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Republican National Committee et al., appellants and cross-appellees, v. Robert B. Evnen, in his official capacity as Nebraska Secretary of State, appellee and cross-appellant.

___ N.W.3d ___

Filed October 16, 2026. No. S-26-685.

1. **Jurisdiction.** A jurisdictional issue that does not involve a factual dispute presents a question of law.
2. **Summary Judgment: Appeal and Error.** An appellate court affirms a lower court's grant of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from the facts and that the moving party is entitled to judgment as a matter of law.
3. ____: ____. An appellate court reviews the district court's grant of summary judgment de novo, viewing the record in the light most favorable to the nonmoving party and drawing all reasonable inferences in that party's favor.
4. **Constitutional Law: Statutes: Appeal and Error.** The constitutionality of a statute and constitutional interpretation are questions of law, and an appellate court is obligated to reach a conclusion independent of the decision reached by the trial court.
5. **Statutes.** Statutory interpretation presents a question of law.
6. **Jurisdiction: Appeal and Error.** Before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it.
7. **Standing: Jurisdiction: Parties.** Standing is a jurisdictional component of a party's case, because only a party who has standing may invoke the jurisdiction of a court.
8. **Standing: Words and Phrases.** Standing involves a real interest in the cause of action, meaning some legal or equitable right, title, or interest in the subject matter of the controversy.

9. **Standing: Claims.** Common-law standing generally focuses on whether the litigant has suffered or will suffer an injury in fact. That injury must be concrete in both a qualitative and a temporal sense.
10. **Complaints: Justiciable Issues.** A complainant must allege an injury to itself that is distinct and palpable, as opposed to merely abstract, and the alleged harm must be actual or imminent, not conjectural or hypothetical.
11. **Actions: Proof.** A litigant must show that its injury can be fairly traced to the challenged action and is likely to be redressed by a favorable decision.
12. **Declaratory Judgments: Courts: Jurisdiction: Parties.** The rule in a declaratory judgment action is that all who have or claim any interest which would be affected by the declaration sought are indispensable parties, and when all such parties have not been joined, the district court has no jurisdiction to determine the controversy.
13. **Declaratory Judgments: Parties: Words and Phrases.** In a declaratory judgment action, a party is "indispensable" when the party has an interest in the controversy to an extent that such party's absence from the proceedings prevents the court from making a final determination concerning the controversy without affecting such party's interest.
14. **Constitutional Law: Statutes.** A facial challenge is a challenge to a statute, asserting that no valid application of the statute exists because it is unconstitutional on its face. Generally, a facial challenge seeks to void the statute in all contexts for all parties.
15. **Constitutional Law: Statutes: Proof.** 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.
16. **Statutes.** Statutory interpretation begins with the text, and the text is to be given its plain and ordinary meaning.
17. ____. It is not within the province of a court to read a meaning into a statute that is not warranted by the language; neither is it within the province of a court to read anything plain, direct, or unambiguous out of a statute.
18. **Statutes: Legislature: Presumptions: Intent.** The Legislature is presumed to know the language used in a statute, and if a subsequent act on the same or similar subject uses different terms in the same connection, the court must presume that a change in the law was intended.

Appeal from the District Court for Lancaster County: Ryan S. Post, Judge. Affirmed.

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Michael T. Hilgers, Attorney General, Zachary B. Pohlman, and Cody S. Barnett for appellee.

Daniel J. Gutman, of Gutman Law Group, and Daniel J. Freeman, pro hac vice, for amicus curiae Democratic National Committee.

Funke, C.J., Cassel, Stacy, Papik, Freudenberg, Bergevin, and Vaughn, JJ.

Per Curiam.

I. INTRODUCTION

A Nebraska statute provides that persons "residing outside the United States," who have "never resided in the United States," but who have a parent registered to vote in Nebraska, "shall be eligible to register to vote and vote" in one county in Nebraska where a parent is registered to vote.[1] The present appeal and cross-appeal arise from a challenge to this statute.

For the reasons set forth below, we conclude that one challenger has standing, as a candidate for office, to bring the lawsuit and that we otherwise have jurisdiction over the appeal and the cross-appeal. However, we also conclude that the challengers failed to prove the statute is unconstitutional on its face. As such, we affirm the judgment of the district court against the challengers and in favor of the Nebraska Secretary of State (Secretary).

II. BACKGROUND

1. Legal Background

Since 1875, the Nebraska Constitution has required that electors "shall have resided in" the state, county, and voting

[1] Neb. Rev. Stat. § 32-939(2)(a) (Cum. Supp. 2024).

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precinct.[2] Currently located in art. VI, § 1, the relevant provision states:

> 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.

In 1895, in *Berry v. Wilcox*,[3] we addressed "[w]hat constitutes residence within the meaning of the constitution." In keeping with the "generally accepted definition of 'residence,' when the term is used with reference to the qualification of voters," we concluded that the term "'residence'" is synonymous with "'domicile.'"[4]

In 1994, the Nebraska Legislature adopted the Election Act[5] and, in so doing, created the statutory framework that, as amended, is at issue here. As part of the 1994 enactment, the Legislature defined "[r]esidence" consistently with *Berry* to mean

> (1) that place [in Nebraska] in which a person is actually domiciled, which is the residence of an individual or family, with which a person has a settled connection for the determination of his or her civil status or other legal purposes because it is actually or legally his or her permanent and principal home, and to which, whenever he or she is absent, he or she has the intention of returning, [and] (2) the place [in Nebraska] where a person has his

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[2] Neb. Const. art. VII, § 1 (1875).

[3] *Berry v. Wilcox*, 44 Neb. 82, 85, 62 N.W. 249, 250 (1895).

[4] *Id*.

[5] 1994 Neb. Laws, L.B. 76, § 1 (codified, as amended, at Neb. Rev. Stat. § 32-101 (Cum. Supp. 2024)).

> or her family domiciled even if he or she does business in another place . . . .[6]

Also as part of the 1994 enactment, the Legislature adopted language that appears to implement the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).[7] As currently codified in § 32-939(1) (Cum. Supp. 2024), this language states:

> As provided in section 32-939.02, the persons listed in this subsection who are residents of Nebraska and who reside outside of Nebraska or the United States or are members of the Nebraska National Guard ordered into the active service of the state or of the United States shall be allowed to simultaneously register to vote and make application for ballots for all elections in a calendar year [in the manner set forth in this section.][8]

Among the persons listed are members of the armed services who are absent from the state, their spouses and dependents "residing with them," and "[o]verseas citizens."[9] The constitutionality of these provisions is not disputed in this case, but the provisions are discussed by the parties and play a role in our analysis. For simplicity, we refer to these provisions, which are codified in § 32-939(1), as "subsection (1)."

Subsequently, in 2005, the Legislature adopted the language at issue here.[10] As currently codified in § 32-939(2)(a), that language states:

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[6] 1994 Neb. Laws, L.B. 76, § 16 (codified, as amended, at Neb. Rev. Stat. § 32-116 (Cum. Supp. 2024)). Cf. Neb. Rev. Stat. § 32-107 (Reissue 1993) ("[r]esidence shall mean that place at which a person has established his home, where he is habitually present, and to which when he departs he intends to return").

[7] Pub. L. No. 99-410, § 101, 100 Stat. 924 (codified, as amended, at 52 U.S.C. §§ 20301 to 20311 (2018 & Supp. V 2023)).

[8] See 1994 Neb. Laws, L.B. 76, § 282.

[9] § 32-939(1).

[10] 2005 Neb. Laws, L.B. 401, § 7.

> As provided in section 32-939.02, 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.

Section 32-939(2)(b) further provides that persons "registering to vote or voting" under this authority must sign a form stating that they meet the aforementioned criteria and specifying the county where their parent is registered to vote. We refer to § 32-939(2)(a) and (b) collectively as "subsection (2)."

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2. Procedural Background

(a) Complaint and Answer

On June 22, 2026, the Republican National Committee (RNC), together with Jack Riggins, a registered voter, and Pamela Dingman, a registered voter and candidate for Lancaster County engineer, (collectively the appellants) filed suit against the Secretary challenging subsection (2). The following allegations are taken from the appellants' amended complaint.

The appellants alleged that the RNC is a "national political committee that manages the Republican Party's business"; it "nominates candidates for public office"; it "supports its nominees . . . by dedicating significant resources to educate, mobilize, assist, and turn out voters"; and its members "include Nebraska residents . . . whose votes are subject to dilution by those who have never lived in the United States." The appellants further alleged that as registered voters, Riggins' and Dingman's votes are "subject to dilution by those who have never lived in the United States." In addition, the appellants alleged that as a candidate for elected office, Dingman has "'an obvious personal stake in how the result' of the November election 'is determined and regarded' by the people of Nebraska."

The appellants also alleged that subsection (2) "extends voter qualifications to individuals who never resided in Nebraska," in violation of article VI, § 1. The appellants sought a declaration that subsection (2) is unconstitutional, as well as an injunction barring the Secretary from "implement[ing] and enforc[ing]" subsection (2) and providing ballots to persons who "vote by virtue of [its] provisions."

The Secretary filed an answer denying that the appellants have standing to bring the lawsuit and alleging "[a]ffirmative and [a]dditional [d]efenses" that are not relevant to our analysis below.

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(b) Secretary's Motion for Summary Judgment

The Secretary then moved for summary judgment in his favor. In support of that motion, the Secretary relied on the complaint and answer described above, the legislative history of the 2005 amendments to the Election Act, and an affidavit from the "Deputy Secretary of State for Elections." The legislative history showed that the introducer of the 2005 legislation intended it 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.'"[11] The deputy Secretary's affidavit showed that there were 116 people "eligible and registered to vote" under subsection (2), 30 of whom were registered to vote in Lancaster County. The Secretary further noted that only six of those people voted in the 2026 primary election (one of them in Lancaster County).

Based on this evidence, the Secretary asserted that all the appellants lack standing. The Secretary claimed, summarized, that the pleadings failed to show the RNC has standing as an organization or association; Riggins' and Dingman's claim of

[11] See, e.g., Introducer's Statement of Intent, L.B. 408, Government, Military and Veterans Affairs Committee, 99th Leg., 1st Sess. (Feb. 9, 2005) (statement of Senator Flood).

vote dilution does not involve a particularized injury; the U.S. Supreme Court's recent opinion in *Bost v. Illinois State Bd. of Elections*[12] recognizing candidate standing is not controlling here; and Nebraska courts had never previously recognized an "abstract interest" in "election integrity or political legitimacy, standing alone," as sufficient for common-law standing.

The Secretary also argued that there is no conflict between subsection (2) and article VI, § 1, because in *Berry*, we interpreted the term "'resided within'" in the predecessor to the current article VI, § 1, to mean "'domiciled in.'" The Secretary then posited a hypothetical person, "Joe," who the Secretary claimed qualifies as an elector under article VI, § 1, and "is eligible to vote" in the county where a parent is registered to vote under subsection (2). In this hypothetical,

> both of Joe's parents were United States citizens domiciled in Saunders County, where they owned a home and intended to remain. Joe's parents, who are missionaries, moved to South America, where Joe was born and where the family continued to live for many years, always intending to return to Nebraska. Joe is a United States citizen. . . . After reaching eighteen, Joe remained abroad, never registered to vote in another State, and never intended to make a foreign country his long-term home.

In their response, the appellants did not dispute that the introducer of the 2005 bill intended to "'allow'" the children of "'UOCAVA qualified citizens'" to "'register and vote'" in the same Nebraska jurisdiction as their parents. However, the appellants claimed that subsection (2) "did not provide the legal mechanism" for these children to vote. Instead, the appellants claimed these children "already had an existing right to vote" under subsection (1) as overseas citizens. Further, the appellants noted that the Secretary's evidence showed that the number of persons who voted in Nebraska under

[12] *Bost v. Illinois State Bd. of Elections*, 607 U.S. 71, 146 S. Ct. 513, 223 L. Ed. 2d 357 (2026).

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subsection (2) was greater in the 2020 and 2024 general elections than in the 2026 primary.

(c) Appellants' Motion for Summary Judgment

The appellants also moved for summary judgment in their favor. In so doing, the appellants relied on affidavits from the chief of staff of the RNC, Riggins, and Dingman that mirrored the allegations of the complaint, as well as federal and state voter registration forms. The federal form required registrants to give their address in the U.S. state or territory where they are registering to vote, but explains that "[f]or overseas citizens, [this] is usually the last place you lived before moving overseas. You do not need to have any current ties with this address."

Based on this evidence, the appellants argued that they all have standing. The appellants claimed, summarized, that the RNC has shown associational standing, that vote dilution is a cognizable injury under Nebraska law, and that Dingman has standing as a candidate under *Bost* and because she must "expend campaign resources to account for votes cast by persons ineligible under the Nebraska Constitution." The appellants also claimed they have standing under *Thompson v. Heineman*[13] because the case involves "'matters of great public concern.'"

The appellants continued to maintain that "Joe" does not represent a constitutional application of subsection (2), because he "has the right to vote" in Nebraska under subsection (1). Instead, the appellants claimed that subsection (2) served to enfranchise persons like "Joe's" hypothetical "23-year-old brother who is over the age of majority, has no intention of returning to Nebraska, has established domicile in South America, and does not consider himself a Nebraskan. His only ties to Nebraska are his parents."

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[13] *Thompson v. Heineman*, 289 Neb. 798, 857 N.W.2d 731 (2015).

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In response, the Secretary argued that "[e]ven if Joe could register" under subsection (1), that "would not negate his eligibility" under subsection (2).

(d) District Court's Order

After a hearing, the district court ruled against the appellants and in favor of the Secretary on the parties' competing motions for summary judgment. The appellants' amended complaint was dismissed with prejudice.

As to standing, the court acknowledged that the Nebraska Constitution differs from the federal Constitution, that Nebraska courts do not always adopt federal case law regarding standing, and that the appellants had cited no Nebraska case recognizing "electoral integrity or political legitimacy," without more, as sufficient for common-law standing. Nonetheless, the court said that because *Bost* was recently decided and we had not yet considered whether to adopt its reasoning, Dingman could not be said to lack standing based on the articulation in *Bost* of candidates' interest in "'the integrity of the election—and the democratic process by which they earn or lose the support of the people they seek to represent.'"

The court then opined that the appellants would face another "jurisdictional hurdle" if they were correct that those registered to vote under subsection (2) are "non-Nebraskans." The court noted that the Uniform Declaratory Judgments Act requires that all persons whose interests may be affected by the declaratory judgment be made parties.[14] However, the court explained that insofar as those who "register to vote and vote" under subsection (2) are not parties here, the Secretary, by and through the Attorney General, could not serve as their representative under the parens patriae doctrine if they were not Nebraska domiciliaries.

Finally, the court concluded the appellants had failed to show that subsection (2) is facially unconstitutional because

[14] See Neb. Rev. Stat. § 25-21,159 (Reissue 2016).

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they "do not dispute that Joe meets all requirements of § 32-939(2) [and] is enfranchised under [a]rt. VI, § 1." The court acknowledged the appellants' argument that under *Los Angeles v. Patel*,[15] "Joe" is not a constitutional application of subsection (2) because he is "eligible to vote" under subsection (1). However, the court said that *Patel* is distinguishable because in *Patel*, "[t]he proposed constitutional scenarios . . . were not actual applications of the [challenged] ordinance," whereas "Joe's circumstances fall squarely within the text of § 32-939(2)." The court also observed that "unlike in *Patel*, the alternative basis for Joe's . . . eligibility" to vote arises not from case law, but from another statutory provision that, unlike subsection (2), does not specify in which county persons like "Joe" may "register to vote and vote."

The appellants appealed the judgment of the district court, and the Secretary cross-appealed. We moved the matter to our docket,[16] and we granted leave for the Democratic National Committee to submit a brief as an amicus curiae.

III. ASSIGNMENTS OF ERROR

The appellants assign, restated, reordered, and consolidated, that the district court erred in (1) ruling against them and in favor of the Secretary on the parties' competing motions for summary judgment; (2) failing to order the inclusion of any indispensable party and entering judgment on the parties' claims insofar as an indispensable party was lacking; and (3) failing to find that subsection (2) conflicts with article VI, § 1, and is facially unconstitutional.

The Secretary cross-appeals, assigning, restated, that the district court erred (1) in concluding that Dingman has pre-election standing as a candidate and (2) insofar as it implicitly determined that Dingman and Riggins have standing

[15] *Los Angeles v. Patel*, 576 U.S. 409, 135 S. Ct. 2443, 192 L. Ed. 2d 435 (2015).

[16] See Neb. Rev. Stat. § 24-1106(3) (Cum. Supp. 2024).

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as voters or that the RNC has standing as an association or organization.

IV. STANDARD OF REVIEW

[1] A jurisdictional issue that does not involve a factual dispute presents a question of law.[17]

[2,3] An appellate court affirms a lower court's grant of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from the facts and that the moving party is entitled to judgment as a matter of law.[18] An appellate court reviews the district court's grant of summary judgment de novo, viewing the record in the light most favorable to the nonmoving party and drawing all reasonable inferences in that party's favor.[19]

[4] The constitutionality of a statute and constitutional interpretation are questions of law, and an appellate court is obligated to reach a conclusion independent of the decision reached by the trial court.[20]

[5] Statutory interpretation also presents a question of law.[21]

V. ANALYSIS

1. Jurisdiction

[6,7] Before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it.[22] Here, we must determine whether the appellants have standing and whether an indispensable party is absent. Standing is a jurisdictional

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[17] *Kellogg v. Mathiesen*, 320 Neb. 223, 26 N.W.3d 651 (2025).

[18] *Bar at the Yard v. Friends Family*, 321 Neb. 606, 35 N.W.3d 813 (2026).

[19] *Id*.

[20] See *N'Da v. Golden*, 318 Neb. 680, 18 N.W.3d 570 (2025).

[21] *Wahl v. Wahl*, 321 Neb. 819, 37 N.W.3d 633 (2026).

[22] *Big Iron Auction Co. v. Harder Capital*, 321 Neb. 918, 38 N.W.3d 508 (2026).

component of a party's case, because only a party who has standing may invoke the jurisdiction of a court.[23] The absence of an indispensable party in a declaratory action, such as this one, is also jurisdictional, because if an indispensable party has not been joined, the district court has no jurisdiction to determine the controversy.[24] And where a lower court lacks jurisdiction to adjudicate the merits of a claim, issue, or question, an appellate court also lacks the power to determine the merits of that claim, issue, or question.[25]

For the reasons set forth below, we conclude that we have jurisdiction over this appeal and cross-appeal because one of the appellants has standing and no indispensable party is absent.

(a) Standing

[8] Standing involves a real interest in the cause of action, meaning some legal or equitable right, title, or interest in the subject matter of the controversy.[26] "[T]he U.S. Constitution limits the jurisdiction of federal courts to certain '[c]ases' and '[c]ontroversies,' . . . and federal courts have interpreted that language to impose standing requirements for the exercise of federal court jurisdiction . . . ."[27] However, the Nebraska Constitution has no analogous requirement.[28] Instead, Nebraska courts rely on the common-law standing doctrine except where the Legislature provides for standing that is broader or more restrictive than the common-law baseline.[29]

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[23] *Kellogg, supra* note 17.

[24] See *Powers v. Board of Directors of Elmwood Tower*, 320 Neb. 906, 31 N.W.3d 599 (2026).

[25] See *Hauxwell v. Middle Republican NRD*, 319 Neb. 1, 21 N.W.3d 34 (2025).

[26] *In re Adoption of Faith F.*, 313 Neb. 491, 984 N.W.2d 640 (2023).

[27] *Griffith v. Nebraska Dept. of Corr. Servs.*, 304 Neb. 287, 291, 934 N.W.2d 169, 173-74 (2019) (internal citations omitted).

[28] See *Griffith, supra* note 27.

[29] See *id.*

[9-11] Common-law standing generally focuses on whether the litigant has suffered or will suffer an injury in fact.[30] That injury must be concrete in both a qualitative and a temporal sense.[31] A complainant must allege an injury to itself that is distinct and palpable, as opposed to merely abstract, and the alleged harm must be actual or imminent, not conjectural or hypothetical.[32] Further, a litigant must show that its injury can be fairly traced to the challenged action and is likely to be redressed by a favorable decision.[33] We have also phrased the standing inquiry as "whether the plaintiff demonstrated a 'direct injury' as a result of the action or anticipated action of the defendant and emphasized that it is generally insufficient for a plaintiff to have 'merely a general interest common to all members of the public.'"[34]

In this case, the trial court found standing based on Dingman's interests as a candidate for elected office, and on appeal, the parties agreed that among the appellants, Dingman as a candidate has the best claim to standing. As such, we turn first to the question of whether candidate standing as described in *Bost* is consistent with Nebraska's common-law standing doctrine.

The appellants essentially argue that the theory of candidate standing they put forth involves an injury in fact. The appellants primarily argue that in light of *Bost*, candidates should be seen to "'have a concrete and particularized interest in the rules that govern the counting of votes in their elections, regardless of whether those rules harm their electoral prospects or increase the cost of their campaigns.'"[35]

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[30] *In re Application A-19594*, 315 Neb. 311, 995 N.W.2d 655 (2023).

[31] *Id*.

[32] *Central Neb. Pub. Power Dist. v. North Platte NRD*, 280 Neb. 533, 788 N.W.2d 252 (2010).

[33] *Id*.

[34] *Griffith, supra* note 27, 304 Neb. at 292, 934 N.W.2d at 174.

[35] Brief for appellants at 18 (quoting *Bost, supra* note 12).

The Secretary, on the other hand, argues that candidates cannot be seen to have standing "*qua* candidates" to "challenge election rules"[36] because there was no corresponding cause of action at common law. The Secretary acknowledges that the court could "nonetheless update the common law to create a 'bespoke standing rule for candidates.'"[37] However, the Secretary claims there is "[n]o compelling reason" for doing so here,[38] insofar as the Legislature has provided a means for candidates to challenge the results of an election "[i]f illegal votes have been received . . . sufficient to change the results."[39]

We agree with the appellants that in light of *Bost*, the injury alleged by Dingman as a candidate suffices to give her standing to challenge the constitutionality of subsection (2) insofar as that statute "govern[s] the counting of votes in [her] election."[40] The Secretary is correct that *Bost* is not binding on Nebraska courts.[41] However, we find the reasoning in *Bost* regarding the harm that "[d]epartures from the preordained rules"[42] cause to candidates to be persuasive given the facts and circumstances of this case.

In *Bost*, a candidate for U.S. Congress in Illinois challenged a state law requiring officials to count mail-in ballots postmarked or certified no later than election day and received

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[36] Brief for appellee at 33.

[37] *Id.* at 36 (quoting *Bost, supra* note 12, Barrett, J., concurring in the judgment). See, also, *Green Plains Trade Group v. Archer Daniels Midland Co.*, 320 Neb. 882, 898, 31 N.W.3d 577, 587 (2026) (courts having power to modify common-law rules "'from time to time as changed conditions and new states of fact require'").

[38] Brief for appellee at 36.

[39] Neb. Rev. Stat. § 32-1101(2)(e) (Cum. Supp. 2024).

[40] See *Bost, supra* note 12, 607 U.S. at 83.

[41] See, e.g., *Nebraska Firearms Owners Assn. v. City of Lincoln*, 319 Neb. 723, 24 N.W.3d 891 (2025).

[42] *Bost, supra* note 12, 607 U.S. at 79.

within 2 weeks of election day.[43] The trial court and an intermediate appellate court found that the candidate lacked standing.[44] The U.S. Supreme Court disagreed.[45] As relevant here, the Supreme Court concluded that candidates "have an obvious personal stake in how the result is determined" in their election and that "[d]epartures from the preordained rules" cause them concrete harm.[46] The Supreme Court also concluded that the harm to candidates when the "preordained rules" are not followed is "in no sense 'common to all members of the public.'"[47] The Supreme Court acknowledged that "[v]oters . . . also have a 'general interest' in an accurate vote tally."[48] But the Supreme Court said candidates' interest "differs in kind" because they "spend untold time and resources seeking to claim the right to voice the will of the people."[49]

In this case, assuming that the appellants' claim that subsection (2) conflicts with article VI, § 1, has merit,[50] Dingman has a cognizable interest in that statute not being implemented in an election for which she is a candidate. The harm that she would suffer as a candidate if votes were cast in her election by unlawful voters is sufficiently concrete in light of *Bost*. That harm is also sufficiently particularized in light of *Bost*.

Because we conclude that Dingman has standing as a candidate, we need not address the parties' arguments on appeal regarding the RNC's standing as an association or Riggins'

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[43] See *Bost, supra* note 12.

[44] See *id*.

[45] See *id*.

[46] *Id*., 607 U.S. at 79.

[47] *Id*., 607 U.S. at 78.

[48] *Id*.

[49] *Id*.

[50] See, e.g., *Heiden v. Norris*, 300 Neb. 171, 912 N.W.2d 758 (2018) (because standing focuses on person bringing claim, and not merits of claim, legal and factual validity of claim presented must be assumed when standing is considered).

standing as a registered voter. In an action where multiple appellants seek identical injunctive or declaratory relief, as is the case here, once the court determines that one of the appellants has standing, it need not decide the standing of the others in order to determine that the action is justiciable.[51]

There were additional theories of standing argued before the district court. However, those theories were not raised on appeal and, as noted above, we would not need to decide them even if they had been so raised, because Dingman has standing as a candidate.

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(b) Indispensable Parties

[12,13] The rule in a declaratory judgment action, such as this, is that all who have or claim any interest which would be affected by the declaration sought are indispensable parties, and when all such parties have not been joined, the district court has no jurisdiction to determine the controversy.[52] In a declaratory judgment action, a party is "indispensable" when the party has an interest in the controversy to an extent that such party's absence from the proceedings prevents the court from making a final determination concerning the controversy without affecting such party's interest.[53]

The appellants claim that the "[d]istrict [c]ourt erred to the extent it determined" that an indispensable party was absent. The appellants also claim that insofar as the district court concluded that an indispensable party was absent, it erred in not ordering that party be joined and in entering a judgment on the merits in the absence of an indispensable party.

The Secretary, in contrast, maintains that insofar as those who "register to vote and vote" under subsection (2) are Nebraska domiciliaries, they are not indispensable parties because the Attorney General can represent their interests

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[51] *Stewart v. Heineman*, 296 Neb. 262, 892 N.W.2d 542 (2017).

[52] *Powers, supra* note 24.

[53] *Id.*

under the parens patriae doctrine. However, the Secretary claims that if the appellants were to prevail on their claim that subsection (2) is unconstitutional, those who "register to vote and vote" under this subsection would be indispensable parties, and the district court's judgment should be vacated and the cause remanded with directions to dismiss it without prejudice for failure to join an indispensable party.

We begin with the appellants' claims, which are without merit. The district court did not determine that an indispensable party was absent. To the contrary, the district court concluded that "the absence of the 116 individuals registered to vote in Nebraska" under subsection (2) was "not a jurisdictional defect," even though the rights and interests of those individuals would necessarily be affected by a declaration that subsection (2) is unconstitutional, because the Attorney General can represent their interests under the parens patriae doctrine.[54] And insofar as the district court did not find that an indispensable party was absent, it cannot have erred in not requiring that party to be joined or in entering a judgment in the case despite the absence of an indispensable party.

Turning next to the Secretary's argument, we need not address his claim that if the appellants are correct that subsection (2) is unconstitutional, the cause should be remanded with the instructions described above. This is because, for the reasons set forth below, we conclude that the appellants failed to prove § 32-939(2) is facially unconstitutional.

2. Merits of Appellants' Claims Regarding Subsection (2)

[14,15] Having ascertained that we have jurisdiction over this appeal and cross-appeal, we now turn to the merits of the appellants' facial challenge to subsection (2). A facial

[54] See, e.g., *Douglas Cty. Sch. Dist. 0001 v. Johanns*, 269 Neb. 664, 694 N.W.2d 668 (2005) (under parens patriae doctrine, when state is party to suit involving matter of sovereign interest, it is presumed to represent interests of all its citizens).

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challenge is a challenge to a statute, asserting that no valid application of the statute exists because it is unconstitutional on its face.[55] Generally, a facial challenge seeks to void the statute in all contexts for all parties.[56] 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.[57]

In essence, the appellants argue that subsection (2) has no constitutional application because "Joe" is an overseas citizen "authorized to register under [s]ubsection (1)(d),"[58] and is not among those to whom subsection (2) "purport[s] to expand the franchise."[59] Instead, the appellants claim that the only persons authorized to "register to vote and vote" under subsection (2) are persons "legally domiciled in a foreign country" and, thus, not qualified to vote under article VI, § 1.[60] The Secretary disputes that subsection (1) authorizes "Joe" to vote in Nebraska. However, the Secretary also claims that even if "Joe" is authorized to vote under subsection (1), he would still be "authorized to vote under the plain text of subsection (2)."[61]

(a) Meaning of Subsection (1)

[16,17] Because much of the parties' dispute turns upon whether "Joe" is covered by subsection (1), we turn first to the language of that subsection. Statutory interpretation begins with the text, and the text is to be given its plain and ordinary meaning.[62] It is not within the province of a court

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[55] *N'Da, supra* note 20.

[56] *Id*.

[57] *Id*.

[58] Reply brief for appellants at 7.

[59] *Id*. at 8.

[60] *Id*. at 7.

[61] Brief for appellee at 17.

[62] *State v. Ansell, ante* p. 28, 38 N.W.3d 788 (2026).

to read a meaning into a statute that is not warranted by the language; neither is it within the province of a court to read anything plain, direct, or unambiguous out of a statute.[63]

The appellants' arguments have shifted over time, as the Secretary notes. Notably, the appellants no longer argue that "Joe's" right to vote in Nebraska derives from subsection (1) "as they did at the summary judgment stage." Instead, the appellants claim that "Joe's" right to vote derives from article VI, § 1, and subsection (1) merely "establishes the procedure for 'Joe' to register to vote."[64] However, the appellants continue to maintain that "[i]ndividuals like 'Joe' who, by virtue of their parents' status as Nebraska residents, have been domiciled in Nebraska their whole lives, are plainly 'overseas citizens' and therefore" covered by subsection (1) and, thus, cannot be seen to represent a constitutional application of subsection (2).[65]

[18] We disagree. The term "overseas citizen" is not defined for purposes of the Election Act. However, as the Secretary argues, in construing that term, we must presume that the Legislature knows the language used in a statute and that if a subsequent act on the same or similar subject uses different terms in the same connection, a change in the law is intended.[66] In other words, insofar as the Legislature used the term "never resided" when they adopted subsection (2) in 2005, and not the preexisting term "[o]verseas citizens," they are presumed to have been referring to different persons. The legislative history materials cited by the Secretary, while not dispositive, support that view,[67] as does the definition of

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[63] *MLB Advanced Media v. Nebraska Dept. of Rev.*, 321 Neb. 515, 36 N.W.3d 165 (2026).

[64] Reply brief for appellants at 7.

[65] *Id*.

[66] *In re Estate of Psota*, 297 Neb. 570, 900 N.W.2d 790 (2017).

[67] Brief for appellee at 16 (discussing Floor Debate, L.B. 401, 99th Leg., 1st Sess. 2537 (Mar. 30, 2005)).

"'overseas voter'" set forth in federal law.[68] We also note that the federal voter registration form, which the appellants themselves claimed was used by persons registering to vote and apply for ballots under subsection (1), indicates that "overseas citizens" are persons who have "lived" in the United States "before moving overseas." A person who "has never resided in the United States" inherently never "lived" in the United States prior to moving from the country.

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(b) Meaning of Subsection (2)

Having rejected the view that "Joe" is an "[o]verseas citizen" for purposes of subsection (1), we now turn to subsection (2). In their initial brief on appeal, the appellants took the view that subsection (2) also applied to at least some "[o]verseas voters."[69] It is unclear from the appellants' reply brief whether they continue to hold that view. However, even assuming that they are now of the view that subsection (2) has no application to "Joe," we conclude him to be within the plain meaning of that subsection. As described by the Secretary, "Joe" is the age of an elector,[70] he is citizen of the United States, he resides outside the United States, he has never resided in the United States, he is not registered to vote in any other state of the United States, and he has a parent who is registered to vote within Nebraska. As such, he is "eligible to register to vote and vote" in a Nebraska county where a parent is a registered voter.

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[68] See 52 U.S.C. § 20310(5)(B) and (C).

[69] Brief for appellants at 30 ("[s]ubsection (2) purports to do two things: (A) replicate the registration process for a narrow swathe of qualified overseas citizen voters; and (B) establish an alternative standard of qualification for voters in Nebraska, which does not require constitutional residency so long as the person has never "resided" in the United States, has not registered to vote in any other state, and has a parent registered to vote in Nebraska").

[70] See Neb. Const. art. VI, § 1.

Joe also meets the qualifications of an elector under article VI, § 1. The district court stated that the appellants "concede[d] that Joe is enfranchised under [a]rt. VI, § 1." The appellants do not directly dispute that statement on appeal, but they do at times use language that could be taken to mean they take no position as to whether "Joe" is a Nebraska resident for purposes of article VI, § 1.[71] However, even assuming that the appellants do dispute that "Joe" is qualified to vote under article VI, § 1, we disagree.

This and other courts have previously recognized that children acquire their parents' domicile at birth and that such domicile "continues until a new one, a 'domicile of choice,' is acquired."[72] We have also stated that to acquire a domicile by choice, there must be both (1) residence through bodily presence in the new locality and (2) an intention to remain there.[73] Under these precedents, Joe acquired domicile in Nebraska at birth even though he had never been there, and there is no suggestion that he has resided in a new locality with an intention to remain there.

Because "Joe" meets the requirements of subsection (2) and is qualified to vote under article VI, § 1, we conclude that the

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[71] See brief of appellants at 30 ("[t]he State's hypothetical Joe is either a Nebraska resident or he is not, and neither answer helps the State's argument. Subsection (1) already covers every Nebraska resident who lives abroad. So, if the person the State imagines is a resident, Subsection (1) lets him register and Subsection (2) adds nothings. If he is not a resident, he is not qualified to vote under the Constitution at all, and Subsection (2) is doing the very thing the Legislature may not do").

[72] *State v. Jensen*, 269 Neb. 213, 218, 691 N.W.2d 139, 144 (2005). See, also, *Mississippi Choctaw Indian Band v. Holyfield*, 490 U.S. 30, 48-49, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989) ("[i]t is undisputed in this case that the domicile of the mother (as well as the father) has been, at all relevant times, on the Choctaw Reservation. . . . Thus, it is clear that at their birth the twin babies were also domiciled on the reservation, even though they themselves had never been there"); *State ex rel. Frasier v. Whaley*, 194 Neb. 703, 234 N.W.2d 909 (1975).

[73] *Acklie v. Nebraska Dept. of Rev.*, 313 Neb. 28, 982 N.W.2d 228 (2022).

appellants have failed to prove that subsection (2) is facially unconstitutional. We determine there is at least one constitutional application of subsection (2).

3. Standard Used in Reviewing Appellants' Facial Challenge

The appellants also claim that the district court "misapplied the standard for determining whether [they] stated a valid facial challenge."[74] However, insofar as that argument is based on their view that subsection (2) "does no actual work with respect to 'Joe's' eligibility to vote,"[75] the argument is without merit because "Joe" is not an overseas citizen covered by subsection (1). Instead, "Joe" is a U.S. citizen "residing outside the United States, who has never resided in the United States," and who is "eligible to register to vote and vote" in a Nebraska county where one of his parents is registered to vote.

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VI. CONCLUSION

Dingman has standing as a candidate to challenge the constitutionality of subsection (2), and we otherwise have jurisdiction over the appeal. However, the appellants failed to prove subsection (2) is facially unconstitutional. As a result, we affirm the judgment of the district court.

Affirmed.

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[74] Brief for appellants at 16.

[75] Reply brief for appellants at 7.

Cassel, J., dissenting.

I dissented from this court's decision in *Forbes v. Nebraska Democratic Party*,[1] upon which the appellants rely in urging that Pamela Dingman has common-law standing as a candidate for Lancaster County engineer. I likewise dissent today.

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[1] *Forbes v. Nebraska Democratic Party, ante* p. 282, ___ N.W.3d ___ (2026).

I rely upon the same case law regarding common-law standing recited by the majority opinion and, in the interest of brevity, do not restate it here. I do not find Dingman's claim of injury to be direct, concrete, distinct and palpable, or fairly traceable to the challenged action. I did not agree that in *Forbes*, the appellant there had a cognizable interest in a political party's nomination of a replacement candidate. The facts here, which the majority opinion accurately recites, likewise fail to support Dingman's asserted injury.

The majority opinion neither cites nor discusses *Forbes*, despite the argument asserted by the appellants. Instead, the majority opinion relies upon a recent decision of the U.S Supreme Court.[2]

Although the Court's decision deserves this court's respect and consideration, it does not control. The majority plainly states that "[t]he Secretary is correct that [the Court's decision] is not binding on Nebraska courts." I agree. Here, the claim is based solely on Nebraska law and does not assert any basis under federal law.

Nonetheless, the majority opinion finds the Court's decision to be "persuasive given the facts and circumstances of this case." I disagree. The deputy Secretary's affidavit informs us of the number of votes cast under the challenged section in comparison to the total voters over the last three election cycles and sets forth the following table:

	2020 Primary	2020 General	2022 Primary	2022 General	2024 Primary	2024 General
Number of 32-939(2) voters	7	56	5	8	12	72
Total Voters	492,580	966,920	414,869	682,716	346,661	965,236
Percentage of Total Voters	.001%	.006%	.001%	.001%	.003%	.007%

[2] See *Bost v. Illinois State Bd. of Elections*, 607 U.S. 71, 146 S. Ct. 513, 223 L. Ed. 2d 357 (2026).

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These numbers establish that the claimed harm is neither actual, imminent, nor palpable. The purported harm resembles a droplet in a deluge. I acknowledge that under other circumstances, standing might exist. But not here. I would dismiss the appeal, and, therefore, I respectfully dissent.

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