



STATE OF NEBRASKA

JOHN A. GALE
SECRETARY OF STATE

P.O. Box 94608
State Capitol, Suite 2300
Lincoln, NE 68509-4608
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Determination Opinion of the Secretary of State of Nebraska
BY: John Gale, Secretary of State
February 27th 2018

In Re: Objection of Tyler A. Davis to the Governor Candidate Filing Form of Robert J. Krist

Introduction:

The purpose of this memorandum is to respond to the objection filed by Tyler A. Davis to the candidate filing of Robert J. Krist for Governor.

On February 20, 2018, Tyler A. Davis filed with the Secretary of State his objection to the candidate filing form of Robert J. Krist filed with the Secretary of State on February 13, 2018, to be a Democratic candidate for Governor for the May 15, 2018 primary.

As part of the objection, Tyler A. Davis indicated that Robert J. Krist:

1. Was not affiliated with the Democratic Party on December 1, 2017.
2. Was a member of the United Nebraska Party as implied through business filings, social media posts and news articles.

The question before the Secretary of State is whether Robert J. Krist had a change of political party such that the candidate filing form filed by Krist should be invalidated.

Secretary Gale conducted an analysis of the allegations including reviewing documents such as Douglas County Voter Registration forms, candidate and business filing forms and relevant Nebraska Revised Statutes and Secretary of State Opinions. This memorandum provides the conclusions of this analysis.

Statutory Background and Relevant Opinions

1. Neb. Rev. Stat. §32-624, provides that "A candidate filing form which appears to conform with sections §32-606 and §32-607 shall be deemed to be valid unless objections are made in writing within seven days after the filing deadline."
2. Neb. Rev. Stat. §32-624 goes on to provide that "The filing officer with whom the candidate filing form was filed shall determine the validity of such objection, and his or her decision shall be final unless an order is made in the matter by a judge of the county court, district court, Court of Appeals, or Supreme Court on or before the fifty-fifth day preceding the election."

3. Finally Neb. Rev. Stat §32-624 requires that “If an objection is made, notice shall be mailed to all candidates who may be affected thereby.”
4. Neb. Rev. Stat. §32-612, section (1) provides that “A change of political party affiliation by a registered voter so as to affiliate with the political party named in the candidate filing form or in an affidavit as a write-in candidate pursuant to section §32-615 after the first Friday in December prior to the statewide primary election shall not be effective to meet the requirements of section §32-610 or §32-611 or subsection (4) of this section.”
5. Neb. Rev. Stats. §32-716 and §32-717 provides the process by which a new political party may be formed.
6. Nebraska Secretary of State’s Opinion dated February 3, 1998 addresses when a non-partisan affiliates with a party in light of Neb. Rev. Stat. §32-612. (Attachment A.)
7. Neb. Rev. Stat. §32-201, provides that “The Secretary of State shall decide disputed points of election law. The decisions shall have the force of law until changed by the courts.”

Relevant Filings

The records of the Secretary of State show the following:

1. On September 13, 2017, Robert J. Krist filed a Nebraska Voter Registration Application reflecting under section 5, his choice of “Party Affiliation” to be “Nonpartisan.” The application was filed with the Douglas County Election Commissioner.
2. On November 22, 2017, Robert Krist’s Application for Reservation of Corporate Name with the Secretary of State requesting that the name “United Nebraska” be reserved for a period of 120 days, was approved.
3. On February 12, 2018, Robert J. Krist filed a Nebraska Voter Registration Application reflecting under section 5 his choice of “Party Affiliation” to be “Democratic.” The application was filed with the Douglas County Election Commissioner.
4. On February 13, 2018, Robert J. Krist filed with the Secretary of State a “Governor Candidate Filing Form” which declares the applicant to be a “Democrat” candidate for the office of Governor for a term of four years. Robert J. Krist requested that his name be shown on the ballot as “Bob Krist” for the primary election to be held the 15th day of May, 2018.
5. On February 20, 2018, Tyler A. Davis filed an objection to the filing form of Robert J. Krist. (Attachment B.)

Findings of Facts and Law

1. The Secretary of State of Nebraska is the statutorily designated filing office for corporate business related filings, candidate filings for statewide offices, and petitions for new political parties.
2. Through the start of the filing period, December 1, 2017 through February 13, 2018, the only official partisan political parties recognized in Nebraska with the Nebraska Secretary of State were: the Republican Party, Democratic Party, and Libertarian Party.
3. The first Friday in December in 2017 prior to the statewide primary election in 2018 was Friday, December 1, 2017.
4. Robert Krist reserved the name "United Nebraska" with the Secretary of State's Office, which became effective on November 22, 2017 for 120 days. Such a filing to reserve a corporate name with the Secretary of State did not constitute the needed filing to petition to form a new political party.
5. No filings have been received by the Nebraska Secretary of State from Robert J. Krist, nor any other person, to initiate a petition for the purpose of gathering the needed signatures to form a new political party in Nebraska with the name "United Nebraska" pursuant to section Neb. Rev. Stats. §32-716 and §32-717.
6. That Robert J. Krist is a registered voter in Nebraska in the County of Douglas, and declared in his registration on February 12, 2018, that his party affiliation was "Democratic."
7. That Robert J. Krist filed on February 13, 2018, a Governor Candidate Filing Form with the Nebraska Secretary of State to be a "Democrat" candidate for Governor for the primary election to be held the 15th day of May, 2018.
8. That Tyler A. Davis met the legal deadline for filing an objection to a candidate filing form within the required seven days of the incumbent filing deadline of February 15th, as allowed by Neb. Rev. Stat. §32-624, with the objection having been filed on February 20, 2018.
9. That Tyler A. Davis filed a Certificate of Service with his objection that certified that a true and correct copy of the Objection of Tyler A. Davis was served via mail, first class postage prepaid, on February 20, 2018, to four candidates who had filed candidate filing forms for the office of Governor for the primary election who may be affected by the objection, including Bob Krist at his home.
10. Under Neb. Rev. Stat. §32-312, the voter registration application shall be prescribed by the Secretary of State pursuant to §32-304 and §32-311.01, and shall provide the instructional statements and request the information from the applicant as provided in that section. The item identified as "PARTY AFFILIATION" asks for "the party affiliation of the applicant as Democrat,

Republican or Other.....and show no party affiliation as Nonpartisan. This paragraph later states "If you register without a political party affiliation (nonpartisan), you will receive only the nonpartisan ballots for state and local offices at primary elections."

11. On September 13, 2017, Robert J. Krist filed a Nebraska Voter Registration Application reflecting under section 5 his choice of "Party Affiliation" to be "Nonpartisan." Under the definition of "party affiliation" in Neb. Rev. Stat. §32-312, that would be the proper designation if the applicant is not registering as "Democrat, Republican or Other."
12. Former Nebraska Secretary of State Scott Moore on February 3, 1998, issued a written opinion to address issues concerning Neb. Rev. Stat. §32-612. In his written opinion, Secretary Moore addressed two questions, one of which was: "May a registered non-partisan (independent) affiliate with a political party after December 5, 1997, and run for a partisan office?" Secretary Moore concluded that: "Accordingly, it is my position that someone who amends their registration from nonpartisan to affiliate with a political party has not affected "A change in political party affiliation...." but has instead chosen to declare an affiliation. As a result, it is my interpretation that the provisions of §32-612 would not apply to this situation."
13. There has not been any relevant changes to Neb. Rev. Stat. §32-612 since the release of this opinion.
14. Secretary Gale has served as Secretary of State since being sworn into office on December 19, 2000, following appointment by Governor Mike Johanns, and has been elected to the office in 2002, 2006, 2010, and 2014. Secretary Gale has interpreted Neb. Rev. Stats. §32-312 and §32-612 consistently with the opinion of former Secretary Moore.

Analysis of Facts and Law

Like former Secretary Moore, Secretary Gale has consistently viewed the selection of "Nonpartisan" on the voter registration form as meaning "no party affiliation." The current voter registration form provides (in part), "...If you register without a political party affiliation (nonpartisan), you will receive only the nonpartisan ballots for the state and local offices at primary elections."

The record shows that Krist was once affiliated with the Republican Party. In September of 2017, he filed a new voter registration form selecting "Nonpartisan" as his party affiliation, thereby un-affiliating with the Republican Party. It appears after that point in time, Krist contemplated forming a new political party by the name of "United Nebraska" by submitting the reservation of the corporate name and reserving the name for 120 days. However, Krist did not take the statutorily required steps to form a new political party by filing a petition to do so.

Krist remained "Nonpartisan" for five months, and ultimately affiliated with the Democratic Party in February of 2018. His selection of the party affiliation of "Democratic" did come after a December 1, 2017 deadline set forth in statute for changing one's party; however his affiliation with the Democratic Party was not a "change of affiliation" as contemplated in the statute, and was instead a selection of party affiliation.

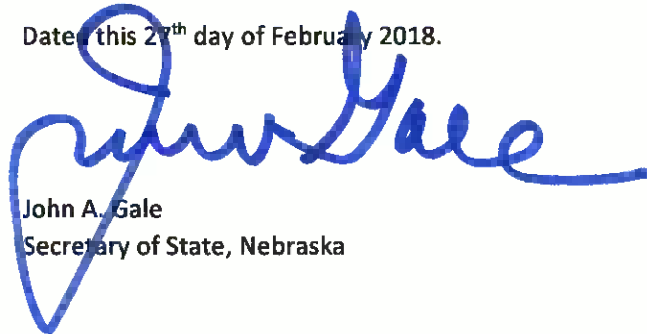
CONCLUSIONS:

1. Robert J. Krist was not affiliated with a political party and was therefore a non-partisan registered voter on December 1, 2017.
2. United Nebraska was never a recognized political party in the State of Nebraska and therefore any arguments or inference made by Davis that Krist "changed" political parties from "United Nebraska" to "Democratic" are without merit.
3. Therefore as a registered non-partisan, Robert J. Krist, in his filing of a Nebraska Voter Registration Application on February 12, 2018, declaring his "Party Affiliation" to that of "Democratic" did not constitute a "change of political party affiliation by a registered voter," but rather it was the request of Robert J. Krist to declare an affiliation.

Accordingly, the objection to the candidate filing is denied and Bob Krist's name will remain on the ballot for the 2018 Primary Election.

Pursuant to Neb. Rev. Stat. §32-624, This decision shall be final unless an order is made in the matter by a judge of the county court, district court, Court of Appeals, or Supreme Court on or before the fifty-fifth day preceding the primary election of 15th day of May 2018.

Dated this 27th day of February 2018.



John A. Gale
Secretary of State, Nebraska

SCOTT MOORE
SECRETARY OF STATE

SUITE 2300 CAPITOL BUILDING
LINCOLN NEBRASKA 68509-4608
PHONE (402) 471-2554
FAX (402) 471-3237



STATE OF NEBRASKA

February 3, 1998

Donna Messersmith
Keith County Clerk
PO Box 149
Ogallala, NE 69153

Dear Donna:

I have reviewed your letter of January 30 and welcome the opportunity to address issues concerning Neb. Rev. Stat. 32-612. In order to provide as much information as possible I am going to respond to a couple of questions in addition to the specific question you asked.

1. May a person who has not been a registered voter, register with a party affiliation after the December 5, 1997 deadline and run for a partisan office?

Section 32-612(1) (Cum. Supp 1996) provides " A change of political party affiliation by a registered voter so as to affiliate with the political party named in the candidate filing form after the first Friday in December prior to the statewide primary election shall not be effective to meet the requirements of 32-610 or 32-611, ...". An individual that has not previously registered has neither made a "change of political party affiliation" nor does a "registered voter" do it. Therefore it is my interpretation that an unregistered person may register and file for a partisan office after the December 5th deadline.

2. May a registered non-partisan (independent) affiliate with a political party after the December 5, 1997 deadline and run for a partisan office?

The predecessor to section 32-612 (Cum. Supp. 1996) was section 32-515 (Reissue 1993). Section 32-515 provided in part "... that a change of registration to the political party named in the application less than ninety days prior to filing his

application for nomination for any political party office shall be deemed to be lack of compliance with this section. ...".

Comparing the two sections, there was a change made from "a change in registration" to a "change of political party affiliation". It has been my position that a person registering as a non-partisan (independent) has made a decision not to affiliate with a recognized state party. This position is present in other areas of statute such as the registration form itself (see 32-312) which provides the explanation: "... If you register without a political party affiliation (independent), you will receive only the nonpartisan ballots for state and local offices at primary election. If you register without a political party affiliation, you may vote in partisan primary elections for congressional offices."

Accordingly, it is my position that someone who amends their registration from nonpartisan to affiliate with a political party has not affected "A change in political party affiliation..." but has instead chosen to declare an affiliation. As a result, it is my interpretation that the provisions of 32-612 would not apply in this situation.

3. May an individual, previously registered with a political party in a county (or state), move to a new county, register with a different party affiliation after December 5th and run for a partisan office in the new county?

This situation raises additional questions that I cannot answer at this time. I believe there are two approaches to looking at this question. One would be to take the statute at its face value and say the change of affiliation prohibits the filing. While this may cause some difficulty in examining other counties records, it would follow a strict reading of the statute.

Another possible approach is that the change of residence from one jurisdiction to another operates as a cancellation of the previous registration. Under this approach, the situation would be similar to question #1.

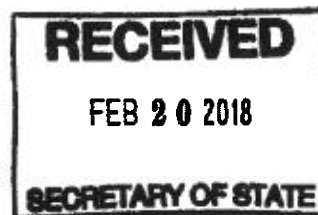
In order to answer this particular question, I have written to the Attorney General's Office to request his opinion. I would hope to have a response for you prior to the filing deadline.

I hope that this information answers your question. Should you have additional concerns, please don't hesitate to contact me.

Sincerely,



Scott Moore
Secretary of State



③

OBJECTION

The undersigned, Tyler A. Davis, a registered voter of Nebraska and a candidate for Governor in the May 15, 2018 Democratic Primary, and pursuant to Neb. Rev. Stat. §32-624 (Reissue 2016) objects to the candidate filing form of Robert J. Krist filed with the Secretary of State on February 13, 2018. In support of said objection, the undersigned states follows:

1. Pursuant to Neb. Rev. Stat. § 32-202, "...the Secretary of State shall: (1) Supervise the conduct of primary and general elections in this state; ... (3) Enforce the Election Act; (4) With the assistance and advice of the Attorney General, make uniform interpretations of the act;..."

2. Pursuant to Neb. Rev. Stat. § 32-612, A change of political party affiliation by a registered voter so as to affiliate with the political party named in the candidate filing form or in an affidavit as a write-in candidate pursuant to section 32-615 after the first Friday in December prior to the statewide primary election shall not be effective to meet the requirements of section 32-610 or 32-611 or subsection (4) of this section, except that any person may change his or her political party affiliation after the first Friday in December prior to the statewide primary election to become a candidate of a new political party which has successfully completed the petition process required by section 32-716.

3. The first Friday in December prior to the May 15, 2018 statewide primary election was December 1, 2017.

4. On December 1, 2017, Robert J. Krist was not affiliated with the Democratic party.

5. On or about November 7, 2011, Robert J. Krist submitted an Application for Reservation of Corporate Name with the Nebraska Secretary of State reserving the name "United Nebraska." Attached hereto, marked as "Exhibit A" and incorporated herein by this reference is a true and accurate copy of the aforementioned Application for Reservation of Corporate Name.

6. On or about January 10, 2018, Robert J. Krist published on his "Bob Krist for Governor" Facebook page the following: "In case you missed it: I'm forming a new political party to represent those who believe change can happen beyond the lines of Republican and Democrat." <https://www.facebook.com/bobkristne/posts/10156018657750818>

7. The aforementioned January 10, 2018 Facebook post was above a picture and hyperlink to a news article dated December 27, 2017 published at <http://kwbe.com/featured-news/krist-announces-new-political-party/>.

8. The aforementioned December 27, 2017 article states that "...Krist has reserved the name "United Nebraska" and will run under that party name for governor."

9. On or about February 13, 2018, Robert J. Krist filed with Nebraska Secretary of State a Governor Candidate Filing Form declaring himself a "Democrat candidate for the office of Governor for the State of Nebraska." Attached hereto and marked as "Exhibit B" and incorporated herein by this references is a true and accurate copy of the aforementioned Governor Candidate Filing Form.

Wherefore, Tyler A Davis, respectfully requests that the Secretary of State reject Robert J. Krist's filing of the Governor Candidate Filing Form on February 13, 2018 as Robert J. Krist

clearly had a "change of political party affiliation" after December 1, 2017 which is prohibited by Neb. Rev. Stat. § 32-612.

Tyler A. Davis

Tyler A. Davis
14865 Hirnebaugh Circle
Omaha, NE 68116

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

Tyler A. Davis, being first duly sworn, deposes and states that he has read the foregoing Objection, has personal knowledge of all matters contained therein, and knows the contents thereof and that the facts therein contained are true and correct.

Tyler A. Davis

Tyler A. Davis

Subscribed and sworn to before me by Tyler A. Davis on this 20 day of February, 2018.



Bethel A. Adams
Notary Public

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was served via mail, first class postage prepaid, on February 20, 2018, upon the foregoing:

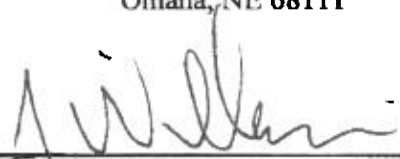
Krystal Gabel
635 South 50th Ave.
Omaha, NE 68106

Governor Pete Ricketts
6450 Prairie Ave.
Omaha, NE 68132

Bob Krist
7365 N. 122nd Avenue Circle
Omaha, NE 68142

Vanessa Gayle Ward
3502 Lake Street, Apt. 211
Omaha, NE 68111

By:



Joseph A. Wilkins, #21803
Attorney for Relator

APPLICATION FOR RESERVATION OF CORPORATE NAME

John A. Gale, Secretary of State
Room 1301 State Capitol, P.O. Box 94608
Lincoln, NE 68509
<http://www.sos.state.ne.us>

Submit in Duplicate

The undersigned hereby requests that the following name be reserved.

Name to be Reserved United Nebraska

Reservation is good for 120 days and is not renewable.

DATED 11/7/2017


Signature

Robert Krist

Printed Name/Title

7365 N 122nd Ave Cir

Street Address

Omaha, NE 68142

City, State, Zip

NOTE: Every filing must be signed by the chairperson of the board of directors, the president, or one of the officers of the corporation. If the corporation has not yet been formed or directors have not yet been selected, the filing shall be signed by an incorporator. If the corporation is in the hands of a receiver, trustee, or other court appointed fiduciary, the filing shall be signed by that fiduciary.

FILING FEE: \$30.00

Revised 12/19/2000

Neb. Rev. Stat. 21-1932 & 21-2029



CONSENT FOR USE OF DECEPTIVELY SIMILAR NAME

John A. Gale, Secretary of State
Room 1301 State Capitol, P.O. Box 94608
Lincoln, NE 68509
(402) 471-4079
<http://www.sos.ne.gov>

Please file this consent with new business formation document or amendment to change business name where a name conflict exists for a trade name or an entity other than a business corporation.

CONSENT FOR USE OF DECEPTIVELY SIMILAR NAME

Consenting Entity: Nebraska United LC

Account Number of Entity Giving Consent: 10226216

Gives Consent To: Senator Bob Krist

To Use the Name: United Nebraska

By signing and submitting this form to the Nebraska Secretary of State, the undersigned hereby certifies that he or she has the requisite authority to execute this document. Consent form must be signed by an authorized representative of the consenting entity.


Signature

Chad M. Roney
Printed Name

11/21/2017

Note: For Business Corporation, submit the Application for Use of Deceptively Similar Name found at:
http://www.sos.ne.gov/business/corp_serv/corp_form.html.

GOVERNOR CANDIDATE FILING FORM

RECEIVED

FEB 13 2018

SECRETARY OF STATE

Purpose: This form may be used to file as a candidate for Governor of the State of Nebraska.

Instructions: Please complete the form in its entirety. Incomplete forms are in front of a Commissioner, C.

You requested in the spaces provided legible. Do not sign the form until you receive instructions; contact your local Election Office.

APR 16, 2018 - INCUMBENT*
MAY 1, 2018 - NONINCUMBENT

Check here if an incumbent*

*Pursuant to Neb. has been appointed

whom the canvassers or the courts declare elected to an elective office or who appears also to a candidate who files for an office other than the current elected office.

3:52pm

Required Information

Registered Voter's Name: Robert J. Krist Douglas
(First, Middle Initial, Last) (County of Residence)

To assist with proper pronunciation of your name on the ballot, please provide the rhymes with word or phonetic spelling or both.
Ex: Sue John = Sue Hahn (rhymes with fan) or William Mishaud = mee-SHO (if is silent) or Tanya Marie = TAWN-yuh (not TAN) mahN-TEA

Krist (rhymes with wrist)

(Phonetic Spelling Required)

Registered Voter's Address: 7365 N 122nd Avenue Cir Omaha NE 68142
(Street address where you reside & are registered to vote) (City) (State) (Zip)

Phone Number: 402-740-8338 or 402-471-2718
(Home/Cellular) (Work)

I declare that I am a Democrat candidate for the office of Governor for a term of 4 years and request that my name Bob Krist
(Party Affiliation) (Print name as it is to appear on the ballot - See reverse side for information.)

be placed on the official ballot for the primary election to be held the 15th day of May, 2018.

By checking this box, I state that I do not owe civil penalties pursuant to the Nebraska Political Accountability and Disclosure Act; or, if civil penalties are owed, a surety bond has been filed pursuant to subdivision (4)(b) of section 32-602.

Optional Information

Mailing Address: _____
(Street address or PO Box) (City) (State) (Zip)

(Candidate's campaign phone)

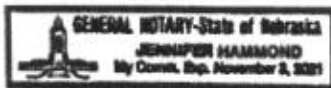
(Candidate's campaign address)

STATE OF NEBRASKA)

COUNTY OF Leavenworth)

I hereby swear that I will abide by the laws of the State of Nebraska regarding the results of the primary and general elections, that I am a registered voter and qualified to be elected, and that I will serve if elected.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 13 day of February 2018
(Day) (Month) (Year)



(SEAL)

Signature of Candidate

Subscribed in my presence and sworn to before me this

13 day of February 2018
(Day) (Month) (Year)

Office Administering Oath

Title

Notary Public

EXHIBIT

B