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William Forbes, appellant, v. Nebraska Democratic Party and State of Nebraska, interested party, appellees.

___ N.W.3d ___

Filed September 10, 2026. No. S-26-730.

1. **Judgments: Jurisdiction: Appeal and Error.** When a jurisdictional issue does not involve a factual dispute, determination of a jurisdictional issue is a matter of law which requires an appellate court to reach a conclusion independent from the trial court's; however, when a determination rests on factual findings, a trial court's decision on the issue will be upheld unless the factual findings concerning jurisdiction are clearly incorrect.
2. **Summary Judgment: Appeal and Error.** An appellate court affirms a lower court's grant of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from the facts and that the moving party is entitled to judgment as a matter of law.
3. ____: ____. An appellate court reviews the district court's grant of summary judgment de novo, viewing the record in the light most favorable to the nonmoving party and drawing all reasonable inferences in that party's favor.
4. **Statutes: Appeal and Error.** Statutory interpretation presents a question of law that an appellate court resolves independently of the trial court.
5. **Jurisdiction: Appeal and Error.** Before reaching the legal issues presented for review, it is the power and duty of an appellate court to determine whether it has jurisdiction over the matter before it, irrespective of whether the issue is raised by the parties.
6. **Standing: Jurisdiction: Parties.** Standing refers to whether a party had, at the commencement of the litigation, a personal stake in the outcome of the litigation that would warrant a court's exercise of its subject matter jurisdiction and remedial powers on that party's behalf.

7. **Standing: Claims: Parties: Proof.** To have standing, a litigant must assert its own rights and interests and demonstrate an injury in fact, which is concrete in both a qualitative and temporal sense. The alleged injury in fact must be distinct and palpable, as opposed to merely abstract, and the alleged harm must be actual or imminent, not conjectural or hypothetical.
8. **Standing.** To have standing, a party must have some legal or equitable right, title, or interest in the subject of the controversy.
9. **Actions: Standing: Proof.** Standing requires that the injury can be fairly traced to the challenged action and is likely to be redressed by a favorable decision.
10. **Standing: Proof.** To show standing, it is generally insufficient for a plaintiff to have merely a general interest common to all members of the public.
11. **Statutes.** Statutory interpretation begins with the text.
12. ____. To give effect to all parts of a statute, a court will attempt to reconcile different provisions so they are consistent, harmonious, and sensible and will avoid rejecting as superfluous or meaningless any word, clause, or sentence.

Appeal from the District Court for Lancaster County: SUSAN I. STRONG, Judge. Affirmed.

Adam W. Kauffman and Brenna M. Grasz, of Keating, O'Gara, Nedved & Peter, P.C., and Erin Morrow Hawley and John S. Ehrett, pro hac vice, of Lex Politica, P.L.L.C., for appellant.

Daniel J. Gutman, of Gutman Law Group, and David Fox, Jacob D. Shelly, Max C. Accardi, and Derek A. Zeigler, pro hac vice, of Elias Law Group, L.L.P., for appellee Nebraska Democratic Party.

FUNKE, C.J., CASSEL, STACY, PAPIK, FREUDENBERG, BERGEVIN, and VAUGHN, JJ.

PER CURIAM.

Cindy Burbank defeated William Forbes in the Nebraska Democratic Party's 2026 U.S. Senate primary election. Burbank later withdrew from the race. After Burbank withdrew, Forbes

sued the party seeking an order declaring that it was legally obligated to place another Democratic candidate on the ballot. The district court concluded Forbes was wrong and that the party could place a replacement candidate on the ballot, but that it did not have to do so. In this appeal brought by Forbes, we agree with the district court and therefore affirm.

BACKGROUND

Burbank Wins Primary Election; Withdraws From Race.

Burbank and Forbes were the only candidates in the Democratic Party's 2026 U.S. Senate primary election. A couple months after Burbank defeated Forbes, Burbank filed paperwork with the Secretary of State declining the nomination. The Secretary of State announced that because Burbank had submitted the required paperwork by the statutory deadline, her name would not appear on the ballot. See Neb. Rev. Stat. § 32-623 (Cum. Supp. 2024).

Forbes Sues.

Days after Burbank's withdrawal, Forbes filed this lawsuit. He alleged that Democratic Party representatives had made statements suggesting that the party would not put forward another candidate to replace Burbank, but that, under a Nebraska statute, Neb. Rev. Stat. § 32-627 (Reissue 2016), the party was obligated to do so. Forbes pointed to language in § 32-627 stating that "[i]f a vacancy on the ballot arises for any partisan office," with some exceptions not relevant here, "the vacancy shall be filled by the majority vote of the proper committee of the same political party."

Forbes' complaint sought declaratory and injunctive relief. He asked that the district court declare that § 32-627 required the Democratic Party to put forward a replacement candidate and enter an injunction prohibiting the party from refusing to do so.

Forbes also requested that the case move forward on an expedited schedule. The district court agreed to decide the

case on an expedited basis and entered a corresponding progression order.

District Court Proceedings.

Forbes initially sought a temporary injunction in the district court. The Democratic Party resisted the motion. It argued that Forbes lacked standing to bring the lawsuit. Alternatively, it argued that it was not obligated to nominate a candidate to replace Burbank on the ballot. It contended that under Nebraska law, it had a choice as to whether it would replace Burbank. It pointed to language in § 32-623 stating that a candidate's declination of the nomination would "create a vacancy on the ballot[,] which may be filled pursuant to [§ 32-627]," and argued that the use of the word "may" conferred discretion. The Democratic Party also argued that if the statute was interpreted as Forbes urged, it would violate its First Amendment rights under the U.S. Constitution. The district court denied Forbes' motion for temporary injunction.

Shortly thereafter, the parties filed cross-motions for summary judgment. The motions were briefed and heard pursuant to the district court's expedited progression order.

At the summary judgment hearing, the district court received an affidavit of Forbes. The affidavit was primarily relevant to whether Forbes had standing to bring the lawsuit. In his affidavit, Forbes asserted that he was a "longtime registered Democratic Party voter in Nebraska" and that he had "no interest in supporting an independent candidate operating outside of that party membership and affiliation." He also stated that unless the Democratic Party named a candidate to replace Burbank, he would be deprived of his "right to associate" and of "the right and opportunity to consider and support" a Democratic Party nominee for the U.S. Senate. Forbes also offered that he was willing to be considered by the Democratic Party as a replacement for Burbank. As part of the summary judgment proceedings, the district court also received an affidavit of a Democratic Party official stating

that while the lawsuit was pending, the Democratic Party's "State Central Committee" had officially voted to decline to nominate a candidate to replace Burbank.

Just prior to the summary judgment proceedings, the Nebraska Attorney General entered an appearance in the case pursuant to Neb. Rev. Stat. § 25-21,159 (Reissue 2016). The Attorney General took no position on whether the relevant statutes required the Democratic Party to nominate a replacement candidate. The Attorney General did dispute the Democratic Party's constitutional argument. The Attorney General argued that if Forbes' reading of the statutes was correct, the statutes would not violate the Democratic Party's First Amendment rights.

After a hearing, the district court sustained the Democratic Party's motion for summary judgment and overruled Forbes' motion for summary judgment. In its order, the district court first addressed Forbes' standing. It found that Forbes' prior candidacy did not confer standing. And while it expressed doubts regarding Forbes' standing as a voter, it appeared to conclude that such standing was present and proceeded to address the merits of Forbes' argument.

On the merits, the district court rejected Forbes' contention that § 32-627 compelled the Democratic Party to nominate a candidate to replace Burbank on the ballot. The district court explained that when the word "shall" is used in a statute, it usually indicates mandatory action, but that when the word "may" is used in a statute, it usually indicates discretionary action. The district court relied on this presumption to find that the language in § 32-623, stating that the declination of a nomination creates a vacancy which "may be filled pursuant to [§ 32-627]," provides a political party with a choice as to whether it fills a vacancy created by a candidate's withdrawal. The district court went on to conclude that the language in § 32-627 sets forth the mandatory rules that a party must follow if it chooses to fill the vacancy. Because the district court disagreed with Forbes' interpretation of the statutes, it did

not address the Democratic Party's argument that its constitutional rights would be violated if Nebraska law compelled it to nominate a replacement candidate.

Forbes appealed. We granted bypass and ordered the parties to submit briefs on an expedited schedule.

ASSIGNMENTS OF ERROR

Consolidated and restated, Forbes assigns that the district court erred (1) in rejecting several of the bases for standing he offered and (2) in concluding that § 32-627 did not require the Democratic Party to put forth a candidate to replace Burbank.

STANDARD OF REVIEW

[1] When a jurisdictional issue does not involve a factual dispute, determination of a jurisdictional issue is a matter of law which requires an appellate court to reach a conclusion independent from the trial court's; however, when a determination rests on factual findings, a trial court's decision on the issue will be upheld unless the factual findings concerning jurisdiction are clearly incorrect. *State ex rel. Hilgers v. Evnen*, 318 Neb. 803, 19 N.W.3d 244 (2025). In this case, we do not understand the district court to have made factual findings as part of its standing analysis. It instead appears to have found standing based on undisputed assertions in Forbes' affidavit. Accordingly, we review the district court's standing determination de novo. See *id*.

[2,3] An appellate court affirms a lower court's grant of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from the facts and that the moving party is entitled to judgment as a matter of law. *Bar at the Yard v. Friends Family*, 321 Neb. 606, 35 N.W.3d 813 (2026). An appellate court reviews the district court's grant of summary judgment de novo, viewing the record in the light most favorable to the nonmoving party and drawing all reasonable inference in that party's favor. *Id.*

[4] Statutory interpretation presents a question of law that an appellate court resolves independently of the trial court. *State v. Strawn*, 318 Neb. 859, 19 N.W.3d 761 (2025).

ANALYSIS

Standing.

[5] Before we can address the merits of Forbes' appeal, we must first consider whether he has standing to bring suit in this case. We are obligated to consider standing before discussing the merits because a party must have standing before a court can exercise jurisdiction. See *In re Interest of Jordon B.*, 316 Neb. 974, 7 N.W.3d 894 (2024). And before reaching the legal issues presented for review, it is the power and duty of an appellate court to determine whether it has jurisdiction over the matter before it, irrespective of whether the issue is raised by the parties. *Pinpoint Communications v. Gage County*, 321 Neb. 764, 37 N.W.3d 178 (2026).

[6] Standing refers to whether a party had, at the commencement of the litigation, a personal stake in the outcome of the litigation that would warrant a court's exercise of its subject matter jurisdiction and remedial powers on that party's behalf. *Nebraska Firearms Owners Assn. v. City of Lincoln*, 319 Neb. 723, 24 N.W.3d 891 (2025). The focus of our standing inquiry is not on whether Forbes' claim has merit; it is on whether he is the proper party to assert the claim. See *id.*

[7-10] Our case law identifies several considerations relevant to the standing inquiry. To have standing, a litigant must assert its own rights and interests and demonstrate an injury in fact, which is concrete in both a qualitative and temporal sense. *Butler Cty. Sch. Dist. v. Freeholder Petitioners*, 283 Neb. 903, 814 N.W.2d 724 (2012). The alleged injury in fact must be distinct and palpable, as opposed to merely abstract, and the alleged harm must be actual or imminent, not conjectural or hypothetical. *Id.* A party must have some legal or equitable right, title, or interest in the subject of the controversy. *Id.* Finally, standing requires that the injury can

be fairly traced to the challenged action and is likely to be redressed by a favorable decision. *Id.* To show standing, it is generally insufficient for a plaintiff to have merely a general interest common to all members of the public. *Nebraska Firearms Owners Assn., supra*.

Both before the district court and now before us on appeal, the parties have cited numerous opinions in which this court and others have analyzed standing in cases involving elections. Forbes marshals many such cases in support of his argument that he has standing, and the Democratic Party gathers others to support its argument that he lacks standing. While the parties' reliance on such cases is understandable, we do not believe either party has identified a case that controls here. Our standing analysis in this case turns—as it often does—on the unique factual setting and legal claim presented. See, generally, *Central Neb. Pub. Power Dist. v. North Platte NRD*, 280 Neb. 533, 541, 788 N.W.2d 252, 260 (2010) (recognizing that cited water law cases "represent fact-specific iterations of basic standing principles"); *McMorris v. Carlos Lopez & Associates, LLC*, 995 F.3d 295, 302 (2d Cir. 2021) (quoting *Allen v. Wright*, 468 U.S. 737, 104 S. Ct. 3315, 82 L. Ed. 2d 556 (1984), *abrogated on other grounds, Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 134 S. Ct. 1377, 188 L. Ed. 2d 392 (2014)) ("determining standing is an inherently fact-specific inquiry that 'requires careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted'"); *McDonald v. Trustees of Indiana University*, No. 25-2366, 2026 WL 2349271, at *7 (7th Cir. Aug. 13, 2026) (quoting *Babbitt v. Farm Workers*, 442 U.S. 289, 99 S. Ct. 2301, 60 L. Ed. 2d 895 (1979)) ("[s]tanding is a fact-specific inquiry and 'not discernible by any precise test'").

To analyze standing, we must, for the moment, assume that Forbes' claims in this case have merit. Because standing focuses on the person bringing the claim, as opposed to

the claim's merits, "the legal and factual validity of the claim presented must be assumed" when standing is considered. See *Heiden v. Norris*, 300 Neb. 171, 174, 912 N.W.2d 758, 761 (2018). For purposes of assessing Forbes' standing, then, we proceed under the assumption that Forbes' legal claim is valid, i.e., that the Democratic Party does have an obligation to name a replacement candidate.

That assumption allows us to identify a legal interest Forbes holds in this case. If we assume that the Democratic Party is legally obligated to nominate a replacement candidate under these circumstances, Forbes—"a longtime registered Democratic Party voter"—has a legal interest in his party nominating a candidate.

To this, the Democratic Party argues that whatever interest Forbes might have in this case, it is not sufficiently concrete for standing purposes. The Democratic Party emphasizes that Forbes did not, in his affidavit, commit to voting for any replacement candidate and asserted only that he wished to have the option to vote for a Democratic candidate. In this factual context, we disagree that the absence of a firm commitment to vote for whomever the Democratic Party might nominate as a replacement candidate means that Forbes lacks standing. At this stage, Forbes does not and cannot know whom the Democratic Party might nominate as a replacement candidate. A reluctance to make such a commitment under the circumstances does not, in our view, render any injury "merely abstract." See *Nebraska Firearms Owners Assn. v. City of Lincoln*, 319 Neb. 723, 731, 24 N.W.3d 891, 899 (2025).

Neither are we persuaded by the Democratic Party's argument that Forbes has merely identified an interest that is common to all members of the public. Not all Nebraskans are "longtime registered Democratic Party voter[s]." As such a person, Forbes has an interest in his political party putting forward a candidate for the U.S. Senate election that is distinct from any interest held by the public in general.

In sum, for reasons discussed above, we conclude that Forbes has identified a personal stake in the outcome of the litigation that warrants an exercise of a court's jurisdiction on his behalf. We thus move on to discuss the merits of his claim.

Merits.

The merits question before the district court and the question now before us is whether Nebraska law required the Democratic Party to nominate a replacement candidate after Burbank withdrew. Resolution of this question does not require that we decide any disputes of fact. It turns entirely on statutory interpretation.

[11] Statutory interpretation begins with the text. *Amorak v. Cherry Cty. Bd. of Comrs.*, 318 Neb. 723, 18 N.W.3d 782 (2025). When the meaning of the text is plain, direct, and unambiguous, courts are merely to give effect to the text. See *State v. Clausen*, 318 Neb. 375, 15 N.W.3d 858 (2025). Various established principles of interpretation guide us as we seek to identify the plain meaning of statutory text. We rely on and discuss some of those principles below.

The parties' dispute in this case is largely about two statutory sections we mentioned in the background section above—§§ 32-623 and 32-627. For ease of reference, we quote the relevant portions of those statutes here.

Section 32-623 provides:

> If any person nominated for elective office for the general election notifies the filing officer with whom the candidate filing form or other acceptance of nomination was filed by filing a statement, in writing and duly acknowledged, that he or she declines such nomination on or before August 1 before the election, the person's name shall not be printed on the ballot, but no declination shall be effective after such date. . . . Such declination shall create a vacancy on the ballot which may be filled pursuant to section 32-627.

Section 32-627 provides:

> (1) If 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. . . . No 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. . . .
>
> (2) . . . If there is no executive committee of the political party or in lieu of the executive committee filling such vacancy, a mass convention of the political party may fill the vacancy and the chairperson and secretary of such contention shall make and file with the filing officer a certificate in form and manner substantially as is required to be filed by the chairperson and secretary of the executive committee under this subsection. The certificate shall be filed by September 1 for a general election and have the same force and effect as the candidate filing form provided for in section 32-607.

The parties' interpretive dispute centers primarily on the use of the words "may" and "shall" in § 32-623 and § 32-627, respectively. Forbes emphasizes the first sentence in § 32-627(1) stating that "[i]f a vacancy on the ballot arises for any partisan office . . . before a general election, the vacancy *shall* be filled by the majority vote of the proper committee of the same political party." (Emphasis supplied.) Forbes correctly observes that when we interpret statutes, we generally presume that the word "shall" is considered mandatory and inconsistent with the idea of discretion. See *State v. Perry*, 318 Neb. 613, 17 N.W.3d 504 (2025). Forbes contends that if "shall" is understood as mandatory in this context, the terms of § 32-627 would require the Democratic Party to fill the vacancy created by Burbank's withdrawal.

The Democratic Party, on the other hand, emphasizes the sentence in § 32-623 stating that a candidate's timely declination

of a nomination creates a vacancy on the ballot "which *may* be filled pursuant to [§ 32-627]." (Emphasis supplied.) It correctly points out that when the word "may" appears in a statute, it generally is understood to confer discretion. See *Ryan v. Streck, Inc.*, 309 Neb. 98, 958 N.W.2d 703 (2021). If "may" confers discretion, the Democratic Party argues, it follows that a political party can fill a vacancy that arises after a candidate declines the nomination, but it could also choose not to.

[12] At first glance, one might conclude that the statutory provisions described above are in conflict; that is, one statute creates a mandatory duty to do something while another says the party has discretion on the same subject. But when courts are confronted with statutory provisions that appear contradictory, established principles of interpretation light the way. In that situation, courts must attempt to harmonize the provisions at issue. As we often say, to give effect to all parts of a statute, a court will attempt to reconcile different provisions so they are consistent, harmonious, and sensible and will avoid rejecting as superfluous or meaningless any word, clause, or sentence. *MLB Advanced Media v. Nebraska Dept. of Rev.*, 321 Neb. 515, 36 N.W.3d 165 (2026). Described slightly differently, courts should, if at all possible, interpret statutory provisions "in a way that renders them compatible, not contradictory." Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 180 (2012).

To their credit, the parties recognize that this dispute cannot be resolved merely by pointing to the statutory language they favor. Instead, consistent with our principles of statutory interpretation, the parties attempt to reconcile the provisions we have discussed. The Democratic Party argues that the statutory sections are best harmonized by reading them to cover different issues. In its view, § 32-623 deals with withdrawals, and the "may" language in that section makes clear that when a nominee makes a timely withdrawal, there is discretion as to whether or not that nominee is replaced. Section 32-627, the Democratic Party argues, concerns the process that is to be

followed if a political party chooses to fill a vacancy. It argues that § 32-627 uses "shall" because the provision is mandatory, but mandatory in a certain sense: it sets forth the procedure that a party is obligated to use if it chooses to fill a vacancy. Under this language, the Democratic Party argues, a party cannot fill a vacancy for an election to a partisan office by a procedure not listed in § 32-627.

Forbes argues that §§ 32-623 and 32-627 should be harmonized differently. He argues that the use of the word "shall" in § 32-627 creates a mandatory duty for political parties to fill vacancies after a candidate files a timely withdrawal and that the "may" language in § 32-623 serves a different purpose. He observes that while § 32-627 sets forth a process for filling vacancies in elections for partisan offices, another statute—Neb. Rev. Stat. § 32-625 (Reissue 2016)—sets forth a process for filling vacancies in elections for nonpartisan offices. Forbes asserts that § 32-623 says that a vacancy caused by a timely withdrawal "may" be filled pursuant to § 32-627, not because a political party has discretion as to whether to fill a vacancy, but, rather, in recognition of the fact that not all vacancies can be filled pursuant to § 32-627. As Forbes puts it, "[I]f a vacancy is for a partisan office, it *may* be filled pursuant to [§ 32-627]; if a vacancy is for a nonpartisan office, it may not—because the applicable procedures are found in [§ 32-625]." Brief for appellant at 24. Forbes argues that this understanding gives effect to both § 32-623 and § 32-627. He also argues that this interpretation should be favored because if a political party has discretion as to whether to fill a vacancy created by a withdrawal, there would be no reason for § 32-627 to provide 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."

But Forbes' attempt to harmonize the statutes at issue runs counter to some of our usual principles of statutory interpretation. To begin, if, as Forbes contends, the "may" language

in § 32-623 is only there to recognize that there are different processes for filling vacancies in elections for partisan and nonpartisan offices, that language does not seem to accomplish anything. It is already obvious from the plain language of §§ 32-625 and 32-627 that the former sets forth a process for filling vacancies in elections for nonpartisan offices and the latter sets forth a process for filling vacancies in elections for partisan offices. This is a problem for Forbes' argument because in interpreting statutes, we generally seek to avoid rejecting as superfluous or meaningless any word, clause, or sentence. See *In re Interest of Mechi J.*, 321 Neb. 455, 35 N.W.3d 35 (2026).

Forbes' position prompts another question he cannot sufficiently answer. If, as Forbes contends, the "may" language in § 32-623 is there only to recognize that different vacancies are to be filled in different ways, why does the language expressly reference § 32-627 and make no mention of § 32-625? To this, Forbes claims that § 32-623 specifically mentions only § 32-627 to "place the accent on the candidate-replacement procedures applicable to partisan offices in particular." Brief for appellant at 25. This too, however, is in tension with our principle requiring that we seek to avoid rendering statutory language superfluous. It is unnecessary for the Legislature to emphasize that which it has already made apparent. The omission of any reference to § 32-625 substantially weakens Forbes' contention that the "may" language in § 32-623 is there merely to observe that different vacancies can be filled in different ways.

We also disagree with Forbes' claim that the language in § 32-627 stating that no vacancy occurs if the party makes no nominations for the primary election serves a purpose only if § 32-627 imposes a mandatory duty for a party to replace a candidate who has withdrawn. Under the Democratic Party's contrary interpretation, that language directs that a party does not have the option to put forward a candidate through

§ 32-627 if there were no candidates for that party in the primary election.

Having weighed the parties' competing attempts to harmonize the statutory provisions at issue, we agree with the Democratic Party that the plain language of the relevant statutes is most naturally interpreted to give political parties discretion as to whether to replace a candidate who has withdrawn. Interpreting the "may" language in § 32-623 to confer discretion as to whether to replace a withdrawn candidate while interpreting the "shall" language in § 32-627 to set forth a process that "shall" be followed if the party chooses to fill a vacancy most naturally gives effect to the full language of both statutory provisions. Accordingly, we agree with the district court that the Democratic Party was not obligated to nominate a replacement candidate.

CONCLUSION

After Burbank's withdrawal, Nebraska statutes did not obligate the Democratic Party to nominate a replacement candidate. Forbes' lawsuit contending otherwise lacked merit, and the district court was correct to dismiss it. Accordingly, we affirm.

Affirmed.

Cassel, J., dissenting.

I agree with the majority opinion in almost every respect. But I am not persuaded that "Forbes has an interest in his political party putting forward a candidate for the U.S. Senate election that is distinct from any interest held by the public in general." And because, as the majority correctly recites, standing is jurisdictional, I would dismiss the appeal.