



## **CIVIC NEBRASKA**

### *Observation Report of 2018 Primary Election*

The purpose of this report is to detail the information collected from Civic Nebraska's 2018 primary election observation program. After highlighting the relevant information, this report will discuss issues of concern that were frequently reported and the areas where Nebraska performed well during the primary. The conclusion of this report will list several policy suggestions that will help create a more modern and robust elections system for all Nebraskans.

It is important to note at the outset that the 2018 Nebraska [primary elections were overwhelmingly well run, efficient, and fair. However, there is always room for improvement and modernization.

#### **I. Observation Program**

Civic Nebraska has run statewide nonpartisan election observation programs since 2012. Nationally, nonprofit organizations began election observation programs following the 2000 presidential election. The Lawyers' Committee for Civil Rights<sup>1</sup> has been the leading national organization that provides training, informative materials and an election-day hotline to organizations who operate observer programs within their respective states. Civic Nebraska partners with the Lawyer's Committee, ACLU and Common Cause of Nebraska on Election Day.

During this election, Civic Nebraska collected information through a combination of volunteers who directly observed polling locations and voters who reported issues to Civic Nebraska's Election Day Hotline. Volunteers were recruited, trained and assigned polling locations. A majority of the volunteers had been election observers in 2016 for Civic Nebraska, while the rest were recruited through various advertising channels. Trainings lasted for about an hour and trained observers on how to properly interact with poll workers, the basics of election law and ways to assist voters who report a problem.

Most of the observers were assigned to a precinct located near where they lived. Others were assigned close to their residence, filling the remaining spots Civic Nebraska identified for this year's program. Civic Nebraska shared information detailing observers' polling place assignments with the Secretary of State's office and election officials in Douglas, Lancaster, Sarpy, and Buffalo counties.

Observers filled out a survey provided by Disability Rights Nebraska<sup>2</sup> that collected information on poll place accessibility, noting items such as whether there was a ramp or powered door at the entrance.

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<sup>1</sup> <https://lawyerscommittee.org/>

<sup>2</sup> An organization that employs a combination of legal advocacy, public policy advocacy, citizen advocacy, self-advocacy and advocacy education to protect vulnerable people with disabilities.  
<http://www.disabilityrightsnebraska.org/>

Observers also filled out a general observation report that collected the number of provisional ballots given, how many times voters went to the wrong polling location, and wait times. In total, Civic Nebraska deployed 36 election observers who were then assigned to 28 different polling locations.

A legal team, comprising of two attorneys, supported voters and volunteers with legal questions from the election day HQ. Alongside the legal team were two field directors: one assigned to assist Omaha poll observers and another for Lincoln/Greater Nebraska. The last member of the observation program was the state director. ACLU also had attorneys. This position was responsible for coordinating the volunteers and communications to the media and election officials.

## II. Election Figures<sup>3</sup>

**Registered voters:** 1,199,474  
**Total votes cast in primary:** 296,000 (24.3% turnout)  
**Voters who cast a ballot by party:** 175,505 Republican  
95,356 Democratic  
1,269 Libertarian  
23,870 Nonpartisan

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**Voter method:** Polling place: 224,807 (75.9%)  
All-mail precinct: 10,400 (3.5%)  
Provisional: 1,584 (0.5%)  
Early voting: 59,209 (20%)  
Total precincts: 1,464

### *Lowest 5 counties in voter turnout*

| County       | Registered | Votes  | Turnout |
|--------------|------------|--------|---------|
| Dakota       | 10,752     | 1,326  | 12.33%  |
| Thurston     | 4,529      | 744    | 16.43%  |
| Nance        | 2,359      | 398    | 16.87%  |
| Scotts Bluff | 24,002     | 4,394  | 18.31%  |
| Sarpy        | 110,134    | 22,361 | 20.30%  |

<sup>3</sup> Figures provided by the Nebraska Secretary of State’s Office

***Top 5 counties in voter turnout***

| <b>County</b> | <b>Registered</b> | <b>Votes</b> | <b>Turnout</b> |
|---------------|-------------------|--------------|----------------|
| Blaine        | 397               | 295          | 74.31%         |
| Arthur        | 329               | 232          | 70.52%         |
| Garden        | 1,363             | 800          | 58.69%         |
| Rock          | 1,012             | 535          | 52.87%         |
| Grant         | 501               | 250          | 49.90%         |

**III. Issues**

As a whole, the election went smoothly across Nebraska; however, there were four frequently reported problem areas. These were:

- A) voters receiving an incorrect or incomplete ballot,
- B) electioneering issues involving campaign signs and ballot distributors,
- C) voters reporting that their party affiliation had changed without their knowledge, and,
- D) the lower-than-expected statewide average voter turnout of 24.3 percent.

**A. Ballot confusion**

*The issue: Nebraska's complex primary ballot system resulted in numerous instances where voters received either an incorrect or partial ballot. Also, it seems that inconsistent training resulted in some poll workers asking voters what ballot they preferred despite party affiliation.*

The most frequently reported problem came from voters who said they had received an incorrect or incomplete ballot. In Nebraska primaries, registered nonpartisans can also cast votes for Democrats, Republicans, or Libertarians.<sup>4</sup> To do so nonpartisans must request a nonpartisan Democratic, nonpartisan Republican, or nonpartisan Libertarian ballot at their polling station. Depending on the county, these races came as an addition to the party ballots.<sup>5</sup>

One example of this happening came from Douglas County. Here the voter reported that they were registered as a nonpartisan and were given the bond issue as a part of their ballot. They also said they were not given the portion of the ballot containing the Board of Regents race and had to request one after asking the poll workers. After some convincing they gave the voter that portion of the ballot to alleviate the problem.

According to Nebraska election rules, workers are not supposed to offer the different nonpartisan ballot options to voters. This should instead be done through the request of the voter. There were a couple of

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<sup>4</sup> <https://nebraskalegislature.gov/laws/statutes.php?statute=32-912>

<sup>5</sup> For more information on nonpartisan primary ballots see <https://www.youtube.com/watch?v=jKhmEe1PxV4>

locations where it was reported that poll workers were offering voters different ballot options irrespective of their party affiliation.

Observers reported that polling stations that handled this issue well had set up clearly visible displays that explained this process near the check-in table. Instead of explaining to voters what options there were or what ballots they preferred before knowing their party affiliation, they motioned to voters to examine the directions before requesting a ballot.

For the instances where voters may have received an incorrect or incomplete ballot they can always request from a poll worker for alleviative action, however, once a voter ballot is placed into the box with the other votes they can no longer correct a mistake.

## **B. Electioneering**

*The issue: Little enforcement of electioneering laws has resulted in a climate where campaigns and ballot collectors are less likely to care that their use of yard signs violates Nebraska law.*

About 25 percent of the complaints received by Civic Nebraska on Election Day involved campaign signs within the 200-foot electioneering ban of polling locations in Lancaster County. Pursuant to Nebraska Revised Statute 32-1524, any person who displays a yard sign within 200 feet from a designated polling place is guilty of a Class V Misdemeanor.<sup>6</sup> This statute has an exception for persons who display yard signs on private property, subject to local ordinances.

According to Nebraska Revised Statute 28-106, Class V Misdemeanors are only punishable by a \$100 fine.<sup>7</sup> One observer reported a ballot collector who started violating the electioneering zone limit by 8 a.m. Poll workers repeatedly told this individual to move, but every time a worker convinced them to leave the property they were discovered at the same place later on. This action repeated all day until the observer called the Election Commissioner's office who then contacted the Sheriff's Office. The Sheriff's Office was finally able to get the offender off the property by 5 p.m.

The majority of the calls specifically involved yard signs outside polling locations in Lincoln. According to witnesses, one campaign had placed campaign signs of several different candidates outside dozens of stations early in the morning. Many of these locations were well within the electioneering zone. At one polling location workers believed it was outside the zone until it was later measured and found to be just outside 100 feet.

On the Lancaster County Election Commissioner's website they mention that they receive many calls regarding political signs every year but do not actually have any statutory or legal authority to enforce a majority of the governing laws and ordinances.<sup>8</sup> During the election, the office directed callers to contact Lincoln's Department of Building & Safety at (402) 441-7521, however, at one point during the day that same department was telling callers that they should instead contact police to report violations.

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<sup>6</sup> <https://nebraskalegislature.gov/laws/statutes.php?statute=32-1524>

<sup>7</sup> <https://nebraskalegislature.gov/laws/statutes.php?statute=28-106>

<sup>8</sup> <https://lancaster.ne.gov/election/camsigns.pdf>

### **C. Registration**

*The issue: Numerous complaints from voters occurred during and after the election claiming that their party affiliation changed without their knowledge or consent. Most of these voters had simply forgotten that they signed the paperwork authorizing the change. Outside of usual human error, it does not appear there were any defects in election software.*

Additional complaints received by Civic Nebraska involved voters who claimed that they had their party affiliation changed without their knowledge or consent. This issue was reported several times on Election Day. Several weeks after the election there were still Nebraskans coming forward saying they had this happen to them.<sup>9</sup>

Civic Nebraska collected the names and identifying information from a dozen individuals and forwarded them to the Secretary of State's Office to examine their voter profiles.<sup>10</sup> The changes to party affiliation were explained by one instance of human error, where an election worker pulled the wrong voter file of someone with the same name but with a different birth date, and voters forgetting that they had signed documentation authorizing the change.

According to this evidence it appears that Nebraska's voter registration system performed well. That being said, there is room for improvement in voter education reminding individuals to check their registration status before the deadline to make any necessary changes.

### **C. Low turnout**

*The issue: Overall voter turnout for the primary came in lower than expected. Election officials, voter advocacy groups and the public have expressed concerns for the low number of voters participating across the state. There is a silver lining coming from the success seen in Garden County's all vote-by-mail (VBM) pilot program for the primary. Garden County demonstrated what has been shown before in special elections conducted exclusively by mail: All-mail elections significantly increase voter turnout.*

The 24.3 percent turnout was lower than Secretary of State John Gale estimate of 28 percent.<sup>11</sup> The four counties of Dakota, Thurston, Nance and Scotts Bluff had voter turnout percentages measuring in the teens.<sup>12</sup> For Nebraska's three largest counties, Sarpy was 20.30 percent, Douglas 20.90 percent, and Lancaster 25.03 percent.

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<sup>9</sup> [https://www.reddit.com/r/Omaha/comments/8otp30/update\\_voter\\_registration\\_fraud/](https://www.reddit.com/r/Omaha/comments/8otp30/update_voter_registration_fraud/)

<sup>10</sup> Each person registered in Nebraska's voter registration has a profile that is maintained by both the Secretary of State's Office and the county election officials. For changes to registration status there are copies of documentation and timestamps on changes stored within the profiles.

<sup>11</sup> Lincoln Journal Star, "Voter turnout less than hoped; two state races may be poised for recount," dated May 16, 2018 retrieved from: [http://journalstar.com/news/local/govt-and-politics/elections/voter-turnout-less-than-hoped-two-state-races-may-be/article\\_69cd2832-5569-55c1-958b-e0f751d6ffa9.html](http://journalstar.com/news/local/govt-and-politics/elections/voter-turnout-less-than-hoped-two-state-races-may-be/article_69cd2832-5569-55c1-958b-e0f751d6ffa9.html)

<sup>12</sup> Dakota 12.33%, Thurston 16.43%, Nance 16.87%, Scotts Bluff 18.31%

Blaine and Arthur counties had the highest percentage of voter participation, with turnout exceeding 70 percent for their total registered voters of 726. Garden County was third in turnout at 58.69 percent. Garden more than doubled their 27.5 percent 2014 Primary Election voter turnout. This was the first county in Nebraska to conduct a county-wide all-mail election for the primary. Out of 1,363 registered voters, 800 ballots were cast.

#### **IV. Strengths**

Even with the reported issues, county and state officials ran an efficient election that proceeded without much trouble. Here are some of the key reasons why this was the case:

##### **A. Poll workers, sufficient resources, and present procedure**

Numerous comments from observers' reports expressed how great and helpful poll workers were. Many of the poll workers, especially from smaller counties, have been working elections for decades. This institutional knowledge is important in keeping errors to a minimum. This also gives voters in those community a deeper connection and sense of trust in the integrity of the elections.

Although the Secretary of State's Office election division has a small staff with several members experiencing their first election, they were able to provide sufficient resources and training to the counties. The existing election infrastructure, although aging and in need of replacement, performed well as there were no reports of any major machine failures or counting delays.

##### **B. Security**

*60 Minutes* reported in April on a Department of Homeland Security internal document that showed Russian hackers launched a cyberattack two weeks before the presidential election into 20 state election systems and one election IT provider in Nebraska. Hackers successfully penetrated the Illinois voter registration database, stealing partial record information of 90,000 voters, and complete voter files of 3,500. The hackers were also successful in penetrating an Arizona county database, a website operated by the State of Tennessee, and a Florida-based IT vendor.<sup>13</sup>

Despite concerns with voters' registrations being switched and evidence of attempted hacking in 2016, it appears that Nebraska's registration system was free from any major failures. According to election officials, Nebraska has done well in addressing security concerns and potential vulnerabilities even before this became a headline issue in the news.<sup>14</sup> For example, Nebraska's voter system on Election Day is completely removed from any access point to the internet, preventing a major vector for traditional attacks.

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<sup>13</sup> Bill Whitaker, "When Russian hackers targeted the U.S. election infrastructure," dated April 8, 2018, retrieved from: <https://www.cbsnews.com/news/when-russian-hackers-targeted-the-u-s-election-infrastructure/>

<sup>14</sup> State officials say Nebraska at forefront of election security [https://journalstar.com/news/state-and-regional/govt-and-politics/state-officials-say-nebraska-at-forefront-of-election-security/article\\_0baa579d-9ec2-5db5-92aa-b7a7c412f372.html](https://journalstar.com/news/state-and-regional/govt-and-politics/state-officials-say-nebraska-at-forefront-of-election-security/article_0baa579d-9ec2-5db5-92aa-b7a7c412f372.html)

### **C. Disability access and outreach**

Several reports detailed incidents where polling locations were not completely accessible to voters with disabilities. Complaints received mainly dealt with select polling locations lacking either ramps, powered doors or accessible parking locations that were far away or not clearly marked. Also, some polling locations had their AutoMARKs, machines designed to assist voters fill out a ballot, facing a portion of the room where it was possible for other voters to see how they were voting. This problem was often times solved when an election inspector for that polling location arrived and could make the appropriate changes.

Although there were several reported issues, Nebraska can be proud that it has the highest voter participation rate among persons with disabilities in the United States. According to a Rutgers University study cited in Stateline, a Pew Charitable Trusts newsletter published February 1, 2018, researchers found that Nebraska's voter participation rate among this population was more than 70 percent.<sup>15</sup> This high percentage can be attributed to advocacy groups, individual advocates from the disabled community and proactive election officials who work along with Nebraskans to address identified barriers.<sup>16</sup>

### **V. Recommendations**

With both issues and strengths identified, this section will briefly mention policy suggestions that can help alleviate the issues that were reported for future primary and general elections.

#### **A. Uniform training on primary ballot distribution and increased voter education**

As the most widely reported issue, assuring nonpartisan voters get their correct ballot will need to be better addressed in future primary elections. As long as Nebraska remains a state that has hundreds of potential ballot options throughout the various election districts and a primary system that has different rules for nonpartisan voting in Republican, Democrat and Libertarian primaries, both voter advocacy groups and election officials need to do a better job in educating the public and training workers.

Civic Nebraska recommends that the Secretary of State's office assemble a list of best practices in regard to this issue, and relay this information to the counties so they can include it in their information when conducting poll worker trainings. These recommendations should at a minimum include: **1)** workers prioritizing a display of highly visible directions near the check-in table directed at nonpartisan voters detailing the different ballot options in both English and Spanish, and **2)** a reiteration that poll workers are not to ask voters what their political party is or which ballot they prefer to receive.

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<sup>15</sup> Matt Vasilogambros, "How Voters With Disabilities Are Blocked From the Ballot Box," published by Pew Charitable Trusts, dated February 1, 2018, retrieved from <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/02/01/how-voters-with-disabilities-are-blocked-from-the-ballot-box>

<sup>16</sup> Molly Klocksin, "Nebraska Rocks the Disability Vote," published by Disability Rights Nebraska, dated April 2, 2018, retrieved from [http://www.disabilityrightsnebraska.org/resources/news\\_archive.html/article/2018/04/02/nebraska-rocks-the-disability-vote](http://www.disabilityrightsnebraska.org/resources/news_archive.html/article/2018/04/02/nebraska-rocks-the-disability-vote)

Civic Nebraska will also consider additional ways to spread information about nonpartisan ballots. By continuing to partner with other advocacy groups, election officials and political parties this could be an excellent opportunity to educate all of Nebraskans about an important portion of election law.

### **B. Enforcement of electioneering laws and perhaps increased penalties**

Voters are rightly concerned with campaigns displaying political signs directly outside polling locations. With a small fine that doesn't impact campaigns or individuals unconcerned with a \$100 penalty, perhaps it is time for the Legislature to reconsider what penalties and enforcement there should be in electioneering cases. Until that happens, it is unlikely that Nebraska will see fewer instances of electioneering by campaigns and ballot drives. There is also a potential for local municipalities to pass ordinances that could address both the issue of enforcement and appropriate motivation to avoid violating Nebraska law.

Civic Nebraska recommends localities that experience high frequency of electioneering cases to examine existing municipality code and enforcement. This may also be an issue ripe for consideration by a legislator from the Legislature.

### **C. Continue to improve security, build upon best practices, and consider upgrades to system such as two-party authentication**

Nebraska's past proactivity in addressing potential vulnerabilities in our election system has proven fruitful when considering the current political landscape. At the time these decisions were being made to examine Nebraska's election security, there wasn't a real public concern that outside actors were directly tampering in American elections. Now that outside tampering is a proven reality and cause for concern among American voters, Nebraska should continue to actively seek out vulnerabilities and to keep up with best practices in election security.

Civic Nebraska recommends that both county and state officials continue to keep up with the best practices regarding election security. This includes taking a look into security solutions such as two-party authentication technology for individuals who have direct contact with Nebraska's voter registration system.

### **D. An examination of why voters don't turn out for the primary and a more serious look into vote-by-mail election structures for additional Nebraska counties**

Perhaps the most frustrating issue for both election officials and advocacy groups is when people don't turn out for elections even after engaging the public with get-out-the-vote campaigns. With three-fourths of Nebraska's voters not participating, perhaps one conclusion that can be drawn is that the current Tuesday-centered voter model is not very conducive to voting, with people now working multiple jobs and with lifestyles changing.

If increased voter turnout is the goal, counties switching to a VBM model might be the solution for increasing voter participation. Additional counties are already applying to the state to have their general



election done exclusively through VBM.<sup>17</sup> The argument in favor of this switch seems clear when considering how much support it enjoys from voter advocates and election officials. According to the Secretary of State's Election System Advisory Taskforce Report dated April 10, 2017, an all-VBM model:

With certain conditions and reservations, the best long-term, county-friendly, and least-expensive choice for Nebraska generally would be an all-mail voting model. In that model, every voter is assured of receiving a ballot. Such a choice would: eliminate the challenge of recruiting, training, and paying just over 8,000 poll workers; reduce the need to identify suitable ADA compliant polling sites in urban and rural areas; and, allow counties to focus efforts primarily on a single voting system instead of the trichotomy that consists of early voting, by mail voting, and in person on Election day. An all-mail voting model would also remove certain inconveniences for voters including: locating and driving to their precinct on Election Day; traveling to the county election office in order to vote early, and eliminating the need to request an early voting ballot by mail.

Civic Nebraska's recommendation is for other counties to seriously consider adopting a VBM election structure. Civic Nebraska also recommends that the Legislature pass legislation that amends the statutory 10,000-person population threshold limit for other counties that might wish to apply to have their future elections done through VBM.<sup>18</sup>

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<sup>17</sup> Chris Dunker, "More county officials pushing for all-mail elections after successful Garden County test," published by Lincoln Journal Star, dated May 26, 2018, retrieved from: [https://journalstar.com/news/local/govt-and-politics/more-county-officials-pushing-for-all-mail-elections-after-successful/article\\_34ce6697-c82e-561a-bfc6-2662a8c5271e.html](https://journalstar.com/news/local/govt-and-politics/more-county-officials-pushing-for-all-mail-elections-after-successful/article_34ce6697-c82e-561a-bfc6-2662a8c5271e.html)

<sup>18</sup> See Nebraska Revised Statute 32-960, only counties with County with less than ten thousand inhabitants can apply to the Secretary of State's office to have their elections done through VBM.