

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

REPUBLICAN NATIONAL
COMMITTEE, JACK RIGGINS, and
PAMELA DINGMAN,

Plaintiffs,

v.

ROBERT B. EVNEN, Secretary of State
of the State of Nebraska, in his official
capacity,

Defendant.

Case No. CI 26-2329

ORDER AND JUDGMENT

This matter is before the Court on the parties' cross-motions for summary judgment. J.L. Spray and Jacob C. Garbison appeared on behalf of all Plaintiffs. Zachary B. Pohlman appeared on behalf of Secretary Evnen. The Court received Exhibits 1 through 10 without objection and took under advisement Defendant's objections to portions of Exhibits 11 through 13. Arguments were made and the Court took the motions under advisement. Now being fully advised, the Court finds and orders as follows.

EVIDENTIARY RULING

At the hearing, Defendant objected to several paragraphs in Plaintiffs' Exhibits 11, 12, and 13, arguing that those paragraphs contained improper legal conclusions. Having reviewed the exhibits and considered the parties' arguments, the Court overrules the objections and receives Exhibits 11 through 13 but will disregard any inadmissible evidence therein.

BACKGROUND

This is a declaratory judgment action brought by Plaintiffs Republican National Committee (RNC), Jack Riggins, and Pamela Dingman against Defendant Robert B. Evnen, Secretary of State of Nebraska, in his official capacity. Plaintiffs seek a judicial determination that Neb. Rev. Stat. § 32-939(2) (Supp. 2025) is unconstitutional under Article VI, § 1 of the Nebraska Constitution and request an injunction prohibiting Secretary Evnen from providing ballots to individuals who vote by virtue of the challenged statute. The Secretary maintains that the challenged statute is constitutional and that all Plaintiffs lack standing to bring this action.

As acknowledged by the parties at the hearing, the material facts relevant to the constitutional question are undisputed. Plaintiffs Riggins and Dingman are residents, registered voters, and taxpayers in Lancaster County, Nebraska. (Ex. 11, ¶ 3; Ex. 12, ¶ 3). Dingman is also a candidate for the office of Lancaster County Engineer in the November 3, 2026, general election. (Ex. 12, ¶ 4). Plaintiff RNC is a national political committee that manages the Republican Party's national platform and election strategies. (Ex. 13, ¶ 4). The RNC nominates candidates for public office in state and federal elections, including the forthcoming 2026 midterm elections in Nebraska, and supports its nominees by dedicating resources to educate, mobilize, assist, and turn out voters. (Ex. 13, ¶¶ 5-6).

Plaintiffs challenge the facial constitutionality of Neb. Rev. Stat. § 32-939(2), which states in pertinent part:

[A] person who is the age of an elector and a citizen of the United States residing outside the United States, who has never resided in the United States, who has not registered to vote in any other state of the United States, and who has a parent registered to vote within this state shall be eligible to register to vote and vote in one county in which either one of his or her parents is a registered voter.

Neb. Rev. Stat. § 32-939(2).

Plaintiffs assert that § 32-939(2) allows non-residents to vote in Nebraska elections in direct violation of the residence requirement in Neb. Const. Art. VI, § 1. The statutory language at issue can be traced back to the 2005 legislative session. In 2005, then-Senator Mike Flood introduced Legislative Bill 408 to “provide[] the children of UOCAVA qualified citizens the right to register in the same Nebraska jurisdiction as their parents even if they have not lived in the United States.” (Ex. 5). The Committee Statement for LB 408 explains that “LB 408 allows a person who is the age of an elector and a citizen of the United States who has not resided in the United States, to register to vote and vote in the county in which his or her parent is registered to vote.” (Ex. 6). At the February 9, 2005, hearing on LB 408 before the Committee on Government, Military, and Veterans Affairs, then-Secretary of State John Gale testified in support of the bill, explaining that it would allow the children of Nebraskan “missionaries,” “civilian contractors,” and “military” members who “have never lived in the United States” to vote in Nebraska elections. (Ex. 7, at 5). The following language of LB 408 was added to LB 401 via the Standing Committee amendment AM0369:

A person who is the age of an elector and a citizen of the United States residing outside the United States, who has not resided in the United States, and who has a parent registered to vote within the state shall be eligible to register to vote and vote in the county in which his or her parent is a registered voter.

(Ex. 8, at 2, 4-5, 8). As amended, LB 401 passed the Legislature with 39 Senators voting in favor, no Senators opposed, and five Senators present and not voting. (Ex. 8, at 9-10).

The parties do not dispute that 116 individuals are currently eligible and registered to vote in Nebraska under § 32-939(2) and 6 of those individuals voted in the 2026 primary election. (Ex. 3, ¶¶ 9, 11). Of those, 30 are registered to vote in Lancaster County and one such individual voted in the 2026 primary election. (Ex. 3, ¶¶ 10-12).

STANDARD OF REVIEW

Summary judgment is proper only when the pleadings, depositions, admissions, stipulations, and affidavits in the record disclose that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law. *Ronnfeldt Farms, Inc. v. Arp*, 317 Neb. 690, 708, 11 N.W.3d 371, 385 (2024). The party moving for summary judgment must make a prima facie case by producing enough evidence to show the movant would be entitled to judgment if the evidence were uncontroverted at trial. *Id.* If the movant makes a prima facie case, the burden shifts to the nonmovant to show the existence of a material issue of fact that prevents judgment as a matter of law. *Id.*

ANALYSIS

This case presents multiple jurisdictional questions in addition to the question of whether the challenged statute is facially unconstitutional. The Court will address jurisdiction first because questions regarding a court's subject matter jurisdiction must be resolved as a threshold matter before an examination of the merits. *Bocanegra v. Gonzalez*, 321 Neb. 738, 37 N.W.3d 186 (2026).

I. Standing.

Only a party who has standing may invoke the jurisdiction of a court. *Neb. Firearms Owners Ass'n v. City of Lincoln*, 319 Neb. 723, 24 N.W.3d 891 (2025). Standing refers to whether a party had, at the commencement of the litigation, a personal stake in the outcome of the litigation that would warrant a court's exercise of its subject matter jurisdiction and remedial powers on that party's behalf. *Id.* at 730, 24 N.W.3d at 898. A party invoking a court's jurisdiction bears the burden of establishing standing and to have standing, the plaintiff must have some legal or equitable right, title, or interest in the subject matter of the controversy. *Id.* Applied here, the question is whether Plaintiffs have suffered an injury in fact.

Under Nebraska's standing jurisprudence:

An injury is sufficient for standing purposes when it is concrete in both a qualitative and temporal sense, and it must be distinct and palpable, as opposed to merely abstract. Further, the alleged harm from such an injury must be actual or imminent, not conjectural or hypothetical. Additionally, a person seeking to restrain the action of a government body must show some special injury peculiar to himself or herself aside from, and independent of, the general injury to the public

Id. at 731, 24 N.W.3d at 899.

Plaintiffs rely on the recent United States Supreme Court decision in *Bost v. Illinois State Board of Elections*, 607 U.S. 71 (2026), to argue that Dingman has met the injury-in-fact requirement and has standing as a political candidate for the office of Lancaster County Engineer. In *Bost*, the U.S. Supreme Court held that a political candidate had standing to challenge Illinois statutes governing the counting of mail-in ballots in his election and that “[c]andidates have a concrete and particularized interest in the rules that govern the counting of votes in their elections, regardless whether those rules harm their electoral prospects or increase the cost of their campaigns.” *Id.* at 74, 82-83. Relying on *Bost*, Dingman contends that she likewise has “a concrete and particularized interest” in the “integrity of the election—and the democratic process by which [she] earn[s] or lose[s] the support of the people [she] seeks to represent,” as well as “an obvious personal stake in how the result [of the November general election] is determined and regarded” by the people of Nebraska. *See id.* at 79, 82.

The Secretary responds that *Bost* does not control because, unlike the federal Constitution’s Article III, the Nebraska Constitution has no analogous “case or controversy” requirement. This Court agrees the Nebraska Constitution has no analogous requirement but is also cognizant that Nebraska’s common-law standing rules are circumscribed by Nebraska precedent and the Nebraska Supreme Court may, but does not always, adopt federal standing principles. *See, e.g., Neb. Firearms Owners Ass’n*, 319 Neb. at 735–37, 24 N.W.3d at 901–02; *Thompson v. Heineman*, 289 Neb. 798, 821, 857 N.W.2d 731, 751 (2015); *In re Application A-18503*, 286 Neb. 611,

838 N.W.2d 242 (2013). On this issue, Plaintiffs have not cited, nor has the Court identified, any Nebraska case recognizing electoral integrity or political legitimacy, standing alone, as a concrete, distinct, and palpable injury sufficient for common-law standing. But because *Bost* was issued recently, the Nebraska Supreme Court has not yet had the opportunity to consider whether to adopt its reasoning regarding political candidates' standing. Against this backdrop, and in light of *Bost*'s recent articulation of candidates' concrete and particularized interest which extends to "the integrity of the election—and the democratic process by which they earn or lose the support of the people they seek to represent," 607 U.S. at 82, this trial court cannot conclude that Plaintiff Dingman lacks standing to bring this action.

In this action, multiple plaintiffs seek identical injunctive and declaratory relief. Having determined that Dingman does not lack standing, the Court need not address whether the RNC and Riggins have standing. *Stewart v. Heineman*, 296 Neb. 262, 294-95, 892 N.W.2d 542, 563 (2017).

II. Indispensable Parties.

Although Plaintiff Dingman may have standing, Plaintiffs face another jurisdictional hurdle. This is a declaratory judgment action and it is a statutory requirement that "all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." *Sanitary Improvement Dist. No. 2 of Knox Cty. v. Fischer*, 308 Neb. 791, 797, 957 N.W.2d 154, 159 (2021) (quoting Neb. Rev. Stat. § 25-21,159 (Reissue 2016)). Nebraska cases have described those who

must be made parties as either “statutorily mandated necessary parties,” “interested or necessary parties,” “significant necessary parties,” or “necessary and indispensable parties.” *Id.* (citations omitted) (cleaned up). Regardless of phrasing, it has long been the rule in declaratory judgment actions that the presence of such parties is jurisdictional and cannot be waived. *Id.* at 797-98, 957 N.W.2d at 159.

The Secretary, in his official capacity and through the Attorney General, is defending the statute after concluding the statute is not facially unconstitutional and is doing so as a representative “of all its citizens” under the *parens patriae* doctrine. *Douglas County School District 0001 v. Johanns*, 269 Neb. 664, 694 N.W.2d 668 (2005). For this reason, the absence of the 116 individuals registered to vote in Nebraska as parties to this action is not a jurisdictional defect even though those individuals’ voting rights and legal interests would necessarily be affected by Plaintiffs’ requested declaration that § 32-939(2) is facially unconstitutional.

But the Court notes that for Plaintiffs’ merits argument to work, § 32-939(2) would impermissibly allow non-Nebraska residents to vote in Nebraska elections. And, if these individuals were non-Nebraskans, the Nebraska Attorney General could not serve as their representative in this action under the *parens patriae* doctrine. Without the Attorney General serving as their representative, indispensable parties would be missing, and this Court would lack jurisdiction because the presence of such parties is jurisdictional and cannot be waived. However, because this Court concludes these individuals reside within Nebraska under the Constitution, the Court does not lack jurisdiction to reach the merits of Plaintiffs’ facial challenge to § 32-939(2).

III. Facial Constitutionality of Neb. Rev. Stat. § 32-939(2).

In this facial challenge to § 32-939(2), Plaintiffs argue that the statute allows citizens who have never resided in the United States to vote in Nebraska, in direct violation of Neb. Const. art. VI, § 1, which provides:

Every citizen of the United States who has attained the age of eighteen years on or before the first Tuesday after the first Monday in November and has resided within the state and the county and voting precinct for the terms provided by law shall, except as provided in section 2 of this article, be an elector for the calendar year in which such citizen has attained the age of eighteen years and for all succeeding calendar years.

Neb. Const. art. VI, § 1.

A statute is presumed to be constitutional, and all reasonable doubts are resolved in favor of its constitutionality. *State ex rel. Hilgers v. Evnen*, 318 Neb. 803, 828, 19 N.W.3d 244, 264 (2025). The burden of establishing the unconstitutionality of a statute is on the one attacking its validity. *Id.* A facial challenge asserts that no valid application of the statute exists because it is unconstitutional on its face. *N'Da v. Golden*, 318 Neb. 680, 696, 18 N.W.3d 570, 584 (2025). Generally, a facial challenge seeks to void the statute in all contexts for all parties. *Id.* A plaintiff can succeed in a facial challenge only by establishing that no set of circumstances exists under which the act would be valid, i.e., that the law is unconstitutional in all of its applications. *Id.* at 696-97, 18 N.W.3d at 584.

Article VI, Section 1 of the Nebraska Constitution requires a Nebraska voter to “ha[ve] resided within the state and the county and voting precinct for the terms provided by law.” The parties correctly cite *Berry v. Wilcox*, 44 Neb. 82, 85, 62 N.W. 249, 250 (1895), as controlling precedent regarding the interpretation of “reside” in

the context of voter qualifications under the Nebraska Constitution. In *Berry*, the Nebraska Supreme Court explained that the generally accepted definition of “residence” for purposes of voter qualification was synonymous with “domicile”—the place “in which his habitation is fixed, without any present intention of removing therefrom.” *Id.* (quoting Story, *Conflict of Laws*, § 43). The parties agree that unemancipated minors generally adopt the domicile of their parents with whom they live and that adults may acquire a new domicile of choice. See *State v. Jensen*, 269 Neb. 213, 218, 691 N.W.2d 139, 144 (2005); *State ex rel. Frasier v. Whaley*, 194 Neb. 703, 706, 234 N.W.2d 909, 911 (1975); *Russell v. State*, 62 Neb. 512, 513, 87 N.W. 344, 346 (1901). A person acquires a domicile of origin at birth, and that domicile continues until a new one, a domicile of choice, is acquired. *Jensen*, 269 Neb. at 218, 691 N.W.2d at 144. To effect a change of domicile, there must be both a change of residence and an intention to permanently abandon the former home. *Dilsaver v. Pollard*, 191 Neb. 241, 247, 214 N.W.2d 478, 482 (1974).

Plaintiffs argue that Neb. Rev. Stat. § 32-939(2) permits a United States citizen who has never resided in Nebraska, has no intention to reside in Nebraska, has established a domicile elsewhere upon reaching the age of majority, and thus is not a Nebraska resident to vote in Nebraska in direct violation of the state constitution. The Secretary concedes that those who have acquired a new domicile elsewhere would not be qualified to vote in Nebraska under the state constitution. However, this does not mean that the challenged statute is unconstitutional on its face.

The Secretary identifies a circumstance to defeat Plaintiffs' facial challenge: Neb. Rev. Stat. § 32-939(2) may constitutionally apply to United States citizens who were born abroad to a Nebraska-domiciled parent; who have never resided in the United States but adopted the Nebraska domicile of their parent; who have never acquired a new domicile; and who therefore remain Nebraska residents for voter qualification purposes. To help illustrate his point, the Secretary describes a hypothetical United States citizen "Joe," who meets the statutory criteria of § 32-939(2) and remains constitutionally qualified to vote. Both of Joe's parents are United States citizens domiciled in Saunders County, Nebraska, where they owned a home and intended to remain. Joe's parents are missionaries, and they moved to South America, where Joe was born and where the family continued to live for many years, always intending to return to Nebraska. After reaching eighteen, Joe remained abroad, never registered to vote in any other state of the United States, and never intended to take a foreign country as his long-term home. During all that time, Joe's parents remain registered voters in Saunders County, Nebraska. Under the foregoing authorities, Joe remains a Nebraska resident and domiciliary for voter qualification purposes under the state constitution, and he is "eligible to register to vote and vote in" Saunders County under Neb. Rev. Stat. § 32-939(2). Plaintiffs do not dispute that Joe meets all requirements of § 32-939(2), and they concede that Joe is enfranchised under Art. VI, § 1 of the Nebraska Constitution. Because Neb. Rev. Stat. § 32-939(2) has at least one constitutional application, the Court cannot conclude that it is unconstitutional on its face.

Plaintiffs rely on *City of Los Angeles v. Patel*, 576 U.S. 409 (2015), to argue that overseas citizens like Joe—who have never resided in the United States but have retained a Nebraska domicile—cannot supply a constitutional application of § 32-939(2) because they are already eligible to vote in Nebraska under § 32-939(1)(d). In *Patel*, a group of motel operators brought a facial Fourth Amendment challenge to a city ordinance requiring hotel operators to make guest records available to the police for inspection, and it was stipulated that the motel operators had been subjected to mandatory record inspections under the ordinance without consent or warrant. *Id.* at 412-14. In defense of the ordinance, the city pointed to situations involving warrants, consent, or exigency as constitutional applications of the ordinance. *Id.* 417-18. The United States Supreme Court rejected this argument, stating that “when addressing a facial challenge to a statute authorizing warrantless searches, the proper focus of the constitutional inquiry is searches that the law actually authorizes, not those for which it is irrelevant.” *Id.* at 418. The proposed constitutional scenarios in *Patel* were not actual applications of the ordinance at all. *Id.* at 419. They were applications of longstanding warrantless search exceptions under constitutional case law. *Id.*

Here, Joe’s circumstances fall squarely within the text of § 32-939(2), which expressly authorizes his voting in Saunders County, Nebraska. Even assuming an individual authorized to vote under § 32-939(2) is separately eligible under § 32-939(1)(d), nothing in *Patel* requires this Court to disregard a constitutional application of § 32-939(2) that actually authorizes the conduct merely because

another statutory provision independently confers eligibility. Moreover, unlike in *Patel*, the alternative basis for Joe's voting eligibility arises not from constitutional case law but from a parallel statutory provision that does not specify the county in which voters like Joe shall cast their ballots. The Court therefore finds *Patel* distinguishable and concludes that Plaintiffs' reliance on *Patel* is misplaced.

In sum, the Court finds that the Secretary has identified at least one constitutional application of § 32-939(2) to defeat the facial challenge. Finding no genuine issue of material fact, the Court concludes that Plaintiffs' facial challenge to Neb. Rev. Stat. § 32-939(2) fails as a matter of law.

IT IS THEREFORE ORDERED that Plaintiffs' motion for summary judgment is denied and Defendant's motion for summary judgment is granted. Plaintiffs' amended complaint is dismissed with prejudice.

Dated this 12th day of August, 2026.

BY THE COURT:

A handwritten signature in black ink that reads "Ryan Post". The signature is written in a cursive, slightly stylized font.

Ryan S. Post
District Court Judge

CERTIFICATE OF SERVICE

I, the undersigned, certify that on August 12, 2026 , I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

Zachary B Pohlman
zachary.pohlman@nebraska.gov

Daniel J Freeman
freemand@dnc.org

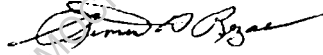
J L Spray
jls@mattsonricketts.com

Stephen D Mossman
sdm@mattsonricketts.com

Andrew R Spader
ars@mattsonricketts.com

Date: August 12, 2026

BY THE COURT:



CLERK



RETRIEVED FROM DEMOCRACYDOCKET.COM