

SUPREME COURT OF NEBRASKA

Burbank v. Evnen

321 Neb. 65 (2026) · No. No. S-26-208 · Decided March 23, 2026

SUMMARY

The Nebraska Supreme Court held that Cynthia Burbank’s appeal was not moot because the Secretary of State could still recertify the 2026 primary election ballot. The court concluded that Nebraska law requires written objections to a candidate filing form within seven days after the filing deadline, and that Burbank’s filing was therefore deemed valid. The court reversed and remanded with directions to issue a peremptory writ of mandamus requiring the Secretary to certify Burbank as a Democratic candidate for U.S. Senate.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Per Curiam; Chief Justice Funke; Justice Cassel; Justice Stacy; Justice Papik; Justice Freudenberg; Justice Bergevin; Justice Vaughn
JURISDICTION	Supreme Court of Nebraska
DECIDED	March 23, 2026
DOCKET	No. S-26-208
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the Lancaster County District Court's denial and dismissal of Burbank's verified complaint seeking a peremptory writ of mandamus compelling the Nebraska Secretary of State to certify her as a Democratic candidate for United States Senate on the 2026 primary-election ballot.
STANDARD OF REVIEW	Whether to grant mandamus is discretionary. Because mandamus is a law action, factual findings after a bench trial have the effect of a jury verdict and are reviewed for clear error; questions of law and statutory interpretation are reviewed independently. Mootness and other jurisdictional questions not involving factual disputes are reviewed independently as matters of law.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion
PARTIES	Cynthia Burbank, also known as Cindy Burbank v. Robert B. Evnen, in his official capacity as Nebraska Secretary of State

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QUESTIONS PRESENTED

1. Whether the appeal was moot because the Secretary of State had already certified the 2026 primary-election ballot without Burbank's name.
2. Whether the seven-day objection deadline in Neb. Rev. Stat. § 32-624 applies to objections made by the Secretary of State as well as objections made by third parties.
3. Whether Burbank's candidate filing form was conclusively deemed valid by operation of law when no timely written objection was filed.
4. Whether the Secretary of State had a clear, ministerial, nondiscretionary duty under Neb. Rev. Stat. § 32-801 to include Burbank on the certified primary-election ballot.
5. Whether Burbank established the elements necessary for a peremptory writ of mandamus.

HOLDINGS

1. The appeal was not moot because the Secretary's prior certification of the ballot did not prevent recertification, no statutory deadline had passed, and meaningful relief remained available.
2. Regardless of who makes the objection, a written objection to a candidate filing form must be made within seven days after the filing deadline; the statute does not limit the deadline to third-party objections or preserve an untimely sua sponte objection by the Secretary.
3. Burbank's candidate filing form was conclusively deemed valid by operation of law because no timely written objection was filed.
4. When a candidate filing form is deemed valid by operation of law, the candidate is entitled to be voted for under § 32-801, and the Secretary of State has a purely ministerial, absolute duty to include the candidate when certifying the ballot.
5. Burbank established a clear right to ballot inclusion, a corresponding clear legal duty owed by the Secretary, and the absence of another plain and adequate remedy; she was therefore entitled to a peremptory writ of mandamus.

KEY QUOTATIONS

“We hold that regardless of who is objecting to a candidate filing form, the plain language of § 32-624 requires that unless the written objection is made within 7 days after the filing deadline, the candidate filing form shall be deemed valid.” (321 Neb. at 80)

“When a candidate filing form is deemed to be valid by operation of law, the candidate is one who “is entitled to be voted for” within the meaning of § 32-801.” (321 Neb. at 82)

“Because Burbank’s candidate filing form is conclusively deemed to be valid by operation of law, the Secretary has an absolute duty under § 32-801, when certifying the primary election ballot, to include Burbank’s name as a Democratic Party candidate for U.S. Senate.” (321 Neb. at 82-83)

FACTUAL BACKGROUND

Cynthia Burbank filed a candidate filing form and paid the required fee to run as a Democratic candidate for United States Senate in Nebraska's 2026 primary election. The form included the required oath that she would serve if elected, and no written objection was filed within seven days after the March 2 filing deadline. Although the Nebraska Republican Party submitted an objection after that deadline, the Secretary of State deemed it untimely but nevertheless refused sua sponte to certify Burbank, relying on public statements that allegedly showed she did not intend to serve if elected. The primary ballot had been certified without Burbank's name, but the statutory certification deadline had not passed and recertification remained possible.

PROCEDURAL HISTORY

Burbank filed a verified complaint in the Lancaster County District Court on March 17, 2026, after the Secretary of State refused to certify her for the primary ballot. The district court permitted the Nebraska Republican Party to intervene, held an expedited bench hearing, and on March 19 denied all relief and dismissed the complaint. The Nebraska Supreme Court moved the appeal to its docket, ordered expedited briefing, submitted the case without oral argument, rejected the Secretary's mootness motion, and reversed with directions to issue a peremptory writ.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Upon receipt of the mandate, and no later than 10 a.m. on Monday, March 23, 2026, the district court must issue a peremptory writ of mandamus directing the Secretary of State to certify Burbank as a Democratic Party candidate for United States Senate for the May 12, 2026, primary election. The mandate was to issue forthwith for immediate delivery.

CASES CITED

- State ex rel. Douglas Cty. Sch. Dist. No. 66 v. Ewing, 319 Neb. 663, 24 N.W.3d 861 (2025)
- State ex rel. Seeman v. Lower Republican NRD, 319 Neb. 681, 24 N.W.3d 874 (2025)
- Saint Joseph Tower Assisted Living v. Royce, 320 Neb. 830, 30 N.W.3d 838 (2026)
- City of Hastings v. Sheets, 317 Neb. 88, 8 N.W.3d 771 (2024)
- Nebraska Republican Party v. Shively, 311 Neb. 160, 971 N.W.2d 128 (2022)
- Salem Grain Co. v. City of Falls City, 302 Neb. 548, 924 N.W.2d 678 (2019)
- Nebraska Republican Party v. Gale, 283 Neb. 596, 812 N.W.2d 273 (2012)
- Flinn v. Strode, 320 Neb. 813, 30 N.W.3d 661 (2026)

- Jones v. Colgrove, 319 Neb. 461, 24 N.W.3d 1 (2025)
- State v. Piper, 50 Neb. 25, 69 N.W. 378 (1896)
- State ex rel. AMISUB v. Buckley, 260 Neb. 596, 618 N.W.2d 684 (2000)

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