

IN THE SUPREME COURT FOR THE STATE OF OREGON

State ex rel NICHOLAS KRISTOF,

Plaintiff-Relator,

v.

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

Defendant.

Supreme Court No. S069165

MANDAMUS PROCEEDING

RELATOR NICHOLAS KRISTOF'S OPENING BRIEF

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INTRODUCTION

Nicholas Kristof petitions this Court for a peremptory writ of mandamus requiring the Oregon Secretary of State to accept his declaration of candidacy and include him as a Democratic candidate for Governor on the May 2022 primary ballot. Although Kristof is a frontrunner in the race to become Oregon’s next Governor, the Secretary of State has taken the extraordinary step of preventing Kristof’s name from appearing on the primary ballot. Her action is based on a previously untested and uninterpreted provision of the Oregon Constitution—Article V, section 2—providing that the Governor must have been “a resident within this State” for the “three years next preceding his election.” According to the Secretary of State, Kristof will not have been a “resident” within Oregon for the three years preceding his election.

What it means to be a “resident” under Article V, section 2, has never been addressed by an Oregon court—let alone this Court. Yet, in her role as the filing officer for statewide elections, the Secretary of State found that Kristof is unable to satisfy this requirement. In doing so, she gave no weight to forty years of published writings in which Kristof has claimed his Yamhill farm as his home nor affidavits swearing to the same. She also took the unusual step of assessing whether Kristof was a “resident” by applying the more restrictive “domicile” doctrine. This set up a false choice between Kristof’s dual residences in Oregon and New York because a person may have only one domicile. More than that,

these steps departed from decades of past practice by her own office, which has maintained that, “[a]bsent compelling evidence to the contrary, a person should be presumed to be a resident of the place or places they consider to be home.”

The Secretary of State erred for three reasons. First, the text and history of Article V, section 2, show that a “resident” is someone who intends to be at home in Oregon and acts pursuant to that intent—not someone who is domiciled in the state. Second, regardless of whether the forgoing standard or a domicile standard applies, Kristof satisfies the residency requirement because he has long viewed and treated Oregon as his home. Not only has he claimed the Kristof farm as his home for 50 years, but he was raised there, spent all but one summer there since the 1970s, built himself and his family living quarters there in 1994, has managed the farm since 2010, and has leased the farm since 2018. Finally, the rule announced by the Secretary of State violates the federal constitution because it is not narrowly tailored to advance the state’s interest in limiting public office to those who are familiar with the state. Kristof is thus eligible to serve as Governor and entitled to the requested mandamus relief.

STATEMENT OF THE CASE

A. Nature of the Action and Relief Sought

This original mandamus proceeding arises under ORS 34.110. Kristof requests that this Court issue a peremptory writ of mandamus requiring the Secretary of State to accept his declaration of candidacy and submit his name for

printing on the May primary ballot.

B. Nature of the Judgment

This original mandamus proceeding arises from the Secretary of State's decision that Kristof does not qualify to hold the office of Governor in this upcoming election cycle and, as such, that ORS 254.165(1) prohibits Kristof from appearing on the primary ballot. (App 127-28.)

C. Basis of Appellate Jurisdiction

Appellate jurisdiction arises under Article VII, section 2, of the Oregon Constitution and ORS 34.120(2).

D. Effective Date for Appellate Purposes

The Secretary of State issued her decision on January 6, 2022. (App 126-28.) Kristof filed his initial pleading in this proceeding on January 7, 2022.

E. Question Presented

Under Article V, section 2, of the Oregon Constitution, which requires the Governor to have been “a resident within this State” for the “three years next preceding his election,” is Kristof eligible to serve as Governor when he was raised on his family's Oregon farm, has returned to live on the farm for all but one summer since the 1970s (and at other times), built living quarters on the farm in the 1990s, has managed the farm's operations since 2010, has leased the farm since 2018, has spent substantial time on the farm over the past four years, and attests under oath that he is and long has been an Oregon resident?

F. Summary of the Argument

Kristof satisfies the residency requirement of Article V, section 2, of the Oregon Constitution. First, the text and history of the provision demonstrate that a person is a “resident” of Oregon if they intend for the state to be their home and act pursuant to that intent. Although the term “resident” is not defined in Article V, section 2, its use in other parts of the state constitution indicates that Oregon residency does not require continuous physical presence in the state and is not exclusive of ties to other states. Similarly, records of the Oregon Constitutional Convention show that the residency requirement was meant to serve a practical purpose: excluding “strangers” who were unfamiliar with the state. These policy objectives are consistent with early Oregon and Indiana cases interpreting the term “resident.” Specifically, early cases distinguish residency from domicile and recognize that a person may have multiple residences so long as they intend for each place to be their home and act in a manner consistent with that intent.

Second, under the standard described above, Kristof satisfies Article V, section 2, because he has long viewed and treated Oregon as his home. In published writings and interviews dating back to 1982, Kristof has consistently described his family’s Yamhill farm as his home. He also attests under oath that that he considers the farm to be his home; intends to return there when he is away; has always planned to live there full-time in retirement; and has been present there with more continuity since 2018. More than that, Kristof has treated the

farm as his home by spending virtually every summer there since the 1970s; purchasing and improving nearby lands starting in 1993; building an addition to the farmhouse for himself and his family in 1994; managing the farm's operations since 2010; and directly leasing the farm since 2018. Moreover, even if domicile were the governing standard, Kristof established Oregon as his domicile when he first moved to the state in 1971, and he has never expressed or carried into effect an intent to abandon his Oregon domicile.

Finally, the rule adopted by the Secretary of State—which excludes people with multiple homes or who have registered to vote in another state—violates the federal constitution. When reviewing durational residency rules, courts apply strict scrutiny because such rules burden the fundamental rights to vote and move between states. In doing so, they have recognized that states hold an interest in limiting public office to those who are familiar with the state, but they have also struck down durational residency rules that sweep more broadly than this justification requires. Here, the rule announced by the Secretary keeps from office many people who are residents of more than one state or who have registered to vote in another state. That interpretation sweeps more broadly than the interest it purports to advance by excluding a candidate who—despite having ties to a second state—was raised in Oregon, maintains a home in Oregon, spends time in Oregon, owns property in Oregon, and identifies as an Oregonian. In other words, this new rule is not necessary to advance the state's asserted interest.

G. Statement of Material Facts

1. Kristof was raised in Yamhill, Oregon, and he has maintained a home in Yamhill for his entire adult life.

Kristof was raised in Yamhill, Oregon. He moved to Yamhill with his parents, Ladis and Jane, when he was 12 years old after Ladis accepted a teaching position at Portland State University. (App 28.) The family purchased a 73-acre farm in unincorporated Yamhill, which has been the Kristof family homestead ever since. (*Id.*) Kristof attended and graduated from the nearby Yamhill Carlton High School, where he was student body president and editor of the school newspaper. (*Id.*) After finishing high school in 1977, Kristof spent a year working full-time as an Oregon state officer for Future Farmers of America. (*Id.*)

Since leaving home for college in 1978, Kristof has returned to his family's farm virtually every summer. (*Id.*) In 1994, Kristof and his wife, Sheryl WuDunn, built an addition to the Kristof family home so that it would be large enough to accommodate Kristof, WuDunn, and their children living there. (*Id.* at 29.) They have designated bedrooms in the home and have always kept personal items like clothing there. (*Id.*) Kristof and WuDunn have also purchased three nearby properties. (*Id.* at 29-31.) The first, purchased in 1993, is a 150-acre property in Yamhill; the second, purchased in 1996, is a 290-acre property in McMinnville; the third, purchased in 2020, is a 115-acre parcel adjacent to their Yamhill farm. (*Id.*) Since purchasing these properties, Kristof and WuDunn have managed, improved, and cultivated them. (*Id.*) They have also paid Oregon property taxes

on each since their acquisition. (*Id.*)

Despite needing to live in New York and abroad during parts of the year for work, Kristof and WuDunn have treated the Yamhill family farm as their home in other ways. When their professional obligations allowed, Kristof and WuDunn spent additional time on the farm. In 1994 and 1999, the couple and their children lived on the farm for most of the year, and their children attended Oregon schools in 1999. (*Id.* at 29.) Kristof was also registered to vote in Oregon and kept an Oregon driver's license through the 1990s. (*Id.*) He has long maintained that he plans to live full-time in Yamhill in retirement and wishes for his ashes to be scattered in Oregon. (*Id.* at 32.) When Kristof's father passed away in 2010, Kristof took over management of the family farm—maintaining farm equipment, ordering trees, and overseeing timber programs. (*Id.* at 30.) He has also regularly received mail at his Yamhill address for decades, and he has used return mailing labels listing the same address. (*Id.* at 29.)

Since 2018, Kristof has spent substantially more time in Oregon. With their children grown, Kristof and WuDunn spent much of 2018 on the Kristof farm researching and writing a book about the social and economic changes to Yamhill, as well as the ways Kristof's childhood classmates have experienced those changes. (*Id.* at 30-31.) As a result of their more regular presence, and in response to market pressures, Kristof and WuDunn decided to transition the farm's principal crop from cherries to cider apples and wine grapes—a process

that required a significant investment of time and money. (*Id.* at 31.) They formalized their investment by leasing the farm from Kristof’s mother in October 2018. (*Id.*) The next summer, in August 2019, an Oregon limited liability company was formed to hold their interest in the farm, and they hired three people to work the farm. (*Id.*) In recognition of the increased time and money spent in Oregon, Kristof and WuDunn filed Oregon tax returns for 2019 and 2020. (*Id.*)

2. Kristof has consistently described Oregon as his home in both his personal and professional capacities.

Kristof has always viewed Oregon as home. That sentiment was captured early in his career, when he declared in an essay written for the Washington Post: “I know Yamhill, for this is my home.” (*Id.* at 38.) He has repeated this view regularly. In a 2004 opinion piece, for instance, Kristof wrote about being “home—too briefly—in Yamhill, Ore.” over the summer. (*Id.* at 42.) Similarly, in a 2017 appearance on CNN, Kristof described having been “home in Oregon over the weekend.” (*Id.* at 48.) And in a 2018 article, Kristof described how he and his daughter “complete[d] the Pacific Crest Trail in my home state, Oregon.” (*Id.* at 61.) In July 2019, Kristof wrote the foreword to a coffee table book, “Oregon, My Oregon,” in which he extolled the “profound and sometimes ostentatious pride” that “[w]e Oregonians” feel for “our state,” proclaiming that “I firmly count myself as an Oregonian.” (*Id.* at 98.) The same year, in an

interview with Portland Monthly Magazine, Kristof described himself as a “local yokel” and “someone who is part of the community” in Yamhill.¹ (*Id.* at 69.)

Kristof’s sworn statement that he lives in Yamhill and considers his farm to be home is corroborated in the record not just by decades of professional writings and interviews, but also by third-party witnesses. Robert Bansen, a Yamhill dairy farmer who has known Kristof since 1973, stated under oath that “my observation has been that [Kristof] always thought of and treated Yamhill and his family farm here as his permanent home.” (*Id.* at 111.) Based on his regular conversations with and observations of Kristof, Bansen attested that Kristof “has maintained a close connection with the state and our local community for his entire adult life.” (*Id.*) Bansen has also lent advice on the recent transition of Kristof’s farm, and thus has observed Kristof’s presence in Yamhill “quite a bit more regularly” since 2018. (*Id.*)

Kristof’s friend since 1984, Michael Gisser, says the same: “There is no question in my mind that Nicholas Kristof considers Yamhill to be his home, and has for the entire duration of our acquaintance.” (*Id.* at 119.) “Nick spent time living in other places, including Beijing and Tokyo, for professional purposes, but, from my observations, it was always his intention to make his home and his family’s at the farm in Yamhill.” (*Id.*) Gisser’s affidavit also details his

¹ “Local yokel” is defined as “a local resident of a rural place.” *McGraw-Hill’s Dictionary of American Slang & Colloquial Expressions* (2006).

observations from spending time with Kristof at his Yamhill home, including Kristof's relationships with neighbors, maintenance of his property holdings, and manner of acting while at home. (*Id.* at 119-20.)

3. Kristof was a frontrunner in the gubernatorial race until the Secretary of State excluded him from the ballot.

On October 27, 2021, Kristof announced that he was running for Governor. Since announcing his candidacy, nearly 6,000 Oregonians from 35 different counties have donated to his campaign, and he has raised more than \$2.5 million. (*Id.* at 79.) No other candidate seeking the Democratic nomination for Governor has received as many donations or raised as much money. (*Id.* at 11.) Kristof also leads in the polls and has secured endorsements from key community leaders and organizations, including the state's largest private-sector union. (*Id.*) Despite these facts, the Secretary has taken the extraordinary step of denying voters the choice to elect Kristof as their next Governor. (*Id.* at 126.)

(a) The process for determining Kristof's eligibility was highly irregular and departed from decades of past practice by the Secretary of State's office.

On December 20, 2021, Kristof submitted his declaration of candidacy to the Secretary of State. ORS 249.020. (App 7.) Just one day later, the Secretary took the unusual step of moving to "verify" that, if elected, Kristof would qualify for the office of Governor. (App 9-10.) Specifically, she sought to determine whether Kristof satisfies the requirements of Article V, section 2, of the state constitution, which requires a candidate for Governor to have been "a resident

within this State” for the “three years next preceding his election.” (*Id.*) But instead of submitting specific inquiries to him or requesting additional evidence or documentation from him, the Secretary made an open-ended request for any further information about his residency. (*Id.*) On January 3, 2022, Kristof responded by offering more than 100 pages of documentation of his residency, consisting of both legal argument and supporting evidence. (*Id.* at 11-112.)

After taking just two days to review Kristof’s evidence and legal argument, the Secretary concluded that Kristof does not qualify to be Governor because, in her view, he has not been a “resident” since on or before November 8, 2019. (*Id.* at 126-28.) In a brief and bullet-pointed explanation, the Secretary offered no supporting legal citations and drew inferences from evidence and facts not in the record. For example, she discounted the weight of Kristof having hired and supervised workers on his Yamhill farm because he did not describe the extent of his supervision or the way in which it had been effectuated. (*Id.* at 127.) But the Secretary never requested that information, and the record contained no evidence that his supervision was anything less than direct. Similarly, she discounted the weight of Kristof having paid income taxes in Oregon for 2019 and 2020 because he did not specify whether he filed as a resident or nonresident. (*Id.*) But, again, the Secretary never requested that information—Kristof happily would have provided it—and the record contained direct evidence that Kristof was living and working much of 2019 and 2020 in Oregon.

In addition to her reliance on evidence and facts not in the record, the Secretary of State gave no weight to Kristof’s sworn statement that he has lived in Yamhill part-time and considered his farm to be his home since 1971. That decision departed from decades of past practice by her own office. As then-Secretary of State Phil Keisling explained in resolving a challenge to the residency of Wes Cooley when he was running for State Senate in 1992, “absent sufficient clear and convincing evidence, [the Elections Division] must place substantial weight on [a candidate’s] sworn affidavit that he intend[s] [a place] to be his residence.” (*Id.* at 3.) More recently, Keisling and two other former secretaries of state—Jeanne Atkins and Bill Bradbury—confirmed in a published essay that the Secretary of State’s office has long assigned considerable weight to a candidate’s sworn statement that he or she considers Oregon to be their home: “Absent compelling evidence to the contrary, a person should be presumed to be a resident of the place or places they consider to be home.” (*Id.* at 76.)

The explanation offered by the Secretary of State also misstated material facts. First, she described Kristof as having spent more time present in Oregon starting only in 2019. (*Id.* at 127.) It was uncontradicted in the record, however, that Kristof spent more time on his farm starting a year earlier, in 2018, while researching and writing a book focused on social and economic changes to Yamhill. (*Id.* at 30-31.) Second, the Secretary of State described Kristof as having paid New York income taxes in 2021. (*Id.* at 127.) But, like most people, Kristof

has yet to file income taxes anywhere for 2021. Finally, the Secretary of State accurately described New York law as allowing a voter to choose between one of several residences, but she then implied that Kristof tried to vote at his New York residence while also claiming the right to vote in Oregon. (*Id.* at 126.) That is a misrepresentation. Nowhere in the record does Kristof claim he could have registered or voted in two states at once.

(b) A subsequent press conference raised further questions about the process for determining Kristof’s eligibility and the standard applied by the Secretary of State.

The same day that the Secretary issued her decision to exclude Kristof from the ballot, she held a press conference about the decision. These public statements revealed further infirmities in the reasoning and process used to exclude Kristof. The Secretary said that she had deferred to the “expertise” of career compliance staff in the Elections Division, saying their recommendation was “the same kind of decision they issue hundreds of times every election,” but the compliance staff are not lawyers and had never before applied the residency requirement of Article V, section 2. (Supp App 1, 6.) She also said that she had not received written advice from the Oregon Department of Justice and instead consulted counsel informally by telephone.² (*Id.* at 12.)

² It remains unclear whether DOJ advised the Secretary that Kristof is not eligible, or merely told her that it would defend her decision in court either way because the legal question is unsettled. (*See id.* at 12 (“We’re very confident that [DOJ is] going to defend this decision and so we moved forward with that without a written opinion ***.”).)

Moreover, the Secretary again shaded and mischaracterized the factual record. She said that Kristof “lived” in New York and returned there after he “travel[ed]” or “vacation[ed]” in Oregon, despite Kristof having attested that he lived in both places and considered Oregon the home to which he returned when away. (*Id.* at 6.) She also chided Kristof for not providing documentation of his Oregon income tax filing status for 2019 and 2020, despite not having requested that information or indicating to Kristof that it could be relevant to her decision. “[H]e didn’t even claim that he’d filed those taxes as an Oregon resident,” she stated, even though Kristof did in fact file Oregon income taxes as a part-year resident in 2019 and a full-year resident in 2020.³ (*Id.* at 7.) Her staff also admitted that they had not requested or indicated interest in any specific types of evidence before mischaracterizing Kristof’s submission by saying “we received a memo [from Kristof], but no documents attached.” (*Id.*) Of course, three affidavits with exhibits had been included with Kristof’s submission—precisely the sort of evidence that had been determinative in prior cases. (App 28-34, 111-12, 119-20.) In the end, the Secretary said that Kristof’s eligibility “wasn’t even a close call,” and that “if a person casts a ballot in another state, they are no longer a resident of Oregon. It’s very, very simple.” (Supp App 8, 25-26.)

³ The Court is considering this appeal on a closed record, as it should, so there is no mechanism for Kristof to supplement the record now. Kristof offers these facts about his taxes only to emphasize the flimsy and indeed false foundations of the Secretary’s determination.

Based on her conclusion that Kristof does not qualify to hold the office of Governor, the Secretary of State has taken the extraordinary step of excluding Kristof's name from the primary ballot. *See* ORS 254.165(1). The result is that, despite the enthusiastic and widespread support for Kristof's candidacy, Oregon voters will be denied the opportunity to elect him as their next Governor unless this Court grants Kristof the requested mandamus relief.

ASSIGNMENT OF ERROR

The Secretary of State erred in finding that Kristof is ineligible to serve as Governor because he will not have been "a resident within this State" for the "three years next preceding his election." Or Const, Art V, § 2.

A. Preservation of Error

The only issue before the Secretary of State was whether Kristof satisfies the residency requirement of Article V, section 2. (App 9-10, 126.) Kristof has consistently argued that he satisfies the residency requirement, including by way of a letter submitted to the Secretary, as well as a supporting affidavit and memorandum of law attached to his letter. (*Id.* at 11-25, 28-34, 95-109.)

B. Standard of Review

The only issue in this mandamus proceeding is whether the Secretary of State correctly interpreted and applied the residency requirement of Article V, section 2. This Court reviews interpretations of the state constitution "for legal error." *State v. Rangel*, 328 Or 294, 298, 977 P2d 379 (1999).

ARGUMENT

Kristof satisfies the residency requirement of Article V, section 2, of the Oregon Constitution. First, a “resident” is someone who intends to be at home in Oregon and acts pursuant to that intent. As the provision’s text and history show, the concept of residence is distinct from the doctrine of domicile, meaning that a person may have more than one residence. Second, under either a residency or domicile standard, Kristof satisfies the requirement of Article V, section 2, because he has consistently viewed and treated Oregon as his home, and he has never wavered in his intent that the state remain his home. Finally, the Secretary of State’s expansive interpretation of Oregon’s residency requirement violates the United States Constitution because it is not narrowly tailored to advance the state’s interest in excluding candidates who are unfamiliar with Oregon. Accordingly, because Kristof satisfies the residency requirement of Article V, section 2, he is eligible to serve as Governor.

A. The text and historical context of Article V, section 2, show that a person is a “resident” of Oregon if they intend for the state to be their home and act pursuant to that intent.

A person is a “resident” of Oregon for the purpose of ballot access if they intend for Oregon to be their home and act pursuant to that intent. Article V, section 2, of the state constitution provides that any person serving as Governor must have been “a resident within this State” for the “three years next preceding his election.” When construing a provision of the state constitution, Oregon

courts consider three factors: (1) its text “in context,” (2) the “historical circumstances” of its adoption, and (3) any “case law that has construed it.” *State v. Mills*, 354 Or 350, 353, 312 P3d 515 (2013). Here, in the absence of any case directly construing the residency provision, its text and history—including contemporaneous Oregon and Indiana cases interpreting the term “resident” in other contexts—evidence that a “resident” is someone who intends for Oregon to be their home and acts pursuant to that intent.

1. The text of Article V, section 2, shows that residency is distinct from domicile and nonexclusive of ties to other states.

When read in context, the text of Article V, section 2, of the Oregon Constitution demonstrates that its drafters intended the term “resident” to be distinct from the doctrine of domicile and broad enough to encompass individuals with more than one home. It also suggests that residency requires less than a continuous physical presence in the state and that a person’s ability or choice to vote in Oregon is not dispositive of their residency.

First, the original constitution’s requirement that the Secretary of State “reside” at the seat of government supports the premise that—unlike domicile—a person can have more than one residence. Before it was amended in 1986, Article VI, section 5, required the Secretary of State to “reside” at the “seat of government” while in office (i.e., Marion County). But this clause did not restrict the position of Secretary of State to people with their one true home or “domicile” in Marion County; indeed, early secretaries had principal residences elsewhere.

A secretary could live—and vote—elsewhere and still “reside” in Marion County for the purpose of serving in that office. Although Article V, section 2, uses the word “resident,” not “reside,” the original Oregon Constitution used the terms interchangeably. *Compare* Or Const, Art V, § 2 (requiring the Governor to be “a resident within this State”), *with* Or Const, Art VII, § 5 (requiring that Justices of the Oregon Supreme Court “shall have resided in the state”). Thus, the drafters likely intended “resident” to mean something less restrictive than “domicile.”

Second, unlike other state constitutions, the Oregon Constitution does not require the Governor to be both a “resident” *and* “citizen” of the state, suggesting that continuous physical presence in the state is not required. As the Indiana Supreme Court observed when interpreting a similar residency provision in the Indiana Constitution, it is only in those states where both residency *and* citizenship are required that other state supreme courts have found durational residency provisions to require “continual physical presence.” *State Election Bd. Bayh*, 521 NE2d 1313, 1316 (Ind 1988). “In each case, the court read residency to require continuing physical presence because any other interpretation would have made the requirement mere surplusage to the requirement of state citizenship.” *Id.* (citing *Ravenel v. Dekle*, 218 SE2d 521, 527 (SC 1975); *Sec’y of State v. McGucken*, 222 A2d 693, 695-96 (MD 1966)). The drafters’ omission of a state citizenship requirement from Article V, section 2, suggests that—unlike in other states—they did not intend to require a sustained physical presence.

Third, where the drafters of the state constitution intended to tie a person's eligibility for office to their continuing physical presence in a place, they used the term "inhabitant" rather than "resident." Under Article IV, section 8, no person may be a state senator or representative unless they have been, "for one year next preceding the election," an "inhabitant" of the district that they represent. As this Court explained in *Roberts v. Meyers*, this requirement reflects the drafters' belief that a state legislator "best represents his constituency when he lives among them, has knowledge of their problems, and is more readily available to [them]." 260 Or 228, 230, 489 P2d 1148 (1971); *see also Holmes v. Or. & Cal. Ry. Co.*, 5 F 523, 527 (D Or 1881) ("[A]n inhabitant of a place is one who ordinarily is personally present there ***."). The drafters' use of the term "resident" rather than "inhabitant" to describe a person's eligibility for the office of Governor suggests that they did not have the same concerns about the officeholder having continually "live[d] among" their far-flung constituents.

Fourth, at least two other provisions of the original state constitution use the terms "resident" and "residence" in ways that suggest they were understood to be nonexclusive of activities in other states. First, the original Article I, section 31, contained a provision contemplating that "foreigners" could be "residents" of Oregon for the purpose of owning property. Although the provision does not describe how "foreigners" could become "residents," it evidences that the term "resident" was understood to include people with connections outside of the

state—even those with robust connections. Second, the original Article I, section 5, contained a provision specifying that “[n]o soldier, seaman, or marine *** shall be deemed to have acquired a residence” as a result of being “stationed within the [state].” The need for this provision suggests that, despite the members of each of these groups having significant connections outside the state, likely owning property outside the state, and even potentially voting outside the state, they could have qualified as residents were it not for an express prohibition.

Finally, there is evidence that the drafters of the state constitution did not view a person’s registration to vote in Oregon as dispositive of residency. One of the many racist provisions of the original state constitution provided that, unless a “Chinaman” was “a resident of the state” when the constitution was ratified, they would be denied certain property rights. Or Const, Art XV, § 8. This provision clearly contemplated that Chinese immigrants could be residents of Oregon when the state constitution was ratified. But, despite their ability to become residents, Chinese immigrants could not vote in Oregon until 1927. *See* Statutes of the Oregon Territory, ch 1, § 1, p 51 (1853); Or Const, Art II, § 2 (1859). Thus, when the Oregon Constitution was drafted, a person’s ability or decision to vote in Oregon did not determine whether they were a “resident” of the state within the meaning of Article V, section 2.

2. The historical context of Article V, section 2, shows that it was targeted at people who were unfamiliar with the state, not people with secondary homes in other states.

The historical circumstances attendant to the adoption of Article V, section 2, reinforce the above analysis and evidence that a “resident” is someone who both intends for Oregon to be their home and acts pursuant to that intent. When considering the historical circumstances of a constitutional provision, this Court often looks to the debates of the Constitutional Convention and decisions of the Oregon and Indiana courts concerning the same or similar issues up until Oregon achieved statehood in 1859. *See State v. Hirsch*, 338 Or 622, 643-56, 114 P3d 1104 (2005). The purpose of this analysis “is to ascertain the meaning most likely understood by those who adopted the provision” and, based on that meaning, to identify “relevant underlying principles that may inform *** application of the constitutional text to modern circumstances.” *State v. Davis*, 350 Or 440, 446, 256 P3d 1075 (2011). This inquiry is not meant to “freeze the meaning of the state constitution in the mid-nineteenth century.” *Id.*

(a) The debates of the Constitutional Convention show that Article V, section 2, was intended to exclude candidates who were unfamiliar with Oregon.

There are few mentions of the durational residency requirement in the debate records of the Oregon Constitutional Convention, but the comments that were recorded suggest that the requirement had two overlapping objectives: (1) to ensure that holders of Oregon’s highest office were familiar with the state, and

(2) to exclude “strangers” with no ties to the state. In addition, although never expressly stated in the record, the debates surrounding other voting and franchise provisions strongly suggest that the durational residency requirement was further animated by an underlying fear of foreigners, people of color, and other outsiders viewed as a threat to white elites in the state.

First, as reflected in the remarks of James Kelley, the framers wished to ensure that any Governor would be familiar with the state. Kelly asked: “Why should a man be elected our chief executive who had only just arrived amongst us? A man should know something of the state before he assumed to take into his hands the reins of the government.” Charles H. Carey, *The Oregon Constitution and Proceedings and Debates of the Constitutional Convention of 1857*, 222 (1926). This comment suggests that the framers were concerned less with the details of whether someone with lifelong ties to the state was also spending time outside of the state and more with the foundational question of whether a person “kn[e]w something of the state” or had “only just arrived.” *Id.*

Second, as reflected in the remarks of Frederick Waymire, the framers wished to exclude interlopers and those who did not identify as Oregonians. The Oregon Argus summarized Mr. Waymire’s remarks as follows: “If this three years’ residence is dispensed with, we will have half the office-seekers of California up here. Strangers came here sometimes and married our girls, when at the same time they had wives in the States, and he was opposed to giving our

substance into the hands of strangers.” *Constitutional Convention*, Oregon Argus (Sept 12, 1957). Waymire’s remarks suggest that the framers—none of whom were born in the state and half of whom had arrived less than seven years before the Constitutional Convention—were concerned that “strangers” with no ties to the state would opportunistically seek statewide office. Claudia Burton, *A Legislative History of the Oregon Constitution of 1857—Part III (Mostly Miscellaneous: Articles VIII-XVIII)*, 40 Willamette L Rev 225, 228-29 (2004).

Finally, as evidenced by debates regarding other voting and franchise provisions, delegates to the Constitutional Convention were fixated on keeping outsiders and those deemed to be “other” out of political power. As one example, the delegates’ brief discussion of Article II, section 1—the Free and Equal Elections Clause—centered on whether the word “free” was “sufficiently explicit” to convey that “it did not mean Chinese or n[REDACTED].” Carey, *Proceedings & Debates* at 318 (racial epithet redacted). They also discussed limiting the franchise to “white male citizens,” whether the constitution should instead use the term “pure white,” and whether it needed to clarify that “Chinamen” could not vote. The delegates also intensely disagreed about how long to require “foreigners” to live here before they would be allowed to vote. These topics occupied far more attention than, say, the separation of powers.

It is reasonable to infer from these surrounding debates and the professed fear of “strangers” underlying Article V, section 2, that similar motives informed

Oregon’s durational residency requirement. As one legal historian has observed, “durational residency requirements were designed to prevent migrants from voting or from influencing the composition and functioning of the government ***.” Eugene Mazo, *Residency & Democracy: Durational Residency Requirements From the Framers to the Present*, 43 Fla St U L Rev 611, 626 (2016). This Court’s interpretive methodology—“to identify *** relevant underlying principles that may inform our application of the constitutional text to modern circumstances”—invites consideration of the exclusionary roots of Article V, section 2, and, given modern circumstances, counsels in favor of an inclusive interpretation. *Davis*, 350 Or at 446.

Taken together, records of the Constitutional Convention show that the main policy objectives of Article V, section 2, were to (1) ensure that holders of Oregon’s highest statewide office were familiar with the state, and (2) exclude opportunistic “strangers” with no ties to the state. Given that half of the delegates to the Constitutional Convention had first set foot in Oregon less than seven years before the gathering, as well as the fact that none of the delegates had been born in Oregon, the residency requirement reflects their basic desire for the Governor to both identify as an Oregonian and have specific ties to the state. The historical record also reveals that their concerns about “strangers” were likely animated by an underlying fear of ceding political power to those deemed “other”—an exclusionary legacy that warrants consideration in this Court’s analysis.

(b) Early Oregon and Indiana cases show that a person was a “resident” of a place if they intended for the place to be their home and acted pursuant to that intent.

The policy objectives of the residency requirement—to keep “strangers” who were unfamiliar with the state’s interests from becoming Governor—align neatly with early Oregon and Indiana precedents interpreting the term “resident.” Specifically, early cases reflect the understanding that someone is a “resident” of a place not only if they are physically present there, but if they view that place as their home and maintain ties to the place that are consistent with that intent.

Oregon’s earliest residency case is *Lee v. Simonds*, 1 Or 158 (1854). In *Lee*, the Supreme Court of the Oregon Territory—which included several justices who would soon serve as delegates to the Oregon Constitutional Convention—expounded on the concept of residence while resolving a claim under the Donation Land Act of 1850. The plaintiff in *Lee*, Daniel Simonds, claimed a tract of land where he had lived for just a short period of months—from the fall of 1849 to the spring of 1850. 1 Or at 158. When Simonds left Oregon to retrieve his family from Illinois in the spring of 1850, he entrusted the land to an agent, who then sold it to Philester Lee in the fall of that same year. *Id.* When Simonds returned to the property in 1851, he challenged the sale to Lee by arguing that he was still “residing upon and cultivating” the land when it was sold. *Id.* at 159.

Before resolving the claim, the Court outlined the standard for determining a person’s residence. *Id.* at 160. It started by cautioning that the idea of residency

is not subject to an “exact definition” and, in any given case, depends not upon “one fact” but rather “the whole taken together.” *Id.* The Court then outlined two considerations for determining a person’s residence: (1) their statements and subjective intent as to the place they consider “home,” and (2) their “acts and circumstances” taken pursuant to that intent. *Id.* Although the Court reasoned that physical “presence in a place” is one factor to be considered, “it is far from being conclusive.” *Id.* Thus, a person’s “[t]emporary absence *** does not necessarily change or affect that residence, if it is in point of fact the[ir] home *** while away, and he looks to it, and treats it as his actual permanent home.” *Id.*

The Court applied these principles to find that Simonds did not “reside” on the land when it was sold. First, the Court emphasized that there was no record of Simonds stating that “his residence was upon the land in dispute,” nor any evidence that Simonds had “declared or intended to put his family on it when they came to Oregon.” *Id.* at 160. It acknowledged that Simonds had shared his intent to return to Oregon before leaving for Illinois, but it reasoned that, “if this goes far enough to prove a residence in Oregon, it falls far short of proving a residence upon the particular land in question.” *Id.* at 159-60. Second, the Court found that Simonds failed to treat the land as his home. *Id.* It observed that Simonds was present on the land only once for a period of months; never made improvements or built a dwelling on it; and never took steps to “make it a comfortable or permanent home for himself and [his] family.” *Id.* Because

Simonds had neither viewed nor treated the property as his home, the Court concluded that he did not reside there when it was sold. *Id.*

Another early residency case from Indiana confirms that a person's continual physical presence is not dispositive of their residence. In *Pendleton v. Vanausdal*, 2 Ind 54 (1850), the Indiana Supreme Court considered the meaning of "residence" while resolving a challenge to the sufficiency of service on a debtor. The debtor had "left for the south in the capacity of a peddler, taking a wagonload of goods with him," but was served six months later at the Indiana home where he was last known to have lived. 2 Ind at 54. In holding that the Indiana home was still the debtor's "residence" despite his absence, the court noted that the debtor had lived there for "six or seven years" before leaving, that his family still lived there, and that "it was not known that he had or intended to change his residence." *Id.* Thus, as in *Lee*, the debtor's residence turned on his subjective intent to maintain the same residence (i.e., he had not told anyone he intended to change his residence), together with acts corroborating that intent (i.e., he had lived at the home previously and his family remained there).

This inclusive conception of residence is consistent with early precedents distinguishing between a person's "residence" and "domicile." In *French v. Lighty*, 9 Ind 475 (1857), for instance, the Indiana Supreme Court observed that, "a residence, within the meaning of our constitution, is a home." 9 Ind at 477 n 1. By contrast, the court explained, the "best definition of domicile" is "[a]

residence at a particular place, accompanied with positive or presumptive proof of an intention to remain *for an unlimited time.*” *Id.* (emphasis added). The court implied that a person might have multiple residences at any given time, but that because of the requirement that they intend to remain present for “an unlimited time,” a person could have only one domicile at any given time. *See id.* (reasoning that no one can be “without a fixed domicile”); *cf. also McFarlane v. Cornelius*, 43 Or 513, 522, 73 P 325 (1903) (“[A] person may simultaneously have a permanent and a temporary residence ***.”) Thus, although some courts have used the two terms interchangeably—indeed, the terms are undoubtedly close cousins—*French* suggests that “residence” sets a lower bar.

Another early Oregon case supports the inference that “residence” is a more lenient standard than the traditional doctrine of “domicile.” In *Pickering v. Winch*, 48 Or 500, 87 P 763 (1906), this Court considered whether Amanda Reed, the founder of Reed College, was domiciled in Oregon at the time of her death. Reed and her husband Simeon lived in Oregon from 1854 to 1892, but when Simeon fell ill in 1892, they purchased a home in Pasadena, California, and “removed their household effects and personal belongings from Portland to Pasadena.” 48 Or at 501. After Simeon’s death in 1895, Reed constructed another home in Pasadena and spent the majority of her time there until she died in 1904. *Id.* at 502. When several heirs contested the probate of her will, the heirs argued that Reed had been domiciled in California when she died and that, as such, the

contest should be venued in California. *Id.* at 503.

In holding that Reed was domiciled in Oregon, the Court made several observations about her residence and its relation to her domicile. “To constitute domicile,” the Court explained, “there must be both the fact of a fixed habitation or abode in a particular place, and an intent to remain there permanently or indefinitely.” *Id.* at 504. It cautioned, however, that domicile “is not in a legal sense synonymous with ‘residence.’” *Id.* Unlike domicile, “[a] person may have more than one residence.” *Id.* Thus, the Court observed, Reed was a resident of both Oregon *and* California at the time of her death. Specifically, it reasoned that, despite having lived in California for 12 years, Reed maintained robust ties to Oregon: she managed a business in Oregon, had an office in Oregon, retained church connections, contributed to Oregon-based charities, kept an Oregon bank account, retained Oregon property interests, and regularly described herself as an Oregon resident. *Id.* at 511-12. It was based on these same facts, in combination with the fact that Reed had never expressed an intent to abandon her original domicile, that the Court likewise found her domicile to be in Oregon. *Id.*

As relevant here, *Pickering*’s distinction between the concepts of “residence” and “domicile” buttresses the inference from *French*—an Indiana case contemporaneous with the adoption of the Oregon Constitution—that the “residence” standard is less onerous than that of “domicile.” Further, the Court’s conclusion that Reed, despite having lived in California for 12 years, resided and

was domiciled in Oregon is consistent with the understanding of residency reflected in *Lee* and *Pendleton*. Specifically, it is consistent with the view that someone resides within a place if: (1) they view that place as their home, and (2) they maintain ties to the place that are consistent with that intent. The concept of “residence” is not, as each of these cases makes clear, a rigid physical presence requirement, nor is it exclusive of activities or even residences in other states.

3. Article V, section 2, should presumptively be construed in favor of democratic participation and choice.

A final consideration weighs in favor of interpreting Oregon’s residency requirement in an inclusive manner. Although this Court has a well-developed methodology for interpreting constitutional provisions, it is neither rigid nor formulaic. *See Davis*, 350 Or at 446 (explaining that “relevant underlying principles *** may inform our application of the constitutional text to modern circumstances”). The growing threat to democratic choice and the electorate’s interest in guarding against that threat is a “modern circumstance” warranting consideration in constitutional interpretation.

This interest finds expression in a canon of construction known as the “democracy canon.” *See generally* Richard L. Hasen, *The Democracy Canon*, 62 *Stan L Rev* 69 (2009). The canon provides that a statute or constitutional provision should be construed in favor of democratic participation and choice if its text is susceptible to more than one reasonable interpretation. *Id.* at 75-80. The democracy canon “has had long and consistent acceptance in state courts,” *id.*

(collecting cases), including in ballot access cases, *see, e.g., Municipality of Anchorage v. Mjos*, 179 P3d 941, 943 (Alaska 2008) (“In our view there is a presumption in favor of candidate eligibility.”); *Queena v. Mimms*, 283 SW2d 380, 382 (Ky 1955) (“It is a fundamental principle that the courts will construe election statutes liberally in favor of the citizens whose right to choose their public officers is challenged.”); *People ex rel. Dickerson v. Williamson*, 56 NE 1127, 1129 (Ill 1900) (construing a state ballot access statute “liberally” to make it easier for candidates of qualified political parties to remain on the ballot).

Although authorities applying the democracy canon are not binding, they are persuasive insofar as this Court finds that Oregon’s residency provision is susceptible to more than one reasonable interpretation. At least one scholar of durational residency rules, law professor Michael J. Pitts, has urged courts to draw on the democracy canon in cases such as this one to “create[] a strong presumption in favor of candidates meeting those requirements.” Michael J. Pitts, *Against Residency Requirements*, 2015 U Chi Legal F 341, 380 (2015); *see also* Gavin J. Dow, *Mr. Emanuel Returns from Washington: Durational Residence Requirements & Election Litigation*, 90 Wash U L Rev 1515, 1534 (2013) (“A world in which no qualifications are placed on candidates for political office seems unlikely; however, the notion that voters should be permitted to judge the merits of candidates themselves is reflected in the democracy canon ***.”). Because the decision before this Court is whether to afford voters the opportunity

to freely choose the occupant of their state’s highest office, it weighs heavily in favor of a construction that maximizes democratic participation and choice.

The textual, historical, and precedential authorities outlined above are best synthesized by requiring a proponent of Oregon residence to establish, in view of the totality of circumstances, their subjective intent that a place in Oregon is or remains their home, together with objective facts evincing their actions taken in conformity with that intent. This is the standard of *Lee* distilled to its essence—that is, these are the factors that the Supreme Court of the Oregon Territory found dispositive of residence just three years before the Constitutional Convention. The early Indiana cases *Pendleton* and *French* are in accord. These factors also give effect to the text and contextual drafting choices of the framers, as well as their main policy objectives as described at the Constitutional Convention. And they function to expand—rather than limit—democratic choice.

B. Kristof satisfies the residency requirement of Article V, section 2, regardless of whether the historical standard or the Secretary of State’s “domicile” standard is applied.

Kristof satisfies the durational residency requirement of Article V, section 2, regardless of whether the historical standard or the heightened “domicile” standard is applied. First, if the historical standard is applied, Kristof satisfies the residency requirement because he has long viewed and treated his Yamhill farm as home. Second, even if the “domicile” standard relied on in error by the

Secretary is applied, Kristof still satisfies the requirement because he has never expressed or carried into effect an intent to abandon his Oregon domicile—established when he moved to the state in 1971—in favor of another state. Accordingly, no matter which standard is applied, this Court should find that Kristof satisfies Oregon’s residency requirement.

1. Kristof is an Oregon “resident” because he has long viewed and treated his Yamhill farm as his home.

Kristof readily satisfies the historical residency standard. First, Kristof has always described his Yamhill farm as home. This includes references Kristof has made to Oregon, generally, and Yamhill, specifically, as his home in published writings and interviews since at least 1982. Second, Kristof has consistently treated his Yamhill farm as home. This includes spending nearly every summer on the farm since the 1970s; purchasing and improving nearby lands starting in 1993; building an addition to the property’s farmhouse for him and his family in 1994; managing the farm’s operations since 2010; and directly leasing the farm from his mother since 2018. Finally, although Kristof has previously voted in New York, both Oregon and New York law are clear that a person may have multiple residences, and New York law allows a person to vote in the state even if their primary residence is elsewhere. Because Kristof has long viewed and treated Oregon as his home, he satisfies Article V, section 2.

(a) Kristof has always held and shared the subjective view that his farm in Yamhill is his home.

Kristof's intent for Yamhill to be his home is manifest in his published writings, interviews, and elsewhere. As early as 1982, Kristof described Yamhill as "my home" in the Washington Post. (App 38.) In other professional writings and interviews, Kristof has likewise used the word "home" to describe time spent in Oregon between 2000 and 2020. In a 2004 opinion piece, for example, Kristof wrote that he was "home" in Yamhill over the summer. (*Id.* at 42.) Similarly, in a 2017 interview with CNN: Tonight, Kristof described having been "home in Oregon over the weekend." (*Id.* at 48.) And the 1999 purchase deed for his house in Scarsdale, New York, states that Kristof lives in Yamhill. (*Id.* at 15.) Kristof has also regularly used return mailing labels with his Yamhill address. (*Id.* at 29.)

In July 2019, Kristof even wrote the foreword to a coffee table picture book, "Oregon, My Oregon," published the following year, in which he extolled the "profound and sometimes ostentatious pride" that "[w]e Oregonians" feel for "our state." (*Id.* at 98.) A few months later, Kristof gave an interview to Portland Monthly Magazine in which he described himself as a "local yokel" and "someone who is part of the community" in Yamhill. (*Id.* at 69.)

Taken together, these statements show that Kristof has consistently viewed his Yamhill farm as his home.

- (b) **Kristof has treated his Yamhill farm as home by regularly spending extended periods of time there, leasing and managing the farm, and purchasing and improving nearby land.**

Kristof has also treated his Yamhill farm as home. Since leaving for college in 1978, Kristof has returned home to the farm nearly every summer. (App 28.) In 1994, Kristof and WuDunn built an addition to the Kristof family home so that it would be large enough to accommodate the entire family. (*Id.* at 29.) Kristof, WuDunn, and their children have designated bedrooms in the house, and they have long kept personal items like clothing in their rooms. (*Id.*) Kristof and WuDunn have also purchased three nearby parcels of land. (*Id.* at 29-30.) The first, purchased in 1993, is a 150-acre property in Yamhill; the second, purchased in 1996, is a 372-acre property in McMinnville (a portion has since been sold); and the third, purchased in 2020, is a 115-acre parcel adjacent to their Yamhill farm. (*Id.*) Over the years, Kristof has managed, improved, and cultivated these properties. (*Id.*) Kristof and WuDunn have also paid Oregon property taxes on all three tracts since they were purchased. (*Id.*)

Kristof and WuDunn have treated Oregon as their home in other ways. For example, when their professional obligations allowed, Kristof and WuDunn spent additional time on the farm. Thus, in 1994, Kristof, WuDunn, and their children spent most of the year in Oregon. (*Id.* at 29.) They were able to do so again for most of the year in 1999, with Kristof and WuDunn's children attending Oregon schools. (*Id.*) Kristof was also registered to vote in Oregon and

maintained an Oregon driver's license through the 1990s. (*Id.*) Although Kristof and WuDunn purchased a New York home in 1999, the purchase deed states that they live in Yamhill. (*Id.* at 15.) Kristof also continued to use return mailing labels with his Yamhill home address even after the purchase. (*Id.* at 29.) And when Kristof's father passed away in 2010, he took over management of the Yamhill farm—maintaining farm equipment, ordering trees, and overseeing timber programs. (*Id.* at 29-31.)

Kristof's residential contacts with Oregon have only increased since 2018. Starting that year, Kristof and WuDunn spent substantial time on the Kristof farm researching and writing a book about ongoing social and economic changes to Oregon. (*Id.* at 30-31.) As a result of their more regular presence, as well as market pressures, they made a significant investment to transition the principal crop of the Kristof farm from cherries to cider apples and wine grapes. (*Id.* at 31.) Kristof and WuDunn formalized their investment by forming a lease of the farm in October 2018. (*Id.*) Similarly, in August 2019, an Oregon limited liability company was formed to hold their interest in the farm, and they hired three people—overseen by Kristof—to work the farm. (*Id.*) Based on this increased expenditure of time and money in Oregon, Kristof and WuDunn filed Oregon tax returns for 2019 and 2020. (*Id.*) These acts, taken together, demonstrate that Kristof has consistently treated Oregon as home.

- (c) **Kristof’s registration to vote in New York is minimally relevant because a person can have multiple residences and New York law allows voting from a secondary home.**

Although the Secretary of State places dispositive weight on Kristof’s registration to vote in New York between 2000 and 2020, his registration is of little relevance to his Oregon residency. First, while New York limits voting to residents of the state, it is hornbook law that a person can be a resident of multiple places. 28 CJS *Domicile* § 5 (“One *** may have more than one residence at the same time ***.”). This principle is consistent with how the term “residence” was used in *French*—an Indiana case contemporaneous with the adoption of the Oregon Constitution—as well as this Court’s thorough discussion of the term in *Pickering*. The view that a person may be a resident of more than one state is also consistent with cases from other states that are contemporaneous with the adoption of Oregon’s constitution. *See, e.g., Succession of Franklin*, 7 La Ann 395, 411 (La 1852) (examining domicile doctrine “where the party has two residences”); *Hairston v. Hairston*, 27 Miss 704, 720 (1854) (same); *Smith v. Croom*, 7 Fla 81, 153 (1857) (same). The fact that Kristof was a resident of New York for voting purposes cannot be dispositive of his Oregon residency.

Second, Kristof’s registration to vote in New York is legally and factually consistent with Yamhill being his *primary* residence. New York law does not require a voter to register in the jurisdiction of their principal residence; rather, a voter with two residences may register in either one. *Willkie v. Del. Cty. Bd. of*

Elections, 865 NYS2d 739, 741-42 (NY App Div 2008). A voter, to that end, is not limited to registering at their “year-round permanent home” or the home where they have “more significant contacts to that place than any other.” *Maas v. Gaebel*, 9 NYS3d 701, 705 (NY App Div 2015). The residents of a seasonal cooperative (*i.e.*, owners of vacation homes), for example, may register to vote in the jurisdiction of their seasonal homes. *Id.* at 703-05. “[T]he inquiry is not which of [a voter’s] dual residences is ‘the more appropriate one’ for voting purposes, but whether the residence held by [the voter] is a legitimate one.” *Willkie*, 865 NYS2d at 742. Thus, not only was it legal for Kristof to vote in New York, it is consistent with him having treated the Kristof farm as home.⁴

Third, nothing in the Oregon Constitution or the historical sources used to interpret its meaning suggest that registering to vote in another jurisdiction is dispositive of residential eligibility for Governor.⁵ To the contrary, although there

⁴ The legal significance of Kristof’s New York registration and voting is discussed at length in his submission to the Secretary. (App 16-23.)

⁵ The Secretary relies on ORS 247.035(1)(e) to find that “voting is integral to residency.” (App 127.) ORS 247.035(1)(e) offers as a rule for county clerks to “consider” that a person who votes in another state surrenders Oregon residency for purposes of voting. But this statute “determin[es] the residence and qualifications of a person offering to register or vote,” ORS 247.035(1), not eligibility for Governor. It is a policy choice by the Legislature about who should be allowed to vote, not a constitutional interpretation of residency for all purposes. More fundamentally, the statute was adopted long after the Oregon Constitution was ratified, and constitutional provisions are not interpreted based on later-enacted statutes. *See State ex rel. Oregonian Pub. Co. v. Deiz*, 289 Or 277, 284, 613 P2d 23 (1980) (“[L]egislative actions should not necessarily be given much weight when construing constitutional principles.”). The statute thus

are no pre-1859 cases on point from Oregon or Indiana, contemporaneous authorities from other states confirm that registration to vote was not viewed as dispositive of residence. *See, e.g., Clarke v. Wash. Territory*, 1 Wash Terr 68, 70 (1859) (holding that “voting for President” in another state “cannot be considered as establishing a residence”); *Smith v. Croom*, 7 Fla 81, 158 (1857) (holding that “undue importance” should not be given to “the exercise of the political right of voting” in determining “residence, habitation, and domicil [sic]”); *Town of New Milford v. Town of Sherman*, 21 Conn 101, 112 (1851) (holding that voting “would not be the proper evidence *** of residence”).

Similarly, this Court has discounted the relevance of voter registration to the question of Oregon residence in other contexts. In *Miller v. Miller*, 67 Or 359, 136 P 15 (1913), for instance, this Court considered the relevance of out-of-state voting to a person’s Oregon residency in a domestic relations case. At issue in *Miller* was whether the defendant’s decision to vote in Idaho was dispositive of his Oregon residency. 67 Or at 366. According to the Court, it was not: voting in Idaho did not have “any effect one way or the other in establishing his domicile there.” *Id.* “Considered in connection with [the defendant’s] previous registration in Oregon,” the Court explained, “his voting in Idaho *** is of no consequence.” *Id.* at 366-67; *see also Volmer v. Volmer*, 231 Or 57, 60, 371 P2d 70 (1962) (holding that “the act of registering to vote is often self-serving and, standing

has little relevance to whether Kristof satisfies Article V, section 2.

alone, is entitled to little weight”); *Inhabitants of E. Livermore v. Inhabitants of Farmington*, 74 Me 154, 156 (1882) (“It is obvious that the fact of voting in a place is not and cannot be conclusive of the fact of residence.”).

This is not to suggest that voting has no relevance to the issue of residential eligibility for Governor. But its relevance, like that of any other fact, is as “one fact” weighed against “the whole taken together.” *Lee*, 1 Or at 160. That is, Kristof’s history of voting in New York weighs in the residency analysis no more prominently than the many other facts bearing upon his intent that Oregon be his home. It would undermine Kristof’s claim to Oregon residency only if it cast doubt on the truthfulness of his sworn and unsworn statements that he considers Oregon his home. But it does not. Kristof registered and voted in New York—despite also residing in Oregon—as a simple matter of convenience since he expected to be present there during more elections. That explanation is consistent with his view of Oregon and his Yamhill farm as home. Simply put, Kristof’s voting history cannot outweigh the decades of other statements and acts reflecting his view and treatment of his Yamhill farm as home.

2. Kristof also meets the “domicile” standard relied on in error by the Secretary of State because he established his Oregon domicile when he arrived here in 1971 and has never shown an intent to abandon that domicile.

Kristof has also been domiciled in Oregon since moving to the state in 1971. Although the Secretary of State avoids describing it as such, her decision applies the standard for determining a person’s domicile. (App 127 (“[W]e

consider a ‘residence’ to be a place in which a person’s habitation is fixed and to which, when they are absent, they intend to return.”.) For the reasons discussed above, the framers of the Oregon Constitution did not harbor a secret intent to require “domicile” where they used the term “resident,” nor would such an intent change the original purpose of Oregon’s residency provision. But even if domicile were the governing standard, Kristof meets that standard because he has never expressed or carried into effect an intent to abandon his Oregon domicile—first established when he moved to the state in 1971—in favor of New York.

As understood when Oregon ratified its constitution, domicile requires “residence in [a] place” coupled “with the intention” that the place be the person’s “principal and permanent residence.” *Ennis v. Smith*, 55 US 400, 422-23 (1852). This means that a person’s domicile is comprised of two elements: “residence and intention.” *Pickering*, 48 Or at 504. Critically, a person’s place of domicile, once established, is presumed to continue “until it is shown that a new one was established, in intent and in fact, by indicating and carrying into effect *an intention to abandon the [original] domicile.*” *Id.* at 505 (emphasis added); *see also Ennis*, 55 US at 401 (“The presumption of law is that [domicile is] retained, unless the change is proved ***.”). Indeed, to change a person’s domicile, “[r]esidence is not enough, except as it is co-joined with intent.” *Pickering*, 48 Or at 404; *accord* Restatement (First) Conflict of Laws § 24 (Am Law Inst 1934) (“When a person *** has more than one home, his domicil [sic] is in the earlier

home, unless he regards the second home as his principal home.”).

The bar for establishing a change in domicile was exceedingly high when Oregon ratified its constitution in 1859. In *Succession of Franklin*, 7 La Ann 395 (1852), for instance, the Supreme Court of Louisiana considered whether Isaac Franklin was domiciled at his residence in Louisiana or Tennessee for the purpose of probate. Franklin was raised in Tennessee but left home “after he came of age” to “engage[] in business” outside of Tennessee for the next 30 years. 7 La Ann at 409-10. During this time, although Franklin spent just “a few days” in Tennessee each year, his father gifted him a Tennessee farm, and he purchased a nearby estate where he built a home. *Id.* at 410. Franklin would retire from business and go on to marry and purchase an estate in Louisiana, where he spent the vast majority of his time living and cultivating the land for the last eight years of his life. *Id.* Franklin also voted in Louisiana and listed it as his residence in several official documents, but with just “one or two exceptions” he still returned to his Tennessee estate every summer after acquiring his residence in Louisiana. *Id.*

In holding that Franklin was domiciled in Tennessee, the Supreme Court of Louisiana emphasized that Tennessee was Franklin’s original domicile, and thus presumed to continue absent express evidence of a contrary intent. *Id.* at 411. Such evidence was lacking, the court reasoned, because Franklin had consistently returned home to Tennessee—even if just for “a few days” a year—throughout his life. *Id.* at 410. The court also found compelling that Franklin had described

Tennessee as his home in his will—if not in other “notarial acts” like voter registration—and that he chose to be buried in Tennessee. *Id.* at 411. Taken together, the court concluded that Franklin’s stated “intention” to maintain his domicile in Tennessee, “coupled with [his] occasional residence, was sufficient to continue his domicile [there].” *Id.* That is, despite having lived most of his adult life away from Tennessee, the court held that he remained domiciled there because he often described it as home and returned throughout his life.

The same result was reached on similar facts in *Smith v. Croom*, 7 Fla 81 (1857). In that case, the Supreme Court of Florida considered whether Hardy Croom was domiciled at his Florida or North Carolina residence for the purpose of probate. Croom was born, raised, and educated in North Carolina. 7 Fla 81 at 150. Although he inherited a family home in North Carolina, Croom lived most of the final 20 years of his life on plantations he purchased in Florida. *Id.* at 155-56. He “settled and improved” the plantations, lived on them for most of the year, kept most of his property and other wealth in Florida, and even voted in Florida. *Id.* at 155-58. At the same time, Croom spent “a portion of each year” on the family estate in North Carolina, where his wife and child lived. *Id.* at 156. Croom also described “returning home” to North Carolina in private letters, though he often also listed Florida as his home in official documents. *Id.* at 161, 163-64.

Notwithstanding his consistent absence from North Carolina, the Florida Supreme Court held that Croom retained his original domicile in the state. *Id.* at

166-67. In doing so, it emphasized an “overwhelming presumption” that a person retains their original domicile absent evidence of an intent to “abandon” the original domicile. *Id.* at 154, 166. The court cited extensively from private correspondence in which Croom described his family’s North Carolina estate as “home,” and it emphasized that Croom never stopped returning to North Carolina annually. *Id.* at 156, 165-67. Croom never “abandoned his residence in North Carolina,” the court reasoned, because he “continued to spend a portion of each year *** with his family at their original place of abode.” *Id.* at 156. The fact that Croom had voted in Florida was “at best of a very dubious character” in determining whether he had intended to change his domicile. *Id.* at 160.

The principle animating *Succession of Franklin and Smith*—cases decided around the time of the Oregon Constitution’s drafting in 1857—was decisive in an Oregon case decided decades later: *Pickering*. “[W]hen [domicile] is shown to exist,” this Court said in *Pickering*, “it is presumed to continue until not only another residence and place of abode are acquired, but until there is an intention manifested and carried into execution of abandoning the original domicile and acquiring another by actual residence; and the burden of proof is upon the party who asserts the change.” 48 Or at 505. “[T]hat intention [to abandon] must be clearly and unequivocally proved.” *Id.* Indeed, even long-term periods of residence elsewhere do not show an intent to abandon, according to *Pickering*: “The mere fact of a man residing in a place different from that in which he had

been before domiciled, even though his residence there may be long and continuous, does not of necessity show that he has elected that place as his permanent and abiding home.” *Id.* at 509. “The books abound in cases where absences for 20, 30, and even 40 years effect no change of domicile.” *Id.* at 510. Upon that principle, this Court concluded that someone largely absent from the state for 12 years had not abandoned her Oregon domicile.

Here, it is incontrovertible that Kristof—who lived exclusively in Oregon before attending college—established his domicile in the state in 1971. The only question is whether Kristof has since indicated and carried into effect an intent to “abandon” his Oregon domicile and establish a new one in New York. It is clear from *Succession of Franklin, Smith, and Pickering* that Kristof never abandoned his Oregon domicile in favor of New York. Like the decedents in those cases, Kristof has consistently described Oregon as his home and returned to the state annually (often many times) since the 1970s. And as in those cases, Kristof kept a second home to accommodate employment. Unlike those cases, however, Kristof has spent far more than just “a few days” in Oregon each year—he has lived on his farm nearly every summer and returned home at other points for both brief and extended periods. It is also uncontroverted that Kristof has long intended to retire on his farm and have his ashes scattered in Oregon. These facts show that Kristof has been domiciled in Oregon since moving here in 1971.

In reaching a contrary conclusion, the Secretary questioned the truth of

Kristof's sworn declaration and indicated that his past acts, such as voting and holding a driver's license in New York, were inconsistent with domicile in Oregon. But voting and "notarial acts" were insufficient for the decedents in *Succession of Franklin and Smith* to "abandon" their original domiciles—the best evidence of how "domicile" was understood when Oregon ratified its constitution in 1859. *Accord Miller*, 67 Or at 367 (voting is "of no consequence" to domicile). And the Secretary simply failed to address the decades of published statements in which Kristof candidly described Oregon as his home. These types of corroborating statements were more than enough for this Court to conclude, in *Pickering*, that Amanda Reed was domiciled in Oregon despite having resided in California for 12 years. 48 Or at 511-12. Kristof thus satisfies even the domicile standard applied in error by the Secretary.

C. The expansive interpretation of Article V, section 2, announced by the Secretary of State violates the United States Constitution.

The Secretary of State's interpretation of Article V, section 2, implicates one final issue: adherence to the United States Constitution. Under the federal constitution, durational residency rules for serving in elected office must satisfy strict scrutiny. The rule announced by the Secretary does not.

Where laws burden constitutional rights deemed fundamental, they are subject to strict scrutiny. *Dunn v. Blumstein*, 405 US 330, 335 (1972). Here, the rule relied on by the Secretary—which excludes people with multiple homes or who have registered to vote in another state—burdens the fundamental rights of

equal protection and voting, of interstate travel, and the right to run for office. Because it is not narrowly tailored to advance the state's interest in excluding candidates who are unfamiliar with the state, the rule proposed by the Secretary sweeps too broadly to withstand strict scrutiny.

Nearly 50 years ago, the U.S. Supreme Court struck down durational residency rules for voting. *Id.* at 344-60. In a careful opinion by Justice Thurgood Marshall, it held that voting residency rules burden the fundamental rights to vote and move between states and, accordingly, must withstand strict scrutiny—that is, be narrowly tailored to the interests they purport to advance. *Id.* The Court ultimately concluded that voting residency rules are not narrowly tailored and therefore are unconstitutional. *Id.* at 360. *Dunn* is one in a line of U.S. Supreme Court cases testing durational residency rules with strict scrutiny: from welfare benefits,⁶ to medical care,⁷ to public employment preferences,⁸ the Court has struck them down. It has explained that laws conditioning rights and benefits on a period of residency hamper the ability to freely move between states and, “any classification which serves to penalize the exercise of th[e] right [to interstate travel], unless shown to be necessary to promote a compelling governmental interest, is unconstitutional.” *Shapiro*, 394 US at 634.

⁶ *Saenz v. Roe*, 526 US 489, 504 (1999); *Shapiro v. Thompson*, 394 US 618, 634 (1969).

⁷ *Mem'l Hosp v. Maricopa Cnty*, 415 US 250, 269 (1974).

⁸ *Att'y Gen of New York v. Soto-Lopez*, 476 US 898, 911 (1986).

Since *Dunn*, courts have tested residency rules for public office with strict constitutional scrutiny. Although typical applications of durational residency rules for serving in office have been upheld, *see, e.g., Howlett v. Salish & Kootenai Tribes*, 529 F2d 233, 242 (9th Cir 1976), courts have struck down such rules when applied more broadly than their policy justifications require.

In *Callaway v. Samson*, for instance, a federal court invalidated a durational residency rule used to disqualify a candidate who lived mere blocks outside his district and who had worked within the district for two decades. 193 F Supp 2d 783, 789 (DNJ 2002). The court held that a rule of law that disqualifies a candidate who is intimately familiar with his district, just because he lives several blocks away, is not narrowly tailored. *Id.* Similarly, in *Robertson v. Bartels*, a federal court invalidated a durational residency rule used to disqualify someone whose home had been drawn out of his district in redistricting. 890 F Supp 2d 519, 531-33 (DNJ 2012). There, also, the court held that a rule of law that disqualifies a candidate who is familiar with his district, just because his home was drawn out of the district, is not narrowly tailored.⁹ In a raft of other cases, including decisions from the Third Circuit Court of Appeals and the

⁹ The California Secretary of State has also opined that California's gubernatorial residency requirement under Article V, section 2, of the California Constitution "violates the U.S. Constitution and is unenforceable." Summary of Qualifications and Requirements for the Office of Governor at 1, n 1 (Sept 14, 2021), <https://elections.cdn.sos.ca.gov/statewide-elections/2021-recall/qualifications-requirements.pdf>.

supreme courts of California, Colorado, Connecticut, and Maryland, courts have held that durational residency rules fashioned too broadly fail strict scrutiny.¹⁰

Here, too, this Court should reject the Secretary's unnecessarily broad interpretation of Article V, section 2, which does not allow for residency in multiple states at once. The Secretary's interpretation burdens several important and fundamental rights. As in *Dunn*, the Secretary's interpretation penalizes those who have exercised the freedom to move from state to state, burdening the fundamental right to interstate travel. *See Dunn*, 405 US at 338, 341. Courts have found this alone enough to trigger strict scrutiny. *See, e.g., Callaway*, 193 F Supp 2d at 787 (holding that a one-year residency requirement for city council wards "plainly burden[s] [the plaintiff's] right to travel" because the requirement "conditions his eligibility for public office *** on his willingness to remain within the relevant geographical unit for one year"); *Bd. of Comm'rs of Sarasota Cnty. v. Gustafson*, 616 So 2d 1165, 1168 (Fla 2d DCA 1993) (finding a two-year residency requirement for county office inconsistent with equal protection, partly because the "evolution of communication and transportation that allows individuals to move easily between communities and states renders such a two-year residency requirement particularly onerous").

¹⁰ *See Wellford v. Battaglia*, 485 F2d 1151, 1152 (3d Cir 1973); *Bruno v. Civ Serv Comm'n of Bridgeport*, 472 A2d 328, 333-36 (Conn 1984); *Bd of Sup'rs of Elections of Prince George's Cty. v. Goodsell*, 396 A2d 1033, 1038-40 (Md 1979); *Thompson v. Mellon*, 507 P2d 628, 633-35 (Cal 1973); *Cowan v. City of Aspen*, 509 P2d 1269, 1273 (Colo 1973).

Moreover, the Secretary’s standard for applying Article V, section 2—driven by a candidate’s choice of where to vote—unreasonably burdens a candidates fundamental right to vote by tying the exercise of one right (to run for public office) to another fundamental right (to vote). *See Dunn*, 405 US at 336 (holding that the right to vote is fundamental). Her interpretation forces candidates to forfeit one right by exercising the other. But “[b]efore the right [to vote] can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close constitutional scrutiny.” *Evans v. Cornman*, 398 US 419, 422 (1970).

The Secretary’s interpretation also burdens the collective rights of both candidates and voters. The important right to run for office, while not expressly labeled as “fundamental” in case law, is closely intertwined with voters’ rights to political expression and to vote for candidates of their choice. *See Bullock v. Carter*, 405 US 134, 143 (1972) (“[T]he rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters.”); *see also Williams v. Rhodes*, 393 US 23, 30 (1968) (“[T]he state laws [limiting ballot access] place burdens on two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters *** to cast their votes effectively. Both these rights *** rank among our most precious freedoms.”). Strict scrutiny is appropriate

where a restriction has a “real and appreciable impact” on both voters and candidates. *Bullock*, 405 US at 143-44 (requiring courts to examine the impact of candidate restrictions “in a realistic light” regarding “the extent and nature of their impact on voters”); *Lentini v. City of Kenner*, 479 F Supp 966, 969 (ED La 1979) (finding a realistic impact on exercise of the franchise where a residency requirement prohibited new residents from running for two years).

Here, the broad interpretation of Article V, section 2, adopted by the Secretary will undeniably have a very “real and appreciable impact” on voters. Indeed, a substantial number of voters have already shown their support for Kristof in polls; he is widely considered a frontrunner; and nearly 6,000 Oregonians have donated to his campaign. His exclusion denies his many supporters the candidate of their choice.¹¹

In turn, because her interpretation burdens fundamental and important constitutional rights, the Secretary must show that it is “necessary to promote compelling governmental interests.” *Dunn*, 405 US at 339. Although she has

¹¹ The Secretary’s interpretation of this provision may deprive voters of their choice of candidate in future elections by disfavoring candidates who, like Kristof, frequently travel abroad, maintain multiple residences, and/or have strong ties both in Oregon and elsewhere. There are many peripatetic Oregonians who, for various reasons, live in more than one place and may prefer candidates who understand the experience of living in multiple places or changing residences often. Such Oregonians come from all walks of life: houseless and housing-insecure persons; university students; seasonal migrant workers; servicemembers; snowbirds; the list goes on. These groups are disserved by the Secretary’s interpretation, contravening the spirit of free and equal elections. *See* Or Const, Art II, § 1 (“All elections shall be free and equal.”).

cited none, states usually offer three justifications: (1) ensuring that candidates are familiar with constituents and their needs; (2) allowing voters to learn about candidates; and (3) preventing “carpetbagging.” *E.g., Robertson*, 150 F Supp 2d at 696; *Callaway*, 193 F Supp 2d at 787. But none of these interests are served by excluding candidates who have close ties to Oregon *and* ties to other states. Nothing about voting or sojourning outside of Oregon—while simultaneously maintaining close ties and a home in Oregon—shows that a candidate is less than knowledgeable about Oregon, a stranger to the state, or uninterested in Oregon affairs. Kristof is a prime example: even though he voted and traveled outside of Oregon, he has always been—and continues to be—intimately involved and dedicated to serving Oregonians and addressing Oregon issues.

In her written decision and public statements, the Secretary indicated her view that a person cannot be a “resident within this State” under Article V, section 2, while registered to vote elsewhere. (App 127-28; Supp App 25-26.) But for someone with deep connections to and a long history in the state, requiring registration to vote serves none of the purposes of durational residency rules. For that very reason, the Maryland Court of Appeals struck down a five-year voter registration requirement for local office. *Goodsell*, 396 A2d at 1038-40. Indeed, the Secretary’s own statement that her office applies the same residency rule for all purposes tacitly admits that the rule she proposes is not tailored to the specific purposes of Article V, section 2. (App 127 (“We determine residency as

consistently as possible for all election laws and all candidates.” (citing ORS 247.035(1)(e), a residency rule for voting).¹²

To be sure, durational residency rules for holding public office are not per se unconstitutional; they survive strict scrutiny when tailored to the purposes they aim to advance. But when deciding what it means for a person to be a “resident within” Oregon under Article V, section 2, the federal constitution requires an interpretation that hews closely to the legitimate purposes of Article V, section 2. Excluding an Oregon resident from elected office just because he registered to vote or periodically lived elsewhere is not necessary to achieve the purposes of the state constitutional rule. This Court should reject the Secretary of State’s interpretation and construe Article V, section 2, inclusively.

CONCLUSION

Based on the foregoing, Kristof respectfully asks that this Court (1) find him eligible to serve as Governor, and (2) issue the requested mandamus relief.

¹² Article V, section 2’s mandate that the three-year residency period must *immediately precede* the election must also overcome strict scrutiny. The burden lies with the Secretary to show that excluding candidates with many years of residency, even if not for a continuous three-year period immediately before an election, is tailored to the purposes of the constitutional rule.

Dated: January 14, 2022

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State of Oregon Newsroom

Oregon.gov Oregon Newsroom Secretary of State PRESS ADVISORY: Notice of 11 AM Media Availability on Kristof Eligibility



PRESS ADVISORY: Notice of 11 AM Media Availability on Kristof Eligibility

January 06, 2022

Records Do Not Support Residency Requirements for Office of Oregon Governor

Salem, OR—Media Contact: Molly Woon, Senior Advisor, 971-375-2640, molly.woon@sos.oregon.gov

11:00 AM Media Availability Information Below

The Oregon Elections Division notified the Nicholas Kristof campaign this morning that it is rejecting his filing for Governor because he does not meet the constitutional requirements to serve. Article V, § 2 of the Oregon Constitution requires a candidate for governor to have been a "resident within this state" for three years before the election.

"The rules are the rules and they apply equally to all candidates for office in Oregon. I stand by the determination of the experts in the Oregon Elections Division that Mr. Kristof does not currently meet the Constitutional requirements to run or serve as Oregon Governor," said Secretary of State Shemia Fagan. "As Oregon's chief elections official, it is my responsibility to make sure all candidates on the statewide ballot are qualified to serve if elected. The Oregon Elections Division and local election officials use the same standards to determine qualifications for hundreds of candidates in dozens of offices every year. In this instance, the candidate clearly does not meet the

constitutional requirement to run or serve as governor of Oregon."

ORS 249.031(1)(f) requires all candidates to provide a signed statement affirming that they will qualify for office if elected. Oregon elections officials evaluate whether prospective candidates meet residency requirements by checking Oregon voter registration records. If those records are insufficient to verify residency, or if officials become aware of other concerns about residency, they ask prospective candidates to provide additional facts. Elections officials across the state routinely review the residency of prospective candidates; it is not uncommon for officials to reject prospective candidates who do not meet eligibility requirements.

"If Mr. Kristof chooses to appeal, the Oregon Elections Division is committed to doing everything possible to allow Oregon courts to decide promptly," said Deborah Scroggin, Oregon Elections Director. "My office remains focused on ensuring a fair process and meeting our March 17th deadline, after which clerks begin printing ballots. While the primary election is in May, for Oregon's elections administrators, the work begins much sooner."

ORS 246.910 states that a person who is adversely affected by any act of the Secretary of State or by any order, rule, directive, or instruction made by the Secretary of State under any election law, may appeal to the appropriate circuit court. Oregon statute requires the Secretary of State to provide a list of qualified candidates to county clerks by March 17, 2022, allowing them to design, print, and mail ballots for the May 2022 primary election.

Secretary of State Shemia Fagan and professional staff from the Oregon Elections Division will hold a press availability for credentialed media and take questions at 11:00 a.m. today. For log in information, please contact molly.woon@sos.oregon.gov.

Verbatim Transcription of Youtube Video

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YouTube Video
Oregon Secretary of State Shemia Fagan and
Professional Staff From the Oregon Elections Division
Held a News Conference
RE: Kristof Ineligible to Run for Governor
Oregon Elections Division Says

January 6, 2022

TRANSCRIBED FROM RECORDING BY:
CHERYL J. HAMMER, RPR
WA CCR 2512, OR CCR 21-0013

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2 (BEGINNING OF TRANSCRIPTION)

3 (Recording/video begins.)

4 MS. WOON: Madam Secretary and team in
5 Salem, are we ready to get started?

6 MADAM SECRETARY: Rock and roll.

7 MS. WOON: Okay. Cool.

8 MADAM SECRETARY: Great. Well, good
9 morning. And I also understand that we have some
10 national news outlets with us, so good afternoon to
11 those of you who are on the East Coast.

12 My name is Shemia Fagan. I use
13 she/her pronouns, and I am honored to serve as
14 Oregon's 28th secretary of state. I'm joined today,
15 albeit virtually, by our elections director Lydia
16 Scroggin -- and, sorry -- Deborah Scroggin, and our
17 compliance specialist who worked on this filing, Lydia
18 Plukchi. And Lydia has been with the agency for
19 almost 20 years.

20 As your secretary of state, my top
21 priority is to build trust with Oregonians, especially
22 trust in our elections. It's not lost on me that
23 today is one year since there was a violent attack at
24 the United States Capitol, and we're only a few weeks
25 away -- or a few weeks past the one year anniversary

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1 of the attack on the Oregon capitol.

2 While I've served as secretary of
3 state for the past year, it's been in the midst of
4 unprecedented attacks on our democracy, historic
5 distrust in public services, and a scourge of
6 misinformation and false accusations against the local
7 elections officials who make our democracy work every
8 day.

9 Today, Oregon's elections officials
10 disqualified Mr. Kristof's filing for governor because
11 they determined that he will not have been an Oregon
12 resident for three years before the November 2022
13 general election as required by the Oregon
14 constitution.

15 The elections division followed their
16 regular procedure in evaluating candidates for office.
17 They begin -- they began that step with a step that
18 all Oregon election officials start with, which is
19 consulting the online central voter registration
20 database in Oregon, and as they do in all cases when
21 residency or eligibility is in question, the elections
22 division then gave Mr. Kristof's attorneys ample
23 opportunity to provide documentation or information to
24 prove his Oregon residency.

25 The division then consulted repeatedly

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1 with the Department of Justice and they issued their
2 decision, the same kind of decision they issue
3 hundreds of times every election. Let me be clear. I
4 stand by their decision, I agree with their decision,
5 and I will defend their decision.

6 Without putting you to sleep with
7 legal doctrines and which law dictionary was in vogue
8 in 1857, let me walk you briefly through some of the
9 objective facts that the elections officials use to
10 make their decision.

11 Until late 2020 or early 2021, Mr.
12 Kristof lived in New York and has for the past 20
13 years. When Mr. Kristof was traveling for work or
14 vacation, he would repeatedly return to his New York
15 residence. Mr. Kristof maintained a driver's license
16 in New York for 20 years. Until recently, he was
17 employed in New York. He received his mail at his New
18 York address. He filed income taxes in New York, and
19 perhaps most importantly, Mr. Kristof voted as a
20 resident of New York for 20 years, including, and this
21 is important, as recently as November of 2020.

22 Ms. Plukchi asked Mr. Kristof for
23 additional information or document to overcome the
24 strong evidence that taken together shows that until
25 late 2020 or early 2021, Mr. Kristof considered

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1 himself a resident of New York. In response, Mr.
2 Kristof provided a variety of sentiments and
3 statements that he's made over the years, which we
4 expect are genuine sentiments about his love for
5 Oregon, that he considers Oregon home, and his desire
6 to some day return to Oregon.

7 He talked about his visits to and
8 connection with the family farm in Yamhill County,
9 renovations to the family farmhouse, and his
10 affiliation with a recent LLC operating there. Mr.
11 Kristof also said that he filed income taxes in Oregon
12 in 2019 and 2020, but he didn't provide any
13 documentation whatsoever and he didn't even claim that
14 he'd filed those taxes as an Oregon resident.

15 While I have no doubt that Mr.
16 Kristof's sentiments and feelings towards Oregon are
17 genuine and sincere, they are simply dwarfed by the
18 mountains of objective evidence that until recently he
19 considered himself a New York resident.

20 And it is worth noting, particularly
21 for those of you who are not as familiar with Oregon
22 as our Oregon media, that Oregon's system of vote by
23 mail makes it exceptionally easy for an Oregon
24 resident to receive their ballot out of state, and has
25 since we became the first state to use vote by mail in

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1 1998.

2 In fact, that's what thousands of
3 Oregonians do every election, whether they are
4 temporarily serving overseas, whether they're in
5 college, whether they're out of state caring for a
6 loved one, whether they are unfortunately displaced by
7 a wildfire or other natural disaster. Any Oregon
8 resident who won't be home during the election to
9 receive their ballot can simply go on OregonVotes.org,
10 update their voter registration mailing address, and
11 your county clerk will make sure that your ballot
12 arrives literally anywhere on the globe.

13 So while this case has clearly
14 garnered significant public interest, in the end, our
15 elections officials told me it wasn't even a close
16 call. And while there have been creative legal
17 arguments and an impressive PR campaign, given the
18 evidence, I venture that most Oregonians who are
19 paying attention have reached the same conclusion.

20 Look, to find that Mr. Kristof meets
21 the three-year constitutional residency requirement
22 for Oregon governor while for 20 years living,
23 working, raising his kids, holding a driver's license,
24 filing taxes and voting as a New York resident until a
25 year ago just doesn't pass the smell test.

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1 As I said before, my top priority is
2 building trust with Oregonians, and we build trust by
3 applying the same rules to everybody. The same rules
4 to someone famous as to someone who's not, the same
5 rules to someone in my political party as someone
6 who's not. The same rules for someone who's raised
7 millions of dollars as someone who has raised none.
8 No exceptions, no special treatment. The rules are
9 the rules for everybody.

10 In fact, you might find it
11 interesting, at least I did, that Mr. Kristof's filing
12 is just one of 11 that our elections division's had to
13 disqualify just in the past year for not qualifying
14 for the office that they seek, including six other
15 candidates for Oregon governor in 2022 who didn't meet
16 the requirements for the ballot. Let that sink in.

17 In other words, Mr. Kristof is the
18 seventh candidate for governor that the elections
19 division had to disqualify in the past year because of
20 failure to meet the minimum qualifications for the
21 office.

22 So let's be clear. This hasn't
23 attracted such big media attention because
24 disqualifying a candidate somehow robs Oregonians of a
25 choice. It doesn't. This hasn't attracted attention

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1 because candidate qualifications are somehow in
2 conflict with our deeply held, deeply held Oregon
3 values of open, inclusive, and accessible democracy.
4 This is drawing a lot of attention only because one of
5 the candidates disqualified today is named Nicholas
6 Kristof. But regardless of public attention, the
7 professionals in the Oregon Secretary of State's
8 office know that the rules are the rules for
9 everybody.

10 I want to thank the hard working
11 professionals in the elections division for their
12 prompt attention and dedication to this matter, and I
13 want to thank the election officials all over our
14 country for the hard work they do to protect the
15 integrity of our elections and make our democracy work
16 every day.

17 Thank you for your attention. Bring
18 on your questions.

19 FEMALE VOICE: Molly, you're on mute.

20 MS. WOON: Of course I'm on mute.
21 Thank you, Madam Secretary. We are going to take
22 questions, take as many as we can. I know the
23 secretary's eager to talk with you all. Let's start
24 with a couple in the chat. Raise your hand also if
25 you want to ask questions, but since Gary was very

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1 eager in the beginning, let's start with his question,
2 which is, can the secretary of state decision be
3 challenged in federal court if the Oregon Supreme
4 Court upholds. And I don't know if we know the answer
5 to that, but should we get back to Gary or do we know?

6 MADAM SECRETARY: I don't know the
7 answer to that. What I do know is that Mr. Kristof
8 has been given his appeal rights on this decision in
9 an Oregon court, and that we are very, very committed
10 to working with his attorneys to make sure that we can
11 do everything we can to get this before the Oregon
12 Supreme Court as quickly as possible.

13 We have a March 17th deadline when we
14 have to give the ballot information to our 36 county
15 clerks so they can begin printing ballots for our
16 overseas and UOCAVA ballots.

17 MS. WOON: Great. Just a couple more
18 from the chat that are kind of more logistics. So
19 we've got Angelina Dixson from KVAL 13 in Eugene. She
20 would like to know, will over a million dollars be
21 returned to donors that was raised?

22 MADAM SECRETARY: That's a question
23 for Mr. Kristof's campaign.

24 MS. WOON: Great. And then Mr. Nigel
25 Jaquiss from Alignment Week is asking, will the

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1 secretary of state release the DOJ opinion that
2 undermines today's decision?

3 MADAM SECRETARY: So we had repeated
4 verbal conversations with the department of justice,
5 as you have reported, and I think, actually, Nigel, I
6 think you reported this as well. I know OPB and
7 others did. We were very anxious. The elections
8 division raised the concern back in December that we
9 were very worried about this March election, this
10 printing deadline for the ballots.

11 And so the department of justice
12 process, I am learning as a new secretary, is very
13 long to get to a written opinion, and so we said let's
14 just -- you know, they gave us their, their -- you
15 know, we had verbal discussions. We're very confident
16 that they're going to defend this decision and so we
17 moved forward with that without a written decision
18 because we didn't want to take the additional weeks
19 potentially to get that, which may have made the case
20 hard to get resolved before March 17th when our clerks
21 begin printing ballots.

22 MS. WOON: Great. We're going to take
23 some questions from folks raising their hands.
24 Hopefully I am doing this right. Dillon Mullan, I
25 believe you are unmuted.

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1 MR. MULLAN: Hey. Yes. Thank you.
2 Yeah, my name is Dillon Mullan. I am a reporter with
3 the Pamplin Media Group. I'm wondering, it looks like
4 Kristof tried to file his candidacy, at least on your
5 website it says December 20, 2021, but he had started
6 a pack and announced his run to the media earlier this
7 fall in October.

8 So I'm just wondering, the election
9 board investigation into the legitimacy of his
10 candidacy, had you been doing that for months now
11 looking into his background or did you not initiate
12 that until he filed last month?

13 MADAM SECRETARY: It was really
14 important to Lydia Plukchi, again, who's been with the
15 office for almost 20 years, to do this in the regular
16 course, which means that until Mr. Kristof filed and
17 provided initial information, there was nothing for us
18 to.

19 And so when he filed, I believe you're
20 right, I think it was December 20th, she promptly, I
21 think within a day or so -- the records are out there
22 -- responded to him with questions, noting that she
23 had looked at the online central voter registration
24 database, couldn't find any registration information
25 for him, noted that of course it had been reported in

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1 the Willamette Week and other places that he had
2 issued a legal memo detailing that he -- admitting
3 that he had voted and lived in New York.

4 And so she asked for that information,
5 but given that it was during the holidays, she wanted
6 to make sure he had ample opportunity. She requested
7 that information back, I believe -- Lydia, you're on
8 here. Was it January 3rd?

9 MS. PLUKCHI: That is correct. That
10 was January 3rd.

11 MADAM SECRETARY: Yes. And then, then
12 the information was then evaluated by Ms. Plukchi and
13 the Department of Justice. I believe we saw the
14 decision come through yesterday. Is that right,
15 Lydia? Okay.

16 MS. PLUKCHI: That's correct.

17 MR. MULLAN: Got it. Thank you.

18 MS. WOON: Great. Gary, you've got
19 your hand up here, and I believe you are unmuted.
20 Anything in addition to asking for us to follow up on
21 the supreme court question? Okay. I'm going to lower
22 your hand, then.

23 I've got Ben Kamisar from MBC.

24 MR. KAMISAR: Yes. Hi. Thanks for
25 doing this with us. I just have a, you know, quick

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1 question. Obviously it's no secret that Mr. Kristof
2 has spent a lot of time in New York. It's part of his
3 campaign story. It's not anything he was hiding.

4 I guess, could you explain a little
5 bit, you know, perhaps maybe what sort of actions he
6 could have taken in the eyes of the elections division
7 over these last three years to actually be considered
8 an Oregon resident while spending significant time in
9 New York? I guess, like, is there a line where you
10 can kind of straddle that and still be considered an
11 Oregon residence[sic] or was his significant time and
12 work in New York just sort of a nonstarter in the eyes
13 of the office?

14 MADAM SECRETARY: Thanks, Ben. It's
15 nice to meet you. So the law, as it was advised to
16 us, is that you look at all of the circumstances
17 together. It's not one factor that's controlling.
18 However, the cases are pretty clear that voting, while
19 not conclusive, is strong presumptive evidence that
20 someone intends to be a resident of a place.

21 So certainly, having registered to
22 vote in Yamhill County prior to November of 2019, I
23 don't know that -- you know, it would have to be
24 evaluated with all the other factors, but as I
25 indicated, there were just a mountain of objective

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1 factors indicating that his -- that his own objective
2 intent as demonstrated was to con -- was to be a
3 resident of New York. The factors taken together, as
4 I mentioned, were just overwhelming.

5 Voting would have been a good start,
6 but again, without knowing more, I can't know all of
7 the factors that would have been in play there.
8 Again, Lydia would have had to evaluate those factors.
9 But the voting is strong presumptive evidence in the
10 courts that is the place that you intend to make your
11 residence.

12 MR. KAMISAR: That's very helpful.
13 Thank you.

14 MS. WOON: Great. We're going to go
15 to some questions in the chat and we'll just kind of
16 go back and forth. So we have a question from Les
17 Zaitz with the Oregon Capital Chronicle, I believe.
18 Les can correct me if I'm wrong in the chat.

19 Did the elections division
20 specifically request any document from Mr. Kristof
21 such as tax returns?

22 MADAM SECRETARY: So I believe that
23 Lydia's letter is in the public record. It's kind of
24 a standard letter. Again, this is a decision that
25 she's made, you know, many, many times a year every

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1 election cycle.

2 I believe that she gave a category of
3 types of documents that could support it. But again,
4 it's, you know, anything you want to provide. Lydia,
5 I don't know if you want to provide any information on
6 that. I don't have your letter in front of me.

7 MS. PLUKCHI: I did not ask for any
8 specific document. I just asked for any documents
9 that Mr. Kristof wanted to provide to prove that he
10 lived here in Oregon three years prior to the
11 election. So I kind of left it up to Mr. Kristof and
12 his campaign to provide any document that they think
13 would prove that he lived here. So I did not specify
14 any particular document.

15 MS. WOON: Thanks, Lydia. Another
16 question from the chat from Gabby Urenda with KOIN 6
17 news asking, any indication if he plans to appeal?

18 MADAM SECRETARY: I have not spoken
19 with him. I know that there's been a professional
20 relationship between the attorneys and that we did
21 indicate to him through a call today, again, through
22 the attorneys, not me personally, that we would make
23 every effort to work with them cooperatively to get
24 this before the Oregon Supreme Court as quickly as
25 possible so the decision can be issued before March

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1 17th when the clerks start printing our ballots.

2 MS. WOON: Great. So now we're going
3 to go to Dick. Maybe Dick Hughes? I'm not sure. I
4 believe you are unmuted, Dick.

5 MR. HUGHES: Thank you very much. And
6 I apologize if my name is not showing up correctly in
7 this virtual world. Thank you very much for doing
8 this.

9 Madam Secretary, my main question is,
10 the -- and I don't know if it's for you or for Lydia.
11 My main question is, I understand that he submitted
12 new docu -- new information early in the week.
13 Today's Thursday. You said that you didn't have time
14 to wait for a DOJ opinion, but it seems like a very
15 quick turnaround from getting his documents to making
16 that decision, which raises the question of whether
17 there was enough scrutiny of what he presented or was
18 what he presented pretty much a reiteration of what
19 had been presented before?

20 That's a convoluted question, but I
21 think -- but I think you get where I'm going.

22 MADAM SECRETARY: No problem, Dick. I
23 got it. Let me give kind of a general answer and,
24 Lydia, please pipe up if there's something more
25 specific.

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1 First off, again, we did get advice --
2 she did get advice from the Department of Justice.
3 Right? They just -- there was a matter, like, oh, to
4 get this legal opinion it's this whole process, and
5 again, we're worried about timeline. We don't want to
6 be the reason for any of the delays, because we made
7 it so clear back in the back in December to the
8 Kristof campaign that the elections division was
9 concerned about this printing deadline to make sure
10 that Oregonians can trust that their ballots are
11 accurate when they get them this May.

12 And so the hundred-plus pages or so
13 that Mr. Kristof provided, his attorney provided on
14 Monday, a lot of it was like articles that had already
15 been in the news, op-eds that had been written. I
16 think there may have been an affidavit from him, but
17 it really wasn't any new factual information. But,
18 Lydia, you know, please, I don't want to put words in
19 your mouth.

20 MS. PLUKCHI: No, I agree. The
21 document did have information that was either already
22 reported in the news or the articles that we have
23 seen. And so we reviewed the information, we talked
24 to Attorney General's Office, we had a couple of
25 meetings about this, and we were worried about the

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1 deadline, so we wanted to move this quickly.

2 MS. WOON: Great. We're going to do
3 one more question and from Maggie Vespa with KGW and
4 then we will go to -- back to questions in the chat.

5 Maggie, you should be unmuted.

6 MS. VESPA: Hi. Yeah. Thank you,
7 guys, again, very much for doing this. Secretary,
8 thank you.

9 Can I ask you more about your comment
10 about you said, quickly, that you were surprised to
11 learn how many candidates or multiple offices were
12 being disqualified and that there were six other
13 gubernatorial candidates. Can you elaborate on that
14 just any more with maybe context as to how -- whether
15 that is high historically or any common factors you're
16 seeing? I think that will surprise a lot of our
17 viewers.

18 MADAM SECRETARY: Sure. And hi,
19 Maggie. And I saw on Twitter that you weren't feeling
20 well until recently, so I'm glad you're back and
21 feeling better.

22 Lydia can provide more information.
23 She's literally been with the agency for 19 years,
24 almost 20. She wouldn't let me say 20 because she's a
25 stickler for details, but almost 20 years.

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1 I was surprised, but what she told me
2 was that every election cycle, and I'm sure that are
3 our county clerks and local municipal elections
4 officials would say the same, people file and for a
5 variety of reasons don't meet the minimum
6 qualifications for the filing of the office.

7 And so I was -- I was -- I just
8 happened to ask her, I think it was yesterday, like,
9 is this common, because she made the decision
10 yesterday, and she said -- and I said, has it happened
11 under previous secretaries, and she said with a
12 hundred confidence that it happens with previous
13 secretaries.

14 So, Lydia, you can provide if this is
15 a high number, a low number. Of course everybody, not
16 just Mr. Kristof, everybody that is disqualified has
17 those opportunities for appeal rights. We just
18 obviously haven't heard about those, because, you
19 know, they are people that are not as well known.

20 Lydia, do you want to answer her
21 question about if this historically is a lot or a
22 little?

23 MS. PLUKCHI: Yeah. It is definitely
24 uncommon. The number does go up when there's a highly
25 contested race on the ballot, so especially governors.

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1 If governor is an open office and the current governor
2 is not running, there's a lot of people that file,
3 there's a lot of candidates, and a lot of them just
4 file and so it's-- it's not common -- not uncommon.

5 It's very common that we have quite a
6 few candidates who don't meet qualifications, and this
7 is a regular process, especially when somebody -- the
8 governor is on a ballot and it's not contested.

9 MS. WOON: Great. I'm going to go to
10 questions in the chat. You can, of course, put
11 questions in the chat or raise your hand and we'll do
12 -- I think we're doing three and three more or less
13 has been our pattern here.

14 So this is a question with Sam Stites
15 from OPB. Can your office provide a list of the 11
16 other candidates the elections division ruled were
17 also ineligible, because they are not readily
18 available on ORESTAR and we only show three pending.

19 So I'm certain the answer is yes, but
20 does anyone else want to say anything about that?

21 MADAM SECRETARY: Go ahead, Lydia.

22 MS. PLUKCHI: I did not hear the
23 beginning of the question. Are we -- is the question
24 about were there --

25 MS. WOON: Can we provide the letters

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1 to the folks that have been disqualified already, the
2 11 other people.

3 MS. PLUKCHI: That is public record
4 and we can definitely provide that.

5 MS. WOON: Great. And folks can just
6 follow up with me if they want that information over
7 email.

8 Here's another question from Gary. He
9 says, I am with the EO Media Group. I'm asking this
10 because I know Kristof will make the argument. Did
11 Secretary Fagan's prior relationships with the
12 Democratic party and Speaker Kotek impact her
13 decision?

14 MADAM SECRETARY: Again, as I said, my
15 primary responsibility is to build trust with
16 Oregonians and the way that that was to happen in this
17 situation is by trusting the decision of the people
18 that are on the call with me today, our elections
19 director. And again, Lydia told me yesterday it
20 wasn't even a close call.

21 And so, you know, I've certainly -- I
22 mean, I read the news. I've seen people saying that,
23 and I just want to, you know, yes, I'm an elected
24 secretary of state, and I was the -- one of two major
25 party nominees last -- a year ago November, but I am

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1 sure if you look closely, you will find that there are
2 people supporting all of the different candidates for
3 governor who also supported me, including the United
4 Food and Commercial Workers. One of the state's
5 largest private sector employee unions has been a
6 supporter of mine for a long time.

7 In fact Mr. Kristof's attorney, Misha
8 Isaak, is a friend of mine and donated to my campaign
9 and not only just send it in. He, like, wrote a nice
10 little card when he -- when he supported my campaign.

11 So I am a person of integrity and
12 Oregonians can trust that this is a process that was
13 put through the professionals in the elections
14 division who have the experience and the technical
15 expertise to apply the qualifications to the law.

16 MS. WOON: Okay. Not seeing any hands
17 raised, I'm going to keep doing questions from the
18 chat, this one from Jim Redden, I believe, with the
19 Portland Tribune.

20 A Marion County Circuit Court judge
21 ruled voting does not determine residence in 1974, in
22 the 1974 case involving then state rep Bill Wyatt.
23 How do you square that with your decision?

24 MADAM SECRETARY: Thanks, Jim. I
25 appreciate you bringing this up, because this was

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1 obviously a case as soon as -- I think somebody
2 reported it. I don't -- you know, again, there's been
3 a lot of media interest and a PR campaign, so I forget
4 who exactly, but...

5 But, yeah. So the advice we received
6 is that's a very distinguishable case for one very
7 important reason, and I'm sure a number of them, but
8 in that instance, the person was registered to vote
9 somewhere and then just simply didn't reregister, but
10 didn't actually affirmatively vote or do anything
11 affirmative in that time period.

12 That's very different from Mr.
13 Kristof, who wasn't just registered in New York, but
14 voted affirmatively in November of 2020 and had to be
15 a resident of New York to vote. And I know that
16 there's been a lot about New York law and multiple
17 residences. I don't know, you know, New York law.

18 What I know is that New York law
19 requires that you be qualified to vote, that he
20 affirmatively asserted that he was qualified to vote
21 by voting, and that Oregon statute provides directly
22 that in ORS 247.035 -- if I don't get that right, we
23 can follow up with you, but it's something like that
24 -- that if a person casts a ballot in another state,
25 they are no longer a resident of Oregon. It's very,

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1 very simple.

2 So it's distinguishable from that
3 Marion County case because that person was registered
4 and just didn't simply update it. Kind of a passive
5 omission of action. Mr. Kristof took action in
6 November of 2020 consistent with his belief that he
7 was a resident of New York.

8 MS. WOON: Great. A question from the
9 chat from Andrew Selsky with the Associated Press.
10 Hello, Secretary Fagan. Could you have overruled the
11 election officials' decision and decided that Kristof
12 is eligible to run? I assume so, but wanted to
13 confirm. Would there have been a process for that?

14 MADAM SECRETARY: I don't know if
15 there would be a process for that. I never even asked
16 that. I committed to Deborah and Lydia early that
17 this was their decision and went along the process
18 with them.

19 So I -- I personally would not have
20 overruled them. Again, my primary job as secretary of
21 state is to build trust with Oregonians, applying the
22 same rules to everybody. I'm not going to overrule a
23 decision when Lydia tells me that it wasn't even a
24 close call.

25 MS. WOON: Great. And then I'm going

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1 to do this last one in the chat and then go over to
2 where hands raised. You can raise your hand if you'd
3 like to ask a question without the chat.

4 This from Gary Warner with EO Media.
5 Oh, that's for me. Sorry. It says, Molly, a side
6 question. When does Betsy Johnson have to file her
7 signatures to run in the general? What is the
8 deadline? It's in August sometime. Is that correct?
9 Elections? Yeah. Okay.

10 Let's see here. So now we're going to
11 go back over to hands raised. And, Dick Hughes, you
12 should be unmuted. Please go ahead.

13 MR. HUGHES: Thank you very much.
14 Just a couple things to make sure I'm understanding.
15 What did the DOJ say in their conversations? What was
16 their legal advice to you? And also, in pursuing the
17 letter very quickly, and I may have gotten it wrong,
18 but in perusing the letter to the Kristof campaign ind
19 -- you mentioned that he had not submitted tax returns
20 to you, et cetera, et cetera, and I'm trying to
21 correlate that with the fact that you didn't
22 specifically ask for tax returns and stuff. So those
23 are my two questions.

24 MADAM SECRETARY: Right. Well, I -- I
25 don't want to -- I mean, the Department of Justice was

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1 giving us essentially the stan -- like, what is the
2 legal standard for residency. Like, in 160-plus years
3 of Oregon history, this is the first time that the
4 definition of residency in article 5 section 2 is
5 being interpreted.

6 In 27 previous secretaries, that has
7 not had to be interpreted, in part because it's not a
8 high bar. The constitution requires that somebody has
9 to be 35 years old and a resident within the state for
10 three years to be -- to constitutionally qualify to
11 serve as governor.

12 And so in terms of the Department of
13 Justice, they are -- this decision -- again, I don't
14 want to put words in their mouths, but there was not
15 really -- there wasn't a dispute. This is a decision
16 that they are fully prepared to discuss. It was
17 really us asking questions, procedurally asking what
18 the standard is, making sure that Lydia knew what
19 standard is she applying to then the documents and
20 information that Mr. Kristof provided.

21 But the absence of a written opinion
22 is only because we said we don't -- they offered one
23 and we said we need to get this going. We do not want
24 to end up with a ballot that has to be printed on
25 March 17th, with Mr. Kristof claiming he's supposed to

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1 be on there. We need to get this to the Oregon
2 Supreme Court if he's going to challenge it as quickly
3 as possible.

4 MS. WOON: Great.

5 MR. HUGHES: Thank you. And then,
6 should you have specifically asked for tax records if
7 -- if that's one of the things you mentioned he didn't
8 provide that might have been supporting? I'm just
9 trying to understand that.

10 MADAM SECRETARY: Yeah, I mean, Mr.
11 Kristof clearly has prestigious and qualified counsel
12 who provided a lot of different documents. He claimed
13 to file for Oregon taxes. If he challenges this
14 decision he's certainly welcome to give the court.

15 But again, Lydia gave him the
16 opportunity to provide anything including, you know,
17 things he provided that other people have not. New
18 things in this case. So, Lydia, I don't know if -- I
19 mean, her normal course is to not ask for specific
20 documents.

21 But, Lydia, I don't know if you want
22 to respond to Dick for that question.

23 MS. PLUKCHI: Yeah, we did ask for
24 documents. We didn't specify documents, but we did
25 ask for documents, any documents that would prove that

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1 he lived here and we received a memo, but no documents
2 attached.

3 Yes, we didn't specify because we
4 didn't know what he can. We didn't want to limit his
5 -- things that he wanted to show to us. So we didn't
6 limit him by specifically asking him for specific
7 documents but gave him the opportunity to provide any
8 documents he can and we received a memo that mentioned
9 something, but no documents attached.

10 MR. HUGHES: Thank you very much.

11 MS. WOON: Great. And then we have a
12 follow-up question from Jim Redden. Madam Secretary,
13 a follow-up on the question around Bill Wyatt. Wyatt
14 actually voted in Lane County in 1972, according to a
15 story in the October 2, 1974 issue of the Oregonian.
16 Why did you say he didn't vote in Lane County?

17 I'm just going to editorialize and say
18 I'm sure this is something we can follow up on if we
19 got some of the details wrong. But do you want to
20 speak to that?

21 MADAM SECRETARY: My understanding was
22 it was a question whether he'd been a resident since
23 1974 -- or sorry -- for the 1974 appointment or
24 election and he had -- if he had voted in 1972, that's
25 two years, not one year. It's a one-year residency

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1 requirement for state legislature. At least I believe
2 it was. I don't -- it's not a state legislative case.

3 But that's my understanding, again.
4 But if we're wrong or if you want to follow up, I'm
5 happy to do that, but that's my understanding. 1972,
6 but it was a question of 1974 going backwards.

7 MS. WOON: Okay. Great. I am not
8 seeing any questions, so this is your final warning to
9 interview --

10 MS. BORRUD: Secretary, Hillary Borrud
11 from the Oregonian. I just had one quick question. I
12 don't believe this was in the elections division
13 letter, but you had mentioned among the evidence that
14 Nick Kristof wasn't considering himself an Oregon
15 resident in recent decades, that he educated his
16 children in New York State.

17 Do you believe -- it sounded like you
18 were asserting there that that's something to consider
19 in terms of eligibility or whether a candidate for
20 office is really a resident of Oregon, like, where
21 their children are going to school.

22 MADAM SECRETARY: All factors about
23 where someone actually lives, again, voting is the
24 strongest evidence. It creates kind of a presumption
25 as some of the cases have talked about. It is not

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1 controlling, you know, any particular factor is not
2 controlling, but there's strong evidence.

3 And so I believe that Mr. Kristof
4 noted that in his -- one of his legal memos, that his
5 kids graduated from high school there. It was simply
6 one of the things that folks that had objective
7 evidence for that they noted. That in and of itself
8 is not a single factor. The one the courts have
9 focused on the most is where somebody chooses to vote
10 as a resident.

11 MS. WOON: Great. And we have another
12 question from Gabby Urenda. You should be unmuted.

13 MS. URENDA: Yeah. Now I'm unmuted.
14 I got a last-minute question from our producer. So
15 thank you for taking the time to answer this.

16 So is Kristof the only person ever to
17 get rejected because of residency? We wanted to make
18 sure we got an answer on that. Thank you.

19 MADAM SECRETARY: I don't have that
20 information. Certainly -- you mean the only for
21 governor or other offices?

22 MS. URENDA: Well, it's a question
23 from someone else, but I want to say that's the
24 assumption, yes.

25 MADAM SECRETARY: Okay. I mean, we

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1 can get back to you on that. Certainly, our county
2 elections officials are looking at residency for who's
3 voting, you know, who's running for water board and
4 school board and mayor and all other kinds of
5 elections. But, Lydia, do you know off the top of
6 your head or should we just get back to her?

7 MS. PLUKCHI: I can definitely get
8 back to her with that question. I know for a fact
9 that there are others who failed to be on the ballot
10 because of residency question, but I have to check
11 specifically if it was for governor.

12 MS. WOON: Great. And I had said when
13 we started -- I apologize -- that if you're on the
14 phone, you could kind of yell out your question. So
15 if we've got any reporters that have -- that are on
16 the phone that want to ask a question, now would be
17 the time to speak up.

18 Okay. Madam Secretary, any closing
19 thoughts?

20 MADAM SECRETARY: No. Thank you for
21 all of your attention to this, and I appreciate the
22 work that you do.

23 MS. WOON: Thanks, everyone. I know a
24 lot of you are asking for the recording. We will get
25 that out as soon as we can. If you have follow-up

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1 questions...

2 (Recording/video ends.)

3 (END OF TRANSCRIPTION)

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TRANSCRIPTION CERTIFICATE

I, CHERYL J. HAMMER, the undersigned
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That the foregoing transcript was
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WITNESS MY HAND this 7th day of December
2022.



CHERYL J. HAMMER

Certified Court Reporter

CCR No. 2512

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