

NOMINATIONS

HEARING

BEFORE THE

COMMITTEE ON RULES AND ADMINISTRATION

UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

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SECOND SESSION

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NOMINATIONS

WEDNESDAY, NOVEMBER 28, 2018

UNITED STATES SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, DC.

The committee met, pursuant to notice, at 2:50 p.m., in Room SR-301, Russell Senate Office Building, Hon. Roy Blunt, Chairman of the committee, presiding.

Present: Senators Blunt, Klobuchar, Wicker, Fischer, King, and Cortez Masto.

OPENING STATEMENT OF HONORABLE ROY BLUNT, CHAIRMAN, A U.S. SENATOR FROM THE STATE OF MISSOURI

Chairman BLUNT. The meeting will come to order and I apologize for being tied up in an earlier event. I'm glad my colleagues have joined us and our witnesses are here today. Shortly, we'll hear from both of the nominees to serve as members of the Election Assistance Commission, congratulate both of you on your nomination.

This Commission was authorized by the Help America Vote Act. I have wondered, frankly, in recent years if there was a real role for the Commission but as I've told both of you, I think that the events of the last couple of years indicate that the Election Assistance Commission in many ways is likely to be more important right now and in the future than it's been up until now.

I think it is the logical nexus for local election officials and state election officials—and I did both of those jobs in my career as the Secretary of State of Missouri and as a local election official, as well—but to have that point of contact, whether it leads to the homeland security and the discussions about assistance in cyber vulnerabilities or whether it leads to a discussion about the kind of equipment that's needed and what information may be available for that equipment. We're lucky to have both of you here for this hearing.

Senator Klobuchar will be here in a moment, but let me first introduce—I'm going to let Senator Klobuchar introduce Mr. Palmer because they've had a strong working relationship as Mr. Palmer's had with this committee and we might have eventually introduce—I might eventually introduce you, as well, Mr. Palmer.

But before I do that, let me introduce—so why don't I introduce you, Mr. Palmer and then we'll let you make your opening remarks and then we'll let Senator Klobuchar, when she gets here, introduce our other nominee.

President Trump nominated Donald Palmer earlier this summer to fill the term of former Commissioner Matt Masterson. That term will expire in December 2011.

If confirmed, Mr. Palmer would bring a broad range of election experience to the Election Assistance Commission. From 2011 to 2014, Mr. Palmer served as the Secretary of the Virginia State Board of Elections. He was also the Director of Elections for the Florida Department of State from 2008 until 2011, which appears to be the period that Florida didn't have any crisis in their election system, so that window is pretty good.

Prior to his work for those two state governments, Mr. Palmer was an attorney with the Voting Section of the U.S. Department of Justice, Civil Rights Division, where he enforced Federal voting and civil rights laws.

In addition, Mr. Palmer is a military veteran, retiring from the U.S. Navy after serving two decades as an intelligence officer and judge advocate general.

Mr. Palmer, you'll be the first to testify this afternoon.

Before you begin your remarks, I'd like to recognize the family members that are with you today. Your wife Laura and your son Benjamin are over here backing you up and we are glad that you're here to join us.

Mr. Palmer, why don't you go ahead and make your opening statement?

**OPENING STATEMENT OF DONALD L. PALMER, TO BE
COMMISSIONER OF THE ELECTION ASSISTANCE COMMISSION**

Mr. PALMER. Thank you, Chairman Blunt, and Ranking Member Senator Klobuchar, for scheduling this hearing.

I would like to thank the Speaker of the House, the Representative Paul Ryan, for placing my name forward as his choice for the Election Assistance Commission.

I would also like to thank the President of the United States for my nomination.

I'm honored to be considered for this position and to again serve the Nation's voters.

If confirmed, my goal as a commissioner would be to leave the United States electoral system stronger and more secure for the next generation of Americans, to assist state and local election officials, to upgrade our voting process with new technologies and meet the expectations of voters.

I'll also work to ensure that our voting equipment is more accurate and more usable for voters, that our voting equipment and voter registration systems are more secure in defending against threats of any kind from any source, and that our voting equipment is more accessible to voters with disabilities and for our rapidly aging population.

Additionally, I will focus on assisting state and local election officials in the challenges that they will inevitably face in the next decade.

In my career of public service, I've been guided not just by the oath to defend the Constitution but the belief that the administration of free and fair elections is a sacred duty in and of itself.

One must always remember that the exercise of democracy is temporarily entrusted in your hands for a length of time and that you are responsible for it.

As Ronald Reagan said, “Freedom is never more than one generation away from extinction. We didn’t pass it to our children through the bloodstream. It must be fought for, protected, and handed on to them to do the same.”

For our republic to work, our citizens must believe that the will of the people will be exercised with elections, that the government derives its power from the consent of the governed, and that the vote was free and fair and that both the winner and the loser of an election can objectively say who was the actual winner of the election.

As a Navy intelligence officer and JAG, my commitment was to defend our way of life, including the ability for Americans to exercise their right to vote. Similarly, at the Department of Justice, Voting Section, I took a similar oath to defend the rights, the voting rights of all Americans, regardless of their color, ethnicity, and economic status, and to ensure all Americans were able to vote.

There, I defended the rights of Americans to vote under the Voting Rights Act and worked to protect the rights of the military and overseas voters and language minorities where I investigate election practices, monitored polling places across the country, and represented the United States in Federal court to ensure that the voting rules established by this Congress were followed.

I’ve worked with states closely to assist election officials in complying with the National Voter Registration Act and the Help America Vote Act, to improve the integrity of our electoral system, maintain the accuracy of our voter registration rolls, and to facilitate private and independent voting by voters with disabilities.

As a state election administrator in two states, I managed Presidential elections in those battleground states, including Presidential primaries, special elections, midterm elections, gubernatorial races, and a statewide recount in Virginia for Attorney General.

My goal has always been and will continue to be to ensure uniformity, fairness, accuracy, and purity in all elections.

During my time in office, over 20 million voters successfully cast ballots by mail, early voting, and on election day, and local election officials in those states overcame all types of challenges, hurricanes, floodings, snowstorms, and earthquakes, to successfully administer the elections on behalf of all of its citizens. They deserve a lot of credit.

I see new technology as a way to improve the voting experience for voters. I have worked closely with the Virginia General Assembly in the passage and implementation of online voter registration and registration data-sharing, both initiatives that became future recommendations of the Presidential Commission on Election Administration created by President Obama.

More recently, I’ve worked with the bipartisan Policy Center to advance consensus recommendations and worked closely with states and localities across the country to collect data at the precinct level in an effort to reduce long lines of voters and make the voting process more efficient.

Working with colleagues on both sides of the aisle, we highlighted the current voting technology crisis in America and encouraged states and localities to provide additional resources to upgrade our electoral infrastructure.

As a former intelligence officer at the end of the cold war, I remain vigilant to the threats this Nation faces from its foes, particularly the Russians, and am dedicated to working closely with our Federal partners to make sure states and localities have the information and the means to defend their systems from intrusion.

The EAC will have an opportunity to continue the process of developing new voluntary voting system standards with state and local election officials, NIST, and other stakeholders.

Together, we can provide increased security, usability, and accessibility to American voters for future elections.

The EAC will need to find better ways to communicate with the American people on the state of the electoral process in this country. While the EAC does not have as large a voice as some, in order to set the record straight, we need to educate voters to better distinguish facts from myths and to improve overall public confidence on the security, fairness, and integrity of our electoral system.

I would like to thank the local election officials and staff in both Virginia and Florida for their dedication and commitment to administering elections and all the efforts that you have made to ensure elections free and fair. It's made my second career as fulfilling as the first.

I'd also like to thank my wife, my parents, and my children for making my life equally as fulfilling and showing patience with me as I follow my dreams.

Thank you, sir.

[The prepared statement of Mr. Palmer was submitted for the record.]

Chairman BLUNT. Thank you, Mr. Palmer.

Mr. Hovland, it's good to see you here this afternoon, and I guess you're looking at this dais from this side for the first time. You've looked at it from back here backing us up a number of times.

I want to recognize Senator Klobuchar to formally introduce you and your family.

**OPENING STATEMENT OF HONORABLE AMY KLOBUCHAR, A
UNITED STATES SENATOR FROM THE STATE OF MINNESOTA**

Senator KLOBUCHAR. Well, thank you so much, Mr. Chair, and I was a little late at another event. I just want to thank you all for being here.

I will just briefly say how important it is to have the United States Election Assistance Commission fully staffed.

As we look back at the midterms, I think we know that we need a strong fully functioning Commission now more than ever. We must make voting easier. We know the consequences of old voting equipment that we saw across the country, long lines, confusion, and sometimes disenfranchisement.

Last month, we saw a number of instances where old machines malfunctioned, poll books failed, and voters did not understand how to use certain voting equipment, creating long delays. These are avoidable problems.

I'm happy to say that the numbers are in today and Minnesota once again had the highest voter turnout in the Nation. I think I've a little credibility when I talk about this and some of it is that we have same-day registration, but we've just worked really hard to create a culture of voting and accessibility to voting.

That's why I congratulate both of you and look forward to this hearing, but it is my honor to introduce Mr. Hovland.

Ben has been a valued, valued member of the Rules Committee staff, working with me and working with Senator Schumer. He has nearly two decades of experience with elections at both the State and Federal level and he'll bring important expertise to the Commission.

He also has strong relationships with election officials across the country that will truly be an asset, if he's confirmed, because of his direct work with this committee.

Ben has spent his career making it easier for people to vote. Prior to his work on the committee, he served as Senior Counsel at the Fair Elections Legal Network, which worked with election officials in Colorado, Michigan, Nevada, and New Mexico to improve access to the polls and to make registering to vote easier.

From 2008 to 2011, Ben served as Deputy General Counsel in the Missouri Secretary of State's Office. In this role, he focused on legal issues related to the administration of State and Federal elections, including ballot initiatives, poll worker training, voter education, and voter registration.

At a time when we're facing unprecedented attacks on our election infrastructure from other countries, it is vital that we have a fully functioning EAC led by commissioners who understand the nature of the threats against our democracy.

I would also add that Ben is a proud husband and a dad and one of the reasons we know he's qualified for this position is that through two opening statements and through Mr. Palmer's opening statements, these children have been really quiet and it's very, very impressive.

We see right there Henry, who has some kind of item in his hands. Henry, age one, and Harper, age three and a half. His wife, Ben's wife Kelly, want to raise your hand there, Kelly, coaches women's golf at the U.S. Naval Academy and is the proud mom of Harper and Henry, and we're glad that Kelly's family, her mom Janet, there she is, and sisters Abby and Katie, thank you, you're all in this, very good, could travel from Illinois and Louisiana to be here today.

Finally, Ben joined the committee when Senator Schumer was Ranking Member and Senator Schumer has provided a statement for the record in support of Ben's nomination.

I ask that that be included, Mr. Chairman.

[The prepared statement of Senator Schumer was submitted for the record.]

Senator KLOBUCHAR. I'd like to point out that in Senator Schumer's statement, he notes Ben's dedication to making voting easier and more secure but also makes mention of Ben's commitment to barbecue. In fact, he is an internationally licensed judge of barbecue with the Kansas City Barbecue Society. Now if that's not a plea for your vote, Senator Blunt, I really I don't know what it is.

Chairman BLUNT. It just gets better and better.

Senator KLOBUCHAR. I just can't come up with anything else. That's it.

But I was so proud to keep Ben on with the Rules Committee when I took over from Senator Schumer here. He's done a great job with us and the whole staff. I speak for them, as well. We're so pleased about your nomination.

Thank you.

You want to go ahead? Okay.

OPENING STATEMENT OF BENJAMIN W. HOVLAND, TO BE COMMISSIONER OF THE ELECTION ASSISTANCE COMMISSION

Mr. HOVLAND. Good afternoon, Chairman Blunt, Ranking Member Klobuchar, and Members of the committee.

Thank you for holding this hearing on my nomination to serve on the United States Election Assistance Commission or EAC.

I also want to thank Senator Schumer for submitting my name to the President for consideration and to thank the President for nominating me.

I'd also like to thank Senator Klobuchar for that great introduction and introducing my family. Also somewhat appropriately, Kelly and I met at the Secretary of State's Office, so I owe way more to election administration than most people.

[Laughter.]

Mr. HOVLAND. I'd also like to thank my mother Barbara. Her health didn't allow her to be here today, unfortunately, but I know she's proud to be watching the webcast, and I would like to thank my mother-in-law Janet and my sisters-in-law Katie and Abby who did travel a long way to be here, and I'd also like to thank a number of my friends who are able to join us here today.

It's an honor to be considered for this position and to testify regarding my qualifications and interest in serving as an EAC commissioner.

As you know, the EAC's mission is to help election officials improve the administration of elections and to help Americans exercise their right to vote. I've dedicated my career to these same goals.

Following law school, I worked at the Missouri Secretary of State's Office. While there, I was involved in the Secretary's efforts to increase access to the polls and improve the voting experience for Missourians.

During that time, I was fortunate to learn a great deal about election administration from my coworkers and election officials both in Missouri and from around the country.

My time at the Missouri Secretary of State's Office also inspired me to start volunteering as a poll worker, a service I enjoy and have continued to do whenever possible. In addition to greeting and assisting my neighbors as they exercise their right to vote, the experience of serving as a poll worker has provided helpful perspective on the amazing work that goes into administering our elections and the difficulties some eligible Americans face while trying to vote.

Following my time at the Missouri Secretary of State's Office, I moved to Washington, DC, and began working with the non par-

tisan advocacy group to improve election administration and voter access around the country. This experience helped me to understand the many benefits and challenges of each of the 50 states administering elections in a unique way.

Then for the last 5 years, I've had the privilege to work at the United States Senate for this committee. Working for the Rules Committee has provided an incredible opportunity to learn more about this great institution and the importance of looking for bipartisan solutions.

Additionally, like many others who work in the election field, I've learned far more about election cyber security in the past 2 years than I ever anticipated.

While the need to improve election cyber security continues, the 2018 election reminded us of the more traditional challenges of election administration, such as long lines, voting machine breakdowns, poll worker issues, ballot design, and the need for contingency plans.

The combined result is that being an election official is a difficult, often thankless job that does not end on election day. I believe we can and should do more to assist the officials that run our elections.

The Election Assistance Commission was created to help election officials across the country with the challenges they face.

If confirmed, I am committed to working on common sense good government solutions that fulfill the Commission's mission to assist election officials and help Americans vote.

Members of the committee, I thank you for your consideration of my nomination and I'll be happy to answer any questions that you may have.

Thank you.

[The prepared statement of Mr. Hovland was submitted for the record.]

Chairman BLUNT. Thank you, Ben and Donald.

I'm glad you're both here. As I said, I think the Commission is going to in some way redefine itself because of the renewed focus on how important it is that people have confidence in this process and in the way we pursue the process.

I want to thank Senator King for coming first and waiting the longest.

Do you want to start with some questions, Angus?

Senator KING. I'd like to, if you wouldn't mind, Mr. Chairman. Thank you.

Gentlemen, thank you both for being here and for sharing your wisdom and experience, which I'm sure you will, on the Commission.

Mr. Palmer, you used the term "sacred duty." That's what our elections are. They're really at the heart of the system and I often think the Judicial Code of Ethics talks about how a judge should avoid not only impropriety but the appearance of impropriety, and I think that's so important in terms of elections.

People have to have confidence and they have to be sure that the system is working and respecting their votes.

It's also a difficult process because it's a big complicated undertaking. I liken it to a small business that does all their sales on

one day. You work for months and months and except for the absentees, it's all in that crunch at the junior high school at 8 o'clock on a Tuesday morning in November. So it's a complex process.

Just a couple of questions. It seems to me, and both of you can respond to this, that one of the most important responsibilities you have in this job is gaining and holding the confidence and trust of the election officials because our elections are essentially run by the states and localities.

I notice I've never seen the word "voluntary" used so often as it is in this context. It's a reassurance of the states, but speak to me about how we can effectively help them provide guidance and resources and at the same time alleviate any fears of a Federal takeover of elections.

Mr. Palmer, you want to take a crack at that?

Mr. PALMER. Sure. Thank you, Senator King.

I will approach the job as a commissioner very similar to the way I approached as a state election official because in the end, elections are run at the local level.

Senator KING. Right.

Mr. PALMER. So sitting as a chief election official or a director, you have some authority under law but generally you are working as a leader and as a teammate of the local election officials, so you are training, you are providing guidance, and you're doing that as a team.

Similarly, at the EAC, our job is to assist and to assist local election officials with best practices, sort of highlighting things that have worked in other states, data that can be provided to local election officials.

In the end, the EAC over the years has gained that trust with state and local election officials.

Senator KING. Is that the case?

Mr. PALMER. I believe it is. I believe it is. They gained my trust and I think they gained the trust of many state and local election officials and it takes years to do that. It takes building—I mean, it's about relationships and about the fact that we know we're in this together and that we understand that elections are run at the local level and that we're here to assist, not to mandate how they're supposed to do things, because there's so many different ways of voting and registration and just methods of how we do things across the country.

Senator KING. Mr. Hovland, your thoughts on how do you help without raising the hackles of the Secretary of State of Maine?

Mr. HOVLAND. Thank you, Senator.

Senator KING. If you have that problem, let me know. I can deal with him.

Mr. HOVLAND. I will definitely do that.

You know, again, I think that so much of this depends on just having a dialog and being able to have a conversation.

As Mr. Palmer pointed out, you know, the Election Assistance Commission is there to help and with the nature of how our elections are run, as I mentioned earlier, 50 different ways or probably more than that but each state running its own elections in its own way, what we can really do is have a dialog where we find out what it is that election officials need assistance with and then we

can use the Federal resources that have been given to the Commission to try to identify those and find solutions that are helpful and whether that's from experts or from their colleagues, you know, best practices are only good if people implement them, and so again I think a big part of it is just having those conversations.

Senator KING. Well, I think that maintaining that level of confidence is so important because the whole enterprise won't succeed unless the recipients of the assistance are willing to accept it.

Mr. Palmer, this isn't strictly related to your position, but I think you have so much experience in this area. I notice you testified to the Advisory Commission on Election Integrity.

Is voter fraud a significant problem in this country?

Mr. PALMER. Senator, from a micro level, fraud does exist. The debate over whether or not it's widespread or it happens in certain situations is really a false debate, in my opinion.

As election administrators, we're concerned—when there's a close race or when candidates come to us, they don't ask us was it a little bit of fraud or a lot of fraud. They want to have clean and pure elections.

Under the Constitution of Virginia, for example, that's my oath. Our goal's always to try to minimize the amount of voter fraud or irregularities or mistakes that can occur and leave the law enforcement to the Attorney General or the local law enforcement agencies to prosecute voter fraud.

Senator KING. Mr. Hovland, do you have any views on that question?

Mr. HOVLAND. You know, I think, like Don said, there are rare instances, I think, where I focused more of my career is on trying to identify why more people aren't voting or what barriers there are that are keeping people from participating, and I certainly think that there are a number of those and we can do a much better job of helping people participate.

Senator KING. I think that's an issue we need to pursue.

Madam Ranking Member, I think Maine is second to Minnesota in voting percentage and I think it has to do with states with large numbers of lakes, maybe.

Senator KLOBUCHAR. Or maybe when it gets so cold, they have nothing else to do but to vote.

Senator KING. Mr. Chairman, thank you very much. I apologize. I have to go to another commission meeting now, but I appreciate your indulgence.

Chairman BLUNT. Well, thank you. Thank you for putting in your time and getting here on time and having the patience to wait for us, and this is an important hearing.

As I said, I think twice now, it's going to be a more important Commission than I think it has been in the past. I think the new focus on how we vote and who gets to vote and when they get to vote and, frankly, I'd like to see a new focus on when the votes are counted.

Again, you're advisory on these issues, as well, but in these states where you have 40 percent of the votes cast before election day and you decide that you're not going to count those before election day and you're going to—it's just amazing to me as someone

who always thought that having the result but also having the result in the most timely way was an important part of what we do.

But you're going to provide a quorum. I'm committed to do everything I can to see that you're both confirmed and you're going to provide a quorum. There have been voluntary standards out there since 2015 but they haven't been approved because there was no quorum on the Election Assistance Commission.

First of all, you may want to very well look at the voluntary standards. The new half of the Commission coming in look at the voluntary standards with the two people currently there and say, okay, what have we learned since 2015 before we put these out.

But I think following up on a point that Mr. Palmer made, you know, they are voluntary standards. The job of the Election Assistance Commission is to give assistance, not to take over the running of the elections but voluntary standards, model systems, all of those things I think are more and more important.

On those voluntary standards, I think in this committee and Senator Klobuchar and I are both in agreement that some kind of paper trail where the voter has a chance to see how they voted and that vote is able to be looked at at a later date seems to me to be the ultimate safeguard when people question what happened on election day.

I think we have a handful of states now that don't require a paper trail, but I'd like for both of you to talk about that particular topic.

Let's start with you, Mr. Palmer.

Mr. PALMER. Thank you, Senator.

While the debate over paper is important, the EAC, I believe, certifies only equipment with a paper trail or a paper ballot and like you said——

Chairman BLUNT. But you can have equipment that is certified by the EAC, right?

Mr. PALMER. Exactly. Yes, sir.

Chairman BLUNT. Okay.

Mr. PALMER. In my experience in both Florida and Virginia, particularly in Florida, we transitioned away from DREs to a paper optical scan in 2008 in a Presidential year.

In Virginia, our legislature had banned DREs but had not provided funding——

Chairman BLUNT. The DRE is what?

Mr. PALMER. Direct Recorded Electronic Machine. It's an electronic voting machine.

Chairman BLUNT. Where you see what you've done as a voter but there's no——

Mr. PALMER. It's not necessarily a paper trail but sometimes there is.

The General Assembly banned DREs, future purchase of, but did not provide funding to the localities to transition to paper and so this has been an ongoing issue in the election community for over a decade as the community slowly transitions to paper digital scan. A lot of it is a resource issue, Senator.

Many localities simply did not have the resources to transition to the new digital scan equipment. They waited and they've continued to wait until those machines either did not work and that's

why many of us have been sort of discussing and trying to convince localities and local election officials to make that transition before their equipment just simply died or was totally vulnerable to outside penetration.

That's a struggle that the states and localities have been battling with over the last, you know, decade.

Chairman BLUNT. The importance of some kind of ballot trail in your view?

Mr. HOVLAND. I would echo a lot of what Mr. Palmer said and, you know, agree that certainly I believe that paper is the best practice. I think that's fairly well established with the Commission's work, but as he highlighted, there are a number of states that have made the decision not to go that route, again largely for resource purposes, and so that seems to be more of a legislative fix than one at the Commission, but I wouldn't anticipate any changes in attitude toward paper or certainly not against paper.

Chairman BLUNT. I think there will be time for a second round here. Let's go ahead and go to Senator Klobuchar and then Senator Cortez Masto.

Senator KLOBUCHAR. Thank you very much.

Just following up on Senator Blunt's questions and I appreciated the help that he gave us to try to move the Secure Elections Act that Senator Lankford and I were leading and unfortunately we weren't able to get it done this time but hopefully we can do it next year.

We did get 380 million out, as you're well aware, has helped with that, Mr. Hovland, and do you think, as we look at the paper ballot issue that Senator Blunt raised, do you think that we should look at additional allocations in the future as we head into the 2020 elections and the idea of tying this to if states are going to take additional Federal election money that they also do something about the paper ballots and auditing?

Mr. HOVLAND. Thank you, Senator.

From the conversations I've had with election officials and my experience in this space, I've found that resources are always welcome.

I mentioned earlier that best practices are only as good if people will implement them. Well, one of the reasons that people often don't implement best practices is the lack of resources and so I think if Congress was inclined to provide additional funding, I'm fairly confident that that would be welcome and I'm certain that it would be put to good use.

Senator KLOBUCHAR. All right. For both of you, I'll start with you, Mr. Palmer, what's your top priorities when you get on to the Commission, if you get confirmed?

Mr. PALMER. Thank you, Senator.

The top priority, I believe, is we do have voluntary voting system guidelines that need to be reviewed by us, if we were confirmed, and we need to be able to identify what those accessibility features are, security features, and allow the other commissioners, as well, to have input into those standards. That would probably be the initial big ticket item that we will face.

I have other—

Senator KLOBUCHAR. Would you look at standards for voting equipment and things in there?

Mr. PALMER. Yes, the voting system, those are for voting equipment.

Senator KLOBUCHAR. Very good. Thank you. Mr. Hovland.

Mr. HOVLAND. I would agree that the Voluntary Voting System Guidelines 2.0 need to be finalized. Certainly that has been something that has been waiting for and as I've talked to election officials around the country and advocates, they have expressed that that is certainly what they hope our top priority will be.

Additionally, while I mentioned in my testimony that many of the incidents that we saw in the 2018 election were more traditional in nature, I don't think that we can forget about the cyber security issue. I think the Commission did a fantastic job following in 2017 helping—after the critical infrastructure designation, the EAC really stepped up and helped to stand up that subsector and I think continuing to work there, recognizing DHS's or Homeland Security's expertise around cyber security but also recognizing that they have a lot of other jobs to do.

The Election Assistance Commission has one job. It works on elections and so I certainly hope to work with them and work with the Government and I believe former Commission Masterson testified here about the whole of government approach and I completely agree with that and hope to work on that at the Commission.

Senator KLOBUCHAR. Okay. One of the things that when Senator Lankford and I were working on that bill, we did a lot of work coordinating with the Secretary of States, some liked us, some didn't, but we worked really hard to meet their concerns on that bill and I think we're close to getting something that was passable.

How about that? How do you think we could do a better job in the Federal Government to work with local election officials, either of you with your experience?

Mr. HOVLAND. I'll start. You know, again, I think that a large part of it is what I mentioned earlier to Senator King. I think it's having a dialog. I noticed that we have representatives from NAST here today and through the process of working on that legislation, I know there were a number of conversations about priorities and again I think, Senator Klobuchar, you were able to get a number of bipartisan cosponsors and in my 5 years with the committee, there has not been any legislation that had that many.

I think it's the right direction. I think—

Senator KLOBUCHAR. Should I let Senator Schumer know that? I'm kidding.

Mr. HOVLAND. But I think continuing to have those conversations and iron out some of the small details.

Senator KLOBUCHAR. Okay. Very good. Anything you want to add? I know this was similar to what Senator King asked.

Mr. PALMER. Yes, Senator. The best approach is obviously just the conversation, discussing, and trying to solicit what would be the financial impact, what are the burden on their local election officials.

Senator KLOBUCHAR. I guess one other thing. I agree with all that. One of the things we've found is like most of them were okay and then a few disagree and we're going to have to get to some

point. What I'm worried is we won't, especially with the House now next year.

There's not going to be any more money here unless we get some agreement, that's just my guess, coming out of the House on paper ballots and a few things, and we don't have to say exactly what that bill will be, but I think a lot of our members now feel that way.

Senator Lankford and I feel that way very strongly. I was hoping that the EAC will be a bridge to that, will explain this to them because a lot of them would agree and then a few of them don't and they've got to understand we're serious about it, I think, so just want to add that.

Mr. PALMER. Senator, I would just add that from a financial perspective, again because elections are at the local level, most of the expenditures are actually at the local level.

Senator KLOBUCHAR. Oh, I know.

Mr. PALMER. When we have the same discussion, how much is the state legislature going to fund localities, and believe me, it's the same discussion at the local level that we have at the Federal level and so usually a partnership of funding usually is the best approach. There's a match of some sort.

Senator KLOBUCHAR. Right. I guess we could have it. I mean, what we're doing is we're not putting a mandatory requirement. We're just saying if you want to get the Federal money, then you're going to have to, you know, have backup papers and most of the states do. It's 14 that don't.

Mr. PALMER. Well, for example, I believe the State of Colorado received a HAVA grant from the Election Assistance Commission to sort of explore post-election audits and they used some of that funding for the preparation of that audit.

Senator KLOBUCHAR. Right.

Mr. PALMER. That's an example of different ways to.

Senator KLOBUCHAR. Exactly. All right. Thank you.

Chairman BLUNT. Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you.

Gentlemen, welcome, congratulations on your nominations. Congratulations to your families.

I want to stay on the topic of election security and particularly in Nevada, I know many of our communities and our counties are rural and there are many challenges in our rural communities, one of them being a lack of resources, particularly when it comes to the need for dedicated IT support staff, as well.

I guess my question to you is, how should the EAC address the unique challenges of election security faced by our rural communities? What should we be thinking about? What should we be focused on to help those rural communities when it comes to election security, as well? I'll open it to both of you.

Mr. PALMER. Well, Senator, I think you nailed it on the concern over rural—on to resource offices in really any state.

The cyber security protections at the state level are fairly significant with the executive branch and Government as a whole being, you know, they're focused on these issues, but the big question is how do you support localities?

This is where the EAC could play, I think, a more significant role in support of that in conjunction, working in cooperation with DHS. The key is to help those localities have enough IT support that they can be in a uniform place where the state is comfortable that these IT offices are secure.

Senator CORTEZ MASTO. Okay.

Mr. HOVLAND. I'd add that I think one of the great things that the Commission can do is help to relay some of the best practices that other states and localities are taking on.

Earlier this year, at a hearing at this committee, I know Noah Prates from Cook County, Illinois, spoke very eloquently about cyber navigators and there's been a lot of discussion about individuals who maybe work for the state but are able to assist a number of counties and we've seen that in other jurisdictions and I would just highlight that as an example of recognizing that there are a number of jurisdictions that don't have the resources and likely don't have the population to demand their own election IT expert but if they were pooled together, they may be able to accomplish that.

Senator CORTEZ MASTO. I appreciate that because I know just as the Attorney General of Nevada, we represented the Secretary of State's Office, but there was an election integrity task force and so similarly there are best practices where you can pool the resources of a state to help with our local communities and I would assume that's something the EAC then can adopt or at least highlight those models for other states to look at, as well. Is that what you're saying?

Mr. HOVLAND. Yes. I think that's one of the great things that the Commission can do with its clearinghouse function is really highlight the excellent work that election officials are doing around the country.

When we were talking about the \$380 million earlier this year or earlier in the conversation that was given out, I think that one of the things the Commission is responsible for auditing that but I also think it's important for the Commission to highlight the great work that that's done because taxpayers end up getting the most out of their dollars if other jurisdictions see what their colleagues have done and adopt similar practices.

Senator CORTEZ MASTO. Yes. No, that makes sense to me.

The committee's been also discussing audits and I know, Mr. Palmer, we had a conversation. Thank you for meeting with me in my office. But we've also talked about, as those audits, the risk-limiting audits and whether or not they should be used more broadly across the country.

I'm curious for both of you. Can you describe your views on the types of audits that are most effective and the process of putting these audits in place and how we can work with our localities, whether rural, urban, to ensure that we're implementing the best practices when it comes to audits?

I'm curious to hear your thoughts on that. Maybe we start with Mr. Palmer.

Mr. PALMER. Sure. Thank you, Senator.

Audits obviously is a best practice and from my experience in Florida particularly, audits have been used to make sure the equip-

ment is working as designed and tabulating correctly and so there have been sort of an evolution on how audits have been done in Florida and other states have different types of audits that may look at certain precincts.

The risk-limiting audit in the State of Colorado, it took a number of years to get Colorado to the point where they could do that risk-limiting audit.

Senator CORTEZ MASTO. Is that the best practice, though? A risk-limiting audit of all the audits, is that the best practice for identifying?

Mr. PALMER. I'm not sure I would characterize it. It's definitely the most sophisticated. It's the most sophisticated. I'm sure there's an underlying rationale that I'll learn very quickly as to why many believe that is the most sophisticated way of doing it, but audits have been in place for a long time and so as we determine what is the best practice, the EAC, for example, has done a paper on this.

You know, many counties or states, they may have their own indication of what they would like to implement as the result of an audit.

Senator CORTEZ MASTO. Okay.

Mr. HOVLAND. Thank you, Senator, for the question.

I think that when we think about audits and best practices, I think the end goal is to be confident in the result and so I would say the best practice for audits is what allows you to get to that.

The Colorado model is obviously a great one, but their risk-limiting audit, my understanding is it's a ballot comparison audit and requires a certain system that allows you to keep track of the order of the ballots.

You can also do a different type of risk-limiting audit, a poll audit, and that is also successful, but I think at the end of the day, because we have all of the states running their elections in different ways with different equipment, the end goal should be having that confidence in the outcome of the election and doing the audit that you can do with the system you have.

If your system doesn't have the capacity to audit, that is, I would say, a larger problem.

Senator CORTEZ MASTO. Okay. Thank you. I notice my time is up.

Thank you very much.

Chairman BLUNT. Thank both of you for being here.

Do either of you have anything you want to add that you'd like to go on the record here?

[No response.]

Chairman BLUNT. You know, I did see a lot of discussion about whether or not elected officials should be the manager of elections that they're involved in, which is, by the way, almost always the case. If you're going to be the election official for a county or the election official for a state, at some point if you're elected, you're going to be involved in one of those elections.

I understand some of the concern about that, but I've also done both of those jobs and dealt with people over the years that have done both of those jobs, and I think they take it particularly seriously. It is their job. They're elected to do it.

As Senator King said, it's like all of your efforts are to make a product available and it's only available for 1 day and you really want people to believe that you did the good job you're going to do. I just would think we ought to be careful about that discussion.

It's unlikely in your working careers on the Commission States are going to rapidly change to some other structure that they don't have and so you're going to be dealing with elected officials. You're going to be dealing, as both of you have pointed out, with states and localities that have their own election laws and their own election systems. Usually even within states, there are numerous election systems.

I think you're actually both very well prepared for that and I think we're done with the hearing today.

Senator Klobuchar and I have talked about this. We've agreed that the committee will meet on December 4th to consider your nominations and hopefully report them out and on that same meeting, we're going to mark up Senate Bill 1010, which is the Register of Copyright Selection and Accountability Act, and the record on this hearing will remain open until Monday, December 3rd, and again we'll meet on the next day to act on these nominations.

[The information referred to was submitted for the record.]

The committee is adjourned and look forward to moving forward with this.

[Whereupon, at 3:39 p.m., the hearing was adjourned.]

APPENDIX MATERIAL SUBMITTED

CHARLES E. SCHUMER
NEW YORK

Democratic Leader

United States Senate
WASHINGTON, DC 20510-3203

November 28, 2018

Chairman Blunt, Ranking Member Klobuchar, members of the committee, it is my distinct pleasure to support Ben Hovland's nomination to be a Commissioner on the Election Assistance Commission.

In 2013, I hired Ben to be my elections counsel here at the Senate Rules Committee, and ever since I have been deeply impressed by his passion for fair elections and his dedication to not only protecting the right to vote but also making it easier for Americans to vote. It's no passing interest for Ben. He's spent most of his professional life working on election administration and voter access, from his time working for the Missouri Secretary of State's office through today.

Ben's zeal for democratic principles runs through the course of his career. While at the Missouri Secretary of State's office, he drafted language for countless ballot initiatives and oversaw a successful voter registration initiative aimed at Missourians who had recently moved. Ben was part of a group of national leaders who worked with Pew Charitable Trusts on what would become ERIC - the Electronic Registration Information Center - which is now used by over twenty states across the nation.

A native of Arkansas and a graduate of the University of Oregon Law School, Ben's commitment to proper procedure extends far beyond the four walls of the ballot box. It wasn't enough for Ben to be an avid consumer of barbeque; he was driven to register with the Kansas City Barbeque Society to become an internationally licensed judge of barbeque.

Ben's work ethic, the quality of his tenure at the Rules Committee under my direction, and his practical experience with our election systems give me every confidence that he will work tirelessly to make elections in the United States more secure and fair. I urge swift confirmation of his nomination to the Election Assistance Commission.

Sincerely,



Charles E. Schumer
United States Senate Democratic Leader

Written Statement of Donald Palmer
United States Senate Committee on Rules and Administration
November 28, 2018

Thank you Mr. Chairman, Senator Blunt and Ranking Member, Senator Klobuchar for scheduling this hearing.

I would like to thank the Speaker of the House of Representatives Paul Ryan for placing my name forward as his choice for the Election Assistance Commission (EAC). I would also like to thank the President of the United States for my nomination as a Commissioner to the Election Assistance Commission. I am honored to be considered for this position and to again serve the nation's voters.

Since my entry into training for Naval Reserve Officer Commissioning and my undergraduate studies, I've taken oaths sworn to support and defend the Constitution of the United States against all enemies, foreign and domestic and to bear true faith and allegiance to the same.

In my career of public service with the Navy, Department of Justice, the Commonwealth of Virginia, and the State of Florida, I have been guided not just by that oath to defend the Constitution but in the area of voting, the administration or oversight of an election is a sacred duty greater than oneself.

The exercise of democracy is temporarily entrusted in your hands for the length of time you are responsible for it, and the principles of democracy and justice are greater than the singular success of any political party or candidate who may win or lose an individual race.

As Ronald Reagan stated, "Freedom is never more than one generation away from extinction. We didn't pass it to our children in the bloodstream. It must be fought for, protected, and handed on for them to do the same."

For our republic to work, our citizens must believe that the will of the people will be exercised with elections, that government derives its just powers from the consent of the governed, that the vote was free and fair, and that both the

winner and loser of an election can objectively say who is the actual winner of the election.

As an U.S. Navy Intelligence Officer and Judge Advocate General (JAG), my commitment has been to service of my country, to defeat or deter our enemies, to seek truth and justice in the military courtroom and military court of appeals, and to defend our way of life, including the ability for Americans to exercise their right to vote.

Having served onboard numerous ships and installations in the Mediterranean Sea, Arabian Gulf, and Southwest Asia region, I can personally attest to the difficulty of registering to vote and voting in a timely manner from remote areas and where the military postal service is often delayed.

While serving overseas, I served as a Voting Assistance Officer for my unit of naval officers, and still think fondly of that additional duty, not anticipating at the time that one day I might be engaged in improving the voting process for all Americans.

At the Department of Justice Voting Section, I took a similar oath to defend the voting rights of all Americans, regardless of their color, ethnicity, and economic status and to ensure all Americans were able to vote.

John F. Kennedy eloquently stated "that every American should be able to enjoy the privileges of being American without regard to his race or his color. In short, every American ought to have the right to be treated as he would wish to be treated, as one would wish his children to be treated." One of the privileges we have as Americans is to exercise our free speech and right to vote.

As a trial attorney at the Justice Department, I defended the rights of all Americans to vote under Section 2 and Sections 203 and 208 of the Voting Rights Act and worked to protect the rights of military and overseas voters under the Uniform and Overseas Citizens Absentee Voting Act (UOCAVA). In my enforcement of the Voting Rights Act (and other federal voting laws), I interviewed witnesses, investigated election practices, monitored polling places, developed cases, and represented the United States in federal court to ensure the voting rules established by this Congress were followed.

I also worked with states to assist election officials in fully complying with the requirements of the National Voting Registration Act (NVRA) and the Help America Vote Act (HAVA), to improve the accuracy and integrity of our electoral system with real time statewide databases, intrastate data-sharing between state government agencies, provisional ballots, and facilitating private and independent voting by voters with disabilities.

I took similar oaths of office when I was appointed Secretary of the State Board of Elections, the chief election officer of the Commonwealth of Virginia, and prior to that as the Director of Elections for the State of Florida. My charge in Virginia was to ensure uniformity, fairness, accuracy and purity in all elections in the Commonwealth of Virginia.

As a state election administrator, I managed two presidential elections in battleground states, including presidential primaries, mid-term elections, gubernatorial races, and, a statewide recount for Attorney General in Virginia.

During my terms of office in Virginia and Florida, over 20 million voters successfully cast ballots by mail or absentee, early voting or in-person absentee voting, or on Election Day, where state and local election officials overcame hurricanes, flooding, snowstorms, and earthquakes to successfully administer the vote and do our part to maintain the greatest Democracy in the World.

During my tenure in Virginia, I saw technology as a way to improve the voting experience for voters. For example, I worked closely with the General Assembly to propose and implement online voter registration and provide registration and update access to voters 24/7 days a week and to modernize registration data-sharing across state lines – both initiatives became future recommendations of the Presidential Commission on Election Administration (PCEA) created by President Obama.

In Virginia, we also worked to register young soldiers and sailors to register to vote before deployment to Iraq and Afghanistan, and in cooperation through a grant with the Department of Defense, we provided new tools and ways for our military and overseas voters to access ballots and save time in the transit of ballots through the mail.

Early in my term in Florida, we transitioned the entire state from Direct Record Electronic (DRE) electronic voting machines to new digital optical scan equipment, each of which was reviewed, modified, and tested by a division and laboratory under the Division of Elections. Likewise, in Virginia, we moved toward a voting system upgrade of an aging DRE-based system of voting to a paper-based digital scan system of voting equipment, and updated electronic poll books to more efficiently process voters casting ballots and reduce lines of voters.

More recently, I have worked with the Bipartisan Policy Center (BPC) and the former Commissioners of the Presidential Commission on Election Administration (PCEA) to advance the consensus recommendations of the Commission, and to work closely with counties across the country on collecting voter line data down at the precinct level and find innovative ways to reduce long lines of voters. We also highlighted the current voting technology crisis in jurisdictions across this country and encouraged states and localities to provide additional resources to upgrade our electoral infrastructure.

To continue the pace with the expectations of voters and lawmakers, states and counties across the country will need to continue the process of upgrading voting equipment and poll books, improve our procedures and to modernize aging statewide voter registration systems.

Technology enhancements provide us the opportunity to increase voters' accessibility and usability with voting equipment, voter registration system security, and overall election integrity. Technology has the ability to overcome potential differences on policy issues and continue to increase the accuracy of registration, list maintenance, and voting.

As a former Intelligence Officer at the end of the Cold War, I remain vigilant to the threats this nation faces from our foes, particularly the Russians, and am dedicated to working closely with our federal partners, including the FBI, DHS, and DNI. The efficient and timely briefing of potential threats to state and local election systems is as important as providing actionable intelligence to pilots preparing to go on missions. I spent much of my military career trying to ensure that pilots and operators had the most accurate intelligence and situational awareness of threats before entering potential dangerous airspace. As the states and localities have the responsibility to administer elections, we

need to do a better job of synchronize raw intelligence in a usable format for state and local election officials.

If granted the opportunity to serve on the EAC, I would continue to coordinate and communicate with local and state election officials in the development and dissemination of best practices in elections to all members of the greater election community, and build consensus on ways to improve the electoral process. The EAC is in a great position as a trusted member of the election community to disseminate best security practices and provide training materials to willing partners at the local level.

The EAC needs to improve the lines of communication with federal partners to provide the best assistance and information possible to state and local election officials in a timely manner – for example, the security of voter registration or in assisting military and overseas voters.

The EAC will have an opportunity to continue the process of developing new voluntary voting system standards with state and local election officials, NIST, and other stakeholders who are involved in the advisory board standards process. Together, we can provide increased security, usability, and accessibility to American voters for future elections.

Even more importantly, the EAC will need to find better ways to communicate with the American people on the state of the electoral process in this county. While the EAC does not have as large a voice with the media as other agencies - in order to set the record straight, we need to educate voters to better distinguish facts from myths, and improve overall public confidence on the security, fairness, and integrity of our electoral process.

I would like to thank the local election officials and staff in both Virginia and Florida for their dedication and commitment to administering elections, and all the efforts you have made to ensure elections are free and fair. It has made my second career as fulfilling as my first. I would also like to thank my wife and my children for making my life equally as fulfilling and for showing patience with me as I follow my dreams.

Thank you for the opportunity to testify today.

Don Palmer

Statement of Benjamin W. Hovland
Nominee, Election Assistance Commission
United States Senate Committee on Rules and Administration
November 28, 2018

Good afternoon Chairman Blunt, Ranking Member Klobuchar, and members of the committee. Thank you for holding this hearing on my nomination to serve on the United States Election Assistance Commission (EAC). I also want to thank Senator Schumer for submitting my name to the President for consideration, and to thank the President for nominating me.

Before I begin, I would like to introduce my wife, Kelly, and our children, Harper and Henry. I am so pleased and proud to have them with me here today. Additionally, as Kelly and I met working at the Missouri Secretary of State's office, I clearly owe more to election administration than most. I would also like to thank my mother, Barbara, whose health did not allow her to travel here today, but I know is proudly watching the webcast. Finally, I would like to thank my friends and family who were able to be here today, especially my mother-in-law, Janet, and my sisters-in-law, Abbey and Katie.

It is an honor to be considered for this position and to testify regarding my qualifications and interest in serving as an EAC Commissioner. As you know, the EAC's mission is to help election officials improve the administration of elections and to help Americans exercise their right to vote.

I have dedicated my career to these same goals. Following law school, I worked at the Missouri Secretary of State's office. While there, I was involved in the Secretary of State's efforts to increase access to the polls and improve the voting experience for Missourians. During that time, I was fortunate to learn a great deal about election administration from my co-workers and election officials, both in Missouri and around the country.

My time at the Missouri Secretary of State's office also inspired me to start volunteering as a poll worker, a service I enjoy and have continued to do whenever possible. In addition to greeting and assisting my neighbors as they exercise their right to vote, the experience of serving as a poll worker has provided helpful perspective on the amazing work that goes into administering our elections, and the difficulties some eligible Americans face while trying to vote.

Following my time at the Missouri Secretary of State's office, I moved to Washington, DC and began working with a non-partisan advocacy group to improve election administration and voter access around the country. This experience helped me to understand the many benefits and challenges of each of the 50 states administering elections in a unique way.

For the last five years, I have had the privilege to work at the United States Senate for this Committee. Working for the Rules Committee has provided an incredible opportunity to learn more about this great institution and the importance of looking for bipartisan solutions. Additionally, like many others who work in the election field, I have learned far more about election cybersecurity than I ever expected in the last two years.

While the need to improve election cybersecurity continues, the 2018 election reminded us of the more traditional challenges of election administration: long lines, voting machine breakdowns, poll worker issues, ballot design, and the need for contingency plans. The combined result is that being an election official is a difficult, often thankless job that does not end on Election Day. I believe we can and should do more to assist the officials that run our elections.

The Election Assistance Commission was created to help election officials across the country with the challenges they face. If confirmed, I am committed to working on commonsense, good government solutions that fulfill the Commission's mission to assist election officials and help Americans vote.

Members of the committee, I thank you for your consideration of my nomination, and will be happy to answer any questions that you may have.

Senate Committee on Rules and Administration

Election Assistance Nomination Hearing

November 28, 2018

Questions for the record

Mr. Donald PalmerSenator Klobuchar**Voter Registration**

- 1) A recent study from researchers at Harvard, Stanford, and the University of Pennsylvania found that the Crosscheck system would kick far more eligible voters off of voter registration lists than it would prevent instances of double voting. The Crosscheck system was used in Virginia during your time as an election official.
- Please discuss why you implemented the Crosscheck system despite concerns that it would result of the improper removal of voters from registration lists.

When I assumed the duties of Secretary, there was a statutory requirement to share registration data across state lines. In 2007, there was legislation sponsored by Virginia House of Delegates member Bob Brink (D - Arlington) that had passed the General Assembly unanimously and included a provision authorizing SBE to share data with other state voting officials for the purpose of list maintenance. Chapter 318 Acts of Assembly (2007). Additional legislation passed in 2011 and 2013 expanded SBE's mandate to share this registration data with other states and specifically to take steps to prevent the duplication of registrations in more than one state or jurisdiction. See Va. Code §§ 24.2-404(A)(10) and 24.2-404.4.

These laws were primarily a result of the recommendations of the Federal Commission on Election Reform "Carter-Baker Commission" that highlighted the inaccuracy and duplication of the voting rolls across the country and encouraged states to share registration data for the purpose of list maintenance and updating voter registrations.

Initially, IVRC or "Crosscheck" was the only data-sharing organization that provided potential matches of registration across state lines. Crosscheck has been around since 2005, and is a bipartisan effort initiated by a number of Secretaries of State, including then-Kansas Secretary of State Ron Thornburg (R) and then Missouri Secretary of State Robin Carnahan (D). In each election during the following decade, the number of states participating in the program increased.

By 2013, a total of 22 states participated in the program sharing over 84 million voter registration records. In recent years, over 30 states participated in the program and the program, while not perfect, was a recommendation of the Presidential Commission on Election Administration (PCEA) to improve the accuracy of the voter rolls.

Crosscheck has been criticized for its lack of security and accuracy. While I agree that there are technologies and security precautions that would improve Crosscheck, the program has been

useful as a list maintenance tool and Virginia never used the raw data, instead using it as a starting point for future investigation. While helpful to identify potential voters who had moved and registered in another state, the data provided by Crosscheck was not considered a final product by any election official and only considered by election officials as the start of the investigation of potential duplicate or inaccurate registrations.

For example, before information was ever sent to local election officials, Virginia Department of Elections staff worked on verifying data and eventually worked the larger list of over 308,000 potential matches down to approximately 57,000 Virginia registered voters registered in other states. As one of the few states that authorizes the use of full social security number in registration, Virginia required a full 100% match of the social security number of the new registration with the out of state registration plus a confirmation of change of residence and registration by comparing the voter history in the new state of registration. Virginia further used National Change of Address (NCOA) notification by the voter to independently confirm the move of the voter.

The Department of Elections has limited authority to remove any voter from the registration rolls, and it provided this information to localities for further investigation by general registrars prior to any list maintenance. A federal district court reviewed the facts and held "that there was no evidence of any individual who has been deprived of their right to vote, and that those individuals who are registered in another state and have thus been correctly removed from the Virginia voter rolls have suffered no harm."

Due to these laws, Virginia also became a founding member of the Electronic Registration Information Center (ERIC) in 2011 to use DMV databases and voter registration lists to increase the accuracy and currency of the list maintenance process and reach out to unregistered voters statewide.

- How many instances of voter fraud were prosecuted as a result of the use of Crosscheck while you were an election official?

Virginia used the IVRC or Crosscheck program primarily to conduct list maintenance and not necessarily to investigate voter fraud. Any evidence of potential double voting was referred to the state police or the Virginia Attorney General for further investigation. In most cases, local election boards would refer cases to local Commonwealth Attorney offices. Over the course of my term, in my knowledge, there were approximately two dozen instances of potential double voting that were sent to the Virginia Attorney General's Office or State Police for future investigation.

Voter ID Laws

- 2) Many experts on election administration have expressed concern with voter ID laws, noting that they disproportionality and negatively affect people of color, those with disabilities, and

the elderly. When Virginia passed its voter ID law you were working as the Secretary of the Board of Elections. Many expressed concern about the impact that the law would have.

- Can you explain how you handled these concerns?

The State Board of Elections implemented a free voter ID system that allowed the production of free voter IDs in local election offices and a mobile system using laptops that would allow election officials to go to community gatherings and provide free voter ID's and provided registration services as needed. In our implementation, we would periodically brief and consult with different groups and stakeholders that may have opposed the laws, but wanted to make it work for voters. During the implemented, we requested their input on ways to improve and implement our statewide voter outreach and awareness program to ensure it was disseminated to different regions and demographic groups in the state. For example, we held meetings that included the ACLU, advocacy groups and disability groups to show the streamlined process that voters would go through to obtain free voter ID and how the process would work with the election community and voters.

As I recall, there were a number of adjustments made in the process to accommodate the concerns or recommendations of these stakeholders and to accommodate voters who may request a free ID near Election Day or in the provisional ballot period. The free voter ID program and the gradual transition of voter ID legislation over a number of elections were both recommendations of the Federal Commission on Election Reform, otherwise known as the Carter-Baker Commission that we incorporated into the implementation process.

Making Voting Easier

- 3) In your testimony before the Committee you noted that election officials have a sacred duty when it comes to administering elections and ensuring people are able to exercise their right to vote.
- If confirmed, what will you do as a commissioner to help make voting easier and to improve the voting experience?

There are a number of ways that our registration and voting process can be streamlined and generally made more efficient and accurate that will improve the voting experience for all voters. I will continue my work with the Bipartisan Policy Center to reduce the potential for lines of voters who have to wait, incorporate new technologies in our registration and voting systems, and highlight the voting technology crisis occurring across the country.

There are also a number of groups that have the most difficulty voting, including voters with disabilities and our military and overseas voters. The participation rate in these groups and rate of failure in being able to cast a ballot is simply unacceptable. In these cases, the voting system standards and accessibility features, and innovation are very important to generally improving elections. We must encourage the development of new processes and incorporate new technology to make the voting process for these voters as easy and straightforward as it is for all other Americans.

Senator Warner

- 1) States now have \$380 million in grants to strengthen election security and improve election infrastructure. However, it can be difficult to evaluate the marketing claims of cybersecurity companies and choose products and services that best meet the needs of individual states.

- If confirmed, what steps will you take to ensure that state election officials have the tools and training needed to evaluate cybersecurity products and service vendors?

Yes, I believe the EAC Clearinghouse should be expanded to provide states and localities the ability to review the use of cybersecurity products and vendors in other jurisdictions and use information and data from that use for future decisions in the states.

- Do you believe the EAC should provide a clearinghouse of information, with vetting of vendors?

This is a concept that I would support. If confirmed, I would consult with the Executive Director and other Commissioners to determine how we could provide this type of information about cybersecurity vendor services to all local and state election officials.

- Do you believe the EAC should either encourage or require states to spend Help America Vote Act (HAVA) money on specific cybersecurity improvements? If confirmed, will you recommend states to prioritize on specific improvements? If so, which aspect of election security/ infrastructure would you request to be prioritized?

While the use of certain types of appropriated dollars of HAVA money may statutorily be used for the general improvement of federal election administration, I would personally advise and publicly recommend election officials use the funds to increase the security and upgrade their state voter registration system and local voter registration systems or to upgrade their current voting systems to more modern and secure systems.

- 2) In 2013, Virginia joined the Interstate Voter Registration Crosscheck (IVRC). The State Board of Elections, which you led, determined that counties should review and cancel the records of approximately 57,000 registered voters on the basis that they were registered in another state. However, local officials discovered large error rates on the Crosscheck list, noting that eligible voters could have been disenfranchised. Approximately 40,000 voters were removed from voter rolls, with some wrongly removed and were required to cast provisional ballots during the election. According to studies, Crosscheck has been found as flawed and consistently inaccurate.

- What role did you play in the implementation of Crosscheck during the 2013 election?

When I assumed the duties of Secretary and chief election official, there was a statutory requirement to share registration data with other states. In 2007, there was bipartisan legislation sponsored by Virginia House of Delegates member Bob Brink (D) passed the General Assembly unanimously and included a provision authorizing SBE to share data with other state voting officials for the purpose of list maintenance. Chapter 318 Acts of Assembly (2007). Additional legislation passed in 2011 and 2013 expanded SBE's mandate to share this registration data with other states and specifically to take steps to prevent the duplication of registrations in more than one state or jurisdiction. See Va. Code §§ 24.2-404(A)(10) and 24.2-404.4.

- With studies revealing high rate of false positives and potential for racial bias, do you believe states should still use Crosscheck as a voter registration tool?

I have not had the opportunity to read the studies noted. Virginia does not collect or maintain the racial demographic of registered voters. However, I believe that any program of list maintenance must be uniform, nondiscriminatory, and in compliance with the Voting Rights Act.

- When you were overseeing the Virginia Board of Elections, almost 40,000 voters were removed from the state's voter rolls. As an EAC commissioner, one of your responsibilities is to help Americans vote. What kind of initiatives will you support in order to expand access to the ballot box?

I would continue to push for the modernization of the voter registration process across the country, including online voter registration in all 50 states. Further, I will continue to find ways to streamline and improve the voting experience for voters who choose to vote during early voting, casting a ballot by mail, or voting on Election Day. I have had experience in administering elections in all three methods of voting and can suggest best practices in all three.

- 3) During the 2014 special election in Virginia, the Virginia State Board of Elections voted to narrow the definition of valid voter identification, which required voters to present current identification or one that had expired within the last 12 months. As the Secretary of State Board of Elections, you drafted and supported this policy and called it a "compromise." However, many Virginians use student and employee IDs that do not have expiration dates.

- At that time, Virginia already had voter identification requirements. With these requirements already in place, why did you support tightening the definition of what constitutes as acceptable identification?

The role of the State Board of Elections was to implement the voter ID law passed by the Virginia General Assembly. A number of issues were raised during the implementation phase such as the definition of the requirement for a valid ID. The proponents of the voter ID law believed that "valid" did not include the use of any ID that had been expired. Opponents of the voter ID law believed that "valid" included expired IDs, even if they had

been expired for 5-10 years. Based on case law of the Virginia Supreme Court defining the term “valid” in relation to state IDs and drivers licenses and the existing Virginia Department of Motor Vehicle policy of an ID remaining “valid” in certain circumstances for up to a year after expiration, I believe that that legal definition adopted, absent direct other statutory guidance, was the definition with the most legal support. It was also a compromise of different proposals that would give voters a year to renew an expired license, ID or receive a free voter ID.

- Proponents of voter-identification laws have said that strict voter-identification laws would combat voter fraud. As the Secretary of Board of Elections, did you believe voter fraud was a prevalent issue in Virginia? If so, what basis did you reach this conclusion?

While Secretary of the State Board of Elections, there were some allegations, investigations and convictions of different types of electoral or registration fraud. There was also newspaper reporting of certain illegalities or potential fraud that I was aware of. Many of these investigations occurred outside my jurisdictions in localities. Any allegations or evidence that I received of potential problems at the state level were referred to the Virginia Attorney General or Virginia State Police. From my perspective, I don’t believe that voter fraud or registration fraud was a predominant issue in Virginia during my tenure. This is based on my observations of the process and insight into certain investigations during my term of office.

- Do you believe voter fraud is a concerning issue today? If so, what basis have you reached this conclusion?

Voter fraud or potential vulnerabilities of our electoral system of fraud have the potential to thwart the will of the people, particularly in a close race, and are therefore concerning. In many cases that conclude with small margin of victory, fraud or vulnerabilities have the potential to dilute legal votes. With any level of fraud or intimidation of voters, there is substantial negative impact on the confidence of voters (and candidates) in the free and fair administration of elections and final results void of error, fraud, or interference.

- Do you believe voter-identification laws impose a significant burden on voting? Can restricting the form of voter identification suppress voter turnout?

All voter ID laws should be closely reviewed to determine if there are substantial or costly burdens that are necessary for voters, including those low income, minority, and elderly voters in order to obtain an ID. There should be a review of whether the process of obtaining an ID is substantial or a slight increase above the usual or normal burdens of voting like going to a polling place or election office. Some of the factors to determine if it is a burden include whether the ID cards are free, the level of inconvenience in going to the Department of Motor Vehicles to obtain an ID, gathering required documents for an ID, and posing for a photograph.

- Do you believe voter-identification laws can be used as a tool to disenfranchise minorities?

Please see my answer above.

Senate Committee on Rules and Administration
 Election Assistance Nomination Hearing
 November 28, 2018
 Questions for the record
Mr. Benjamin Hovland

Senator Warner

- 1) States now have \$380 million in grants to strengthen election security and improve election infrastructure. However, it can be difficult to evaluate the marketing claims of cybersecurity companies and choose products and services that best meet the needs of individual states.

- If confirmed, what steps will you take to ensure that state election officials have the tools and training needed to evaluate cybersecurity products and service vendors?

I believe the EAC should work with the Department of Homeland Security, the Government Coordinating Council, the Election Infrastructure Information Sharing and Analysis Center (EI-ISAC) and other relevant stakeholders to identify and distribute best practices around the evaluation of cybersecurity products and service vendors. If confirmed, I will assess what is currently being done and work toward this goal.

- Do you believe the EAC should provide a clearinghouse of information, with vetting of vendors?

Conceptually, this could be a great function for the EAC's clearinghouse. If confirmed, I would need to consult with the EAC's general counsel about what actions would be permissible in the Executive Branch without promoting or favoring any particular business. If this would require a legislative solution, that is something that could be relayed to your staff and the appropriate oversight committees.

- Do you believe the EAC should either encourage or require states to spend Help America Vote Act (HAVA) money on specific cybersecurity improvements? If confirmed, will you recommend states to prioritize on specific improvements? If so, which aspect of election security/ infrastructure would you request to be prioritized?

The \$380 million in grants that were distributed in 2018 left broad flexibility for states to prioritize improvements they believed were best suited for their state's needs. If confirmed, I intend to promote best practices to encourage states to consider the options appropriate for their systems. Additionally, I think it is important to recognize and prioritize vulnerabilities based on the potential for being targeted. For example, most experts point to systems that have an online interface such as election night reporting systems as being likely targets.