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January 06, 2022

Nicholas Kristof

Sent Via Electronic Mail Only To: info@nickfororegon.com

Dear Mr. Kristof:

After reviewing your candidacy filing, and the additional information you provided, we have determined you do not meet the qualifications to be a candidate for Oregon governor in 2022. We appreciate your campaign's cooperation in responding to our inquiries, and we did not make this decision lightly.

Reasons for our decision include the following:

- 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 period of required residency for the 2022 election began in November 2019.
- As the filing officer for statewide offices, our office determines whether candidates meet minimum qualifications for office. This includes verifying qualifications of prospective candidates when they file for office, including whether they meet residency requirements. ORS 249.004(1), ORS 249.031, ORS 254.165.
- To verify residency, we begin by reviewing a prospective candidate's Oregon voter registration history. If a person's history is insufficient to determine Oregon residency, we request additional information, as we did here. We also ask prospective candidates to answer any questions we may have about their residency.
- Your voter registration history for the required residency period shows you were registered as an Oregon voter from December 28, 2020 to the present. We requested additional information because this was insufficient to demonstrate residency for the entire residency period. In this case, questions about your residency were also raised publicly. We reviewed your public response and asked you to address those questions further, focusing on the effect of your New York voting history. Your counsel provided a response on January 3, and a supplemental response on January 5. We reviewed and considered all the information you provided.
- Considering all the available information,¹ we note the following facts concerning the required residency period (November 2019-November 2022):

¹ The letters from your legal counsel are thorough in detailing your various connections to Oregon. We reasonably infer that you were comprehensive in providing all relevant information.

- From 2000 until December 2020, you were registered to vote in New York. You voted there as recently as November 2020. You were registered to vote in Oregon on December 28, 2020 and are still registered here.
 - From 2000 until December 2020, you maintained a New York driver’s license. This indicates that you viewed New York as the place where you intended to permanently return when you were away.
 - During the relevant period, you owned and maintained homes in New York and in Oregon but spent most of your time away from Oregon. Before 2019, you spent “at least part of every summer” in Oregon. You spent more time in Oregon since 2019.
 - You worked in New York (journalism) and in Oregon (owning/leasing and managing farm property). You stated that you have hired and supervised employees since 2019, but you did not state the extent of your supervision or whether you supervised employees in person or from New York.
 - You paid income taxes in New York from 1999 to 2021. You paid income taxes in Oregon in 2019 and 2020. You did not explain whether you filed Oregon income tax returns as a nonresident, a part-year resident, or a full-year resident.
- When determining residency for elections purposes, the place where a person votes is particularly powerful, because voting is the center of engaged citizenship. The fact that you voted in New York strongly indicates that you viewed it as the place where you intended to permanently return when you were away.
- Other objective facts, such as those listed above, are powerful evidence of where a person resides. In evaluating whether a person meets Oregon residency requirements, we 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. While a person’s statement of their intent is significant, we also consider a person’s prior acts. We cannot ignore past acts that strongly indicate the person’s state of mind at that time, even if the person’s current sworn statement indicates a different intent.
- We determine residency as consistently as possible for all election laws and all candidates. Although Oregon courts have not interpreted the constitutional residency requirement for gubernatorial candidates, it is only one of many Oregon residency requirements that apply statewide for voter registration and candidacy qualification. For example, many Oregon offices require candidates to be registered to vote in the appropriate district. Article II, § 2 of the Oregon Constitution allows people to vote only if they have “resided” here for the required period. ORS 247.035 provides a substantial list of factors to consider when determining where a person resides, including whether the person inhabits a location for a temporary or permanent purpose, where the person maintains a driver’s license and files taxes, and where the person has voted. ORS 247.035 (1)(e) provides that a person loses Oregon residency by voting in another state. While that statute does not apply directly in this case, it demonstrates that voting is integral to residency. This principle applies to the concept of residency in general, and we consider it first whenever we determine candidate qualifications.
- You suggest that we should apply a different standard, but we decline to change the way we evaluate residency. Even if we adopted New York’s residency standards, we do not believe that they would lead us to determine that you are an Oregon resident. In some instances, New York allows a person to choose one of several residences, but it does not allow a person to vote at one residence while claiming the right to vote at another.

In order to satisfy the three-year residency requirement, you must have been a resident in Oregon for the entire three-year period beginning in November 2019. But the objective facts, including your decision to vote in New York, convincingly suggest that you resided in New York at least from November 2019 to December 2020. Therefore, we conclude that you have not met the residency requirement to appear on the ballot for Oregon governor in 2022. According to ORS 245.165(1), your name may not be printed on the May 2022 primary ballot.

To be clear, it is not the Elections Division's role to determine whether any candidate is sufficiently "Oregonian," to examine the depth or sincerity of a candidate's emotional connection to Oregon, to assess the number of a candidate's supporters or the magnitude of their fundraising, or to comment in any way on the merits of a candidacy. Rather, our role is to determine whether candidates meet the minimum threshold for Oregon residency required by Oregon law. We conclude that, at this time, you do not.

Appeal Process

ORS 246.910 states that a person affected by any act of the Secretary of State, or by any order, rule, directive, or instruction made by the Secretary of State, may file an appeal to the appropriate circuit court. If you choose to appeal, our office will do everything possible to allow Oregon courts to decide the matter promptly, with sufficient time to meet the March 17, 2022 statutory deadline for our office to provide an official ballot statement to county clerks and allow them to design, print, and mail ballots.

Sincerely,



Lydia Plukchi
Compliance Specialist



Deborah Scroggin
Elections Director

cc: Misha Isaak, misaak@perkinscoie.com