

# Nick Kristof lawyers argue candidate is Oregonian

Kristof says intent, not voting history, should dictate residency ruling

By **JIM REDDEN**  
Oregon Capital Bureau

PORTLAND — Lawyers for former New York Times columnist Nick Kristof have submitted a 15-page letter to the Oregon Secretary of State's Office asserting he is legally qualified to run for governor this year.

The office, which regulates elections in the state, is questioning Kristof's qualifications, in large part because he registered to vote in New York while working at The Times. The Oregon Constitution requires candidates for governor be a resident of the state for at least three years before their election, or no later than November 2019

in Kristof's case.

"Mr. Kristof is an Oregon resident and has been for his entire adult life," said the letter from Misha Isaak and Jeremy Carp, of the Perkins Coie law firm, dated Monday, Jan. 3. Among other things, the letter cited a 1974 Marion County Circuit Court case that found where a candidate votes does not determine residency. The Portland Tribune first reported on the case Dec. 28.

Kristof filed as a Democrat for governor on Dec. 20. The next day an election compliance specialist sent him a letter which said, in part, "We typically determine whether candidates meet residency requirements by checking their voter registration records, but your Oregon voter registration record has insufficient information. In addition, it has come to our attention that you voted in New York State as recently as 2020."



Kristyna Wentz-Graff/Oregon Public Broadcasting, File  
**Nick Kristof answers questions about his campaign for Oregon governor on Oct. 27, 2021, at First Presbyterian Church of Portland.**

In their response, Isaak and Carp note that many people have multiple residences, sometimes in different states, but that Kristof has always considered Oregon his home, even when going to college or working out of state. Among other things, the letter said

Kristof has returned to his family farm in Yamhill every summer over the past three decades, built an addition large enough for his growing family there in 1994, and purchased three nearby parcels of land between 1993 and 2020. Kristof also has called Oregon his

home in numerous columns and interviews beginning in 1982, the letter said.

According to the letter, there has only been one Oregon court case that considered the question of whether voter registration determines residency. It took place in 1974 after former Oregon Secretary of State Clay Myers ruled then-Clatsop County state Rep. Bill Wyatt off the ballot because he had registered to vote in Lane County while attending the University of Oregon in Eugene. Wyatt challenged the decision in court.

Marion County Judge Jena Schlegel disagreed with Myers, ruling that "the question of domicile is largely one of intent" and Wyatt "by his testimony maintained his ties with Clatsop County and never made an affirmative decision to change his domicile elsewhere. Continuous

physical presence (within the district) is not required."

Myers did not appeal the ruling.

"Thus, today, the Marion County Circuit Court decision is the only judicial decision to address the significance of registration and voting in evaluating an Oregon candidate's residency. That decision squarely resolves the issue in favor of Mr. Kristof's position," the letter reads.

In their letter, Isaak and Carp also say that residency requirements are historically rooted in racism, especially in Oregon.

"They applied originally both to voting and serving in elected office and were adopted by powerful white elites to keep themselves in power and to exclude from political participation people of color, 'foreigners,' and other disempowered newcomers," the letter reads.

## Oregon Supreme Court: Only active voters can sign initiative petitions

By **PETER WONG**  
Oregon Capital Bureau

SALEM — The Oregon Supreme Court has held again that only active voters, excluding people who remain on county registration rolls but are considered inactive, are eligible to sign petitions for ballot initiatives and referendums.

The court upheld the secretary of state, who declined to place an initiative on the 2016 statewide ballot because it relied on signatures from inactive voters to qualify it. Judge J. Channing Bennett upheld the state's

action in mid-2020 in Marion County Circuit Court. But a three-judge panel of the Oregon Court of Appeals overturned it in a 2-1 decision released on Dec. 30, 2020.

Exactly one year later, on the final business day of 2021, the Supreme Court upheld the original 2016 decision by then-Secretary of State Jeanne Atkins to exclude signatures from inactive voters. The resulting total fell short of the amount required to qualify the initiative for a statewide ballot. (Atkins has had three successors: Republican Dennis Richardson,

elected in 2016; Republican Bev Clarno, appointed in 2019 after Richardson died, and Democrat Shemia Fagan, elected in 2020. The case now bears Fagan's name as the respondent.)

The Oregon Constitution specifies the signatures required to qualify a referendum, initiative or constitutional amendment for a statewide election, based on the total votes cast in the most recent election for governor.

Justice Thomas Balmer, who wrote for the court, said voter registration for elections has been required

by state law since 1920 and by the Oregon Constitution since 1927.

He wrote: "Defining and regulating voter registration and verification of registrations has been within the purview of the legislative branch. And this court has issued several decisions squarely holding that voters may sign initiative petitions only if they could legally vote in an election at the time of signing."

"We conclude that voters with inactive registration, who statutorily may not vote, may not have their signatures counted on initiative

petitions either."

Voters are considered "inactive" under a state administrative rule if they have not cast ballots for at least 10 years and county elections officials have sent specified notices to them. They can become active and eligible to vote if they notify the Division of Driver and Motor Vehicle Services or their county elections office.

The legal challenge was filed by Richard Whitehead on behalf of the Citizens in Charge Foundation, based in Virginia. It sought to qualify a ballot measure barring disclosure of certain voter

information to third parties, such as the status of a voter's ballot, without a voter's written consent. The lawsuit was joined by Timothy Grant, who became an inactive voter because he joined his spouse on active military duty out of state.

Three lawyers from the Portland firm of Davis Wright Tremaine were involved with the plaintiffs' challenge: Chris Swift; Evan Christopher, who now is a counsel with the U.S. House Judiciary Committee, and Greg Chaimov, a former counsel for the Oregon Legislature.

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