U.S. Election Assistance Commission Meeting
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Minneapolis, Minnesota
Written Statement of John A. Gale
Nebraska Secretary of State

Early in 2006, my office was approached by Design for Democracy about doing a pilot project in Nebraska on optical-scan ballot design. The project involved modifying what had become a routine ballot layout into one that would be easier to read and use for voters.

My office thought the project had a great deal of merit and enthusiastically agreed to participate. The project was conducted in Cedar and Colfax counties for the 2006 general election. The cost of the project was largely paid by Design for Democracy. The cost to my office and the two counties mainly involved staff time.

Nebraska was a logical place to conduct such a project. Nebraska counties have used optical-scan equipment to count ballots since the early 1980s. The last punch-card county system was replaced in 1992. Prior to the enactment of the Help America Vote Act, about half of Nebraska counties, representing approximately 85 percent of ballots cast, used optical-scan systems with the remainder hand counting.

This long experience with optical scan played a role in the Nebraska State Plan Commission's recommendations to continue utilizing the technology. In addition, Nebraska adopted the AutoMARK, a disability-accessible marking device for optical-scan systems, for all polling sites. All Nebraska counties used an optical-scan system exclusively for the 2006 election cycle.

I will not go into great detail on the Design for Democracy pilot project for the simple reason that there is an excellent summary of it in your June 2007 report, "Effective Designs for the Administration of Federal Elections." However, there are a few points that are worthy of comment. I hope my comments will provide some insight into state and local election administrators' thinking on optical-scan ballot design and the suggested best practices.

A survey showed that voters did not notice a significant difference between pilot project ballots and those used in the past in the two counties. I view this finding as very positive, not negative. I believe the redesigned ballots succeeded in doing their job – navigating voters through the task of voting in a helpful, unobtrusive manner.

I believe the reaction of voters would have been very different if they had been able to compare side by side the redesigned ballots with traditional ballots. Such a comparison reveals significant differences. The traditional ballots were bland, while the redesigned ballots were eye-catching.

Some of the suggested best practices might seem to be basic common sense. I would caution that just because a suggestion seems to be common sense, it does not mean it is easily adopted. As an example, a Nebraska statute requires ballot headings identifying "Presidential Ticket," "State Ticket," "County Ticket," etc. This is an old statute that I assume was more appropriate

for a hand-count system, where voters would receive several pieces of paper to cast their votes. It makes little sense to require a "County Ticket" heading when the language immediately following says "For County Commissioner," "For County Sheriff," etc. Unfortunately, because of the specificity of the statute, this is not something that can be changed administratively but instead requires legislative action.

Other suggestions are the product of graphic artists and usability professionals who have studied the public's behavior. Items like font style and size, text alignment, and the use of color, shading and other graphic devices are simple to implement and are relatively costless. In Nebraska, with no specific statutory language in this area, these changes are easily addressed administratively.

Suggestions on improving ballots can come from many sources. Shortly after becoming secretary of state, a high school class in Laurel, Nebraska, asked about changing the phrase "vote for three" to "vote for up to three" to clearly indicate that the voter did not have to cast three votes or risk having their one vote or two votes not count. Once again, without specific statutory requirements, this change was accomplished administratively.

Many of the changes I've mentioned cause no concern for election administrators. However, not all suggestions will find enthused officials. It is important to keep in mind the nature of optical-scan ballots. They are generally column oriented on specialized – meaning expensive – paper stock. Accordingly, space on the printed ballot is prized. Local officials will, whenever possible, seek to maximize the use of that space, attempting to balance items that may be helpful to the voter with a cost efficient use of the space.

An example that illustrates this point is the instructional portion of the ballot. Instructions use 3 column inches on a traditional Nebraska ballot. The instructional portion of the best practices sample in "Effective Designs for the Administration of Federal Elections" (page 3.7) is very effective but consumes much more space. The sample uses 10 column inches for the instructions and leaves the remaining column space blank. As a result, an entire column – 1/6 of the available ballot space – is devoted to instructional material. A local election administrator would be reluctant to devote so much space to instructions if it would force the use of a second page, which would add 25 to 27 cents per voter.

The column orientation of optical-scan ballots can cause other difficulties. There have been numerous examples where a race being split between two columns has caused voter confusion. Certainly, election administrators recognize the problems caused by splitting a race between columns. However, there will be situations where there is no alternative. As an example, prior to 2000, the Republican Party in Nebraska elected nine of their national convention delegates on the primary ballot. In the Third Congressional District, it was not uncommon to have forty or more candidates vying for three slots. In this situation, it is impossible to avoid splitting the race between columns. In such a circumstance, clear instructions will help but not guarantee that voters do not become confused.

I would like to offer some comments on ballot language. I believe everyone would agree that ballot language should be simple and easily understood by anyone. The more difficult challenge

is getting agreement on what is simple and easily understood – and yet is also fair and balanced. Ballot language on issues is often a product of statutory requirements that are debated and passed by legislators.

I am thankful that I do not write ballot language for Nebraska ballots – that task is performed by either the Legislature or the attorney general. I've seen language that I thought could be presented better. However, I probably take a different view in that I don't expect the ballot language to provide all the answers, but instead provide enough information that I'm able to identify the proposal from previous research on the issue.

A corollary to ballot language is translation issues. My experience is somewhat limited in that I'm not bilingual and Nebraska has only one county with an alternative written language requirement. However, I have observed that regardless of who does the translation, there will always be someone who disagrees with the translation.

My office gained a great deal of knowledge and insight into ballot design from the pilot project. We have incorporated some of the changes into our ballot design in Nebraska. A limiting factor in making design changes is the capabilities of our ballot vendor.

It was an honor for Nebraska to participate in the pilot project. We hope the project has advanced research on ballot design to the benefit of the U.S. election community.