

**IN THE SUPREME COURT FOR THE STATE OF OREGON**

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State ex rel NICHOLAS KRISTOF,

Plaintiff-Relator,

v.

SHEMIA FAGAN, Secretary of State  
of the State of Oregon,

Defendant.

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Supreme Court No. S069165

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**AMICUS BRIEF OF DERRIN “DAG” ROBINSON, COUNTY  
CLERK/RECORDER, HARNEY COUNTY, OREGON**

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MARKOWITZ HERBOLD PC

Harry B. Wilson, OSB #077214  
Hannah K. Hoffman, OSB #9183641  
MARKOWITZ HERBOLD PC  
1455 SW Broadway, Suite 1900  
Portland, OR 97201  
(503) 295-3085

**Attorneys for Amicus Derrin “Dag” Robinson**

PERKINS COIE LLP

Misha Issak, OSB #086430  
Thomas Russell Johnson, OSB #  
010645  
Jeremy A. Carp, OSB #173164  
Perkins Coie LLP  
1120 NW Couch, 10th Fl.

STATE OF OREGON

Ellen F. Rosenblum, OSB #753239  
Attorney General  
Benjamin Gutman, OSB #160599  
Solicitor General  
Kirstin M. Naito, OSB #114684  
Christopher A. Perdue, OSB #136166

Portland, Oregon 97209  
Telephone: (503) 727-2000  
Email: [misaak@perkinscoie.com](mailto:misaak@perkinscoie.com)  
[trjohnson@perkinscoie.com](mailto:trjohnson@perkinscoie.com)  
[jcarp@perkinscoie.com](mailto:jcarp@perkinscoie.com)

Attorneys for Plaintiff-Relator

Patricia G. Rincon, OSB #162336  
Assistant Attorney General  
1162 Court St. NE  
Salem, Oregon 97301-4096  
Telephone: (503) 378-4402

Email:  
[benjamin.gutman@doj.state.or.us](mailto:benjamin.gutman@doj.state.or.us)  
[kirsten.m.naito@doj.state.or.us](mailto:kirsten.m.naito@doj.state.or.us)  
[chris.perdue@doj.state.or.us](mailto:chris.perdue@doj.state.or.us)  
[patty.rincon@doj.state.or.us](mailto:patty.rincon@doj.state.or.us)

Attorneys for Defendant

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## INTRODUCTION

Oregon law, ORS 204.016(2), provides that individuals are only eligible for county elected office, such as sheriff, commissioner, assessor, and treasurer if they have been “a resident of the county” for “the period of one year preceding the next election.” In Oregon, county clerks determine residency by reviewing objective factors like where a person is registered to vote, where they are licensed to drive, and where they receive their mail. In considering the interpretation of “resident” in Article V, section 2 of the Oregon Constitution, Amicus Derrin “Dag” Robinson, County Clerk for Harney County, Oregon, urges the Court to adopt an interpretation that relies on well-established objective standards to determine residency. Adopting an alternative interpretation, based on a person’s subjective intent that a place is home, would destabilize the definition of “resident” that county clerks use to establish eligibility for hundreds of local offices. To ensure consistency across Oregon, county clerks must be able to rely on an objective interpretation of “resident” that is based on established legal standards.

**I. Mr. Robinson has spent his career in elections and serves on a national-level committee for election standards.**

Amicus Derrin “Dag” Robinson is one of the most knowledgeable elections officials in Oregon. He has more than 27 years of experience in records and elections administration. Mr. Robinson began working in

elections as a high school student, assisting the Harney County Clerk setting up polling places. Mr. Robinson obtained a bachelor's degree in political science and public administration from Boise State University. He became Harney County Deputy Clerk and Elections Clerk in 1997 and served in that role until 2012. In 2012, the people of Harney County elected Mr. Robinson Clerk for the County. They re-elected him in 2016 and 2020.

The Oregon Association of County Clerks has designated Mr. Robinson a Certified Elections Administrator, Certified Recording Administrator, and Certified County Clerk because he has met the extensive required criteria of experience and training.

Mr. Robinson has national-level experience in election standards. He has served on the United States Elections Assistance Commission Standards Board since 2015, when then-Secretary of State Jeanne Atkins appointed him. He has been reappointed by both subsequent secretaries, Republican Bev Clarno and Democrat Shemia Fagan. Mr. Robinson was elected Secretary of the Standards Board in July 2021 and presently serves on its executive board.

Mr. Robinson also has significant experience in Oregon elections administration at the statewide level. Mr. Robinson sits on the Oregon Votes Project Executive Steering Committee and the Oregon Votes County

Subcommittee. He is the co-chair of the Legislative Committee of the Oregon Association of County Clerks and has previously served on the Change Control Board for the Oregon Centralized Voter Registration and Election Management System.

Mr. Robinson was a City Councilor for the City of Burns and the City of Hines. He presently serves on the Local Board of the United States Selective Service and was formerly a member of the Harney County Historical Society Board.

**II. The Court should adopt an interpretation of “resident” that relies on objective standards, like voter registration, to determine residency.**

**A. Mr. Robinson relies on objective factors, like where a person is registered to vote, licensed to drive, or receives mail, to determine residency for eligibility to serve in office.**

As a Harney County Clerk, Mr. Robinson is responsible for determining whether candidates for county, city, and special district elected offices in Harney County are eligible and qualified to serve. For County offices alone, Mr. Robinson must determine whether candidates for county judge, commissioner, sheriff, clerk, assessor, and treasurer meet state-law residency requirements.<sup>1</sup> Under state law, a person must be a resident of the

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<sup>1</sup> Harney County’s governing body is a county court. *See* ORS 203.111.

county in which they are elected for county office for at least one year prior to the election. ORS 204.016(2).

When Mr. Robinson determines whether a person is qualified to run for office in Harney County, the first place he looks is Oregon's Centralized Voter Registration and Elections Management System, which shows whether a candidate is registered to vote in Harney County. If so, he looks for how long they have been registered and if they have voted in past elections. If a person has been registered to vote in Harney County for at least a year, Mr. Robinson determines that they are eligible to serve in Harney County office. If they have been registered to vote in a different county within the last year, Mr. Robinson determines that they are not eligible to serve in Harney County office.

If a person is not registered to vote at all, Mr. Robinson then moves to other evidence, such as where the candidate has a driver's license or receives their mail. Those objective factors are the best evidence of a person's residence.

There are three reasons Mr. Robinson begins his residency analysis with the voter database. First, a person who is registered to vote in Harney County is, by definition, a resident because voter registration requires residency in the county where a person votes. ORS 247.013, 247.035.



Second, where a person chooses to vote is an objective indicator of where they believe their residence is and where they actually spend most of their time. Third, in Oregon a person may only be registered to vote in one county at a time. ORS 247.013(2), 247.035(2). Thus, examining voter registration ensures that a person does not seek elected offices in two different counties simultaneously.

**B. The Supreme Court should adopt an interpretation of “resident” that relies on similar objective factors to determine residency.**

Amicus urges the Court to adopt an interpretation of “resident” that relies on well-established objective factors to determine residency.<sup>2</sup> If this court invests “resident” with a subjective meaning, it would have a significant effect on county elections. A subjective interpretation of “resident” creates multiple problems for county clerks. First, it would lead to inconsistency across and within counties. Some county clerks could interpret “resident” to allow candidates to run in their counties based on the candidates’ sentiments, rather than where the candidates actually live and

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<sup>2</sup> Amicus understands that the issue before the Court concerns the interpretation of “resident” in Article V, section 2 of the Oregon Constitution, which applies to the State’s governor, not the interpretation of “resident” in ORS 204.016. But “resident” is not defined in ORS Chapter 204. Whatever interpretation the Court adopts for Article V, section 2, could well set the standard for the term “resident” in state and local eligibility statutes and ordinances.

vote. If the test for residency is subjective, county clerks will lack clear standards to apply, potentially leading to candidates and elected officials having only tenuous connections to the communities they were elected to serve. Non-local individuals might end up making highly local decisions, such as setting tax rates, imposing zoning laws, and running the county jail.

It would also create a situation in which the rules for residency and eligibility change with who is elected clerk. Where Mr. Robinson may adhere to the objective definition of “resident,” his successor may take a more expansive, or more restrictive, subjective view. The result is inconsistency and unpredictability for the people who are governed by county officials.

Second, establishing a subjective test for “resident” could lead to absurd results. For example, if the Court holds that where candidates register to vote is inconclusive in determining where they are residents for the purpose of determining eligibility for elected office, an individual might be able to serve in elected office in one county and vote in a different county. A person could also attempt to serve in elected office in multiple counties at the same time.

Third, adopting a subjective standard would make it more difficult for county clerks to definitively determine where a person’s residence is.

Instead of relying on well-tested objective factors, county clerks would be forced to make imprecise credibility determinations about the sincerity of a person's subjective intent.

Finally, adopting a subjective definition of "resident" could expose small, local communities to unexpected influences. If individuals can establish residence based solely on their subjective sentiments, and maintain multiple residences at the same time, individuals who live and vote outside of local communities—even outside of Oregon—could attempt to obtain control of county and city offices. In one example, members of the Rajneesh cult moved to Antelope, Oregon, a town with fewer than 100 residents. By establishing residency in Antelope, they were able to approve a measure changing Antelope's name to Rajneesh. A member of the cult was installed as city attorney.

Residency requirements, like those in ORS 204.016(2), enhance Oregon communities by ensuring that electors have "a chance to observe [candidates] and gain firsthand knowledge about [their] habits and character." *Chimento v. Stark*, 353 F. Supp. 1211, 1217 (D.N.H. 1973), *aff'd*, 414 U.S. 802 (1973). Amicus urges this Court to adopt an interpretation of "resident" that relies on objective factors to determine residence.

**CONCLUSION**

This court should adopt an interpretation of “resident” that relies on objective factors, like where a person votes, where they are licensed to drive, and where they receive their mail.

DATED this 26th day of January, 2022.

MARKOWITZ HERBOLD PC

By: *s/ Harry B. Wilson*

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Harry Wilson, OSB #077214  
HarryWilson@MarkowitzHerbold.com  
Hannah K. Hoffman, OSB #183641  
HannahHoffman@MarkowitzHerbold.com  
Attorneys for Amicus Derrin “Dag”  
Robinson

**NOTICE OF FILING AND PROOF OF SERVICE**

I hereby certify that I served on January 26, 2022, I directed the original Amicus Brief of Derrin “Dag” Robinson to appear *Amici Curiae* (“Amicus Brief”) to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and electronically served upon Misha Isaak, Thomas Russell Johnson, Jeremy A. Carp, attorney for relator, and Benjamin Gutman, Kirsten M. Naito, Christopher A. Perdue, and Patricia G. Ricon, attorney for plaintiff, by using the court’s electronic filing system. Additionally, I further certify that on January 26, 2022, I directed the Amicus Motion be served upon Thomas Russell Johnson, Jeremy A. Carp, attorney for relator, and Benjamin Gutman, Kirsten M. Naito, Christopher A. Perdue, and Patricia G. Ricon, attorney for plaintiff, by electronic mail to the following email addresses:

misaak@perkinscoie.com  
trjohnson@perkinscoie.com  
jcarp@perkinscoie.com  
benjamin.gutman@doj.state.or.us  
kirsten.m.naito@doj.state.or.us  
chris.perdue@doj.state.or.us  
patty.rincon@doj.state.or.us

*s/ Harry B. Wilson*

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Harry B. Wilson

Of Attorneys for Amicus Derrin “Dag”  
Robinson

**CERTIFICATE OF COMPLIANCE WITH ORAP 5/05(1)(d)**

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(1)(b) and (2) the word-count of this motion (as described in ORAP 5.05(1)(a)) is 1,518 words. I further certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(3)(b).

*s/ Harry B. Wilson*

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Harry B. Wilson

Of Attorneys for for Amicus Derrin “Dag”  
Robinson