, 2022 all of which bearing the address for Mr. Chang at 19 Cleveland Place, New York, New York. Those checks have also the back of them presented as part of the exhibit showing Mr. Chang's endorsement of those checks and

deposited in banks located in his community near Cleveland Place. One is a bank you will note and the stamp on the back entitled Chinatown 2 and another one is an address of a bank on -- I forget what place it is, bear with me a moment, please. The Charleston and Barrett Place in New York County. Exhibit H are the two W2 wage statements issued by the Board of Elections to Mr. Chang, both again reflecting his residential address at 19 Cleveland Place, New York, New York. At no time through and including the date thereof did Mr. Chang ever take -- make the effort to change his address for Board of Elections service from New York County to Kings County. Exhibit I is 11 pages of abstract from the New York State Department of Motor Vehicles reflecting Mr. Chang's motor vehicle license and registration and insurance documentation all of which were reflected in New York County. Mr. Chang's counsel has also introduced these -- will introduce these exhibits and he will comprise them as his exhibits 31, 32 and 33. And these exhibits acknowledge Mr. Chang's residence in New York County through and including his change of address entered on in the month of November 2022, some two weeks ago, November 24th, 2022. At no time did Mr. Chang ever change his address with the Department of Motor Vehicles. Exhibit J, his records from the Bureau of Military and Naval Affairs all of which are redacted to some extent but were replicated and will be replicated by Mr. Chang filing through his counsel he will call them Exhibits 24 and 25. In particular, they reflect Mr. Chang's call-up for military service by the Department of the Bureau of Military and Naval Affairs. Those

call-up notices consistently through and including January 7th of this year were sent to Mr. Chang and he received them because he served at his Cleveland Place, New York County residence. Not one of these documents from his employer, from his military service reflect the communication to Mr. Chang at a Brooklyn Kings County address. And lastly as Exhibit K is a screen shot downloaded from the New York State Board of Elections of Mr. Chang's contributions to various political candidates and entities, of significance in this document is the one contribution made in the applicable period on November 29th, 2021 after the November 7th required date to the Zeldin for New York Committee reflecting Mr. Chang's address at Cleveland Place, New York, New York. Again, no one questioned whether a person is entitled to maintain multiple residences. It is the question of which one the person selected by objective evidence, documentation and testimony that is reflected clear and unequivocally as his voter address his domicile. I ask that the Committee clerk and the reporter introduce these documents into evidence. Thank you.

CHAIRMAN LAVINE: Those are accepted as evidence. Thank you, Mr. Schlein.

One moment.

(Pause)

Thank you, Mr. Schlein.

MR. SCHLEIN: Thank you, Mr. Chairman.

CHAIRMAN LAVINE: Mr. Mo.

MR. MO: At the outset I'm going to introduce 35

pieces of documentary exhibits in which I will give you a brief introduction of these exhibits in support of Mr. Chang's residency as well as rebut the various documents that were just received into evidence by the Committee. On behalf of, you know, the Committee. Document number one is Exhibit One, that is the Board of Elections' Certification of Lester Chang's election as a member of the 49th Assembly District which is dated December 2, 2022. Document Number Two is an affidavit of Mr. Chang's sister, Laurie Chang Kisacky, K-I-S-A-C-K-Y, his older sister to set forth that at some point that is in the end of 2019 Lester Chang transitioned back to his childhood home in Midwood area of Brooklyn. And then there's also an affidavit that is Exhibit Three from a Republican party official that is an affidavit of Robert L. Morgan, III to set forth the facts and circumstances that led to Mr. Chang running for the State Assembly, 49th Assembly District and how did that come about and how the issue of his Kings County residency was discussed predating, predating 2021.

CHAIRMAN LAVINE: Mr. Mo, pardon me for the interruption, but I'm just discussing a matter with Mr. Tannousis. We don't yet have copies of the documents to which you're referring but I understand that they should be here very soon. Notice how there was a question mark at the end of that. So if it's okay with you can we wait a couple of minutes because I think it will be helpful to the Committee to go through these with you. Fair enough.

MR. MO: Sure. Shall we take a short recess?

CHAIRMAN LAVINE: Yes. We will be back in ten minutes.

(Whereupon, a brief recess was held at 10:25 a.m.)

CHAIRMAN LAVINE: Thank you for bearing with us, Mr. Mo. Thank you very much.

MR. MO: What I'm going to do is I'm going to allow Mr. Chang to deliver his statements. In fact pursuant to our agreement I made with Stanley Schlein that instead of I conduct a question and answer like in a typical court proceeding, I'm going to allow Mr. Chang to deliver a statement, basically his narrative, all right, touching on various issues, obviously focusing on the issue of his electoral residency which is the issue before this Committee. So at this time I turn to my client Lester Chang.

CHAIRMAN LAVINE: And that's fine, Mr. Mo. May I just ask a quick question. Mr. Mo, will you be returning for the presentation of the evidence (inaudible).

MR. MO: After Mr. Chang finish I will go through the 35 documentary exhibits that have been submitted to this Committee and I will briefly take you through those exhibits and touch upon their relevance, okay. So at this time I turn to Mr. Chang.

CHAIRMAN LAVINE: May I swear Mr. Chang in.
(Whereupon, Mr. Chang was duly sworn by
Chairman Lavine)

CHAIRMAN LAVINE: Please commence.

MR. CHANG: Good morning, Chairman Lavine,

Ranker. Thank you and to all my future distinguished members of this Committee and Judiciary. I, Lester Chang, come before you today as a newly-elected Assemblymember 49th Assembly District elected by the people of Dyker Heighs, Sunset Park, Bensonhurst and Borough Park in Brooklyn. I am honored to be the first Asian-American, son of a Chinese immigrant to be elected in New York Assembly. I live in Brooklyn at 1015 East 29 Street, Brooklyn New York 11210. I'm a product of Brooklyn. I'm a product of Brooklyn public schools. I lived there for at least one year before being elected by the people when I was put on the ballot without challenge by the Board of Elections or in court. I meet the electoral residency requirements. I urge you Chairman Lavine and your esteemed Committee to see the facts. I was elected to represent Assembly District 49 and I live and I have lived in Brooklyn for the largest part around November 1st, 2021. I'm a 61-year-old American Chinese born. I'm a son of a proud Chinese immigrant who sought a better life in America for my siblings and I. Through us my parents saw the American Dream become a reality. I grew up in Brooklyn in the same house that I live now with my mother and uncle. My family bought that house 50 years ago, that's 5-0 with their savings so that he can have a small piece of Brooklyn. I'm a product of Brooklyn public school. I graduated P S 95 Gil Hodges, middle school 240 and (inaudible) Hudson Junior High School, Midwood High School, Brooklyn College, all Brooklyn. I'm also a proud State University graduate. I graduated master's degree in international transportation management at SUNY Maritime

in the Bronx. I'm a proud Navy veteran. I served our country as a US Navy reservist for over 24 years with active employment in Afghanistan. I'm a retired Chief Warrant Officer, a Chief Warrant Officer is a very distinguished rank, very difficult to achieve. I had to be a Chief Petty Officer and 14 years in before I can even submit that application, rarer than admiral or general. My brother also served in our country 25 years as a Navy reservist and an Afghanistan veteran himself. I've been a member for over 20 years with New York Naval Militia, a State defense force. I've been deployed with them for over five times due to hurricanes or natural disasters. There were also various day assignments when called upon as my service was needed during 2021 and 20'22. Not only I dedicated my service to this country but also to the City and to this State. For the past 30 years I've been a poll worker for New York City Board of Elections. I cherished the opportunity to be involved in most sacred right of an American which is right to vote, right to choose our leader, the essence of American democracy. With all my American education I was able to have a fulfilling career in a global shipping industry. I believe in American rule of law. I defend that and our political system isn't agent for change. I ran for public office three times before unsuccessfully and finally won this November as an Assembly member District 49. My parents modeled hard work and sacrifice. They made me who I am today. As a first generation Chinese immigrant they worked in Chinese restaurant and garment factories in order to provide better life for me and my two siblings in our country,

America. My father died when I was eight. My mother single-handily raised me my older sister and my younger brother while working in various Chinese restaurants. She instilled her children of hard work, sacrifices and service to our country. 50 years ago, that's 5-0, my mother and uncle with their savings buy a two-family house at 1015 East 29th Street, Brooklyn, New York in the Midwood section of Brooklyn. For 15 years, that's 1-5, I lived in that Brooklyn home with my mother and siblings. And in 1993 I moved to Manhattan. In year 2000 I married to Bowie Wong (phonetic) a shipping manager. We both lived in Manhattan until her death in late 2019. She passed away unexpectedly at 58 years old. We have no children. I never actually left Brooklyn entirely. I often stayed and returned visiting my aging mother while living with my wife in Manhattan. My late wife Bowie was diagnosed Stage 4 terminal cancer with lung cancer in April 2019 and died five months later. I lost part of myself on my wife's death. She was my anchor. She was my military wife. When I had gone on deployments she was ready and there for me. She was not only my soulmate but like a second mother. Her death was devastating and I was emotionally distraught and I sought relief and sought grief counseling at the VA Hospital for several years. (Wiping tears) sorry. In July 2020 I was diagnosed with PTSD due to my deployment in Afghanistan with the Navy. And I received PTSD treatment at a VA Hospital until August 2022. And I want to digress here because this is a public hearing. I want to say to this audience and live streaming there is no shame of taking Mental Health treatment while you're a

veteran or not. It is important. In my culture they're very sensitive about Mental Health, but there is no shame of receiving and getting treatment for mental health. Thank you. Back to my statement. After Bowie's death three years ago I moved back to Brooklyn and at the same time my mother's health started to decline. (Wiping tears) Forgive me. Even during this time in Manhattan I still have my room, personal belongings, receive mail and often stay at home in Midwood Brooklyn. I never completely left home. I'm a BrooklyKnight. I'm a BrooklyKnight. I always return to see my mother and my uncle as a good son and nephew. My mother's 95, that's almost a century old. She has Alzheimer's and dementia and is unable to walk by herself. She needs 24 hour care and assistance which I took on a role as a caregiver along with my uncle and my sister. I inherit that role because of my wife passing, I became her caregiver, it was natural for me to be a caregiver for my mother, it was natural and it makes sense. My uncle is 87 years old and legally blind. He's my mother's primary caregiver along with my sister. As I move back to Brooklyn three years ago in 2019 I helped my mother, uncle and sister with food shopping, medical appointments, companionship, transportation, house maintenance and upkeep. I frequently did small shops that I grew up around while serving my family and my community. During the petition process in March 2022 there was no one challenge of my petition or certificate of substitute in the (inaudible) as a candidate for was there any challenge on my electorate residency throughout the campaign the issue of residency was out there, out there during the

campaign. However, no one produces proof to back up those allegations. After November 8, 2022 election I was certified by December 2, 2022 by the New York City Board of Elections having the greater number of votes. I was duly-elected office member of the Assembly, a 49th District Assembly. I hereby state and I swear to you that I have been and continue to be a legal resident of Brooklyn from November 2, 2021 through November 8th and throughout now. I've submitted dozens of documents that overwhelmingly demonstrate my electoral residence in Brooklyn for at least a year. Prior to my successful unprecedented election that's including my 2021 tax return, bank statements, credit cards and affidavits from my sister, neighbors, party leaders and more. Affidavits from the party leader who recruited me to run for the Assembly demonstrated beyond a reasonable doubt that by November of 2021 I made and intended to make Brooklyn my residency, my home for all purposes. I voted in Manhattan early election in October 23, 2021 as listed in documents which reflected a Board of Election records. I voted. I voted earlier. During that period of time I was intermittently on day orders from my Navy militia to assist with COVID efforts and also I was working as a poll worker for New York City. I voted early at that time and I was working out of convenience sake. I was -- at that time I was properly registered to vote in Manhattan. I could have voted either in person in Brooklyn or by affidavit ballot and using my residence in Brooklyn as my address. But in any event my early voting in October 23rd, 2021 because it was more than a year before I ran for the Assembly.

Moreover, I am informed because it was more than a year that my residency had been properly challenged in court -- if my residency had been properly challenged in court I was over a year. This evidence would have been outside the scope of court examination. I'm here to tell you today that by November 2nd, 2021 I had determined that my permanent residence was in Brooklyn for all purposes. In closing, thank you Chairperson Lavine, ranker and this esteemed Committee for giving me this opportunity to be heard and overwhelmingly to prove that I lived in Brooklyn for 12 months before my election of November 8, 2022. For two years of 2020 and 2022 Brooklyn was my residence. It is today. The Judiciary knows that, too. They mailed me a letter questioning my Brooklyn residence to my Brooklyn home. Ironic. It is my primary residence today. Any allegation reported in the media that I fail to meet the residence requirement is based on rumor, insinuation and not fact. There's simply not a clear and convincing evidence that I did not reside in Midwood Brooklyn at the time of relevant time. As I mentioned earlier, the fact are facts. I won my election fair and square. I lived in Brooklyn. I lived there over a year. Prior to my winning the election I looked forward to being seated with you with this Committee on January 3rd rightfully as a newly-elected Assembly member of the 49th Assembly District. I urge this esteemed Committee to respect the electoral process the voters of the people of Brooklyn of the 49th Assembly District that I represent. Despite all odds and expectation I made history on November 8th of 2022 as the first Asian-American ever elected to

represent Brooklyn's growing Asian community in the Assembly District 49. My campaign focused on people. I contacted as many voters as I could on a one-to-one basis. I asked for their vote. The voters of District 49 responded to my personal one-to-one contact by delivering a stunning election win. I promised them to represent the people's interest. The people responded. The result has been certified. The people of 49th Assembly District have spoken loudly. Thank you, Chairman. Thank you, Committee and thank you all and may God bless us and God bless America. Thank you.

CHAIRMAN LAVINE: Thank you, Mr. Chang. So this is how we will proceed in the coming moments. Special counsel will now have the opportunity to examine Mr. Chang and after that examination I'm going to call on any member of the Committee who may seek to question Mr. Chang as well and we are limited to three minutes. And I want to thank ranking member Tannousis for reminding me that after that experience Mr. Mo is going to continue to present his evidence. So, from a logistical point of view Mr. Schlein --

MR. SCHLEIN: Mr. Chairman, it would probably be better with the Chair's permission for Mr. Mo to first introduce those documents because they may be the subject of some questions both by myself and the Committee members. So if we can do that sequentially it would be appreciated.

CHAIRMAN LAVINE: Very good. That certainly is reasonable. Mr. Mo and we will continue with Mr. Chang and thank

you for your testimony, Mr. Chang.

MR. CHANG: Thank you.

MR. MO: Thank you, Mr. Chairman. Why don't I start from the beginning because since all the Committee members right now have the 35 documents, the exhibits that are being offered and hopefully it would be received in evidence. And I'm looking at Exhibit One, which is the Board of Elections Certification of Lester Chang election to the members of the Assembly, 49th Assembly District which is dated December 2, 2022. Exhibit Two is an affidavit from Laurie, L-A-U-R-I-E, Chang, C-H-A-N-G-Kisacky, K-I-S-A-C-K-Y. That is Mr. Chang's older sister and she has presented this Affidavit of 28 paragraphs and she is on the Affidavit, is sworn -- signed and sworn by her before a notary public which touched on Mr. Chang's electoral residency. We also have a series of Affidavits and Exhibit Three is an affidavit from Robert I. Morgan, III. He's a Republican official who has presented this Affidavit. It's a ten paragraph Affidavit in which he set forth the circumstances, the factual circumstances in how Mr. Chang ended up running for the 49th Assembly District as well as the issue of his Brooklyn residency was discussed. And then we have an affidavit for a number of neighbors and giving the press of time we are only able to obtain a few Affidavits from his -- Mr. Chang's neighbors in the Midwood house or the Brooklyn house, okay. We have an affidavit from Abraham and Rachel Abramor, A-B-R-A-M-O-R, okay. We also have -- that is Exhibit -- M-O-V, excuse me, that's correct. And then

we have Exhibit Five is a neighbor Affidavit from Joseph Robinowitz, excuse me, Robinowitz, that's correct. And then we also Exhibit Six is an affidavit from Frieda Nknopfler, N-K-N-O-P-F-L-E-R Exhibit Seven is an affidavit from Sara Rosenthal. Exhibit Eight is an affidavit from Sara Cerruti, C-E-R-R-U-T-I. And then Exhibit Nine is an affidavit from Nonman Rosten, R-O-S-T-E-N. Exhibit Ten is an unsolicited letter of support from various individuals who may be members of the Kings County community; Gary Chen, Xiao Yu, X-I-A-O Y-U, surname is (inaudible), Han Quing Yang and Tony Tih, T-I-H. Now Exhibit 11 is the mothers doctor's note certifying that she suffers from Alzheimer's as well as dementia. And by the way, this doctor's note is dated December 19th, 2022. And then we also obtained a doctor's note for the uncle that is dated December 16th, 2022 which supports that or reports that Mr. Chang's uncle is legally blind from macular degeneration. And then Exhibit 13 is the uncle's driver's license which shows his date of birth, all right, which supports the fact that he's 77 years old -- 87 years old, I'm sorry, 87 years old. And then Exhibit 14 is Bowie's, that is Mr. Chang's wife, Bowie's death certificate. Her date of death was September 9th, 2019. And then Exhibit 15 is Bowie's cause of death from lung cancer, malignant lung cancer. And then Exhibit 16 is the pathology report for Bowie. And Exhibit 17 is a marriage certificate with a date of September 20, 2000 which supports Mr. Chang's testimony or the statement that her death was 11 days shy before their 19th anniversary. And then we have Lester Chang's certificate of birth showing that his date of birth

is 3/26/1961. Now Exhibit 19 is his Midwood High School alumni newsletter which -- as well as a notice from the alumni association which was mailed to his Brooklyn address at 1015 East 29th Street, Brooklyn, New York. And Exhibit 20 is documents reported poll workers and records only page 4 and 5 of a 22 page document are attached which shows that Mr. Chang has been consistently working as a poll worker over the years, I believe over 20 some years. And then Exhibit 21 is a Board of Election change of address. The change of address was made by Mr. Chang on or about February 18th, 2022. Exhibit 22 is a Board of Election calendar. It shows the primary election date for 6/28/2022. And then also the period for designating petitions for the election year of 2022. And in fact that the Board of Election mail-out was sent to Mr. Chang's address at 1015 East 29th Street in Brooklyn. Exhibit 24 as well as 25 are both New York Naval Militia Modified Orders. Exhibit 24 is for the period that he was actively deployed by the New York Naval Militia for the period of 3/25/20 to 9/30/2021 for the COVID relief operation. And then the New York Naval Militia Modified Order, that's Exhibit 25. It's for the second period of deployment that is 1/18/22 to 6/5/2022. And on both occasions he was deployed first in the Javits Center, Jacob Javits Center in Manhattan and the second time it was in Lexington Armory in Manhattan. Now Exhibit 26 are billing records for the Marriott and Renaissance Hotel billing for the period that Mr. Chang was actively deployed on both separate occasions and quartered in those two hotels at the expense of the New York Naval Militia. Exhibit 27 is an

insurance company called Unum, U-N-U-M as in Mary insurance dividend check that is dated 5/21/2021 and it was sent to Mr. Chang's Brooklyn address. It is a joint investment between him and his elderly mother. Now Exhibit 28 are documents of his Federal and State tax return for the year -- for the calendar year 2021 which was filed in 2022 because you file one year after your calendar tax year and these documents will show that he obtained an extension for filing in prior to April 2022 for the calendar year 2021 and subsequently filed his tax return, the federal and the State and City tax return in October of 2022. And these documents all reflect his Brooklyn address. In fact the documents of Exhibit 28 also include that he often paid his taxes, he got some kind of refund from the New York State Department of Taxation and Finance and in fact didn't get a chance to redact so Mr. Chang's income and expenses, his tax return for the calendar year 2021 is disclosed. Exhibit 29 is a Chase Manhattan bank statement. In fact it's a, you know, account for -- joint account, joint checking account between Mr. Chang and his mother and it has both of their names on the document that is Exhibit 29 and it shows the Brooklyn address. In fact this account, his Chase account has been active for many, many years and it is still current and it always show the Brooklyn address. Now Exhibit 30 is a credit card, a JetBlue credit card that is issued by the Barclays Bank as well as the American Airline credit card also issued by Barclays bank and both reflect his address in Brooklyn. Now Exhibit 31 shows it's a copy of Mr. Chang's updated driver's license. He applied after his election my

understanding here sometime before Thanksgiving in November of 2022 he changed his address with the Department of Motor Vehicles. And he also -- that's Exhibit 32 his car registration was also updated with his new address on or about November 2022. And also he updated his vehicle insurance ID card in November of 2022, that's Exhibit 33. Exhibit 34 is a selection of just three photographs to show Mr. Chang with his late wife Bowie and then Exhibit 34 shows photos -- also show a photograph of Mr. Chang with his elderly mother. And then Exhibit 34 also has a photograph showing Mr. Chang with the American Legion Post, the Kimlau Post in Chinatown. Now Exhibit 35 is an affidavit of Theodore Gora (phonetic) also a Republican party official and Theodore Gora had set forth at my request in eight -- no nine, no ten separate paragraphs that he sworn before a notary setting forth in detail how Mr. Chang got to run for the 49th Assembly District. The facts and circumstances that led to his being a Republican candidate and also the issue of his residency was discussed because Mr. Chang as well as Gora (phonetic) was fully aware that he had to be a resident of Kings County and if it wasn't for redistricting he would've had to be a resident of the 49th Assembly District for 12 months before the election. And at this time unless there's objections, Mr. Chair, I'm going to move all 35 exhibits into evidence.

CHAIRMAN LAVINE: Motion granted. All are received into evidence as is the case with the documents that had been submitted by Mr. Schlein. Everything is admitted into evidence.

MR. MO: Thank you.

CHAIRMAN LAVINE: Thank you. So Mr. Schlein, it's a logistics question and a quick one. Do you wish to conduct the examination from where you're seated now or at the lectern.

MR. SCHLEIN: Whatever the Committee preferences. I'll be glad to comport.

CHAIRMAN LAVINE: The Committee's preference is that it's up to you.

MR. SCHLEIN: Mr. Chang, are you comfortable if I sit here and just direct my questions to you this way? I have documents in front of you in support aggregate space here. Thank you very much.

QUESTIONING BY MR. SCHLEIN of MR. CHANG:

Q. Thank you, Mr. Chang and thank you for your testimony. Let's refer first to your election voting record in the City of New York. You had indicated you initially registered to vote in 1994; is that correct.

A. That's correct.

Q. And that was from your residence on Cleveland Place in Manhattan?

A. That's correct.

Q. And you maintained that residence for voting purposes since 1994 through and including 2021; is that not correct?

A. That's correct.

Q. And you had indicated, however, in your narrative

statement that you moved to Brooklyn after the passing of your wife in 2019; also correct?

A. That's correct.

Q. However, these records indicate that you voted in New York County from that same address in the General Election of November 3rd, 2020. June 22nd a primary of 2021 as well as the general election in 2021. How do you comply is that this distinction if you were living in Brooklyn at that time?

A. I was registered to vote in Manhattan.

VOICE: I'm sorry. Can you move the mic? We can't hear you.

A. I was registered to vote in Manhattan. I voted in Manhattan prior to my changing the address, but my physical intent was in Brooklyn.

Q. You in fact did seek to change your voting address until February of 2022 at which time you changed your voter registration card with the Board of Elections. So you're saying to this Committee that there was a two-and-a-half year lapse between your intent and your change of address for voting purposes?

A. I think that was outside my electoral residence to vote, but it was just a matter of convenience, just as simple as that.

Q. Just convenience?

A. It was convenient.

Q. And during that entire time was it equally a matter of convenience that when you worked for the New York City Board of Elections various poll worker capacities through the same particular period of time that your work was exclusively limited to polling sites within the County of New York, Borough of Manhattan even though you claim you were living in Brooklyn?

A. I've been there for a long time. So it's familiarity, the people have worked there and the language that I speak in Chinatown so that has no bearing on residency. It just work. Just plain work.

Q. Okay. And then for payment for those services rendered to the Board of Elections you maintained an address with the City's payroll system, with the Board of Elections' payroll system of 19 Cleveland Place through and including calendar year 2022. In fact is that not the case?

A. That's exactly what you see in the record but I paid my taxes in 2021 in Brooklyn.

Q. This is not a question of 2021 taxes. The question relates to where you directed the Board of Elections to send your payment for work during the period and we'll keep it limited from November 7th, 2021 through and including 2022. In particular may I refer you to the - with the assistance of your counsel - to those checks which were contained within Exhibit G. Perhaps Mr. Mo you can show them to Mr. Chang? Go through them one by one. And we'll do this in reverse order, most recent

back to 2021. So you received payments, Mr. Chang, on September 2nd, 2021 for services rendered to New York City Board of Elections and on the check made payable to you sent to your address at 19 Cleveland Place; is that not correct?

A. That is true. I'm not going to deny that and it just predates during my change of move and this is only -- it's for consistency basis but has -- but it just is not -- it's just for consistency basis. I've been doing for decades working.

Q. So for economic purposes for consistency basis so you're stating to this Committee that it was more appropriate to have your payroll checks sent to your Manhattan address even though you testified that you moved to Brooklyn in 2019 after the passing of your wife; is that correct?

A. That's correct.

Q. And the answer would be the same with respect to your check payable on June 22, 2022; would it not?

A. Be the same. It's on record.

Q. And the answer would be the same with respect to the payment for services rendered on June 6th, 2022; would it not?

A. Yes.

Q. Equally for payment on January 21, 2022?

A. That's correct.

Q. Equally for February 4th, 2022?

A. That's correct.

Q. And November 26th, 2022?

A. That's correct.

Q. 2021 I apologize.

A. 2021.

Q. So for economic purposes service to the Board of Elections you never took the time or made the effort to conform -- to confirm with them that you had moved to Brooklyn in 2019.

A. There's many things in my life that are priorities and this one of those things that (inaudible) subject to change but I just didn't --

Q. And even though you changed your voting address by changing your registration to Brooklyn in February of 2022.

A. That's correct.

Q. Let's turn to your military service documentation which is contained within the Committees' Exhibit letter J. And in your counsel's exhibits as 24 and 25. Give you a moment to pull those documents to Mr. Chang, Mr. Mo assist him, please.

(Pause)

A. Yes, sir.

Q. Now for the convenience of the Committee the documents obtained by the Committee in respect to these matters were to some degree redacted but reflect an address of New York, New York, zip code 10012, but in the duplicative documents provided to the Committee by Mr. Chang the actual address is 19 Cleveland Place, New York, New York is unredacted. So I ask you with that said Mr. Chang, referring to in particular the November 16th,

2021 call-up letter where the Bureau of Military and Naval Affairs called you up for service. The date of November 16th, 2021 indicates the transmittal of that notice to you in New York, New York effectively Cleveland Place; is that not correct?

A. Yes, but I got a call-up on the phone that was an emergency so it was a call-up on the phone.

Q. But the notice was sent to you in your residence in New York, was it not?

A. Yes, following after that.

Q. Equally the documents with both parties have presented the one dated November 7th, 2022 wherein --

A. Which one is that?

Q. It's contained within your Exhibit Number 25.

A. Yes.

Q. You received that notice, did you not, in the mail?

A. By e-mail, yes.

Q. And it in fact reflected an address of 19 Cleveland Place; does it not?

A. That's correct.

Q. Equally your Exhibit 26 -- I'm sorry, your Exhibit -- our Exhibit, I'm sorry, letter J, the sequential notice is sent to you on June 13th, 2022 was sent to you at Cleveland Place, were they not, by the military?

A. J and what pages are these?

Q. June 13th of 2022. You're at the right page.

A. Okay. June 13th, 2022.

Q. Sent to you at Cleveland Place; was it not?

A. Yes.

Q. Also as late as October 3rd, 2022 was the notice of call-up by the Bureau of Military and Naval Affairs sent to your residence on Cleveland Place, New York, New York; was it not?

A. Yes.

Q. You maintained you were living at the Brooklyn address, but you still maintained an address and residence for military purposes in New York County; was that not true?

A. I use it as a mail drop and for convenience purposes itself and being in the military for many, many years for decades I know what's it's like for change of address. It's a convoluted process.

Q. So would it be fair to say that for again for convenience purposes you never changed your address with the Bureau of Military and Naval Affairs.

A. Yes.

Q. That'd be an accurate statement.

A. That's an accurate statement.

Q. Okay. Let's refer to your motor vehicle documentation. That motor vehicle documentation is set forth in the Committees' Exhibit I and in your Exhibit 31, 32 and 33. Give you a moment to pull it up.

A. Exhibit I, what documents, sir?

Q. Again, Exhibit I from the Committee and 31, 32 and 33 from your own counsel.

(Pause)

A. Okay. Driver's license. Okay.

Q. It refers to 31 your driver's license.

A. Yes.

Q. 32 your vehicle registration documentation.

A. Yes.

Q. Multiple vehicles and 33 your vehicle insurance ID card.

A. That's correct, yes.

Q. Is it not fair to state that all of these registration documentation, license documentation and insurance documentation maintained by the Department of Motor Vehicles reflected a New York County address for you through and including November 23, 2022 at which point on November 24th, 2022 in the words of your counsel on the document that's when you updated it to Kings County.

A. That's correct. That's around Thanksgiving because I was just --

Q. And was that also for convenience, Mr. Chang, because changing addresses are difficult? Would that be a fair statement?

A. Yes.

Q. Thank you. Let's refer at this time to your Exhibit

30 if we could, Barclays credit card, JetBlue and American Airlines.

A. Yes, sir.

Q. You have provided this Committee with five consecutive statements received by you for payments of charges on that card.

A. Yes.

Q. Those statements provided to this Committee were the one of August 2022 through and including December 2022 monthly by monthly, correct?

A. Yes.

Q. How long did you have this card in your possession, did you maintain this card?

A. I recollect probably more than one year.

Q. I can't hear you. I'm sorry.

A. If I can recollect probably I had this by more than one year.

CHAIRMAN LAVINE: May I interrupt? Can we move the mic a little closer to Mr. Chang. It's a little bit muffled.

MR. CHANG: Certainly.

BY MR. SCHLEIN:

Q. I believe the answer was more than a year?

A. Yes. (Inaudible)

Q. Would it be fair to say that you had that card certainly in the month of November 2021 and December 2021?

A. I probably had that.

Q. Now Mr. Chang, this Committee asked you to provide such documentation by voluntary basis as well as subpoena for those statements. Yet you only provided through your counsel those statements from August of 2022 through and including December of 2022. Do you have those statements for November '21 and December '21?

A. If you need that I can provide that.

Q. Do you recall what address those statements bear?

A. Yes. Manhattan address 19 Cleveland Place, Apartment 4C, New York, New York 10012.

Q. Thank you. Do you know when those statements were converted through your effort to change the address to Brooklyn? What month?

A. Probably around summer of this month but I can't print out precisely what.

Q. But would it be fair to say somewhere June, July or August? June or July because we have August's in Brooklyn. So June or July was the conversion.

A. Possibly.

Q. Right. It wasn't inconvenient for you to do that at that time, was it, to change the address?

A. At that time I was working on making payments that's during my campaign so...

Q. I see. I ask you to refer to Exhibit K of the Committees's exhibits, Mr. Chang, the last exhibit in the

package.

A. Yes.

Q. K would be a one page screen shot of your contributions to various political entities and candidates.

A. Okay.

Q. This is an accurate listing, is it not, t of those contributions you made certainly from the period of 2016 through and including October of 2022; is it not?

A. Yes.

Q. I refer you in particular to the fourth one from the top which lists your name and the date of November 29, 2021, some 22 days after the applicable November 7th, 2021 date. And I see there that it reflects a contribution you made to the Zeldin for New York Committee; is that not accurate?

A. Yes.

Q. And the date you provided to that Committee as your residence address is 19 Cleveland Place, New York, New York; is that not accurate?

A. It's listed there, yes.

Q. Thank you. Mr. Chang, do you maintain any other bank accounts other than the joint one you referred to in your testimony and through your counsel's documentation which would be Exhibit 29? Do you maintain any other bank accounts? The one in 29 refers to joint account in Chase Manhattan bank in Brooklyn, New York. Do you have any other bank accounts?

A. Yes, I have.

Q. In which county are they maintained and which bank are they with?

A. I have two other bank accounts is TD Bank and Chase Bank.

Q. The TD Bank. Where's that located branch that you use?

A. Used in Chinatown.

Q. Huh?

A. I use that in Manhattan, Chinatown.

Q. Okay. And that's in New York County.

A. Yes. I opened that account in Chinatown for many years.

Q. And you still use that account; do you not?

A. Yes.

Q. And any other bank accounts?

A. Navy Federal Credit Union.

Q. Where's that located?

A. Virginia. Everything on line.

Q. That's on line. Thank you. Let me refer to the address of 19 Cleveland Place, New York, New York. Does that building have a name to it, a convenience name to it as it may be known?

A. I don't understand your question.

Q. Is the 19 Cleveland Place located is that Confucius

Plaza or another location?

A. No. The neighborhood called is Little Italy.

Q. And is that address -- is that apartment a rent-controlled or rent-stabilized unit?

A. Rent-stabilized.

Q. And are you familiar with the fact that that must be maintained as a your primary residence to comply with the proper rent stabilization laws of the State of New York?

A. Yes.

Q. And you still maintain that apartment; do you not?

A. That apartment?

Q. Do you still pay rent every month on that apartment?

A. Yes.

MR. SCHLEIN: I have no further questions, Mr. Chairman.

CHAIRMAN LAVINE: Thank you, Mr. Schlein.
One quick moment just to confer with Mr. Tannousis.

(Pause).

Thank you, Mr. Schlein.

MR. SCHLEIN: Thank you, Mr. Chang.

CHAIRMAN LAVINE: Now, does anyone on the Committee, any members of the Committee wish to ask any questions? Mr. Norris, everyone else should give me a sign and we'll get a list going. Mr. Norris, thank you.

MR. NORRIS: Thank you, Mr. Chairman. I have a question for Mr. Schlein. Is it accurate that any poll worker or election worker can serve in New York City so long as they live in New York City anywhere in the five boroughs?

MR. SCHLEIN: Mr. Chairman, I'm not under oath. Somehow the member wants to be sworn into oath to answer the question?

MR. NORRIS: You're fine, sir.

CHAIRMAN LAVINE: Without taking an oath we'll listen to what you have to say.

MR. SCHLEIN: Sir, the Board of Elections is authorized to assign any poll worker to any location they deem appropriate.

MR. NORRIS: Within the City of New York, correct.

MR. SCHLEIN: Within the City of New York.

MR. NORRIS: I just want to make sure I have that properly. Thank you very much. Now I have a couple questions since I have three minutes for Assemblymember-elect Chang.

QUESTIONING BY MR. NORRIS of MR. CHANG:

Q. My first question for you is did you receive any lawsuits, any service of papers challenging your candidacy for the office member of Assembly?

A. None at all.

Q. Thank you very much. And did you receive a

certification of election being elected duly to the 49th Assembly District?

A. Yes, I have both for New York City and for New York State certified my election.

Q. I see. Thank you very much. And did you vote -- I want to make sure I got your testimony correct. That you early voted in October of 2021 in Manhattan?

A. That's correct. October 23rd, 2021.

Q. 2021. And you served as a poll worker at that location;?

A. That's correct. I served that location.

Q. Very good. And then is it accurate that you also voted in the primary election and the General Election in Brooklyn in 2022.

A. That's correct. I did voted both primary and General Election of 2022.

Q. Within Brooklyn.

A. Within -- in Brooklyn.

MR. NORRIS: Thank you. Thank you very much. You know I have very limited time here but I wanted to say that I thank you for your service to our country as a US military veteran. My grandfather served in World War II in the US Navy and I know we're here today right here in this Chamber and can walk freely because of people like you for stepping up and being a veteran and serving in our community and our country. So I want to thank you

and I want to congratulate you on your historic election that the people of your district sent you here. So thank you, Mr. Chairman for the opportunity to be heard and for Assemblymember-elect Chang for answering my questions.

MR. CHANG: Thank you, sir and your grandfather is the greatest generation that served.

MR. NORRIS: I'm so honored to be a part of that tradition. Thank you very much?

CHAIRMAN LAVINE: Thank you, Mr. Norris. And Mr. Chang, with respect to your military service. My first cousin died in the last days of the Second World War in the Philippines so both sides of the aisle have great sensitivity for your service to our nation and it's truly appreciated by both sides of the aisle. Now who is the next person who has a question? Mr. Abinanti.

MR. ABINANTI: Thank you, Mr. Chairman. Mr. Schlein, would you run through some of the provisions of the constitution for me? I'd just like to make sure I understand them. Article III, Section 9 of the Constitution says that each House shall be the judge of their own election; is that correct?

MR. SCHLEIN: Yes, sir. The exact quote is each House shall determine the rules of its own proceedings and be the judge of the election, return and qualification of its own members.

MR. ABINANTI: Do you know of any situation where the Legislature was bound by an (inaudible) determination of the Board of Elections?

MR. SCHLEIN: No, sir. This is an independent provisions required in fact not voluntary but required to be followed by this Committee, by the entire State legislature as it is particularly articulated in Article III, Section 7 above Article Section 9.

MR. ABINANTI: Now the Constitution also sets some of the requirements for serving in the Assembly, correct?

MR. SCHLEIN: Yes, sir.

MR. ABINANTI: Can those requirements be waived?

MR. SCHLEIN: No, sir. And in fact in response to your question, it requires as a predicate step that the election would have occurred and the individual be elected before the evaluation of such qualifications can be made. Much has been said here today and in the media preceding today's activities that this -- there was a failure to challenge his petitions or his candidacy. This is an independent requirement not part of the Election Law but of a higher standard of the New York State Constitution relating not as eligibility to run but as eligibility to serve.

MR. ABINANTI: Now Mr. Schlein, there's a requirement. Can you give us the exact language again with respect to the residency requirement?

MR. SCHLEIN: Sir, I will read in salient part. If elected, a Senator or member of Assembly at the first election next ensuing after a readjustment or alteration of the Senate or Assembly District becomes effective a person to be eligible to serve as such must

have been a resident of the county in which the Senate or Assembly District is contained for the 12 months immediately preceding his or her election.

MR. ABINANTI: Now it's your position that there has to be some indicia as of residency, not just an intent to become a resident as of what date?

MR. SCHLEIN: It's intent coupled with indicia with actual facts and data and information.

MR. ABINANTI: So we're looking for --

CHAIRMAN LAVINE: Thank you, Mr. Abinanti.

MR. ABINANTI: We're looking for some kind of indicia of residence.

MR. SCHLEIN: Yes.

MR. ABINANTI: Thank you.

CHAIRMAN LAVINE: Thank you, Mr. Abinanti.
Mr. Goodell.

MR. GOODELL: Thank you, Mr. Chairman. Now, Mr. Schlein, I know you've referenced the Constitution several times and I'm looking at Article III, Section where it says that each House shall determine rules of its own proceedings (inaudible) of its own members. Mr. Chang, is not a member of this Assembly yet, is he?

MR. SCHLEIN: He's not, sir.

MR. GOODELL: This Committee won't continue until it's reappointed next year, correct?

MR. SCHLEIN: That is correct, sir.

MR. GOODELL: Mr. Abinanti, who I have great respect for, won't be a member of this Committee next year, correct?

MR. SCHLEIN: I take that --

MR. GOODELL: He was not reelected.

(Inaudible/cross-talk).

MR. SCHLEIN: Yes, sir.

MR. GOODELL: So if the Constitution requires the Assembly to be the judge of its own members and neither this Committee nor Mr. Chang are members of the next year's Assembly. Are you aware of any legal precedent whereby one legislative Session can make a determination that's binding on newly-elected members using a vote of people who aren't even elected for the next year?

MR. SCHLEIN: I believe an answer to your question, sir, that the requirement to be elected, which is the trigger for the determination to be made, no one questioned the fact that Mr. Chang's election was duly certified by the Boards of Elections. That an eligible to serve is the judgment to be made by the incoming legislature. That legislature will be in office as of January 4th, 2023 and it will be their responsibility to make a judgment as to the qualifications of Mr. Chang to serve under Article III, Section 7 and Section 9.

MR. GOODELL: But not this year's Assembly?

MR. SCHLEIN: Not this Body.

MR. GOODELL: Not this Committee, okay. If I may, Mr. Mo. Mr. Schlein started his comments by saying it's

perfectly lawful for a person to have two residences as long as they only have one electorate. And he ends his presentation with the same comment. It's therefore perfectly acceptable to have one residence where you might receive mail from the military, you might receive credit card receipts, you might have some other driver's license or whatever and have an electoral residence that's different. Would you agree with Mr. Schlein that's perfectly appropriate to have two residence as long as only one is your electoral residence?

MR. MO: That is correct.

MR. GOODELL: One last question if I may, Mr. Chairman?

CHAIRMAN LAVINE: Yes.

MR. GOODELL: Mr. Schlein, you spent a great deal of time in front of us here cross-examining Mr. Chang almost like a prosecutor or a prosecuting attorney or a plaintiff's attorney. Are you also being asked to write the report or is this going to be a bipartisan effort that doesn't -- are we looking at a report written by a prosecutor?

MR. SCHLEIN: I've been called worse in my life.

(Inaudible/Cross-talk)

MR. GOODELL: I mean I didn't see you presenting exculpatory evidence or questions that would be exculpatory for Mr. Chang. Did I miss something?

MR. SCHLEIN: I think in the preparation for this hearing, Mr. Goodell in consultation with Mr. Chang's counsel who

and I have been law partners (inaudible) over the years, it is my responsibility at the direction of the Chairman to present the documentation and evidence that we have introduced relating to Mr. Chang's residence or residences. And I've been directed by the Chairman of this Committee to offer a report summarizing the facts and materials we've learned here today and as I understand through communication between the ranker and the Chairman, there will be an opportunity for that report to be distributed to the members of the Committee and for brief statements pursuant to the Assembly rules to be responded to to that report; am I not correct, Mr. Chairman?

CHAIRMAN LAVINE: Without being sworn as a witness you are correct.

MR. SCHLEIN: Thank you.

CHAIRMAN LAVINE: And without me being sworn as a witness you are correct. And Mr. Goodell, thank you very, very much.

MR. MO: There's no question I think that, you know, Assemblyman Goodell raised a very serious due process issue. Now, in light of the fact that I didn't realize that this proceeding would result in Mr. Schlein, which I have longstanding relationship and very fond of him, but the fact that he's going to be drafting a report, I assume that his report will have finding of facts as well as finding of law as well as making a recommendation. Now if he's going to be doing that since he is in somewhat of an adversarial posture from where I'm sitting would I be entitled to write a report with finding of facts,

finding of the law as well as recommendation to the incoming Assembly? Because let's face it. We should have that protocol in order to provide Mr. Chang his right to due process.

CHAIRMAN LAVINE: So let me make two points. Any reports prepared by Mr. Schlein can include statements from any member of the Committee itself. But if you wish to submit a report I would welcome that report. Thank you.

MR. MO: Thank you.

CHAIRMAN LAVINE: Mr. Zebrowski.

MR. ZEBROWSKI: Thank you, Mr. Chair.

QUESTIONS OF MR. ZEBROWSKI for MR. CHANG:

Q. Mr. Chang, I didn't intend to ask a question but I think I have to. The last question by Mr. Schlein regarding your apartment in Manhattan being rent-stabilized apartment. So you can certainly have two residences, two places, you can have a summer home but you need to have a domicile. The law that would require to have a rent-stabilized apartment be your primary residence makes a lot of sense, right, so that people aren't able to keep multiple homes. We obviously have a housing crisis for a lot of people in the State. And the ability to have an apartment could be thwarted by folks having multiple apartments and keeping rent-stabilized apartments that they don't live in. So when that piece of information came to light at this hearing, to me it's a very salient point that raises a very salient question. So it seems that one of these two things

seem to be true. Either the Constitutional provisions were violated in that Brooklyn wasn't your primary residence or the rent-stabilized laws were violated because Manhattan wasn't your residence. So which one of those are true?

A. Assemblymember Zebrowski, I'm not sure about that law itself for I sign any legal documents regarding about residences so I just don't know. I really don't know.

MR. ZEBROWSKI: Thank you, Mr. Chang. I have no more questions, Mr. Chairman.

CHAIRMAN LAVINE: Thank you, Mr. Zebrowski. Assemblymember Byrnes.

MS. BYRNES: Thank you. Mr. Schlein, I have a question for you, sir.

MR. SCHLEIN: Yes.

MS. BYRNES: Thank you. My question is I think everybody on this Committee understand that the procedure that we're engaged in right now is a totally different procedure than the Board of Elections determination and what occurred before that. My question though to you is, you know, we're looking at the facts, we're determining what the facts are and how those facts are relevant to and reflect on electoral residency. Do you agree with me that the facts that the Assemblyman-elect opponent never questioned the Assemblyman-elect's residency. I mean that is a fact. Do you agree that that fact is relevant living in the same district in determination of what the electoral residency is.

MR. SCHLEIN: With all due respect no, I don't agree with that statement for the following reasons. They have a right, a citizen objector has a right, an opponent candidate has a right provided for the New York State Election Law to challenge a candidate as to residency or the quality of his indicia. In this instance Mr. Chang was a substituted candidate. He didn't put a petition forward. Nevertheless, that opportunity fell upon the people I just described. However, the New York State Constitution independently provides I would go as far as saying an obligation on this institution to make an independent evaluation as to the ability to serve as set forth in Article III.

MS. BYRNES: I don't disagree with you, sir, but by the same token as we put together all of the relevant facts through all of the Exhibits through testimony it is a fact that I believe many of us would think relevant that the person who lived in the district who was an Assemblyman -- who is an Assemblymember until the end of the year never took any action. I mean that is a fact that I believe should be considered along with all of the other facts in making a determination. You disagree?

MR. SCHLEIN: I do disagree. I think the facts that were reduced here today by both parties, myself and Mr. Mo as to the Exhibits, as to the residential disposition of Exhibits are the relevant facts and Mr. Chang's testimony should all be taken into the global consideration of the outcome of this Committee's report. But the fact that he was not challenged or would have been challenged during the

candidacy is not a material fact. I will go as far as saying one more sentence if I may, Member. Even if his candidacy were challenged during the petitioning period on the grounds of not maintaining a proper residence in accordance with the provisions of the Election Law and that case were adjudicated through the courts, it still would have been within the providence of this Committee and this Legislature to make an independent judgment of that circumstance.

CHAIRMAN LAVINE: Thank you, Ms. Byrne. Mr. Mo.

MR. MO: May I have an opportunity to express my comments regarding the question that's been raised by Assemblywoman Byrnes?

CHAIRMAN LAVINE: Mr. Mo, I would ask you to move -- if you can move the mic because I'm not sure everyone heard what you say.

MR. MO: Mr. Chair, would I be given the opportunity to just briefly comment to the question that has been made on the floor?

CHAIRMAN LAVINE: Without swearing you in as a witness the answer is yes.

MR. MO: Your honor, I'm fully aware (inaudible) of the Constitution, New York State constitutional mandates as well as the procedures to delve into qualifications of member-elect. However, I think that this Body as well as the incoming Body should take into consideration that whether we say due process, we say fairness to be

accorded to a member who is subject to be investigated or to be looked into his or her qualification, we should be mindful the reality that for the Chamber, the incoming, the existing Chamber this is a bipartisan Chamber. We cannot ignore that fact. So the Constitution of the State of New York has to be read that the only due process for Mr. Chang or any member-elect to be challenged with respect to his or her qualification, that should be brought in a court of law. A Body that is truly fair, a Body that is also subject to the review process of the judicial system, the Appellate Court, the highest court of the land including federal court. So for Mr. Chang to even sit before this Committee today, despite the fact that the Constitution may allow it which I'm troubled by it because an issue has been raised by the esteemed colleague Mr. Goodell that this is an outgoing Body of members. And here they are -- here you are. You're sitting here to review Mr. Chang's qualification. When some of you, I don't know how many, may not even be sitting in the Chamber after January 4th. And how about the electorates who faithfully went out and voted on November 8th of this year and voted for Mr. Chang. And then to have Mr. Chang to be ousted or not to be sworn in. How are we going to justify to these electorates, everyone who has voted and supported Mr. Chang. So we're notifying their exercise of the right to vote that is such a cherished part of American institution that we die for it, we live by it and we swear by it that our elected leaders on all levels across America are duly-elected. So I believe that my esteemed colleague, you know, Assemblywoman Byrnes, you hit the cord. That should

also be taken into consideration, are we going to allow the public be damned to pull the rug on their choice to be their elected official for the 49th Assembly District. This is going to send a chilling, chilling message not just in New York, across America that we can have a partisan Body and in this case let's face it, we have a Democratic supermajority. Why are we trying to oust him when he is only a Minority member? That's why all the media that I have read are questioning the wisdom of this proceeding and the fact that we are going to send a wrong message, that's why I said regardless of which aisle you're sitting, regardless of what is your political persuasion, please stop this process of trying to vet his qualification after he has been voted. And with that, I urge you to look at the implications of what this proceeding is going to lead to. And it just happened, by the way. Mr. Chang is a Chinese American, an Asian-American who served his country, his brother served his country, a native born American. He's not someone who immigrated and acquired citizenship later in life. And I'm sitting here and I'm astounded that Chair Heastie is ordering this inquiry and when my Minority brothers and sisters in this Body as well as those who are sons and daughters of immigrants who strive to achieve the American Dream and to be leaders. Think about that. And those who have lived through and who have are cognizant of how many blood has been shed in order to acquire this right to vote and this Body as well as the subsequent Body can say hey, you know what. We're going to reach out to the New York State Constitution and determine whether Mr. Chang, a military

veteran who served his country are going to be ousted who is not fit to represent the 49th Assembly District when we know the residency issues sometimes is turned into a ploy. It is a gray subjective area and we all know home is where your heart is. Everything in my wallet does not represent where I call home. This is a wake-up call to all of you. That's why I alluded to the fact that let's not history repeat itself. And that is why newspapers are identified to be conservative papers are coming out and saying what the hell this is going on. Google, read all the newspapers. I got a call from the *New York Times* this morning and saying what are you up in Albany for? Wake up. Come on. Let's uphold the right to vote and also Mr. Chang won the election. Leave him alone. His district may be redrawn in 2024. Let his constituency decide whether he should be reelected. I urge the members of this Body, those who are present, those who are going to be serving in the next incoming legislature, wake up. This is an issue that we should not be debating here for crying out loud. We're not going to slice and dice the language of the New York State Constitution. As we all know the Constitution could be interpreted even by nine Supreme Court justices one way or the other. And we all know at one time under the Constitution someone like myself would not have been allowed to practice law in the State of New York. That was based on the Constitution. So all of you here who are lawyers, non-lawyers, wake up. As it is the public is very cynical that our system is not working because commonsense has left, that we are following the partisan line. And let the public be, all right. I hope that I'm not being

controversial. I want to state the truth. I am his lawyer so you can take whatever I say on its face, but I think that I'm also a New Yorker. I'm also a practicing lawyer for 46 years. I also served as an Assistant DA in Manhattan. I also served as a Deputy Commissioner (inaudible) in New York City Police Department which I (inaudible) hearing misconduct. I've written more than 300 reports. Let's not forget. We are all Americans.

CHAIRMAN LAVINE: Mr. Mo, controversy is part of our nationality as New Yorkers. Thank you for your comments.

MR. ABINANTI: May I have a point of --

CHAIRMAN LAVINE: Not right now, Mr. Abinanti.

MR. ABINANTI: Well, I have been referred to so I would like to make a statement.

CHAIRMAN LAVINE: Mr. Abinanti, we will put you on the list again once we've gone through the entire list of members that are going to be asking question.

Assemblymember Walker.

MS. WALKER: Thank you, and thank you so very much for your testimony today. And to you Mr. Counselor, with your extensive record, I'm sure you know the potential falsification of documents is a very serious allegation and is definitely something that, you know, we're taking into consideration. I direct you to the renewal lease form which I believe was executed by your client which indicated that there was a one year lease which expired on 9/30/2021.

But there were renewal provisions that would extend through 9/30/2022 and ending on 9/30/2023. Do you know if your -- can you state whether or not your client elected to utilize this lease renewal or is there an updated version of a lease that can be provided to this Committee?

MR. MO: I'm not aware of any lease renewal documents that is in his possession.

MS. WALKER: Okay. The document that I'm referring to is page 24 of the Exhibit which was introduced by Attorney Schlein. And one of the things, too, I know you mentioned that home is where the heart is, but home is also where I get my Grubhub, home is also where if I'm taking the subway, it's where I'm getting my Amazon deliveries and so could you just speak to a little bit or have your client speak to just what his is day-to-day operation look like? Where does he go to the supermarket? Where are home deliveries taking place? If he takes public transportation to work, what's his local subway? If he's utilizing E-ZPass, can you provide E-ZPass statement so we can get a sense of just sort of his day-to-day goings on and how he's traveling and moving about New York City?

MR. MO: Obviously I'm not testifying, I'm not under oath but I believe his statements set forth pretty accurately regarding sometime after his late wife passed away suddenly in the latter part of 2019. He started to make the transition and start visiting as well as ultimately living with his elderly mother and uncle. And that is supported by his sister's Affidavit, neighbors who seen him going in

and out. Obviously they don't keep records as to what date or what year. He is known. He's a known presence. Before he moved to Manhattan until after he moved, you know, moved back to his home, his childhood home. And that is strongly supported and obviously we all recognize that residences is not (inaudible). People change. We also recognize as a fact that people could have multiple residences, two residences, three residences to receive mail and the old saying goes the address that's in the (inaudible). It's not completely dispositive (inaudible) once an electoral legal residence or for that purpose whether the purpose stay at that place. That is reflected in a address ID card. And also by the way, there is no law regarding when certain government ID cards should be updated, changed to reflect a legal residence. Mr. Chang drives, okay. He drives so there's no subway to speak of. Clearly he grew up there in the, you know, the Midwood home going as far as back 1972. So he is certainly familiar with that neighborhood. That is his neighborhood. He goes there frequently and I will be more than happy to allow any of the members here to question him further regarding his assertion that Brooklyn literally, figuratively, physically became home at some point in 2020, if I want to move the goal post into 2020.

MS. WALKER: Thank you so much for your (inaudible).

CHAIRMAN LAVINE: Thank you, Assemblymember Walker.

MR. STECK: What Exhibit letter was

Assemblywoman Walker referring to? Not the page. What exhibit letter?

CHAIRMAN LAVINE: J. It's the last page. Very good. Thank you.

Assemblymember Tannousis.

MR. TANNOUSIS: Thank you, Mr. Chairman. My question I just want to start first is with Mr. Fusco who is also present here today. Mr. Fusco, I know that my esteemed colleague here Mr. Zebrowski made a statement in regards to rent stabilization and I just wanted to ask you a question. Is there -- is it possible to have a residence and an electoral residence and is that something that has to be the same based on the case law of the State of New York?

MR. FUSCO: Mr. Chairman, if I may answer Member Tannousis' questions without being sworn in?

CHAIRMAN LAVINE: I will not take your testimony if it's sworn.

MR. FUSCO: Mr. Tannousis, one can have a rent-stabilized apartment that is their primary residence but is not their electoral residence. One can have an electoral residence which is separate and distinct from what they claim to be a primary residence for the matter of having a lease that is for a rent-stabilized apartment or a rent-controlled apartment. As a matter of fact this House has taken up significant pieces of legislation in the past few years that would afford an individual to vote from the second home to vote from a second place and these laws dictates -- I believe it's in the matter of

Willkie, et al vs. Delaware County Board of Elections that the Election Law does not preclude a person from having two residences and choosing one for election purposes provided he or she has legitimate significance and continued attachment to that residence. That is what Mr. Chang has here with the residence in Brooklyn. The fact that there's a rent-stabilized lease for a separate apartment in Manhattan is of no (inaudible) with respect to his electoral residence which as Mr. Mo just provided dates back to as early as 2020.

MR. TANNOUSIS: Thank you, Mr. Fusco. My next question is for Mr. Schlein.

Mr. Schlein, you handed us here today evidence, correct, that you have submitted to this Body claiming to your evidence in regards to this hearing; is that correct?

MR. SCHLEIN: This is the documentation that was the subject of the Committee's subpoena and/or FOIL requests of various governmental agencies.

MR. TANNOUSIS: And these are the documents (inaudible), right?

MR. SCHLEIN: I believe so.

MR. TANNOUSIS: And you would agree with me that the issue here is the intent of Lester Chang from November I believe it was the 8th or the 7th of 2021 to November of Election Day 2022. Would you agree with that?

MR. SCHLEIN: Not only the intent but the intent coupled with legitimate indicia of the manifestation of that intent. But

I think to answer your question, certainly, Mr. Mo, my colleague said home is where you make it, it's where your heart -- your heart is where your home is. That's not what the case law says. That's not what the law says. It has to be couple with significant indicia manifested in that intent. So you just can't have a New York State of Mind and say I'm a New Yorker. You have to have documentation and evidence in real terms of that intent, sir.

MR. TANNOUSIS: Well, sir, the burden here is on you; is that not correct, Mr. Schlein? There's no burden on Mr. Chang.

MR. SCHLEIN: The person disproving a particular choice has to have a proof of -- of -- of a continuing without any equivocation, yes.

MR. TANNOUSIS: He has no burden here, sir. You would agree, Mr. Schlein, that the burden is on you.

MR. SCHLEIN: I would agree.

MR. TANNOUSIS: Very good. Thank you. Mr. Chang came here today with affidavits of neighbors, family, friends that are from Brooklyn that live near his Brooklyn residence. Do you have any Affidavits as the person that has the burden today from anybody in Brooklyn to say that he does not visit or stay at that Brooklyn address?

MR. SCHLEIN: No. I have documentation that he has submitted to governmental agencies which demonstrate he has chosen as his main and permanent domicile New York County

through the applicable period. That document -- as an example, sir, in response to your question, his documentation maintained by the Department of Motor Vehicles has been there through and including November 23, 2033 even though the law requires you if you change your address as Mr. Chang has testified to he changed his address in 2019. Section 505 of the Motor Vehicle Law requires you to notify DMV within ten days of that move of that change and they could -- and that has not occurred.

MR. TANNOUSIS: I appreciate the response. I have a question. Do you have any proof for the Committee today to show us where Lester Chang put his head on the pillow at night for that year, anything?

MR. SCHLEIN: I did not go to bed with Mr. Chang nor did I join him in either residences that he's maintained.

MR. TANNOUSIS: I'll take that as a no. Thank you very much.

CHAIRMAN LAVINE: Thank you, Mr. Tannousis. Assemblymember Mitaynes.

QUESTIONING BY MS. MITAYNES of MR. CHANG:

Q. Thank you. I also am going to have questions about the rent stabilized apartments. Can you tell me when the original vacancy lease was signed?

A. I don't -- approximately 1993, sometime in '93. I don't remember the exact.

Q. And who were the original people named on the lease?

A. The lease is my name 1993.

Q. And is it always throughout the tenancy, it's only been in your name?

A. Yes, in my name.

Q. And you signed renewal leases and you continue to sign renewal leases during your tenancy, correct?

A. Yes, ma'am.

Q. Your current lease. When does it expire?

A. 2023.

Q. So you signed a two-year lease starting October 1st, 2021.

A. I believe so.

Q. And was the lease signed by the landlord as well?

A. Yes.

Q. So it's a fully executed legal document that you signed on October 1st, 2021 stating that you would be living in this apartment.

A. Yes.

Q. If you're living in Brooklyn can you tell me who is living, if anyone, living in that apartment?

A. Which apartment?

Q. The one with the lease that you submitted, the one in Manhattan.

A. No one lives there.

Q. No one lives there. But you pay rent every month.

A. Yes.

MS. MITAYNES: Thank you.

CHAIRMAN LAVINE: Thank you, Member
Mitaynes.

Assemblymember Walsh.

QUESTIONING BY MS. WALSH of MR. CHANG:

Q. Thank you, Mr. Chairman. So Assemblyman-elect Chang. I just have a few more questions for you on the issue of your Brooklyn home and a little bit more explanation from you about the time that you have spent there during the relevant year or so actually it was more than a year because your testimony I believe earlier was that after your wife's really tragic and I'm so sorry and untimely death you started to make that transition to living in the Brooklyn location. So could you just -- the Court of Appeals talked about for the purposes of electoral residence the individual may choose one to which he or she has legitimate significant and continuing attachment. So it's an intent coupled with physical presence. So could you talk to us a little bit about starting in that time period after your wife's passing that you began to live in Brooklyn. How often were you visiting your mom? What was your day-to-day? Did you -- what were your comings and goings? Did you sleep overnight there? At times how frequently? Just could you just speak to that and address that a little bit for us?

A. Well, thank you. It's a very painful time. It is

painful after my wife's passing because during that time that she was alive I have to be her caregiver a hundred percent getting cancer treatment. So after the passing, naturally I have enough skills that I can take over because principally my uncle and my sister were doing the caregiving while I was taking care of my wife. And I brought in skills that I felt guilty to see my sister taking that role. She was working full-time. I was not working. I was not. So I could have devoted a hundred percent. And I tried to be a good son to do that and also it gives me comfort to even see my mother and even ask her every day do you know who I am just to make sure that she remembers me. There are times that she does not and that pains me a little bit so that's why I devote as much waking time as I can during those course and I'm sure many of you in this Body knows what it's like to have a family member who has dementia. It doesn't improve over time. It goes the other way. So that is why I (inaudible) in that my companionship what's important. Not just physically taking care, not just shopping but companionship is also part of treatment and therapy for me and also for me mother and I spent as much waking time as I can. But as everyone who is campaigning, it's difficult to take care of a home. So I still feel guilty during my campaign naturally not to be with my mother because I come home very late at night and she's asleep. And as I'm out campaigning and you have to spend that time and I feel guilty during that time after my wife

passed and during the campaign and also feeling bad especially when I'm called for active duty and not seeing my mom so it's a choice, it's difficult. That's why I said thank you.

CHAIRMAN LAVINE: Thank you,
Assemblymember Walsh.

Assemblymember Cruz.

QUESTIONING BY ASSEMBLYMEMBER CRUZ of MR.

CHANG:

Q. Thank you, Mr. Chairman. Mr. Chang, thank you for your service. I have just a couple of questions. You stated thank you moved back to Brooklyn in 2020 after your wife's death; is that correct?

A. I transitioning.

Q. So when more or less was that transition completed, the actual move.

A. It's still ongoing because there's so much memory in that apartment.

Q. Could you do your best to give me some sort of time frame, a date, a month? I'm not asking for a specific date but a date and a month would be great.

A. I started transitioning after my wife's passing in late 2019. I don't like -- I physically have to go to my mom because that's also my therapy is to lessen the pain I had in my apartment. So it's right around late 2019 because my wife passed in September.

Q. Thank you, Mr. Chang. And I think I share with everybody's sentiment that we are very sorry for your loss as well. Isn't it a fact that you ran in 2020 in the Senate race against Brian Kavanaugh out of the Manhattan address?

A. Yes.

Q. And isn't it also correct that you ran for City Council District One in 2021 out of the Manhattan address?

A. I petitioned but I did not run.

Q. In speaking of petition, thank you for bringing that up Mr. Chang, I'm going to refer you to Exhibit Number 35, an affidavit from - and I don't want to mispronounce his name - Mr. Theodore Gora (phonetic). If you look at the last page it refers to the number of petitions that were collected for this race and that they were not challenged. How many petitions did you collect?

A. I don't -- I don't recall the exact number.

Q. You don't recall the exact number. Did you collect petitions door to door knocking with folks to collect petitions for yourself?

A. Yes. I did participate petitions myself.

Q. Got it. And I think -- and were those petitions -- was there an opponent or someone else running on that same line that would have challenged you or would have challenged those petitions?

A. Can you repeat that question? Sorry.

Q. Was there an opponent during that primary that would have challenged those petitions against you?

A. You mean during this year?

Q. Yes. I'm referring to when I asked you about you door knocking, I'm referring to the 49th Assembly District primary race and this Affidavit Number 35 it's states in the last two paragraphs that more than sufficient petitions were collected and they were not challenged. And I was asking, did you yourself go out and collect petitions, going and get petitions with folks, how many were there or approximately and were you challenged?

A. As far as I know I wasn't challenged but I did do the petition process but I did not put together and submit it officially. I just participated out there out in the streets.

MR. SCHLEIN: Member Cruz, may I interject with the Chairman's permission? It needs to be noted that that I would use the term of art Affidavit is cute by a half. Those petitions were not gathered with Mr. Chang's name appearing as the candidate. They were for another candidate. That candidate declined and then Mr. Chang was substituted.

MS. CRUZ: Thank you.

MR. CHANG: I mentioned that in my testimony as well.

CHAIRMAN LAVINE: Thank you. And thank you Assemblymember Cruz.

Assemblymember Keith Brown.

MR. KEITH BROWN: Thank you, Mr. Chairman. My first question I'm going to start procedure ly and get into substantive and I only have (inaudible) Mr. Mo, the 1920 case with the five socialist party members not being seated, that happened after the new Assembly was convened; is that correct?

MR. MO: Yes, I believe so.

MR. KEITH BROWN: Counsel Schlein, assuming the Committee has proper jurisdiction to hear the matter and in partiality (inaudible) I heard the Chairman mention the court would include (inaudible). Would you allow and submit the report and (inaudible) by Mr. Chang's attorney to be included in that report?

MR. SCHLEIN: I think the Chairman has already confirmed that he will allow Mr. Mo to submit a report coincidentally with (inaudible).

CHAIRMAN LAVINE: That's correct. I want to make sure everyone is clear. Every member of the Committee has under our rules the expressed right and ability to submit her or his own report.

MR. SCHLEIN: Understood.

CHAIRMAN LAVINE: And with respect to the issue involving Mr. Mo, we've covered that already and the answer to the question of whether or not Mr. Mo can submit, we would gladly accept anything from Mr. Mo.

MR. KEITH BROWN: Mr. Schlein, when were you

first contacted by the Committee to discuss the Chang matter and to be retained by the Committee? Do you have the month and date?

MR. SCHLEIN: Probably the first -- last week in November, first week in December.

MR. KEITH BROWN: And bringing your attention to the case that was brought up by Mr. Fusco, the Willkie vs. Delaware county case where it cited you can have multiple residences and the quote is provided he or she has legitimate significant and continued attachment to that residence; is that correct?

MR. SCHLEIN: Yes. My recollection of that case that's the (inaudible) language.

MR. KEITH BROWN: And you stated several times during this hearing that it's the indicia of physical presence. But isn't it a fact that the Court of Appeals case I'm looking at says coupled with physical presence. It says nothing about indicia.

MR. SCHLEIN: Well, the physical presence can be measured by the indicia documents, mail, filings, motor vehicle license, employment records. That's what the totality of circumstances are is what the courts have considered in making a determination of what a particular person's domicile or electoral residence is. Without trying to be cute, and please forgive my term of art, this case was most recently decided by a member of -- with a member of this Committee (inaudible) where the court clearly stated that the totality of circumstances are to be evaluated and making a judgments as to whether a person has a legitimate or non-legitimate

electoral residence.

MR. KEITH BROWN: Mr. Chair, if I may, I allowed the counselor to speak and finish his thought --

CHAIRMAN LAVINE: Mr. Brown, it's appreciated that you allow the person you asked the question of to speak but why don't you ask one more question.

MR. KEITH BROWN: Well, you mentioned domicile. But it's actually electoral residence. And I just want to point out for the record, and maybe I'll ask Mr. Mo this question, Exhibit Five Joseph Robinowitz. It says he resides at 1017 East 29th Street. That is his next door neighbor to where Mr. Chang grew up, that's no pun intended (inaudible) East 29th Street, that's my first part and is it correct that this is actually Rabbi Robinowitz?

MR. SCHLEIN: Yes, he is.

MR. KEITH BROWN: Thank you. No further questions.

CHAIRMAN LAVINE: So, is there anyone who isn't yet asked a question on these panel.

Ms. Seawright?

QUESTIONING BY MS. SEAWRIGHT of MR.

CHANG:

Q. Thank you, Mr. Chairman. I just have a quick question, Mr. Chang. Mr. Chang, I wanted to refer to Exhibit K introduced into evidence on November 29th, 2021 where it indicates you made a donation to Zeldin for New York and it has

your 19 Cleveland address, New York, New York. Have you filed an amendment with the State Board of Elections if your address is Brooklyn to correct that?

A. (Inaudible)

Q. I'm sorry. What?

A. State Board of Elections to change address?

Q. Well, you've listed that you made this donation based on your address being at Cleveland in New York.

A. I'm sorry. Could you just repeat the question? Sorry about that, ma'am. Repeat your question.

Q. Exhibit K.

A. Okay.

Q. November 29th, 2021 indicates that you made a donation to Zeldin for New York. It lists Cleveland as your address.

A. Yes. It's printed there. Yes, ma'am.

Q. So previously on 2019 it has Park Row as your address.

A. I don't even live in Park Row.

Q. I'm sorry. What?

A. I don't know about Park Row because that's an error because that's filed by the candidates, (inaudible) candidates whatever form they fill out I don't know about that. The one before that (inaudible) and the (inaudible) Park Row I have no idea at that address.

MS. SEAWRIGHT: Okay. Thank you.

CHAIRMAN LAVINE: Thank you, Ms. Seawright.

Assemblymember Joyner.

MS. JOYNER: Yes, thank you. Okay. These two 2 questions are for Mr. Schlein. From my understanding in looking over the documents Mr. Chang was a substituted candidate. Can you talk about what was the time frame to raise any residency issues or challenges before the Board of Elections after he signed that document?

MR. SCHLEIN: Certainly. If a objector whether it be a citizen objector residing in the district or the candidate as a candidate (inaudible) could have filed objections within three days after the filing of that substitution as an initial filing and could have gone to court within ten days to challenge it. Neither of those circumstances happened by anybody.

MS. JOYNER: Okay. And then (inaudible) you just on the record explain what was the legislative intent behind this constitutional provision giving us the ability to examine this residency question. Thank you.

MR. SCHLEIN: The legislative intent really goes back to grassroots simple elementary school construct that there are three independent separate branches of government. There is a legislature obviously, an executive and a Judiciary and it is historically said so each constitution each State Constitution and the U.S. Constitution has made the legislative branch the judge of the credential of its members. Historically and continually irrespective of what may happen in independent litigation. And this time it requires,

in my opinion, this Legislature, this Assembly to make an independent judgment whether or not a challenge was instituted, which it wasn't, to make a judgment of the qualifications of any candidate who was elected to serve.

CHAIRMAN LAVINE: Thank you,
Assemblymember Joyner.

Assemblymember McMahan..

MS. MCMAHON: Thank you, Mr. Chair. Counsel, you talked about the law of electoral residence and you both cited Mr. Fusco and Mr. Schlein some cases. Would you provide those cites to us or if they're (inaudible).

MR. SCHLEIN: I certainly will incorporate what I believe the status of the law as determined by the courts in the report being issued to the Committee.

MS. McMAHON: Thank you.

MR. FUSCO: Thank you, Assemblywoman. I would just add to that that certainly there is the case that Mr. Schlein handled with regard to (inaudible) Patch. But for every (inaudible) Patch I can cite to you the matter of (inaudible) vs Blakeman (phonetic), the match of (inaudible) vs (inaudible), the matter of Polenz vs Marcantonio, the matter of (inaudible) all where the (inaudible) court looking at a totality of circumstances. No longer is the right line rule where one cast of vote to determine their electoral residency, rather it's determined by a totality of factors. But the important thing to remember and to distinguish what is happening here today juxtapose

to those cases is that those were all brought during the petition season in accordance with the Election Law as opposed to being brought after the election of a member.

MS. McMAHON: Thank you. I would like to read those myself rather than just take, you know, your representation what they mean. So I really appreciate the cites to those cases and then I can figure out on how to apply those things to our particular circumstances. Thank you.

MR. SCHLEIN: Let me just add to the Member, I think the one thing Mr. Fusco and I certainly agree on is it the totality of circumstances and that is why the evidence before this Committee is to be evaluated in a clear lens, equally the testimony that has been presented and it's for this Committee ultimately to reach a conclusion, more particularly the whole Body in 2023. Thank you.

MR. FUSCO: Just for the record, I can provide citations to those cases to the Committee if they so wish.

MS. McMAHON: I would wish.

MR. FUSCO: So the matter of (inaudible) versus (inaudible) from the Court of Appeals is 98 New York 2nd 418 decided in 2002. Following that case the (inaudible) case on elections when it comes to the matter of residency is the matter of Glickman vs Laffin, 27 New York 3rd, 810. And following those decisions is when the courts have entertained the totality of the circumstances. And that would be a case I can refer you to there was the matter of Polenz vs. Marcantonio, (inaudible) New York (inaudible) or the matter of

(inaudible) 83rd (inaudible) and all of those case subsequent to (inaudible).

MS. McMAHON: What was the last one?

MR. FUSCO: Matter of (inaudible) vs. Koffman, K-O-F-F-M-A-N. That is 183 (inaudible) 3rd 480 decided in May 2020. And those are cases where the totality of the circumstances test was applied rather than previous (inaudible) line voting rule that we find from the (inaudible) court in the early 2000s.

MS. McMAHON: Thanks. That gives me some reading to do.

CHAIRMAN LAVINE: Thank you, Assemblywoman McMahan. So now we're going to go to a second round. Everyone's who's had the option of being up here on the panel has had the option to ask questions. So a couple of people, being Mr. Goodell and Mr. Abinanti, want to follow up with some brief questions.

So Mr. Abinanti.

MR. ABINANTI: Thank you, Mr. Chairman. I started with a personal point of privilege. I just want to make it clear that I am here because I am a member of this Committee and the Speaker asked this Committee to come together to convene to investigate and make a recommendation on a particular issue. I have no -- I have not made a foregone conclusion as to what the evidence would show. My question I think (inaudible) I'm looking to understand the law, learn some facts and then apply the law to the

facts and make a recommendation to the next legislature. In fact, I suggest to you that I'm unbiased because I will not have to live with the decision that I make. I will not be serving or not serving with this gentleman. I'm sitting here as an impartial judge on what facts are brought out.

Now on the question of that I asked Mr. Schlein before, I'm basically looking for the indicia. And I think that's the appropriate word here. I'm looking for those significant contacts but those contacts in my mind and I want to put this out as a way to look at this to frame the issue. One, you need an intent but it has to be manifested by action and evidence that that location is a place of residence, not just a place that you visit as a caregiver, as an employee, as a friend and it's not just an address where you receive mail and whatever. So I'm looking here for those indicia to indicate to me that the Brooklyn address, the Brooklyn location was in fact a residence during the time period in question. It may very well be a residence today. It may have been a residence in the past. The question is is it one of his residences. That's what I'm looking for. That's why I'm here today and on the basis of applying the law to the facts I will make a recommendation to my future legislature. Thank you, Mr. Speaker -- Mr. Chair.

CHAIRMAN LAVINE: Thank you, Assemblymember Abinanti. And because this is likely the last time this Committee will meet with you participating as a member, I just want to say on behalf of all of us it's been a pleasure and an honor to

work with you over the years and I wish you all the best in the days to come.

Mr. Goodell.

MR. GOODELL: Thank you, Mr. Chairman. I was hoping Mr. Chairman you would clarify your last comment. If this Committee is issuing a report for the next legislature, will this Committee then be meeting to review the draft? Will we be discussing the contents of that draft? Will we be voting on that draft or is this a secret draft that we'll receive at some future point in time without any Committee meeting or any Committee discussion or both?

CHAIRMAN LAVINE: Assemblymember Goodell, in the nearly 20 years I've served in this Legislature and in the years I have served in government before I served in this legislature I've never known anything to be a secret. In fact just the opposite. I will be directing our special counsel to prepare a report. That report will be reviewed by each and every member of this Committee pursuant to our rules. And any report may include a brief statement of the (inaudible) member or members of the Committee. And I also am going to look forward to a report from Mr. Mo as well. Now I'm sure that you and everyone else will see those reports and I have no doubt that this will be the subject of considerable discussion.

MR. GOODELL: And will then our Committee meet, discuss it and make a vote or is there a report by the Committee without any meeting or vote of the Committee?

CHAIRMAN LAVINE: At the close of our meeting today I'll direct special counsel to prepare the report. That report will be reviewed. It will be added to by all members and then I'm going to be sending it to the Speaker for further consideration.

MR. GOODELL: So you envision that all the members of the Committee will have an opportunity to review and make comments and suggestions on the initial report before it's issued?

CHAIRMAN LAVINE: Yes.

MR. GOODELL: And do you envision that to any point in time the Committee as a whole will vote on it?

CHAIRMAN LAVINE: I do not envision (inaudible) at all. But the views of each and every single member of the Committee will be reflected in that report which will be a public report.

MR. GOODELL: It's interesting because when it comes to a trial by jury of a heinous criminal defendant they require all the jurors to meet and discuss in detail and for obvious reasons. But I would hope that we will extend as much if not more courtesies to a duly-elected member member of the Assembly than we would to a heinous criminal use of horrific crimes.

CHAIRMAN LAVINE: Mr. Goodell, I appreciate that editorial comment, but I don't consider Mr. Chang to be a heinous criminal committing any heinous crime whatsoever. And this is our Democratic process and this is the way it works.

MR. GOODELL: I absolutely agree with you on that, Mr. Chairman. I think he's an honorable individual who is not only served our country for decades but is willing to put up his life on the line for public service. I'm just saying that the procedural protections that we provide Mr. Chang in any report ought to exceed any procedural protections for anyone else. That was my only point. If I may ask a question.

CHAIRMAN LAVINE: Please do.

MR. GOODELL: Mr. Schlein, I understand that you presented us with evidence after November of 2021 Mr. Chang months later changed his driver's license to the Brooklyn address, changed his car registration to the Brooklyn address. May have changed bank accounts registered in the Brooklyn address. Is there anything in your review after November 2nd, 2021 that would be inconsistent, any affirmative action by Mr. Chang that was inconsistent with his stated intent? I mean everything that you have mentioned. The DMV transfer, the driver's license, the bank records, the re-registration. All those are consistent with what he said. And as you know there's one case out there where they said you didn't meet residency requirement because you voted in a different State and as a matter of law had to certify that that was your sole electoral residence. Do you understand my question?

MR. SCHLEIN: I believe so. I think the answer to your question, Mr. Goodell, is as follows: The documentation produced on the Exhibits provided by myself to the Committee show I

think a rolling change to Brooklyn. But not within and complete within that year required by the Constitution just by way of example, not by way of totality working backwards. On November 29th I think a point was made by Member Seawright, Mr. Change self declared his address to be on Cleveland Place in Manhattan when he made contribution to the Zeldin campaign. He declared on that contribution 19 Cleveland Place to be his address. In the lease that was referred to earlier by members Mr. Chang on June 18th, 2022 states to the Bureau of Military and Naval Affairs that he's residing at 19 Cleveland Place, and in fact articulates the name of his landlord on that form and does that by Affidavit.

MR. GOODELL: Mr. Schlein, I appreciate what you're saying. My question though -- no. I just want to -- that wasn't my question. My question was after November --

CHAIRMAN LAVINE: Mr. Goodell, we can ask questions. People who ask questions have to be afforded the opportunity to respond. Whether it's to your or my liking or not doesn't much matter. I'm going to --- please conclude whatever remarks you're making and then Mr. -- Assemblymember Goodell, please continue after that.

MR. GOODELL: I apologize if I interrupted you. I was listening to your earlier presentation. I apologize. My question was: Was there anything after November '21 that changed or confirmed a residence that was inconsistent with Brooklyn? I mean everything that you mentioned either continued reflecting his

Manhattan residence or changed to Brooklyn. What was new moving towards Manhattan?

MR. SCHLEIN: There were documents that I have just referred to and more documents in the package that continues to reflect Mr. Chang's residence in New York County past the November 2021 date continuing through and including December of 2022 on different materials contained within the documents lettered A through K. And Mr. Chang indicates in his testimony his concerns with those documents. Best I can say.

MR. GOODELL: Thank you.

CHAIRMAN LAVINE: Thank you, Mr. Goodell.

Any other questions.

Assemblymember Tannousis, please.

MR. TANNOUSIS: Mr. Schlein, I know that you keep referring to this contribution to the Zeldin campaign, correct? Do you know what form that contribution was in?

MR. SCHLEIN: By check or otherwise. It would have to be a matter of law by check but let me see what is stated on the document. The Board of Elections just states in categorical form monetary contribution received so that's all I have.

MR. TANNOUSIS: So is it possible that it could either be by check or via credit card, right? And that's how State candidates are (inaudible); is that correct?

MR. SCHLEIN: That's correct.

MR. TANNOUSIS: Okay. And we don't know how

that information came uploaded to that BOE system, whether it was a credit card that came back to a certain address or an address that perhaps was on a check; isn't that correct?

MR. SCHLEIN: That certainly is correct.

MR. TANNOUSIS: That is correct. So you cannot sit here and look at the address provided by another entity, another entity the BOE and because it was a New York address now you're insinuating that Lester Chang must have told them that he lived in Manhattan.

MR. SCHLEIN: No. I am stating that the documentation provided to this -- with this contribution denoted that his address being 19 Cleveland Place.

MR. TANNOUSIS: So that was information that you received from the Board of Elections that is not confirmed. You have no idea here today in this hearing how the BOE came in possession of that address, correct?

MR. SCHLEIN: I believe I do because I questioned Mr. Chang about that in my cross-examination and he acknowledged that in fact that address was associated with his contribution to the Zeldin campaign.

MR. TANNOUSIS: (Inaudible) believe what he acknowledged and we can go back to it was that that address was in connection to that contribution but he had at no point did he say in his testimony that that was an address that he gave when he gave his contribution, correct?

MR. SCHLEIN: Using those precise that you just stated Mr. Tannousis, no.

MR. TANNOUSIS: Thank you, Mr. Schlein.

CHAIRMAN LAVINE: Thank you, Assemblymember Tannousis. I believe we have concluded the evidentiary. Oh, Mr. Brown. Assemblymember Brown and I'm sorry and Assemblymember Walker. Please Mr. Brown.

MR. KEITH BROWN: Thank you, Mr. Chair. It's a question directed to you just to pick up where Assemblymember (inaudible) left off. It is my hope that we as members of this Committee would see the Body and the memorandum prepared by Mr. Mo before we are permitted to opine and submit. So I just want to go over the procedures as how the report is being produced.

CHAIRMAN LAVINE: (Inaudible). If I say simply say your holiday wish is granted because it is.

MR. KEITH BROWN: Thank you for that clarification.

CHAIRMAN LAVINE: You know at times there's a little levity during a hearing like this, but every single one of us recognizes the seriousness of this matter and no one should think otherwise.

Assemblymember Walker.

QUESTIONING BY MS. WALKER of MR.

CHANG:

Q. Thank you. I did also want to just sort of come back

to Mr. Chang with respect to one last question on the lease issue. So according to the rent stabilization code Section 2520.11 Subsection K, it says that the rent stabilization code excludes from protection housing accommodations which are not occupied by the tenant not including subtenants or occupants at his or her primary residence. It was your testimony today, correct, that no one is in fact living in the rent-stabilized apartment?

A. As of what period, ma'am?

Q. You were asked by one of our Assemblymembers who presently lives in the apartment -- who lives in this apartment and you said no one.

A. Since when?

Q. Since we've been sitting here. I mean you were asked today whether or not anyone is presently living in the apartment and -- or you were asked who was living in the apartment and your response was no one.

A. No one. That's correct.

Q. So you're aware that when you indicate no one is living there then it means it's excluded from the housing accommodation and the protections afforded and again it's very concerning. It's also one of the Affidavits -- Affidavit of Robert Morgan. He indicated in his Affidavit number 9 that Lester indicated that he had moved his electoral residence to Brooklyn because he was spending more time there to care for his

mother. So do you believe that spending more time qualifies for your intent or would this support your intent that this would be considered your primary residence?

A. Yes.

Q. Can you tell me a little bit about what the spending more time does? Where do you go to the supermarket?

A. During the time --

Q. What's the name?

A. In Brooklyn there's Key Foods. And then in Manhattan I would spend more time it's called iFresh in Chinatown.

Q. Okay. So one of the other questions I have is whether or not you utilize any mode of public transportation. So I'd like to know some of your community interests and how you're just sort of going about your day. Is there a local subway or a bus stop that you frequent?

(Voice from audience)

A. There's a (inaudible) at that time there's two subway station I use East Flatbush Avenue and or Avenue in Avenue J. But in Manhattan there's a subway station by Spring Street number six or Canal Street.

Q. Have you had an opportunity to utilize an emergency room let's say within this last year?

A. For me personally?

Q. Yes.

A. Last year? This year I don't. Last year I don't,

personally I don't. I use a VA Hospital.

Q. VA Hospital. What about any urgent care visits?

A. I use VA Hospital.

Q. So lastly, I'd like to know perhaps about, you know, just sort of some of your deliveries. Where do you usually receive Grubhub, Amazon?

A. I use somebody else office because often for the past year or two I seen even I have delivered in Brooklyn and Manhattan they're stolen so I use somebody else address in Manhattan that I know that somebody will be there to receive it.

MS. WALKER: Thank you, Mr. Chang.

CHAIRMAN LAVINE: Thank you,

Assemblymember Walker. So we've now concluded with all the questioning from members of the panel. Mr. Schlein, I'm going to direct you as special counsel to draft a report for review and consideration by members of this Committee before the end of this year with a view towards transmittal to the new legislature to be seated on January 4th, 2023. Mr. Mo, please do the same. Please get us your memorandum as -- as well. And now I want to extend some thank yous. I want to thank all the members of the Committee who participated today. I want to thank all of the Assembly staff who helped to put this together and I also want to thank Mr. Chang for his testimony and I want to thank all who are watching, who are participating in this exercise in constitutional democracy. Finally, before I'm certainly going to wish everyone all the best for this holiday

season, but I want to comment and on the attorneys. I want to comment and thank the attorneys for the quality and the professionalism of Mr. Mo and Mr. Schlein. It has been a pleasure literally and in this difficult situation you have both really helped. Thank you.

That concludes the work of this hearing. Thank you all.

(Whereupon, the hearing was concluded at 1:05 p.m.)

TAB 7: Remarks by Minority Committee Members



MICHAEL TANNOUSIS
Assemblyman 64th District

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

RANKING MINORITY MEMBER
Aging Committee

COMMITTEES
Cities
Codes
Governmental Employees
Judiciary

Hon. Charles D. Lavine
Chairman, Assembly Judiciary Committee
Albany Office
LOB 831
Albany, NY 12248

VIA EMAIL (lavinec@nyassembly.gov)
(lindgrend@nyassembly.gov)

RE: Assembly Judiciary Committee Hearing – Hon. Lester Chang (49th AD)

Dear Chairman Lavine:

The Republican minority members of the Assembly Judiciary Committee submit the following comments regarding the residency of Assemblyman-elect Lester Chang.

To be clear, the Assembly Judiciary Committee did not meet, discuss, or vote on the process, timeframe, means, or any other factor to be used in reviewing the residency of Mr. Chang, including the employment of attorney Stanley Schlein or any other aspect of this inquiry. In addition, the Judiciary Committee did not meet, discuss, or vote on any report purportedly coming from the Judiciary Committee regarding Mr. Chang. Thus, the Judiciary Committee, *per se*, has not issued any report.

Article III, Section 7 of the New York State Constitution requires in relevant part that an Assembly member “must have been a resident of the county in which the . . . assembly district is contained for the twelve months immediately preceding his or her election.” The New York State Court of Appeals in *Glickman v. Laffin*, 27 N.Y.3d 810 (2016), specified the standard for determining electoral residence:

“The critical determination for electoral residency purposes is that the individual must manifest an intent, coupled with physical presence without any aura of sham.”

Mr. Chang meets both requirements.

1. Intent. Mr. Chang was clear and unequivocal, both in his testimony under oath and in his sworn affidavit, regarding his intent to use his Brooklyn address as his electoral residence starting no later than November 7, 2021. His sworn statements were confirmed by sworn affidavits from Laurie Chang-Kisacky, who stated that “[t]here is absolutely no question that the

Brooklyn house is Lester’s residence...” and from Robert L. Morgan, III., who confirmed under oath that “Lester indicated to me that he had moved his electoral residence to Brooklyn because he was spending more time there to care for his mother.”

All the documents presented at the hearing were consistent with Mr. Chang’s stated intent to select his Brooklyn address as his electoral address, including the fact that he subsequently changed his voter registration, driver’s license, car registration, and bank accounts to his Brooklyn address. No evidence was presented to indicate that Mr. Chang intended to use any other residence as his electoral residence.

2. Presence. The evidence was overwhelming that Mr. Chang had substantial physical presence at his Brooklyn electoral residence. In addition to his own affidavit and sworn testimony, affidavits were presented by his sister, Laurie Chang-Kisacky, and his Brooklyn neighbors, Abraham and Rachel Abramov, Frieda Knopfler, Sarah Rosenbaum, Stella Cerruti, Nachman Rosten and Rabbi Joseph Rabinowitz. No evidence of any kind was presented to dispute his extensive and well-documented daily presence in Brooklyn.

It is deeply disappointing that Mr. Schlein failed to list each of these affidavits in his summary of evidence, and instead grouped them altogether as “various letters and affidavits” And attempted to summarily dismiss these affidavits from nine people as “not particularly probative of the determination made herein.” It is shocking that a document adjudging the qualifications of Mr. Chang implies that several neighbors of Mr. Chang would lie under oath when they attested to his presence in Brooklyn.

Multiple Residences. Although Mr. Chang has continued to lease a small Manhattan apartment, his second residence does not preclude him from designating his Brooklyn address as his electoral residence. Indeed, Mr. Schlein repeatedly confirmed during the hearing that a person can validly have more than one residence as long as only one of those residences is designated as his “electoral residence.” As noted by the Court in *Quart v. Koffman*, 183 A.D.3d 480 (1st Dept. 2020), citing the Court of Appeals in *Glickman v. Laffin*:

“[A] person is permitted to have more than one residence, but is not permitted to have more than one electoral residence.”

Thus, for example, students can live 9-10 months a year outside of New York State and still designate their parent’s house as their electoral residence. Likewise, a person could have an apartment with his wife and still claim his parent’s residence as his “electoral” residence as long as he has the requisite intent and physical presence. Or one may live in Manhattan and claim a home in Hudson as her electoral residence, or have an apartment in Manhattan and have a house in the Catskills, or build a new house in North Carolina and maintain an electoral residence on Long Island.

Indeed, a person does not need to be “domiciled” in their electoral residence (*Willkie v. Delaware County Board of Elections*, 55 AD3d 1088, (3d Dept 2008)), nor establish that “one home or the other is their principal, permanent residence.” *Wit v. Berman*, 306 F3d 1256, 1262 (2d Cir. 2002). Thus, a person can have a “primary residence” in one jurisdiction and an

electoral residence in another jurisdiction, so long as they have the requisite intent and presence regarding the second jurisdiction.

Presumption of Innocence. Consistent with fundamental due process, Mr. Chang is entitled to a presumption of innocence regarding any claim that he violated the Constitutional residency requirement. To overcome that presumption, those challenging his residency have the burden to establish his lack of intent or presence at his Brooklyn address by “clear and convincing proof,” a very high evidentiary standard.

A review of the transcript of the hearing shows that there was no evidence presented to challenge Mr. Chang’s sworn statements that he intended to make Brooklyn his “electoral residence” by November 7, 2021, and that he has maintained a substantial physical presence at that location for well 12 months immediately preceding the election.

Further, the evidence presented incorrectly summarizes the relevant facts. For instance, testimony and evidence show Lester Chang early voted on October 23, 2021, whereas the Schlein document incorrectly concludes that Lester Chang voted in the General Election on November 2, 2021.

Lack of Jurisdiction. The current Judiciary Committee lacks authority to adjudicate the qualifications of a future member of the Assembly. Article III, Section 9 of the State Constitution states in relevant part that:

“Each house shall determine the rules of its own proceedings, and be the judge of the elections, returns and qualifications of *its own members*...”

It is important to note that Mr. Chang is not a member of the current Assembly. The members of the current Assembly cannot rule on the qualifications of a future member of the Assembly. Furthermore, the membership on the current Judiciary Committee will undoubtedly change next year because some of its members were not elected to serve in the Assembly next year.

Conclusion. Mr. Chang was duly elected by the residents of the 49th Assembly District, making history as being the first Asian-American from Brooklyn to be elected to the New York State Assembly. He won fair and square. He has provided substantial evidence of his intent and presence to justify the use of his Brooklyn address as his “electoral residence.” He should be welcomed into the New York State Assembly.

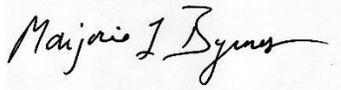
Sincerely,



Michael Tannousis
64th Assembly District
Ranking Republican Membe



Keith P. Brown
12th Assembly District



Marjorie L. Byrnes
133rd Assembly District



Andrew Goodell
150th Assembly District



Michael J. Norris
144th Assembly District



Mary Beth Walsh
112th Assembly District