

**Testimony of The Honorable Robert Evnen, Nebraska Secretary of State
U.S. Senate Committee on Rules and Administration
March 28, 2023**

Good afternoon, Chairperson Klobuchar, Ranking Member Fischer, and Members of the Rules Committee. My name is Bob Evnen, and I have the honor and privilege of serving as Nebraska's 27th Secretary of State.

This afternoon I'd like to talk about takeaways from Nebraska's 2022 elections, Nebraska's newly adopted state constitutional voter ID requirement, and security issues including cyber security. I'd like to conclude with a thought about federal versus state control of elections.

After the November, 2020 general election, a significant percentage of voters became concerned about the integrity of voting processes across the country. Nebraska was not immune to these concerns. Within two weeks after the 2020 general election, the Secretary of State Elections Division began tracking concerns that were being raised.

As we began to see certain claims and concerns raised repeatedly, we created a presentation entitled "Fake vs. Fact." The format was modeled on a presentation that we had seen on the Commonwealth of Virginia website called "Myth Busters." In our presentation, we set out frequently cited claims and concerns, then we set forth what we had found in response to them. We put the presentation up on our website in February 2022. The presentation continues to be posted on our website to this day.

When I spoke to groups across the state, I found that the overwhelming majority felt satisfied with the security of Nebraska's elections after I explained our election process.

Nebraska's 2022 elections were conducted efficiently, accurately, securely and in accordance with law. As we have done for some time, within approximately one month before the primary and general elections, every single ballot tabulation machine in the state was tested three times for accuracy by running three separate test decks of ballots through each machine. In addition to these three tests, two mock elections were held. One of these three independent tests was a mock election

held to further check the accuracy of our ballot tabulators, and to check the accuracy of the computers that compile the results and our election night reporting website.

After each election we hand count the results of certain elections in two or three percent of our precincts statewide. After the 2022 general election, we expanded this audit to include ten percent of our precincts statewide. We checked at least one precinct in each of our 93 counties, then added precincts in more populous counties. In counties with more than one precinct we randomly selected the precinct to be checked. Counties were not advised of the precincts to be checked until after Election Day. In those precincts, three races were checked: Governor, House of Representatives, and a local race.

In all, our counties hand counted three races on each of 48,292 ballots. The counting was conducted by election boards in those counties, composed of representatives of both major national parties.

In total, out of the more than 48,000 ballots hand counted, discrepancies were noted on eleven ballots. That is a discrepancy rate of twenty-three thousandths of one percent.

Of the 11 ballots where there were discrepancies, five ballots were marked too lightly for the machine to read the ballot, even though every single ballot carries the instruction to mark the oval completely, and you can turn in your ballot to a poll worker and get a new one if you make a mistake. Five people failed to heed those instructions, even though more than 48,000 of their fellow Nebraskans were able to do so. I might add that, with respect to those five ballots, we really don't know what the voter intended, nor does our state law allow us to try to identify intent. The other six discrepancies were ballots that had been misfiled or misplaced.

We did another check after the election. We found that 682,745 voters across the state were shown on the voter rolls as having cast a ballot. We compared that with the 682,716 ballots that were tabulated. That's a variance of 29 ballots, which is a variance rate of four thousandths of one percent.

Most of the variance can be explained by voters who, for example, signed an early voting envelope and were shown as having cast a ballot, but later when the envelope was opened it was empty. Other times the record shows that a voter cast a ballot, but the ballot wasn't counted because it lacked one or both sets of poll worker initials on the bottom the ballot.

In Nebraska, in my view, our election officials across the state did an exemplary job of conducting an accurate and secure election. Our state, and indeed in my view our nation, owe a debt of gratitude to Nebraska's county election officials for conducting an election that is a model for the nation. I would like to take this opportunity this afternoon to express my thanks and gratitude to our friends and neighbors across the State of Nebraska who conducted an outstanding election for our citizens in 2022.

In November, 2022, Nebraska voters overwhelmingly enacted an amendment to our state constitution requiring the presentation of a photo ID before casting a ballot.¹ I have supported voter ID for many years. Our state legislature is now working on legislation to implement this new voter ID requirement.

My office estimates that between 97 and 98 percent of registered voters already have state issued photo IDs. I am confident that effective legislation will be passed that will carry out Nebraska's new voter ID constitutional requirement without disenfranchising any legitimate voter. I am working closely with the legislature to ensure that we have an effective voter ID requirement that is consistent with the rights of voters.

Let me turn to security issues which elections officials have an ability to address. I will not be talking about disinformation campaigns. These are highly significant but not something that elections officials have much ability to affect beyond cautioning voters to be cautious about their sources of information and to think critically about claim they hear.

¹ "Before casting a ballot in any election, a qualified voter shall present valid photographic identification in a manner specified by the Legislature to ensure the preservation of an individual's rights under this Constitution and the Constitution of the United States." Initiative 432, November, 2022.

In terms of the elections process itself, in my view one of the greatest threats to election security grows out of the increasing availability of early voting. The threats that come with early voting include the opportunity to pressure or intimidate voters, and the possibility of vote buying efforts. The potential for this sort of fraud is intensifying as these early voting methods become more ubiquitous. In my view we ought to focus our attention on these matters.

Turning briefly to cyber security, the Elections Division of the Nebraska Secretary of State's office was awarded the 2019 Election Innovation Award from the National Association of State Elections Directors. We received this award for our program of collaboration between our office, our voter registration database vendor, the Department of Homeland Security and EI-ISAC (Election Infrastructure-Information Sharing and Analysis Center). Through this collaboration, organized by our office, we were able to place an Albert Networking Monitor on the server of our elections vendor to detect intrusion on our voter registration system.

Albert Monitors are hardware devices that connect to computer servers. These monitors use threat signatures to detect and report intrusion attempts into the server to which the Monitor is connected.

I would note that our ballot tabulation equipment and the computers that compile results are not connected to the Internet and for that reason do not require Albert Monitors. These monitors are important for intrusion detections in voter registration systems, which are connected to the Internet.

One recent issue has arisen regarding Albert Monitors. We are concerned that the Election Assistance Commission (EAC) may not permit states to continue to use HAVA grants to fully fund the purchase of Albert Monitors in smaller counties which use their servers not only for elections but also for other county governance functions. My concern is that, faced with the need to pay for much of the cost of the monitors themselves, counties will simply opt out of using them altogether. We are working with EAC on this issue and I wanted to alert you to it.

Finally, permit me to observe that under the U.S. Constitution, elections have been left to the sound discretion of state legislatures. Speaking from my perspective as the Secretary of State of

Nebraska, the states ought to remain responsible for the conduct of elections. Issues affecting the conduct of elections can be, and ought to be, resolved by the state legislatures.

Thank you, Senators, for your time and attention this afternoon.