

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

WILLIAM FORBES,	)	
	)	
Plaintiff,	)	
	)	Case No. CI 26 - _____
v.	)	
	)	COMPLAINT FOR
	)	DECLARATORY AND
	)	INJUNCTIVE RELIEF
NEBRASKA	)	AND REQUEST FOR
DEMOCRATIC PARTY,	)	EXPEDITED
	)	ADJUDICATION
Defendant.	)	
	)	
	)	
	)	

COMES NOW the Plaintiff, by and through his counsel, and for his claim of relief against the Defendant, states as follows:

INTRODUCTION

1. For months, Cindy Burbank—the erstwhile Democratic Party general election nominee for United States Senator—made her plans clear: After winning the Democratic primary election, she intended to strategically drop out of the race to clear the field and redirect her votes to another candidate. The Nebraska Democratic Party has deliberately pursued this scheme alongside Ms. Burbank. Now, Ms. Burbank has followed through on her promises—filing paperwork to withdraw from the race and make good on the sham. And the Nebraska Democratic Party has made clear that it has no plans to nominate a replacement candidate.

2. Fortunately, Nebraska law does not sanction such gamesmanship. It does not permit the hijacking of Nebraska’s

elections, especially where it would disenfranchise Nebraska's Democratic voters by depriving them of their rights. Rather, Neb. Rev. Stat. § 32-627 provides that, where a ballot vacancy arises between the primary and general elections, that vacancy "*shall* be filled" by the proper committee of the nominating political party. To effectuate the replacement, the party's chairperson and executive committee secretary "*shall* make and file" the necessary paperwork explaining the reason for the vacancy and naming the replacement. Neb. Rev. Stat. § 32-627(2).

3. To ensure this mandatory process is properly carried out and Nebraska's elections are kept fair, Plaintiff William Forbes brings this Complaint for Declaratory Judgment pursuant to the Uniform Declaratory Judgments Act, Neb. Rev. Stat. §§ 25-21,149, et seq., and Neb. Rev. Stat. § 25-1063.

NATURE OF THE ACTION

4. This is a declaratory judgment action seeking a judicial determination that sham candidacies in Nebraska elections, where a duly nominated candidate disenfranchises the voters of that political party by dropping out after the primary and their party strategically declines to replace them, are impermissible.

5. Specifically, Plaintiff seeks a judicial determination that, when a candidate's withdrawal after the primary election creates a vacancy on the general election ballot, Neb. Rev. Stat. § 32-627(1) and Neb. Rev. Stat. § 32-627(2) impose mandatory duties upon a political party to fill the vacancy.

6. There is an actual controversy between the parties regarding whether Neb. Rev. Stat. § 32-627 requires that, in the event of a nominated candidate's withdrawal after a primary election but prior to the general election, the resulting vacancy must be filled by the backing political party.

JURISDICTION AND VENUE

7. This Court has jurisdiction because Neb. Rev. Stat. § 25-21,149, which governs declaratory judgments, allows appropriate courts to declare “rights, status, and other legal relations” of parties between whom an actual controversy exists, and because Neb. Rev. Stat. § 25-21,150 provides for courts to determine “any question of construction or validity arising under” a statute that affects a person’s “rights, status, or other legal relations.” The purpose of the Uniform Declaratory Judgments Act is “to settle and to afford relief from uncertainty and insecurity”, and its provisions “are to be liberally construed and administered.” Neb. Rev. Stat. § 25-21,160.

8. Venue is appropriate in the Lancaster County District Court because Defendant resides and conducts business in Lancaster County. Neb. Rev. Stat. § 25-403.01.

PARTIES

9. The Plaintiff is William Forbes, who sought the Nebraska Democratic Party nomination for United States Senate. He is a Democratic Party voter located in the State of Nebraska. Plaintiff believes that party membership creates an ongoing structure of accountability that helps ensure that a candidate—both during campaigns and upon election—acts in a manner consistent with the policy goals of the Democratic Party. Plaintiff has no interest in supporting an “independent” candidate operating outside of that party membership and affiliation, because this independence frees the candidate to deviate drastically from Democratic Party priorities. The Democratic Party’s refusal to field a general election candidate—after competing in the primary—disenfranchises the Plaintiff and other Democratic voters like him.

10. The Defendant, Nebraska Democratic Party, is the Democratic Party affiliate in the State of Nebraska. The Nebraska Democratic Party is composed of a chairperson, executive committee, secretary, and other individuals to whom the responsibility falls,

pursuant to Nebraska statute, for making nominations in the event of post-primary nominee vacancies.

FACTUAL ALLEGATIONS

11. The Nebraska Democratic Party's preferred candidate in the 2026 general election is not, in fact, a Democrat. The Nebraska Democratic Party has thrown its support behind independent candidate Dan Osborn, apparently believing him to be a stronger candidate against incumbent Republican Senator Pete Ricketts.

12. To help increase Mr. Osborn's chances, the Nebraska Democratic Party has pursued a controversial—and unlawful—strategy: run sham candidates in the primary elections for established parties, and—if successful—compel those candidates to drop out of the election *after* the primary but *before* the general election. The avowed purpose of this strategy is to funnel as many votes as possible to Mr. Osborn, by removing all other electoral options for voters opposed to Senator Ricketts.

13. This strategy was never a secret. In fact, Ms. Burbank repeatedly made her intentions clear. On her website, she exhorted voters to “vote for me—and *I'll support Dan Osborn* and make sure we send Billionaire Pete Ricketts PACKING!” (Ex. 1)

14. Jane Kleeb, chair of the Nebraska Democratic Party, publicly stated to supporters that the Party had “made a deliberate, principled decision not to field a candidate in the U.S. Senate race” and promised that Ms. Burbank would “drop out after the primary and support Osborn.” (Ex. 1)

15. Nebraska officials previously attempted to stop this sham. Prior to the primary election, Secretary of State Robert Evnen sought to remove Ms. Burbank from the Nebraska Democratic primary ballot, noting that she was a “sham” candidate, and that the “true nature” of her candidacy was “plainly apparent.” (Ex. 1) Though Ms. Burbank was eventually returned to the ballot on other grounds, *see Burbank v. Evnen*, 321 Neb. 65, 32 N.W.3d 612 (2026), no court—at any level—questioned Secretary Evnen's substantive findings.

16. On May 12, 2026, Ms. Burbank prevailed in the Democratic Senate primary. The results of that election were certified on June 8, 2026 by the Nebraska Board of State Canvassers.

17. On July 17, 2026, Ms. Burbank made good on her promise to withdraw from the general election, filing forms to do so under Neb. Rev. Stat. § 32-623. (Ex. 11); Juan Salinas II, *Democrat Cindy Burbank Files Paperwork to Drop Out of Nebraska U.S. Senate Race*, News from the States (July 17, 2026) (Ex. 2) (“The Secretary of State’s office confirmed that Burbank filed a form saying she was declining to run Friday morning.”).

18. Neb. Rev. Stat. § 32-623 specifies that when a nominated general-election candidate withdraws after the primary, but on or before August 1 in advance of the general election, their name “shall not be printed on the ballot.”

19. Neb. Rev. Stat. § 32-623 further specifies that a declination “shall create a vacancy on the ballot which may be filled pursuant to section 32-627.”

20. Neb. Rev. Stat. § 32-627 affirms that this vacancy-filling provision is not merely discretionary, but mandatory. Neb. Rev. Stat. § 32-627(1) states that “[i]f a vacancy on the ballot arises for any partisan office except President and Vice President of the United States before a general election, the vacancy ***shall be filled*** by the majority vote of the proper committee of the same political party.” (emphasis added).

21. Neb. Rev. Stat. § 32-627(2) corroborates this mandatory reading. That provision states, in relevant part, that “[t]he chairperson and secretary of the executive committee for the political party ***shall*** make and file with the filing officer” information on the cause of the vacancy and the identity of the replacement candidate. So too, that provision specifies that the certificate of vacancy “***shall be filed*** by September 1 for a general election[.]” All throughout § 32-627, mandatory language is employed.

22. Construing § 32-627 as mandatory makes good sense. The alternative would mean that voters in a political party who previously

supported a party candidate in the primary election could be functionally disenfranchised at the party's discretion. Under Nebraska law, a political party's choice to field candidates and invite public support comes with the responsibility to replace them if they drop out.

23. Defendant Nebraska Democratic Party has made clear that it plans to nominate no replacement candidate in the wake of Ms. Burbank's departure. That violates the plain language of §§ 32-623 and 32-627, disenfranchises Plaintiff, and creates a distorted competitive environment in the 2026 general election.

24. Nebraska law provides that a court may grant a temporary injunction "[w]hen it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce great or irreparable injury to the plaintiff, or when, during the litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual." Neb. Rev. Stat. § 25-1063.

25. Plaintiff is entitled to the relief demanded because §§ 32-623 and 32-627 compel the replacement of a political party's nominee when a vacancy arises between the primary and general elections.

26. On July 21, 2026, the Secretary of State acknowledged that Ms. Burbank "has declined her nomination." (Ex. 10). Her withdrawal thus created a vacancy on the ballot under § 32-627. The Secretary of State informed the Democratic Party Chair that the party "must" certify a replacement by September 1.

27. Absent intervention from this Court, however, Defendant Nebraska Democratic Party is likely to fail to replace Ms. Burbank on the ballot upon her removal. Ben Kamisar and Bridget Bowman, *Democrat Moves to Drop Out of Nebraska's Senate Race, Clearing the Path for an Independent*, NBC News (July 17, 2026) (Ex. 9) ("When asked by NBC News whether the state Democratic Party would fill the

vacancy, communications director Jose Flores Jr. echoed Kleebs' comments and said, 'We will back the coalition of Democrats, Republicans, and independents who support Dan Osborn for US Senate.'").

28. If Defendant Nebraska Democratic Party fails to discharge its statutory responsibilities to nominate a replacement candidate, Plaintiff will be irreparably injured because, as a Democratic Party voter, he will be disenfranchised in the general election.

CAUSE OF ACTION UNIFORM DECLARATORY JUDGMENTS ACT

29. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

30. This cause of action is brought pursuant to the Uniform Declaratory Judgments Act, Neb. Rev. Stat. §§ 25-21,149, et seq.

31. The Nebraska Democratic Party has announced its intention to refuse to nominate a replacement candidate in the wake of Ms. Burbank's withdrawal from the general election ballot for U.S. Senate in 2026, meaning that no Democratic Party member is expected to appear on that ballot.

32. As a direct and proximate result of Defendant's announced intention to fail to fulfill its statutory duty to nominate a replacement candidate, Plaintiff is injured. Plaintiff's rights, status, and legal relations are directly affected by the construction of § 32-627, the statute at the heart of this case.

33. The statutory deadline for the provisions of §§ 32-623 and 32-627 to apply—September 1—is imminent.

34. No other plain and adequate remedy exists at law. The question of whether § 32-627 imposes a mandatory duty on a political party to replace a nominee who withdraws after a primary election but before the general election is a pure question of statutory interpretation and readily resolved by this Court.

35. The question is ripe because Ms. Burbank has filed the requisite forms to withdraw from the general election pursuant to Neb. Rev. Stat. § 32-623.

36. On July 21, 2026, the Secretary of State acknowledged that Ms. Burbank “has declined her nomination” and her name will not appear on the 2026 general election ballot. (Ex. 10) Her withdrawal thus created a vacancy on the ballot under § 32-627. The Secretary of State informed the Democratic Party Chair that the party “must” certify a replacement by September 1. (Ex. 10)

37. Yet the Democratic Party has publicly and repeatedly announced its determination not to comply with § 32-627. (Ex. 9)

38. Thus, a “present, substantial controversy” exists that is “susceptible to immediate resolution and capable of present judicial enforcement.” *Pro. Firefighters Ass’n of Omaha, Loc. 385, AFL-CIO CLC v. City of Omaha*, 282 Neb. 200, 211, 803 N.W.2d 17, 26 (2011). Neb. Rev. Stat. § 32-627 requires immediate compliance by the Defendant.

39. Expeditious resolution of this claim—well in advance of the September 1 candidate replacement deadline—is essential to effectuate the requirements of Nebraska law.

40. The threat of irreparable harm is sufficiently imminent, given Ms. Burbank’s withdrawal, Defendant’s refusal thus far to comply with § 32-627, and Defendant’s announced intent to continue its noncompliance prior to the September 1 deadline. Once the September 1 deadline passes, there is no way to rewind the clock.

WHEREFORE, the Plaintiff prays this Court enter the following relief:

- A. Exercise jurisdiction over this declaratory judgment action, consistent with the Uniform Declaratory Judgments Act, Neb. Rev. Stat. §§ 25-21,149, et seq.
- B. Enter, pursuant to Neb. Rev. Stat. §§ 25-21,149 and 25-21,150, a declaratory judgment declaring that Neb. Rev. Stat. § 32-627 mandates that a political party and its

officers take the steps required by statute to fill the vacancy created by Ms. Burbank's withdrawal of her nomination in advance of the general election.

- C. Enter, pursuant to Neb. Rev. Stat. § 25-1063, a temporary injunction prohibiting the Defendant Nebraska Democratic Party from refusing to comply with the statutory requirements of Neb. Rev. Stat. § 32-627 to nominate a replacement candidate in advance of the September 1 deadline.
- D. Adjudicate this case on an expedited timetable, given the impending statutory deadline;
- E. Grant any additional relief as this Court deems just and equitable.

DATED this 24th day of July, 2026.

WILLIAM FORBES,
Plaintiff

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Attorneys for Plaintiff William Forbes

Exhibit 1



STATE OF NEBRASKA

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March 16, 2026

VIA EMAIL (perry@nebraskabusiness.legal)

Perry A. Pirsch, Esq.
Omaha, Nebraska

Re: Your March 13, 2026, letter concerning the candidacy of Cindy Burbank

Dear Mr. Pirsch:

I am in receipt of your March 13, 2026, letter on behalf of the Nebraska Republican Party (the "NEGOP"), in which you object to the candidate filing submitted by Cindy Burbank. You requested that I "reject [her] candidate filing form[] and withhold her name from any 2026 ballot for the office of United States Senator." In particular, you allege that Ms. Burbank does not intend to serve as United States Senator but is a "plant" candidate, "whose intended presence exists to divert votes and confuse voters." In your letter you have set forth evidence in support of your claim that Ms. Burbank has no intention of serving if elected, in violation of her oath and the statute requiring it.

In considering your objection I have reviewed your letter, the email and attached letter and memo from Jason Grams on behalf of Cindy Burbank received on March 13, 2026, and I have consulted with the Office of the Nebraska Attorney General. It is my understanding that you sent Mr. Grams a copy of your letter to me.

Ms. Burbank filed to run in the Democratic Party primary. When she filed her United States Senate Candidate Filing Form ("Form") with this office, Ms. Burbank acknowledged in the Form taking the following oath:

"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."

(Emphasis added.) The source of this oath is statutory. §32-607(1)(a), Neb. Rev. Stat.

Ms. Burbank filed for office about 15 minutes following the filing of William Forbes, another Democratic primary candidate for the U.S. Senate. Both Ms. Burbank and Mr. Forbes filed

in person in the Secretary of State Elections Division office. She was present in the Elections Division office when Mr. Forbes submitted his filing.

Shortly after she submitted her candidate filing, Ms. Burbank made statements on her website that plainly establish her intent: to win the Democratic primary against Mr. Forbes, then withdraw and support Dan Osborn, a declared independent candidate for Senate. Her intent was confirmed by the Nebraska Democratic Party in a broadly distributed letter.

She has stated that Dan Osborn “deserves *a fair shot against Ricketts*.” (emphasis added). That fair shot, Burbank has explained, comes from her dropping out if receiving the democratic nomination: she exhorts voters to “vote for [her]—and [she’ll] *support Dan Osborn* and make sure we send Billionaire Peter Ricketts PACKING!” (emphasis added). Her website discusses Ricketts not as a threat to her own campaign but to Dan Osborn’s. In the section labeled “Why I am running,” Ms. Burbank never states an intention to serve, saying only her “firm determination to secure the US Senate from Pete Ricketts”—but not secure the seat for herself. And in another section, she commits to “doing *whatever* it takes to beat Pete Ricketts” and “unit[ing] around the strongest candidate in November.” These statements demonstrate that she is not a “good faith candidate” who “compete[s] for the support of the people.” *See Bost v. Ill. State Bd. of Elecs.*, 146 S. Ct. 513, 520 (2026). Contrary to her oath, she has no intention to serve.

The Nebraska Democratic Party has confirmed the sham nature of Ms. Burbank’s candidacy. In an email to donors, the Democratic Party Chair stated that the Party “made a deliberate, principled decision not to field a candidate in the U.S. Senate race.” The email explicitly states that Ms. Burbank “will ... drop out after the primary and support Osborn...”

Ms. Burbank’s entire candidacy is built not on an intent to serve if elected but on precisely the opposite.

Nebraska law has long guarded against practices that “confuse voters, cause doubt, and undermine the integrity of elections. *State ex rel. Johnson v. Marsh*, 120 Neb. 927 (1930). The question here is whether the Secretary of State is required to ignore the plainly apparent true nature of Ms. Burbank’s candidacy.

The NEGOP lodged its objections under Nebraska Revised Statute § 32-624(1). That section states that a “candidate filing form filed for the primary or general election ... shall be deemed to be valid unless objections are made within seven days after the filing deadline.” For non-incumbents like Ms. Burbank, the filing deadline for the 2026 primary election was March 2, 2026, the day on which she filed. Any objection to her candidate filing form thus needed to be submitted no later than March 9, 2026 - “seven days after the filing deadline.” *Id.* Mr. Pirsch concedes that the lodging of the NEGOP’s objection is too late. Mr. Pirsch argues that I have the authority to “equitably toll” this deadline. In Mr. Grams’ response letter, he contends that I do not

have such authority. Courts have long had the power, in equity, to order deadlines tolled or stayed. I am skeptical that the Secretary of State has such authority.

I am hereby denying your objection. §32-624, Neb. Rev. Stat.

Nevertheless, as the Secretary of State's duty to certify the ballot is independent of a third party's statutory limitations for submitting objections to a candidate filing. This office is charged with certifying the candidates to appear on the ballot. Neb. Rev. Stat. § 32-801. In addition, this office is charged with supervising the conduct of primary and general elections, which includes, among other things, the duty to protect the integrity of the election process and to avoid voter confusion. The Secretary of State has exercised such authority in the past. In 2024, I removed a candidate for President of the United States without acting on any filed objection. Secretary of State John Gale allowed the substitution of candidates for Lieutenant Governor after the deadline for making such a designation had passed. The courts left both of these decisions undisturbed. There are other examples. Pursuant to this authority, as well as the concomitant authority to decide disputed questions of law and the responsibility of enforcing the Election Act, it is my duty to certify only those candidates who qualify to be on the ballot under Nebraska law. This duty is apart from the time limitations of third parties to file objections.

The Secretary of State has broad authority to, among other things, "[s]upervise the conduct of primary and general elections in this state; ... [e]nforce the Election Act; ... [and] make uniform interpretations of the act[.]" Neb. Rev. Stat. § 32-202(1), (2), (4). Pursuant to this authority, the Secretary must, "[a]t least fifty days before any statewide primary or general election, ... transmit in ballot form to each election commissioner or county clerk a certification of the candidates, offices, and issues that appear on the state ballot." *Id.* § 32-801. That certification must include, among other things, "the name of each candidate for whom candidate filing forms ... have been filed ... *and who is entitled to be voted for* at such primary election." *Id.* (emphasis added).

To be "entitled to be voted for," a candidate must "either tacitly or expressly[] consent[] to be considered" for office. *Id.* § 32-104. In her filing form, a candidate must therefore include the statement that "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." *Id.* § 32-607(1)(a).

Taken together, these statements prohibit a person from being placed on the ballot who has no intention of holding the office that she purportedly seeks. *See McCarthy v. Exon*, 424 F. Supp. 1143, 1145 (D. Neb. 1976) (holding the State "has a sufficient interest to assure itself that the candidate is a serious contender, truly independent, and with a satisfactory level of community support"). Such a person has not "consent[ed] to be considered" for that office. *Id.* These statutes thus forbid the placement of "plant" candidates on the ballot, who enter the race to divert votes and confuse voters.

Perry A. Pirsch, Esq.
March 16, 2026
Page 4

That the Election Act forbids such a practice is not surprising. States have always had "a duty[] to protect the integrity of its political processes from frivolous or fraudulent candidates for public office." *Bullock v. Carter*, 405 U.S. 134, 145 (1972). Long ago, the Nebraska Supreme Court held that candidates ought to seek office in "good faith" and not with "trickery and fraud." *State ex rel. Johnson v. Marsh*, 120 Neb. 927 (1930).

I have concluded, as set forth above, that I will not certify Ms. Burbank for the primary ballot.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert B. Evnen", written in a cursive style.

Robert B. Evnen
Nebraska Secretary of State

Cc: Jason W. Grams (via email)
jason.grams@grams.law

Exhibit 2

NEBRASKA | News

Democrat Cindy Burbank files paperwork to drop out of Nebraska US Senate race

GOV & POLITICS | Jul 17, 2026 | 3:25 pm ET | By Juan Salinas II

SHARE



Cindy Burbank, the Democratic nominee for Nebraska's U.S. Senate race, talks with a voter following a town hall on June 22, 2026. Burbank has submitted paperwork to be removed from the November ballot. (Photo by Zach Wendling/Nebraska Examiner)

LINCOLN — Cindy Burbank, Nebraska's Democratic nominee for the U.S. Senate race, submitted paperwork Friday to remove herself from the November ballot, a move that could clear the way for nonpartisan candidate Dan Osborn to challenge incumbent Republican Sen. Pete Ricketts.

The Secretary of State's office confirmed that Burbank filed a form saying she was declining to run Friday morning.

Burbank did not immediately respond to an Examiner request for comment. In a video posted to her Facebook page, she said: "I've looked at the numbers. I won't be your next senator. So I have withdrawn my bid for U.S. Senate."

But that doesn't necessarily mean Burbank will get her wish in this closely watched race. Her candidacy has come under scrutiny as she has faced allegations of being "planted" in the race to boost chances for Osborn, which Burbank has denied.

Nebraska Democrats did not actively recruit a candidate, and state party chair Jane Kleeb endorsed Osborn.

Secretary of State Bob Evnen will send a letter on Monday to Nebraska Attorney General Mike Hilgers asking for his decision on whether Burbank should be allowed to drop out, Evnen spokesperson Rani Taborek-Potter said Friday.

Hilgers told the Examiner in May that Evnen had asked for guidance on whether the state can refuse to remove Burbank from the ballot. Evnen told the online outlet The Plains Sentinel shortly before the primary that “if she submits a withdrawal, then I’m going to ask, ‘Well, what is my obligation with respect to this now? Do I have to accept it?’

Evnen briefly removed Burbank in March, saying she wasn’t a “good-faith” candidate, but she was able to successfully sue her way back on the ballot, partly because Evnen missed a deadline for raising his objection.

Burbank told the Examiner she would drop out of the race only if she didn’t have a clear path to victory in the general election.

Since the May party primary elections, Burbank’s campaign for Senate had been quiet. While she has not announced any public campaign events of her own, she has been campaigning for the 1st Congressional District nonpartisan candidate Austin Ahlman.

Marijuana NOW Party’s U.S. Senate nominee Mike Marvin is still currently on the ballot.

Ricketts’ campaign released a statement Friday on Burbank dropping out.

“Dan Osborn has rigged yet another party’s ballot because he is the Democrats’ nominee,” the statement said.

The Osborn campaign declined to comment on Burbank.

The Osborn-Ricketts race has already been heated and likely will continue to be. The secretary of state on Thursday verified Osborn had gathered enough signatures to qualify for the November general election as an independent.

The general election is Nov 3.



PUBLISHED ON

Nebraska Examiner

Lincoln, NE

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Exhibit 3

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Spoiler allegations fly as five Nebraskans join US Senate race just before deadline

Josh Reyes · 40 mins ago · 2



5. Senate candidate Dan Osborn speaks after receiving endorsement from the Nebraska State Education Association

LINCOLN — Five candidates on Monday — the last day to file for primary elections in Nebraska — decided to become late entries to the race between U.S. Sen. Pete Ricketts and former Senate candidate and labor leader Dan Osborn.

Why join the fray now after Ricketts and Osborn have been going at it for months?

The answer lies somewhere within a flurry of accusations and denials of dirty tactics, siphoning votes and disingenuous candidates. The situation led to a state party leader calling for a legal change to how candidates can get onto the ballot under a party name.

The campaign for Osborn sent a press release early Tuesday, accusing William Forbes, a pastor and anti-abortion activist from the Nebraska Panhandle, of signing up to run in the Democratic primary to split votes in the general election for the benefit of Ricketts.



U.S. Sen. Pete Ricketts speaks at the Nebraska Walk for Life at the Nebraska State Capitol in Lincoln on Saturday, Feb. 1, 2025.

CHRIS MACHIAN, THE WORLD-HERALD

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4 **Dan Osborn criticizes US, Israeli strikes on Iran: 'I think there's something else going on'**

Osborn will not appear on primary ballots because nonpartisan candidates qualify through petition. The Nebraska Democratic Party did not have candidates in the race until Monday. Party Chair Jane Kleeb has said the party **supports Osborn** as the best candidate to unseat Ricketts and stand up to President Donald Trump.

Osborn also accused Ricketts of being behind Forbes' candidacy: "Pete Ricketts knows he can't beat me. ... So he's trying to rig the election instead."

Ricketts' team strongly denied the allegation and said, "Dan Osborn's conspiracy theory is completely false. The Ricketts campaign had no role in the Democratic primary."

They also said Osborn has a "history of rigging primary elections," referring to controversy around the Legal Marijuana NOW

Party's 2024 nominee for Senate who dropped out to support Osborn. The party said on social media Tuesday that a similar pattern was playing out this year, with a last-minute candidate jumping into their primary. Osborn's campaign denied a connection to the candidate Mike Marvin, a former union leader for state employees.

Kleeb doubled down Tuesday afternoon and said Forbes' candidacy is a "political maneuver engineered by Pete Ricketts to split the opposition vote and protect his Senate seat." **Recent polling** shows a tight race between Osborn and Ricketts.

Forbes, who is listed as the **pastor of a church in Paxton**, confirmed his candidacy in a text and said he is a lifelong Democrat. State voter records show he is registered as a Democrat in Keith County.

Forbes will not appear alone on the Democratic primary ballot.



Dan Osborn speaks at an event where the Nebraska State Education Association endorses his campaign for the U.S. Senate during an event at the Omaha Education Association, 4202 S 57th St. in Omaha, on Wednesday, Nov. 19, 2025.

CHRIS MACHIAN, THE WORLD-HERALD

Kleeb said the party started to seek a candidate from its leadership ranks when they heard someone may try to play spoiler.

Cindy Burbank of Omaha volunteered to "protect the party line," according to Kleeb. She described Burbank as an activist in the party and said Burbank would drop out of the race if Forbes did.

Burbank's campaign website echoes Osborn and Kleeb and accuses Forbes of being a stooge for Ricketts.

Her site also says that Burbank does not want to serve in the Senate — her goal is to win the Democratic primary to keep Forbes off the November ballot.

Then, she said, "I'll support Dan Osborn," calling him "a good man, a working man, a strike leader and someone we can trust." Burbank did not return calls Tuesday.

Osborn campaign manager John Dolan said his team is not involved with Burbank, though she gave the campaign a "heads up" that she was getting on the ballot.

The assertion that Forbes is playing spoiler centers on his staunch activism against abortion.



Nebraska Democratic Party Party Chair Jane Kleeb opens a press conference announcing Jocelyn Brasher's candidacy for attorney general in the Capitol Rotunda on Wednesday, Feb. 11, 2026.

KENNETH FERRIERA, Journal Star



ELECTIONS

Here's who has filed to run in key Nebraska primary races, including last-minute additions

Josh Reyes , Luna Stephens

Osborn's campaign highlighted a [2022 Flatwater Free Press story](#) that featured Forbes and his petition effort to ban abortion in Paxton. The panhandle town of about 500 people does not have an abortion clinic. In the story, Forbes said he is a Democrat.

[Burbank's website](#) also shows screenshots of a Facebook page that appears to belong to Forbes. That page also appears to be hidden or deactivated. The page shows

photos from the 2025 anti-abortion rally, Walk for Life, in Lincoln, including a photo of Ricketts addressing the crowd. One photo of balloons being released is paired with a caption that refers to "baby girls and boys that were murdered by abortion."

Osborn's team noted Forbes' activism against abortion is "a challenging background for a Democratic primary candidate."

Osborn's issues page does not list a stance on abortion, but he spoke about it in 2024 when he challenged Sen. Deb Fischer. He said he supports abortion measures as they were before the 2022 U.S. Supreme Court decision overturned Roe v. Wade.

"Since Roe v. Wade has been overturned, abortions are on the rise. And women are dying, plain and simple," Osborn said. "That portion of health care needs to be available."

Kleeb said Forbes has an extreme position on abortion and is "running to trick voters."

In a lengthy text to the World-Herald, Forbes said he believes in cutting wasteful spending while protecting Social Security and Medicare, looking out for rural Nebraska and working with "whoever's willing to fix things." He did not mention abortion.



GOVERNMENT POLITICS

Dan Osborn campaign's internal poll shows statistical tie with Pete Ricketts

Ben Doody

He said he's running to "bring common sense back and put Nebraska first." Forbes did not return calls from the World-Herald, though he exchanged a few text messages. He did not respond to questions about allegations from the Osborn campaign and state Democrats.

Legal Marijuana NOW party entrant

In the Legal Marijuana NOW party, leaders are accusing one of the candidates in their primary of being a plant to support Osborn. Both Mark Elworth Jr., the party chair, and Earl Starkey, a Senate candidate who joined the race in January, called out last-minute candidate Marvin on social media for joining their party's primary. Elworth predicted Marvin, known as a former leader in the state employees' union, was running to clear a path for Osborn, **"just like Kerry Eddy in 2024."**

Eddy won the LMN primary in 2024 then dropped out to support Osborn, saying he was the best chance to unseat Fischer. Eddy had **joined the party earlier that**

year, according to reporting in the Lincoln Journal Star. LMN did not run a candidate in the Senate race.

Marvin on social media denied being a plant for anyone else and said he's a longtime supporter of legalizing marijuana.

Osborn's campaign also said it was not involved with Marvin and had not met him.

The Ricketts and Osborn campaigns levied similar accusations at one another about trying to distract from misdeeds.

Dolan, Osborn's campaign manager, said, Ricketts is "going to deflect because he got caught with his hand in the cookie jar, but the fact is that Pete is trying to undermine this election." Meanwhile, Ricketts' campaign spokesman Will Coup said, "Dan Osborn is attempting to repeat the same trick this cycle while deflecting from it with wild conspiracy theories about Sen. Ricketts."



GOVERNMENT | POLITICS

Dan Osborn criticizes US, Israeli strikes on Iran: 'I think there's something else going on'

Ben Doody

Along with Forbes, Burbank and Marvin, Mac Stevens of Bushnell and Debb Axtell Schultz of Grand Island were the other late entries to the Senate race.

Both joined the Republican primary. Stevens has previously run for Senate and lost in the GOP primary. He has a **campaign website** and lists fighting against cancer as his leading issue. Schultz was **running for mayor in Grand Island** until switching her candidacy to the Senate race.

Eric Mortimore of Kearney and Todd Knobel of Lincoln previously joined the primary field against Ricketts.

Kleeb said the Nebraska Democratic Party will pursue a law to require parties to certify a candidate's application to appear on a ballot under the party name, a rule in place in other states. She said non-serious candidates should not be able to "exploit the democratic process."

Photos: Fischer, Ricketts, Flood gather for annual legislative summit

Exhibit 4

Nebraska Examiner

Nebraska Dem Senate candidate Burbank paid third-party candidate's filing fee

Public records on payment of Marvin's fee follow weeks of competing allegations of planted candidates

BY **JUAN SALINAS II** - MARCH 24, 2026 4:17 PM



📷 Voters leave a polling place in Louisiana during the November 2024 election. (Matthew Perschall/Louisiana Illuminator)

LINCOLN — In a U.S. Senate race marked by allegations of planted candidates, an unusual thing happened on the filing deadline day: Democratic candidate Cindy Burbank paid the \$1,740 filing fee for Legal Marijuana NOW Party candidate Mike Marvin, state records obtained by the Nebraska Examiner show.

Payment records from the Nebraska Secretary of State's Office indicate "Cynthia J Burbank" paid Marvin's filing fee via a check at the close of business on the last day for candidates to file, at 5:03 p.m. March 2, via an "agent drop off." That's a way of saying a person besides Marvin or the Post Office dropped off the check.

Burbank had been at the filing office at the Secretary of State's Office in Lincoln that day to file for herself at 4:43 p.m., using the same name. She filed her own paperwork to run about 13 minutes

after Democrat William Forbes filed and paid for his own fee at 4:30 p.m., with a check, state records show.

Marvin's final day filing as a candidate came just as the office was closing, nearly two months after the other marijuana candidate, Earl Starkey. He filed at 11:53 a.m. on Jan. 8.

Three of those candidates have been involved in some of the race's [recent controversy](#).

Burbank and the Nebraska Democratic Party have accused Forbes — an anti-abortion pastor — of being a planted candidate to help Republican U.S. Sen. Pete Ricketts. Ricketts supporters, the Nebraska Republican Party and former leaders of the Legal Marijuana Party NOW have described Burbank and Marvin as plants to help registered nonpartisan candidate Dan Osborn, Ricketts' likely general election opponent in a race drawing national attention and dollars.

Leaders of the Nebraska Democratic Party have encouraged voters to vote for Burbank in the party's 2026 primary race and have described Forbes' bid as "a political maneuver engineered by Pete Ricketts to split the opposition vote and protect his Senate seat."

When the Examiner asked Marvin last weekend why Burbank had paid his filing fee, Marvin said, "I have no idea what is happening."

"I keep waiting for the check I wrote to clear," Marvin said. "I have been unable to find out what is happening right now. ... I don't even know Cindy Burbank."

The Examiner requested copies of any checks used to pay for Marvin's filing, and only a copy of Burbank's check was provided. The Secretary of State's Office declined to comment on the specific circumstances from that final filing day.

Burbank, in a follow-up email Tuesday, told the Examiner she was in the election office in early March and saw "the secretary's people refusing to take Mike's check because it was for ten dollars too much."



📷 A photo of Mike Marvin (courtesy of his facebook page)



📷 A screenshot of Cindy Burbank's campaign website on March 3, 2026.

"It pissed me off, and I paid for it ... I've never met Mike," Burbank said. "If Ricketts can throw his money around then so can I!"

Until this year, Evnen said he could not remember a candidate paying for another candidate's filing fee over the past eight years. The other: This year in Legislative District 48, a western Nebraska couple registered in competing parties to challenge State Sen. Brian Hardin of Gering.

The Nebraska Republican Party's brief filed to the Nebraska Supreme Court as part of a failed legal attempt to keep Burbank off the ballot mentioned Burbank paying Marvin's filing fee. The state's high court ruled Monday that [Secretary of State Bob Evnen's action to remove Burbank from the ballot came too late](#). It put her back on.

Attorneys for Evnen and the state GOP had argued that Burbank's campaign website and comments from state Democratic Party chair Jane Kleeb indicated that Burbank did not plan to serve in Congress but planned to compete for the minority party's nomination and eventually step aside and support former Omaha labor leader Osborn, giving him a "fair shot against Ricketts."

Mark Elworth, a former leader of the Legal Marijuana Party NOW, has pointed to Marvin's union ties and actions taken by Osborn supporters in 2024 to win his party's nomination and then drop out to keep competing names off the general election ballot. Marvin has denied being a plant. Osborn's team has denied involvement with Marvin as well.

[Burbank's campaign website](#), which she named, "NOT a Pete Ricketts plant," shared alleged Facebook photos of Forbes, an anti-abortion Democrat, attending a banquet for Nebraska Right to Life and a separate photograph allegedly posted by Forbes of Ricketts speaking at the Capitol for the 2025 Nebraska Walk for Life. Forbes has sidestepped a question about whether he wanted to address allegations of being "loyal" to Ricketts. Team Ricketts has denied any involvement with Forbes or his campaign.

The outcome of the Democratic primary and the two-person Legal Marijuana NOW primary could determine whether the general election ballot is cleared for Osborn in his nonpartisan bid against



📷 A photo of William Forbes deleted facebook on Cindy Burbank website.



📷 Nebraska U.S. Sen. Pete Ricketts, R-Neb., and registered nonpartisan Dan Osborn. (Juan Salinas II and Zach Wendling/Nebraska Examiner)

Ricketts, who faces only nominal opposition in his own party's primary.

Ricketts paid his own filing fee on Feb. 4 around 11:44 a.m., records indicate. Starkey and a Republican candidate, Eric Mortimore, filed as "pauper" candidates, which waives the filing fee. GOP candidate Debb Axtell Schultz paid on March 2 at 4:55 p.m. with a bank check.

Nebraska's primary election is May 12. The general election is Nov. 3.

Exhibit 5

4 Takeaways From Tuesday's Primaries in Nebraska and West Virginia

Democrats in Nebraska appear headed toward the Senate matchup they want, while their primary for a key House district was too close to call.



By Kellen Browning

May 12, 2026

Nebraska Democrats on Tuesday night maneuvered toward a favorable matchup in a high-profile Senate race, and were locked in a close primary contest for a battleground House seat that could be important to the party's hopes of regaining control of Congress this fall.

In West Virginia, meanwhile, Gov. Patrick Morrisey's effort to mete out Trump-like retribution against political opponents in Republican primary races met some success.

Here are four takeaways from the night.

Democrats can play hardball, too.

Democratic voters have been urging the party to pull out all the stops in opposing President Trump and the Republican Party, which has pursued aggressive and unorthodox strategies — like mid-decade redistricting — to hold onto power.

Democrats have responded with their own gerrymanders. And in Nebraska, rather than back a doomed Democratic bid for Senate, party leaders played smart, endorsing Dan Osborn, an independent candidate who stands a better chance of

defeating Senator Pete Ricketts, the Republican incumbent, in November. Mr. Osborn also ran for Senate as an independent in 2024, when he put up a competitive showing but fell short.

When William Forbes — a Democrat accused of being a Republican “plant” who could split the general-election vote and hinder Mr. Osborn — entered the primary, the state Democratic Party quickly threw its support behind an alternative option. It backed Cindy Burbank, who promised to drop out of the general election and consolidate support for Mr. Osborn.

She easily won the primary on Tuesday night. In a text message afterward, she said — perhaps joking, perhaps not — that she hoped Mr. Ricketts would simply drop out that night. “That would be such sweetness,” she wrote.

She said she was also “kinda disappointed,” because the speed of her victory over Mr. Forbes — the race was called six minutes after polls closed — had taken “all the fun out of it.”

But she recommitted to her pledge to exit the race.

“I don’t wanna split the ballot,” Ms. Burbank wrote. “I have no expectations of being able to win in November.”



Denise Powell was narrowly leading a Democratic House primary that featured an unusual argument: that electing her chief party rival, State Senator John Cavanaugh, could make it easier for Republicans to win the White House in 2028. Rebecca S.

Gratz/Associated Press

‘Blue dot’ politics may have swayed some voters.

Democrats saw a major opportunity for a House pickup when Representative Don Bacon, a moderate Republican, announced his retirement from Nebraska’s competitive Second Congressional District around Omaha.

But much of the sparring in the Democratic primary focused on the argument that electing one candidate, John Cavanaugh, could make it easier for Republicans to win the presidency in 2028.

The argument stemmed from Nebraska’s unusual allocation of electoral votes in presidential elections, which awards the winner of each of its three congressional districts one electoral vote each. The Omaha-area district has gone to Democrats in recent presidential contests, even as the rest of the state typically went to the Republican presidential candidate.

State Republicans have tried to repeal the so-called blue dot system — named because Omaha is a blue dot in a sea of Republican red — but Democrats in the State Legislature have blocked them. Opponents of Mr. Cavanaugh, a state senator, argued that if he won the House primary and left the State Senate, it would mean one fewer vote to keep the blue dot.

Those arguments may have had some traction. Late Tuesday, Mr. Cavanaugh was narrowly trailing Denise Powell, a political organizer, in a race that was too close to call. The winner will face Brinker Harding, a Republican city councilman.

The Senate map continues to line up for Democrats.

Democrats began the 2026 election cycle with control of the Senate looking like a long shot. But the political environment has shifted their way, and they have recruited some strong candidates.

Tuesday's results were more good news for them: Mr. Osborn will have a clear shot at Mr. Ricketts, and limited polling has indicated a tight race.

Assuming Mr. Osborn submits enough signatures to qualify for the ballot, he will start as an underdog. But he and his allies see promise, with Mr. Trump growing increasingly unpopular and Nebraska's farming economy taking a hit from the president's agricultural tariffs.

Running as an independent could allow Mr. Osborn to avoid, to some degree, being painted as a left-wing partisan — even though Republicans will try to do just that.

He has already inverted some traditional political trappings: On Tuesday, he generated buzz by posting a chart on X depicting himself with a red backdrop — the typical color for a Republican — and Mr. Ricketts with a blue background, typically associated with Democrats.

Incumbents (mostly) got their way.

In West Virginia, Senator Shelley Moore Capito, a Republican, fended off five primary challengers. The state's Republican governor, Mr. Morrissey, also had some success as he waded into state legislative primaries to back allies and oust adversaries. Many — but not all — of the candidates he endorsed in contested state legislative primaries had won or were leading on Tuesday night.

And in Nebraska, Gov. Jim Pillen, a Republican who is expected to win re-election, will look ahead to his matchup with Lynne Walz, a former state legislator who won the Democratic primary on Tuesday.

Kellen Browning is a Times political reporter based in San Francisco.

Exhibit 6

2026 ELECTION

Democrats pick Nebraska Senate nominee who could drop out and back independent Dan Osborn

Democrat Cindy Burbank won Tuesday's primary, NBC News projects. She has said she would consider leaving the race if she didn't have a path to victory.

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00:00

03:52

1x



— Nebraska Democratic Senate candidates Cindy Burbank and William Forbes.

cindyburbank.com; forbesfornebraska

May 12, 2026, 9:06 PM EDT

By Bridget Bowman

Cindy Burbank won the Democratic Senate primary in Nebraska, NBC News projects, potentially clearing the way for independent Dan Osborn to take on GOP Sen. Pete Ricketts head-to-head in the fall.

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Burbank defeated pastor William Forbes for the Democratic nomination, while Ricketts easily won his Republican primary.

Democrats have not won a Senate race in Nebraska since 2006. But Osborn has been [gearing up for a run against Ricketts](#) after he ran a surprisingly competitive first campaign as an independent in 2024. Osborn, a steamfitter and former union organizer, lost to GOP Sen. Deb Fischer by 7 points as Donald Trump carried the state by 20 points.

Osborn has stressed that he does not plan to caucus with either party if he is elected. But Republicans have accused him of being a Democrat, noting [in attack ads in 2024](#) that he had privately praised Sen. Bernie Sanders, I-Vt.

Burbank said in a phone interview last week that she would consider ending her campaign and backing Osborn if she does not have a clear path to victory. But she denied that she entered the Democratic primary with the intent to drop out.

“I will drop out when and if the time comes that I cannot win in November. And I think anybody with any dignity should do that,” she said, saying that she would evaluate her prospects based on polling and that she aims to decide in time to remove her name from the November ballot.

Questions about Burbank’s intentions have swirled since she jumped into the race shortly before the filing deadline. The Nebraska Democratic Party had declined to field a candidate, hoping to allow a matchup between Osborn and Ricketts.

But Forbes filed as a Democratic contender at the last minute, raising concerns among Democrats that he was a Republican plant to pull votes from Osborn in the general election. Forbes, who has supported Trump in recent elections and attended a training run by a conservative group, [denied those allegations](#) in an interview with CNN.

Burbank, a pharmacy technician, said she jumped in the race after she heard chatter that Republicans were trying to place a Democrat on the ballot. Burbank said “some people” she met while she was working on previous campaigns asked whether she would consider running, declining to specify who they were but clarifying that they were not connected to Nebraska Democratic Party chair Jane KleeB. Burbank said he did not believe they were associated with the Osborn campaign.

KleeB and the state Democratic Party [had been encouraging voters to support Burbank](#) in the primary, accusing Forbes of being a “Ricketts plant.”

Burbank chided KleeB for suggesting that she intended to drop out of the race to clear the way Osborn to take on Ricketts. But Burbank mentions Osborn multiple times on her campaign website, including writing that “he deserves a fair shot against Ricketts.”

Asked about the website language, Burbank said of Osborn, “I think he’s a great guy, and we have to keep in mind that he might be able to be on [the ballot].”

“For me to stay on the ballot and take votes away from Osborn, it’s not fair,” she added later.

Osborn told NBC News last year that he cast his 2024 presidential vote for United Auto Workers President Shawn Fain, writing him in instead of voting for Trump or Vice President Kamala Harris.

Trump has endorsed Ricketts, who is running for his first full term after he easily won a special election in 2024 to replace GOP Sen. Ben Sasse. Ricketts, a former governor, has already launched multiple ads in the race [touting tax cuts](#).



Bridget Bowman

Bridget Bowman is a national political reporter for NBC News.

Exhibit 7

< shall



Dictionary

Thesaurus

shall verb

shəl, ('shal ◀▶)

past **should** shəd, ('shüd ◀▶) ; *present singular and plural* **shall**[Synonyms of shall >](#)

auxiliary verb

1 a → used to express what is inevitable or seems likely to happen in the future
we *shall* have to be ready
we *shall* see

b → used to express simple futurity
when *shall* we expect you

2 → used to express determination
they *shall* not pass

3 a → used to express a command or exhortation
you *shall* go

b → used in laws, regulations, or directives to express what is mandatory
it *shall* be unlawful to carry firearms

4 archaic

a : will have to : **MUST**

b : will be able to : **CAN**

intransitive verb

archaic : will go

|| ... he to England *shall* along with you.

Exhibit 8

Nebraska Examiner

Legal Marijuana Now Party won't offer a nominee for Nebraska's U.S. Senate ballot

BY AARON SANDERFORD - SEPTEMBER 4, 2024 9:45 AM



📷 Signs in the bowels of the Nebraska State Capitol advocate for legalization of marijuana. Aug. 2, 2024. (Aaron Sanderford/Nebraska Examiner)

LINCOLN — The Legal Marijuana Now Party has decided it will put no name on the November ballot against Republican U.S. Sen. Deb Fischer and nonpartisan candidate Dan Osborn.

The close of business Tuesday was the party's deadline to offer a name after its original nominee resigned. No replacement form was filed with the Nebraska Secretary of State's Office.

Mark Elworth Jr., who chairs the party, said Tuesday that the group chose not to run someone because supporters of Osborn and Kerry Eddy, the former nominee, threatened to sue.



📷 U.S. Sen. Deb Fischer, R-Neb., faces nonpartisan candidate Dan Osborn in Nebraska's Senate race this

"We don't want to deal with it," Elworth said. "We don't fundraise. We have every right to run a candidate. We think Dan Osborn is dishonest."

fall. Candidate photos courtesy of their campaigns. Capitol photo by Jennifer Shutt/States Newsroom)

The party considered backing Ed Williams after Eddy, who won the party nomination in May, followed through on her pledge to quit the race and back Osborn if she thought he could win.

Some party members knew Williams from his work gathering signatures for the medical marijuana ballot initiatives.

Questions about party involvement

Some longer-tenured members of the Legal Marijuana Now Party argued that Eddy and a group of Osborn supporters took over their party to clear the ballot for him in his run against Fischer.

Fewer names on the ballot consolidate protest votes against incumbents, giving challengers a better chance to secure more votes.

Eddy has [denied she ran for that reason](#). But she posted online during the primary that she might step aside for Osborn. She cited July polling as her reason for resigning.

Dustin Wahl, an Osborn campaign spokesman, said the campaign made no threats. He said the person who advised the party it couldn't run another candidate was Eddy's campaign treasurer.



Legal Marijuana Party NOW U.S. Senate nominee Kerry Eddy, at left, quit the race. (Aaron Sanderford/Nebraska Examiner)

Focus on letter

In a letter Elworth shared with the Examiner, Eddy treasurer John Cartier argued the party had flubbed how it handled a convention Aug. 14 to weigh whether to replace Eddy.

He wrote that the party had illegally kicked out 19 people who voted against adding a new candidate. Elworth said the party had adopted a rule disallowing Osborn and Eddy supporters to participate in the convention, sharing a party Facebook post from before the gathering as evidence.

Cartier wrote that the party or its members could face a lawsuit and possible prosecution for potentially falsifying election-related documents if it replaced Eddy on the ballot. In a follow-up call, Cartier said he was not threatening the group.

"Due to not receiving the proper amount of votes and illegally kicking off multiple party members ... filing for Mr. Williams to replace Kerry Eddy



would be invalid,” Cartier wrote.

 Mark Elworth Jr. of the Legal Marijuana Now Party. (Courtesy of Mark Elworth Jr.)

The party’s decision leaves only Fischer and Osborn on the ballot, since the Nebraska Democratic Party also decided not to run a write-in candidate.

Fischer criticized Osborn during an interview Tuesday for “playing games” with the Legal Marijuana Now Party and the Democratic Party.

Elworth, in a follow-up text, said he is so angry at Osborn and his supporters for what happened to his party that he plans to vote for Fischer, who opposes legalizing marijuana.

**SENT VIA EMAIL AND FACEBOOK MESSENGER**

August 15, 2024

Dear Mr. Mark Elworth Jr., and Mr. Ed Williams:

On August 4, 2024, the Nebraska Legal Marijuana Now Party ("LMN") held our party convention via Facebook Messenger thread. I myself was present and have access to the chat transcript prior to my own removal. During the convention:

- Mr. Elworth stated: "I'm the Chair Mark Jr, this is a open convention, everyone who is registered to the party gets a equal vote"
- Voting opened on a motion to nominate Edward Williams to replace Kerry Eddy, with the voting stipulated to be open all day.
- 19 party members voted NO on the motion, with 7 individuals voting YES.
- Mr. Elworth rapidly moved to remove these individuals from the Facebook Messenger thread.
- Mr. Elworth declared Ed Williams to be the nominee and stated his intent to file paperwork to that effect with the Secretary of State's office.

Due to not receiving the proper amount of votes, and illegally kicking off multiple party members from the convention, any filing for Mr. Williams to replace Kerry Eddy for the 6-year US Senate seat would be invalid and amount to falsification of election documents. Should you move forward with filing any documentation be aware that you will be subject to Nebraska statutes that criminalize election falsification, such as Neb. Rev. Stats. § 32-1501, 1502, 1516:

A person shall be guilty of election falsification if, orally or in writing, he or she purposely states a falsehood under oath lawfully administered or in a statement made under penalty of election falsification (1) as to a material matter relating to an election in a proceeding before a court, tribunal, or public official or (2) in a matter in relation to which an oath or statement under penalty of election falsification is authorized by law, including a statement required for verifying or filing a voter registration application or voting early or a statement required by a new or former resident to enable him or her to vote for President or Vice President of the United States. Any person committing election falsification shall be guilty of a Class IV felony.

The first page of a letter John Cartier said he sent to leaders of the Legal Marijuana Now Party. (Courtesy of Mark Elworth Jr.)

Neb. Rev. Stat. § 32-1501.

Any person who willfully interferes with or refuses to comply with the requirements of and cooperate with the Secretary of State or his or her designated agent in carrying out the powers and duties prescribed in sections 32-202 and 32-203 shall be guilty of a Class III misdemeanor.

§ 32-1502.

Any person who falsely makes or falsely swears to any candidate filing form or any part thereof, fraudulently defaces or destroys any candidate filing form or any part thereof, files or receives for filing any candidate filing form knowing that the form or any part thereof is falsely made, suppresses any duly filed candidate filing form or any part thereof, or forges or falsely places any initials or signatures on any ballot under section 32-916 or 32-947 shall be guilty of a Class III felony.

§ 32-1516.

Should you move forward with filing any falsified election documents related to this convention, we will be forced to oppose such action with every legal means available to us. In order to avoid the time, cost, and possibility of criminal action against yourselves, we beseech you to please reconsider moving forward with your filing and follow the applicable state and party rules moving forward.

Respectfully,

John D. Cartier

The second page of a letter John Cartier sent the leaders of the Legal Marijuana Now Party. (Courtesy of Mark Elworth)

Exhibit 9

2026 ELECTION

Democrat moves to drop out of Nebraska's Senate race, clearing the path for an independent

Cindy Burbank's attempt to drop out of the race would leave Republican Sen. Pete Ricketts in a one-on-one matchup with independent Dan Osborn.

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00:00

02:50

1x



— Cindy Burbank. Cindy Burbank for U.S. Senate

July 17, 2026, 4:27 PM EDT / Updated July 17, 2026, 5:48 PM EDT

By Ben Kamisar and Bridget Bowman

Nebraska Democratic Senate nominee Cindy Burbank has submitted a letter requesting her name be removed from the ballot, a move that would set up a one-on-one matchup between Republican Sen. Pete Ricketts and independent challenger Dan Osborn.



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Rani Taborek-Potter, a spokesperson with Secretary of State Bob Evnen's office, confirmed to NBC News that the office received Burbank's letter. Taborek-Potter added that the secretary of state will be sending a letter to the state attorney general to ask whether to honor Burbank's request.

Courier Nebraska [first reported the news](#).

"My candidacy for Senate was a privilege I'll never forget," Burbank said in a video sent via text message, later adding: "You deserve representation that works for you. I've looked at the numbers. I won't be your next senator. So I have withdrawn my bid for U.S. Senate."

Burbank did not endorse Osborn in her message, instead urging her voters to "educate yourselves about the remaining candidates."

The Democrat had repeatedly stressed she would consider dropping out and endorsing Osborn if she didn't think she had a path to victory. Burbank's website included language arguing that Osborn "deserves a fair shot against Ricketts," and she told NBC News shortly before winning the Democratic nomination in May, "I will drop out when and if the time comes that I cannot win in November. And I think anybody with any dignity should do that."

She had denied she was solely running to set up a one-on-one battle between the Republican and the independent. But that matchup may occur nonetheless.

The state party's chairwoman, Jane Kleeb, [wrote in a post on the social media platform X](#) last year: "We are supporting Dan Osborn. We believe a coalition of Dems, Indys and Republicans can beat Ricketts and break up the one-party rule."

When asked by NBC News whether the state Democratic Party would fill the vacancy, communications director Jose Flores Jr. echoed Kleeb's comments and said, "We will back the coalition of Democrats, Republicans, and independents who support Dan Osborn for US Senate."

A Democrat hasn't won a Nebraska Senate seat since 2006. Osborn lost by almost 7 points during his 2024 Senate bid against Republican Sen. Deb Fischer, while then-Vice President Kamala Harris lost the state by more than 20 points in the presidential race.

Nick Puglia, a regional press secretary at the National Republican Senatorial Committee, reacted to the news in a statement that referred to Osborn as "Democrat Dan Osborn."

"Nebraskans will reject Osborn again," Puglia added.



Ben Kamisar

Ben Kamisar is a national political reporter for NBC News



Bridget Bowman

Bridget Bowman is a national political reporter for NBC News.

Exhibit 10



STATE OF NEBRASKA

ROBERT B. EVNEN
SECRETARY OF STATE

P.O. Box 94608
State Capitol, Suite 2300
Lincoln, NE 68509-4608
Phone: 402-471-2554
Fax: 402-471-3237
www.sos.ne.gov

July 21, 2026

Jane Kleeb
3701 O St., Ste. 200
Lincoln, NE 68510

Dear Chair Kleeb,

This letter is to inform you that Cindy Burbank, the Democratic nominee for United States Senate, has declined her nomination. A copy of the Declination of Candidate Nomination is enclosed.

As specified in §32-623, this creates a vacancy on the ballot under §32-627. The form of the certification designating a replacement nominee is specified in subsection (2) of §32-627. The certification and \$1,740 filing fee must be filed with my office by September 1.

If you have any questions on this, please let my office know.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert B. Evnen".

Robert B. Evnen
Secretary of State

Exhibit 11



STATE OF NEBRASKA

ROBERT B. EVNEN
SECRETARY OF STATE

For immediate release:

July 21, 2026

Contact:

Rani Taborek-Potter

402-471-4086

Secretary Evnen issues statement on Cindy Burbank declination of candidate nomination

Secretary of State Bob Evnen released the following statement on Tuesday on the matter of Cindy Burbank's wish to be removed from the ballot in the race for U.S. Senate in the 2026 general election.

"Cindy Burbank has submitted the form by the statutory deadline to decline her nomination as the Democratic Party nominee for the U.S. Senate in the November election. We have consulted with the Attorney General's office. Under Nebraska law, when a candidate has declined a nomination by the deadline, the Secretary of State has no discretion to refuse it. For that reason, Cindy Burbank's name will not appear on the November ballot as the Democratic nominee for U.S. Senate. I have advised the Democratic Party of the requirements for substituting another candidate."

Secretary Evnen went on to describe the rationale both for his initial removal of Cindy Burbank from the 2026 primary election ballot and for his consideration of the legal implications of accepting her declination of candidate nomination form.

"In my view, Burbank's action is a cynical manipulation of the ballot process. Earlier this year, when Burbank first filed to run under a separate Nebraska law, the Nebraska Republican Party filed an objection. They were right, and I acted to stop this abuse then. The Supreme Court reversed my decision because the objection was filed too late. Now Burbank has done exactly what I predicted in May. She has declined the nomination."

###

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

WILLIAM FORBES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Case No. CI 26-_____
NEBRASKA	)	
DEMOCRATIC PARTY,	)	MOTION FOR
	)	APPOINTMENT OF
Defendant.	)	SPECIAL PROCESS
	)	SERVER

COMES NOW the Plaintiff, by and through his counsel, and moves this Court for an Order granting the Plaintiff leave to serve the Defendant in the above captioned matter by special process server, in accordance with Neb. Rev. Stat. § 25-2203. Plaintiff requests that this court appoint Greiner Process Service, L.L.C. as special process server, for the reason that this matter presents time-sensitive questions of law that require expedited resolution, requiring the Defendant to be served in an expedited manner.

WHEREFORE, Plaintiff prays this Court grant leave to appoint Greiner Process Service, L.L.C. as special process server in the above captioned matter.

DATED this 24th day of July, 2026.

WILLIAM FORBES, Plaintiff

By: /s/ Brenna M. Grasz
Brenna M. Grasz, #26794

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**Pro hac vice application forthcoming*

Attorneys for Plaintiff William Forbes

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

WILLIAM FORBES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Case No. CI 26- _____
NEBRASKA	)	
DEMOCRATIC PARTY,	)	MOTION FOR
	)	TEMPORARY
Defendant.	)	INJUNCTION

Pursuant to Neb. Rev. Stat. § 25-1063, Plaintiff moves this Court for a temporary injunction to enjoin the following action, the commission or continuance of which during this litigation would produce irreparable injury to Plaintiff: Defendant Nebraska Democratic Party is likely to fail to nominate a replacement candidate, following the withdrawal of its U.S. Senate nominee, Cindy Burbank, in advance of the September 1 statutory deadline.

All allegations present in the Complaint are incorporated here. The actions to be enjoined are those specified in Plaintiff's Complaint, which is incorporated by reference, and as specified in this Motion. Specifically, Plaintiff requests that this Court enter, pursuant to Neb. Rev. Stat. § 25-1063, a temporary injunction prohibiting the Defendant Nebraska Democratic Party from refusing to comply with the statutory requirements of Neb. Rev. Stat. § 32-627 to nominate a replacement candidate in advance of the September 1 deadline.

The grounds for this motion, set forth in the accompanying Memorandum Brief in Support of Motion for Preliminary Injunction, are that (1) Plaintiff is entitled to the relief demanded; and (2) the commission or continuance of Defendant's actions during the litigation would produce great and irreparable injury or would violate Plaintiff's rights so to render any judgment ineffectual. Neb. Rev. Stat. § 25-1063.

DATED this 24th day of July, 2026.

WILLIAM FORBES, Plaintiff

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Attorneys for Plaintiff William Forbes

NOTICE OF HEARING

Plaintiff intends to contact the Court once a judge has been assigned to this case to obtain an expedited hearing date. Plaintiff will file a supplemental notice of hearing once a judge is assigned and hearing date is obtained.

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

WILLIAM FORBES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Case No. _____
NEBRASKA	)	
DEMOCRATIC PARTY,	)	MEMORANDUM
	)	BRIEF
	)	IN SUPPORT OF
Defendant.	)	MOTION FOR
	)	TEMPORARY
	)	INJUNCTION

Cindy Burbank entered the Democratic Party primary election for U.S. Senate as a self-declared sham candidate, broadcasting from the start that she planned to drop out of the race to divert Democratic votes to rival independent candidate Dan Osborn. Even though over 100,000 Nebraskans voted for Burbank, many *because* she was a Democratic Party candidate—and so accountable to the Democratic Party and supportive of its core principles—the Nebraska Democratic Party plotted to disenfranchise its own voters in favor of a rival candidate running under a different banner.

Nebraska law does not countenance such a result. Instead, it clearly provides that where a candidate wins a primary election and—as here—attempts to exit the election thereafter, the political party that nominated the candidate must nominate a replacement. Neb. Rev. Stat. §§ 32-623, 32-627.

Yet the Nebraska Democratic Party, which engineered this scheme from the beginning, has publicly indicated it will refuse to comply with that statutory mandate. Absent this Court’s intervention, Nebraska’s Democratic voters—like the Plaintiff—will be deprived of an opportunity to vote for a nominee for U.S. Senate in the general

election who is committed to the Democratic Party. Only a temporary injunction from this Court can ensure that the ballot vacancy is filled until such time as Plaintiff's Complaint can be adjudicated on the merits.

LEGAL STANDARD

Under Neb. Rev. Stat. § 25-1063, a temporary injunction may be issued when: (1) “it appears by the complaint that the plaintiff is entitled to the relief demanded” and (2) “such relief” would prevent “great or irreparable injury to the plaintiff.” The purpose of entering such an injunction, as the Nebraska Supreme Court has recognized, is “to protect the subject matter of litigation and preserve the status quo of the parties until a determination of the case on the merits.” *Ramaekers v. Creighton Univ.*, 312 Neb. 248, 256, 978 N.W.2d 298, 304 (2022).

FACTUAL BACKGROUND

Early in March 2026, Burbank filed to run for U.S. Senate as a member of the Democratic Party. But when Ms. Burbank eventually launched her campaign website, the site was unusual to say the least. It failed to identify any of Burbank's qualifications to hold office, or even list the positions she intended to back if elected. But her website was clear on one thing: the fact that she “support[ed] Dan Osborn,” a *rival* independent Senate candidate ostensibly running as Burbank's *opponent*. (Compl. Ex. 1 at 2).

Such a statement would be unintelligible if Burbank were, in fact, a bona fide candidate for office. But she never was. In fact, the Nebraska Democratic Party laid the plans bare from the start, stating in an official email that after winning the primary, Ms. Burbank would “drop out . . . and support Osborn.” (*Id.*). That would ensure that no Democratic candidate was on the ballot to compete against Osborn in the general election. None of this was a surprise to the Osborn campaign. Rather, Mr. Osborn's own campaign manager, John Dolan,

admitted that Ms. Burbank notified the Osborn campaign of her purported run for office. Josh Reyes, *Spoiler Allegations Fly as Five Nebraskans Join U.S. Senate Race Just Before Deadline*, Omaha World-Herald (Mar. 4, 2026) (Compl. Ex. 3 at 4).

In furtherance of this plan to disenfranchise Nebraska voters, Ms. Burbank waited in the Secretary of State's office until Plaintiff (her rival candidate for the Democratic primary, and a bona fide candidate for office) filed his paperwork before filing her own. Juan Salinas II, *Nebraska Dem Senate Candidate Burbank Paid Third-Party Candidate's Filing Fee*, Neb. Exam'r (Mar. 24, 2026) (Compl. Ex. 4 at 1-2). Ms. Burbank also reportedly paid the candidate filing fee for Mike Marvin, yet a third candidate running for the United States Senate—a bizarre choice for anyone actually seeking public office. (*Id.*).

After prevailing in the primary election, Ms. Burbank reconfirmed her plans to exit the race and clear a glide path for Osborn. "I don't wanna split the ballot," Ms. Burbank told the *New York Times* immediately after her primary win. Kellen Browning, *4 Takeaways From Tuesday's Primaries in Nebraska and West Virginia*, N.Y. Times (May 12, 2026) (Compl. Ex. 5 at 2). She publicly worried about "stay[ing] on the ballot and tak[ing] votes away for Osborn." Bridget Bowman, *Democrats Pick Nebraska Senate Nominee Who Could Drop Out and Back Independent Dan Osborn*, NBC News (May 12, 2026) (Compl. Ex. 6 at 3). That wouldn't be "fair." (*Id.*).

On July 17, Ms. Burbank made good on her promise, withdrawing from the general election pursuant to Neb. Rev. Stat. § 32-623. (Compl. Ex. 11); Juan Salinas II, *Democrat Cindy Burbank Files Paperwork to Drop Out of Nebraska U.S. Senate Race*, News from the States (July 17, 2026) (Compl. Ex. 2). This action follows.

ARGUMENT

I. PLAINTIFF IS ENTITLED TO THE RELIEF DEMANDED.

Nebraska law does not permit a candidate—or, more fundamentally, her political party—to abuse and distort the electoral process by running in a primary election with the deliberate purpose of exiting the race before the general election to strategically divert votes to a rival. Nebraska law is clear: when a nominee withdraws between the primary and general elections, their political party has an obligation to replace them.

A. The Plain Text of Sections 32-623 and 32-627 Mandates Candidate Replacement.

The unambiguous text of Nebraska election law twice sets forth a mandatory duty to replace a withdrawn nominee. The procedure for withdrawing from a Nebraska election is set forth at Neb. Rev. Stat. § 32-623. The statute provides that “any person nominated for elective office for the general election”—that is, anyone who has won a primary—may “notif[y] the filing officer with whom the candidate filing form or other acceptance of nomination was filed” that he or she declines the nomination. *Id.* The filing officer shall then personally notify the leadership of the candidate’s political party that the candidate has declined the nomination. *Id.*

Upon the candidate’s declination, “[s]uch declination shall create a vacancy on the ballot which may be filled pursuant to section 32-627.” *Id.* Section 32-627 makes clear that this vacancy-filling procedure is not optional. That statute requires that “[i]f a vacancy on the ballot arises for any partisan office except President and Vice President of the United States before a general election, the vacancy ***shall be filled*** by the majority vote of the proper committee of the same political party.” Neb. Rev. Stat. § 32-627(1).

Similarly mandatory language is used to describe the responsibilities of the political party's key officers in such a scenario. Upon the arising of a vacancy, the chairperson and secretary of the executive committee for the political party ***shall make and file with the filing officer*** a certificate setting forth the cause of the vacancy, the name of the person so nominated, the office for which he or she was nominated, the name of the person for which the new nominee is to be substituted, the place of residence of the person so nominated, the street and number of the residence or place of business of the person so nominated if such person resides in a city, and the name of the political party with which the person so nominated affiliates which such committee represents." Neb. Rev. Stat. § 32-627(2).

This mandatory language is dispositive. Indeed, in light of these statutory requirements, the Secretary of State has notified the State Chair of the Nebraska Democratic Party of its duty to certify a new nominee by September 1. "The certification [of a replacement nominee] and \$1,740 filing fee ***must be filed*** with my office by September 1." Letter from Secretary Robert B. Evnen to Jane Kleeb (July 21, 2026) (Compl. Ex. 10).

Further, as the Nebraska Supreme Court recently explained, "[t]he text of a statute is to be given its plain and ordinary meaning, and an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous." *Burbank v. Evnen*, 321 Neb. 65, 32 N.W.3d 612, 624 (2026). Nebraska election law twice uses the mandatory phrase "shall" to mandate nominee replacement. The meaning of "shall" is "plain, direct, and unambiguous." *Id.* When addressed to a third person, the verb compels mandatory action. *See Shall*, Merriam-Webster (last visited July 21, 2026) (Compl. Ex. 7) (when used in the second and third person, "shall" expresses "determination," "a command or exhortation, or to "express what is mandatory").

Ordinary canons of statutory interpretation confirm that the duty to appoint a replacement when a primary-winning nominee withdraws is mandatory. Where, as here, "the language of a statute is

clear, the words of such statute are the end of any judicial inquiry regarding its meaning.” *Sanitary & Improvement Dist. No. 596 of Douglas Cnty. v. THG Dev., L.L.C.*, 315 Neb. 926, 941, 2 N.W.3d 602, 615 (2024); see also *Martinez v. Jensen*, 320 Neb. 996, 32 N.W.3d 251, 255 (2026) (same).

Had Nebraska’s legislators intended to make vacancy-filling discretionary, Section 32-627 would read “the vacancy may be filled,” which would match the formulation of Section 32-623. But it is not “within the province of a court” to read such a plain directive “out of a statute.” *Angel v. Nebraska Dep’t of Nat. Res.*, 314 Neb. 1, 12, 988 N.W.2d 507, 516 (2023).

The Nebraska Legislature has dictated the rule of statutory construction that applies to the Legislature’s use of the term “shall.” In Section 49-802(1), the Legislature specified that, “[u]nless such construction would be inconsistent with the manifest intent of the Legislature . . . [w]hen the word shall appears, mandatory or ministerial action is presumed.” Contrast with the word “may”—which is statutorily defined to mean “permissive or discretionary action.” *Id.* Section 49-802’s rule of interpretation, moreover, predates Section 32-627’s vacancy-filling procedures by nearly five decades.

Unsurprisingly, Nebraska courts have broadly adhered to this rule of statutory construction. Abundant Nebraska precedent confirms that “the word ‘shall’ in a statute is considered mandatory and is inconsistent with the idea of discretion.” *Burns v. Nielsen*, 273 Neb. 724, 732, 732 N.W.2d 640, 648 (2007); see also *State ex rel. Smith v. Nebraska Liquor Control Comm’n*, 152 Neb. 676, 679, 42 N.W.2d 297, 299 (1950) (same).

B. The Structure of Sections 32-623 and 32-627 Mandates Candidate Replacement.

A mandatory reading of Section 32-627 also makes sense of the statutory context. For instance, contrary provisions are framed as exceptions to the general rule of mandatory replacement. The statute

notes that “[n]o vacancy on the ballot shall be deemed to have occurred if a political party makes no nomination of a candidate at the primary election for the office.” § 32-627(1). So, the only way for a political party to decline to field a general election candidate under Nebraska law is to decline to nominate one in the first place. Otherwise, vacancy filling is mandatory.

While resort to legislative history is unnecessary because Section 32-627 is not genuinely ambiguous, *Nebraska Journalism Tr. v. Nebraska Dep’t of Env’t & Energy*, 316 Neb. 174, 190–91, 3 N.W.3d 361, 373 (2024), that history confirms the mandatory nature of Section 32-627. In fact, in discussing a separate section of the same bill stating that parties “may” require primary candidates to register as party members, Senator Schimek (one of the bill’s original cosponsors) noted that the term “may” “is permissive language. “It would allow [parties] to do that should their state central committees decide that they desire to do so.” Neb. Legislature, *Floor Debate Transcripts for the 93rd Legislature* (Jan. 19, 1994), 8124. By contrast, Section 32-627 (enacted in the same bill, alongside the provision giving parties the discretion to require partisan registration), does *not* use permissive language, because it imposes a mandatory duty on political parties. “Where [the legislature] includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that [the legislature] acts intentionally and purposely in the disparate inclusion or exclusion.” *Russello v. United States*, 464 U.S. 16, 23 (1983) (quotation omitted).

This is doubly so when the words “shall” and “may” are juxtaposed in a statute, as the Nebraska Supreme Court has recognized. In the context of interpreting a statute (the Whistleblower Act) that used both “shall” and “may,” the Court explained that “shall” was mandatory and not merely permissive. That was because “[i]f the word ‘shall’ . . . means ‘may’”—as one party had argued—“then what meaning are we to give ‘shall’ the other . . . times it appears in the [statute]? Moreover, through its use of the word ‘may’ [repeatedly] in close proximity to the word ‘shall,’ it is clear that the Legislature

understands the distinction between these words and intended each to mean what it says.” *State ex rel. Shepherd v. Nebraska Equal Opportunity Comm’n*, 251 Neb. 517, 528, 557 N.W.2d 684, 692 (1997). Precisely so; the Nebraska legislature meant what it wrote.

The *Shepherd* Court went on to emphasize that on only three occasions had the Nebraska Supreme Court “construed the word ‘shall’ to be permissive”—and then, only “in order to save a statute from constitutional infirmity.” *Id.* There is no basis for such a construction here. “Shall” means “shall.”

Finally, there are sound policy arguments as to why the Legislature would have required political parties to replace withdrawn nominees. For instance, the disappearance of a major-party nominee in advance of an election deprives the state’s voters, who have already registered their support for that party by voting in the primary, of an electoral option. Minnesota, for example, has a statute that allows for the rescheduling of an election for federal office if a major party candidate dies. Minn. Stat. Ann. § 204B.13. Interpreting Nebraska’s election laws to require candidate replacement is fully consistent with promoting voter choice. *Cf. Anderson v. Celebrezze*, 460 U.S. 780, 806 (1983) (the law’s “primary concern is not the interest of candidate[s], but rather, the interests of the voters who chose to associate together to express their support for . . . [a] candidacy.”).

Further, the requirement that a party replace a withdrawn nominee effectuates the First Amendment rights of Nebraska citizens. As the Supreme Court has explained, “the interests of the voters who chose to associate together” are paramount. *Anderson*, 460 U.S. at 806. *See McCarthy v. Exon*, 424 F. Supp. 1143, 1145 (D. Neb. 1976) (holding the State “has a sufficient interest to assure itself that the candidate is a serious contender, truly independent, and with a satisfactory level of community support”). Any meaningful understanding of voters’ rights presupposes that candidates who claim to represent them do so in good faith. In *Smith v. Cherry*, for example, the Seventh Circuit held that a sham candidate who intended votes for her to be a vote for someone else engaged in “deception” that “clearly debased the rights of all

voters in the election.” 489 F.2d 1098, 1102 (7th Cir. 1973) (per curiam). Further, Nebraska law does not choose *who* the Democratic Party must nominate; it just provides for a replacement nomination *occurring*.

Indeed, Ms. Burbank relied on exactly these sorts of voter interests in convincing the Nebraska Supreme Court to reinstate her to the primary ballot. According to Ms. Burbank, her prior disqualification resulted in “complete disenfranchisement of voters who seek an alternative to [the other Democrat] in that race.” Appellant’s Reply Br., *Burbank v. Evnen*, No. CI 26-931 (Neb., Mar. 20, 2026), at 17. She acknowledged that failing to give voters a choice “burdens the fundamental right to vote ‘and also burdens voters’ freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying-point for like-minded citizens.” *Id.* (quoting *Anderson*, 460 U.S. at 787–88). From the horse’s mouth: By failing to field a candidate as required by Nebraska law, the Nebraska Democratic Party would impermissibly disenfranchise voters, burden the fundamental right to vote, and burden voters’ freedom of association.

To the extent that Ms. Burbank’s political party might now attempt to argue that her withdrawal without replacement would *not* disenfranchise Nebraska voters, that argument is barred by judicial estoppel. Under Nebraska law, “the intent behind the doctrine of judicial estoppel is to prevent parties from gaining an advantage by taking one position in a proceeding and then switching to a different position when convenient in a later proceeding.” *Trausch v. Hagemeyer*, 313 Neb. 538, 551, 985 N.W.2d 402, 414 (2023). Ms. Burbank previously argued, in a bid to stay on the Nebraska ballot, that First Amendment associational rights required meaningful candidate choice; she and her party cannot now take the opposite position.

Other provisions of Nebraska law reinforce the nominee replacement requirement. Nebraska law, for example, requires that, at the time candidate filing forms are submitted, the candidate expressly

commit to “serve” in office if elected. Neb. Rev. Stat. § 32-607(1)(a). A person may not be placed on the ballot who has no intention of holding the office that she claims to be seeking. *Cf. McCarthy* 424 F. Supp. at 1145; *Ronan v. Larose*, No. 2:26-CV-343, 2026 WL 926053, at *9 (S.D. Ohio Apr. 6, 2026) (upholding good-faith statutory requirement for candidates against constitutional challenge).

Indeed, the Nebraska Supreme Court has long required a “good faith candida[cy].” *Johnson v. Marsh*, 120 Neb. at 297, 297, 232 N.W. 104, 104 (1930). In *Johnson v. Marsh*, for example, the Nebraska Supreme Court upheld the Secretary of State’s decision to exclude a sham candidate’s name from the ballot, because Nebraska’s voters are entitled to have their selection of candidates “unobscured by trickery and fraud.” *Id.*

The candidate replacement requirement helps police this good-faith requirement. It ensures that a party will not be able to clear the ballot by refusing to run a candidate after fielding one in the primary. This reading of Section 32-607 therefore helps states to exercise their duty “to protect the integrity of [their] political processes from frivolous or fraudulent candidates for public office.” *Bullock v. Carter*, 405 U.S. 134, 145 (1972). It prevents what other courts have called “a secret blitzkrieg campaign from being waged at the expense of unknowing voters and honest candidates.” *Chavez v. Hannah*, 827 S.W.2d 100, 102–03 (Tex. Ct. App. 1992), *writ denied* (Sept. 30, 1992).

In sum, Plaintiff is likely to succeed on the merits. *See* John P. Lenich, *Nebraska Practice Series: Civil Procedure* § 18:2 (2026) (“[T]he interlocutory equivalent of a clear right is a strong probability of success on the merits.”).

II. ABSENT A TEMPORARY INJUNCTION, PLAINTIFF WOULD SUFFER IRREPARABLE INJURY AND HAS NO ADEQUATE REMEDY AT LAW.

Plaintiff will suffer irreparable injury should the Democratic Party fail to replace Ms. Burbank with a different nominee. First,

harm is irreparable because, as the United States Supreme Court has explained, the right to vote is both “precious” and “fundamental.” *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966). That is because “[o]ther rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964); *see also Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (noting that the right to vote is “preservative of all rights”).

Nebraska similarly recognizes the right to vote as fundamental. *See State ex rel. Williams v. Moorhead*, 95 Neb. 80, 144 N.W. 1055 (1914). Indeed, Article I, Section 22 of the Nebraska Constitution provides: “All elections shall be free; and there shall be no hindrance or impediment to the right of a qualified voter to exercise the elective franchise.” This provision protects the right of Nebraskans to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. *See Williams v. Rhodes*, 393 U.S. 23, 31 (1968) (holding that right to vote is burdened where vote may be cast only for one of two parties). Thus, both federal and Nebraska law recognize the right of voters to have a meaningful choice at the ballot box. Further, as the Nebraska Supreme Court has explained, whether an injury is irreparable depends upon the nature of the right and not its monetary value. *See Hogelin v. City of Columbus*, 274 Neb. 453, 465, 741 N.W.2d 617, 627 (2007).

Here, the loss of the elective franchise constitutes irreparable harm. Since the Supreme Court’s decision in *Elrod v. Burns*, courts have recognized that the loss of a First Amendment freedom, “for even minimal periods of time, unquestionably constitutes irreparable injury.” 427 U.S. 347, 373–74 (1976). The loss of such a constitutional right is “substantial rather than abstract.” Lenich, *supra*, § 18:2.

Second, the harm is irreparable—and there are no adequate remedies at law—because post-election remedies do not exist. There are no election do-overs, and the loss of an effective franchise cannot be compensated monetarily. *See Rath v. City of Sutton*, 267 Neb. 265, 280, 673 N.W.2d 869, 884 (2004) (irreparable harm is harm “of such a

character or nature that the party injured cannot be adequately compensated therefor in damages, or when the damages which may result therefrom cannot be measured by any certain pecuniary standard”). Needless to say, money damages will *not* “fully alleviate [such] harm.” Lenich, *supra*, § 18:2. Plaintiff, in other words, stands to suffer irreparable harm, and on the flip side of the “same coin,” *see id.*, has no other adequate remedy at law.

CONCLUSION

For these reasons, the Court should issue a temporary injunction prohibiting the Defendant Nebraska Democratic Party from refusing to comply with the statutory requirements of Neb. Rev. Stat. § 32-627 to nominate a replacement candidate for United States Senate in advance of the September 1 deadline.

DATED: July 24, 2026.

WILLIAM FORBES, Plaintiff

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with Neb. Ct. R. § 6-1505 and Neb. Ct. R. App. P. § 2-103(A) and (C), and further certify that the word count function was applied to include all text, including the caption, cover, headings, quotations, and signature blocks, excluding this certificate. This document was prepared using Microsoft Word for Microsoft Office 365. It complies with applicable typeface requirements and contains 3,730 words, which is within the 3,800 word limit.

/s/Brenna M. Grasz, #26794