

Limited Proxy Voting: An Alternative to Complex Systems for UOCAVA voters?

Submitted by

Richard Benham, Elections by the People Foundation
Alec Yasinsac, Univ. South Alabama School of
Computer and Information Sciences
Jeremy Epstein, SRI International
LisaAnn Benham, Elections by the People Foundation

Summary

This position paper proposes study of the feasibility, risks, and benefits of allowing Limited Proxy Voting for UOCAVA voters as an alternative to using complex systems to serve those voters. Proxy voting is defined as allowing a voter (the Principal) to designate another eligible voter (the Proxy) to vote in his/her stead and in accordance with the Principal's instructions. In contrast to many of the proposed complex technical approaches to the problem, Limited Proxy Voting could provide a simpler, more effective, and relatively inexpensive method to improve UOCAVA voter's ability to cast ballots and have those ballots accurately counted.

Proxy voting requires the Principal to give up ballot secrecy with respect to a personally chosen Proxy and trust in the Proxy to faithfully execute the Principal's instructions. In contrast, perfectly engineered technical systems, operated flawlessly, offer the possibility of maintaining complete ballot secrecy and 100% reliability. Unfortunately, no such "perfect" system exists, and all implemented systems are heavily dependent on correct operation and perfect human behavior to maintain ballot secrecy and integrity. For these reasons, each of the implemented systems provides effectively less than 100% assurance of secrecy and reliability. Depending on the voter's assessment of the system, a voter might reasonably prefer to designate a Proxy at the cost of loss of secrecy with respect to the Proxy.

Use of proxies in voting is not an uncommon or new idea. Proxy voting is used in commercial contexts (e.g., shareholder votes in corporations) and to a more limited extent in governmental elections. The U.K.

allows proxy voting (and has since 1918) for voters who provide a sufficient reason that they cannot vote personally. The Netherlands allows permissive Proxy voting (no reason required)¹ similar to U.S. jurisdictions that allow permissive absentee voting by mail. Some U.S. jurisdictions already allow "voter assistance" which is very close in practical effect to proxy voting. For example, some voters in Florida may have a person accompany them into voting booth to "assist" them with completing a ballot². Voters in Maryland may designate a person to obtain an absentee ballot for them and return the completed absentee ballot to the election office³. While such assistance is not equivalent to designating a Proxy to cast a vote directly, the privacy properties are nearly indistinguishable from proxy voting.

Typical concerns about proxy voting center on the loss of secrecy, the potential for coercion and vote buying, and the possibility of infidelity (when a Proxy does not faithfully execute the Principal's instructions). We posit that the actual loss of secrecy with respect to a chosen Proxy may be less troubling to many UOCAVA voters than the possible loss of secrecy and reliability inherent in complex systems. Further, many UOCAVA voters already return voted ballots by Fax, demonstrating a willingness to trade secrecy for increased certainty of delivery. Coercion or vote buying concerns can be mitigated by constraining the use of proxies. For example by limiting the reasons allowed for proxy voting, limiting the number of votes a Proxy may cast, and controlling who may serve as a Proxy.

The remainder of this paper provides background information on proxy voting and discusses possible advantages of Limited Proxy Voting for UOCAVA voters. We conclude by calling for further study of Limited Proxy Voting as an alternative to use of complex systems for UOCAVA voters. We specifically suggest that advocates for UOCAVA voters survey their stakeholder groups, establish a legal review committee to investigate state and federal legal issues related to proxy voting, and research the use of Limited Proxy Voting by other western democracies

with particular attention to how those nations meet the needs of their military and overseas voters.

Statement of the Problem

UOCAVA voters' attempts to vote are consistently less successful than attempts by other absentee voters and voters who vote in person⁴. Factors contributing to the failure rate include delays in delivery of blank ballots to the UOCAVA voter, delays in return of the completed ballot to the election office (EO), loss of ballots in transit, incorrect or out of date addresses, failure to comply with ballot return formalities⁵, and election official errors. Further, due to return timelines, UOCAVA voters typically must cast their votes much earlier than other voters, depriving them the opportunity to use late campaign news in their decision.

To date, most of the proposed methods to remedy these problems have involved use of complex systems which introduce their own security, reliability, and integrity concerns. Mitigating those concerns often involves adding additional layers of complexity (and expense) for securing communications, ensuring identity, etc. In these complex system implementations, the UOCAVA voter must place trust in numerous entities and individuals to ensure their votes are delivered securely, reliably, and with integrity. The UOCAVA voter will usually not know who these intermediaries are and may or may not be willing to place his/her trust in the "system."

How Limited Proxy Voting Could Address the Problem

Allowing a UOCAVA voter to personally select a Proxy could improve the likelihood that the voter's intent is carried out. In a proxy system, a UOCAVA voter would submit an application to vote by proxy, much as these voters now submit applications to vote by absentee ballot. The Principal would provide identifying information, a reason why proxy voting is sought, the duration of the proxy designation (single election, range of dates, or permanent until revoked), and the identity of the individual chosen to serve as the Proxy. The Proxy would also provide information and would accept the appointment. Both Principal and Proxy

would sign the application form(s) which might include a sworn statement/oath. The signatures would be used later for verification of identity just as with absentee ballots returned by mail.

When an election is scheduled, the Principal would be sent a notice of the election and confirmation that the previously designated Proxy is allowed to vote for the Principal. The Proxy would receive a reminder that he/she is designated to vote for the Principal in the election. The election register (or poll book) would reflect that either the Proxy or the Principal could vote for the Principal on Election Day.

If the Principal is home in time to vote in person, he/she could dismiss the Proxy and vote directly. However, if the Principal is absent as expected, he/she would only need to tell the Proxy how to vote in the election. This communication could happen through any channel of the UOCAVA voter's choosing and would typically be the channel that the voter uses for other personal exchanges with stateside contacts. When either Principal or Proxy appears at the polling place, they would provide identification (consistent with the rules for all voters) and receive a ballot. They would complete and submit the ballot just as any other voter does.

A key advantage of allowing proxy voting is that communication between the Principal and Proxy is superior to communication between the Principal and the EO. For example UOCAVA voters typically have reliable communication with family and friends at home. They can communicate by phone, web, email, fax, and postal mail and already use these methods for other confidential/intimate communications. This flexibility in communication channels reduces the time delay in transferring both blank and voted ballot information and can eliminate any risk of loss in transit, changes of voted ballots in transit, and loss of secrecy with respect to intermediaries other than the Proxy.

Problems related to unanticipated change of address may also be eliminated by using a proxy. If a UOCAVA voter is suddenly transferred half-way around the world while her/his ballot is in route from the EO, it is

likely that the voter will not receive a ballot in time to vote. This same transfer would have little effect on the ability to vote through a Proxy.

Finally, it is worth noting that the ballots ultimately cast by the Proxy benefit from the same level of security, integrity, and auditability available for any other in-person vote in the voter's jurisdiction. In-person voting is generally considered the "gold standard" for ensuring votes are counted accurately and anything that moves away from real-time in-person voting is considered incrementally less reliable. For example, in jurisdictions using precinct scanners, a proxy voter would be warned if they accidentally overvoted a race and they could obtain a replacement ballot. This type of protection is simply not available with most absentee ballot systems.

Who might this work best for?

A UOCAVA voter with a close friend or relative living in their home jurisdiction (ideally their home precinct) would be most likely to benefit from proxy voting. In this scenario, the Proxy would be easily able to obtain election material and vote in person for the Principal. Loss of secrecy with respect to the Proxy may also be less of a concern when the Proxy is a close relative. Many family members and friends discuss issues of importance among themselves and disclosure of how they intend to vote is not atypical.

UOCAVA voters without relatives/close associates in their home jurisdiction could still benefit from use of a Proxy if the Proxy is allowed to obtain and vote an absentee ballot on behalf of the Principal. The advantage here is that the Proxy is in a better position to communicate with the EO than the UOCAVA voter. Benefits include the ability to freely call, write, fax, and email the EO to request a blank ballot and resolve problems with obtaining the blank ballot; closer proximity in time to the EO (it is practical to communicate during normal business hours); and easy ability to access reliable delivery services to return the voted ballot (e.g., Postal Express Mail or FedEx).

Proxy Voting is not Uncommon

Voting by proxy is common in some non-governmental contexts such as shareholder votes in corporations.

Proxy voting may be used by U.S. Senators in committee votes⁶. It was used in American general elections prior to the Civil War and was particularly beneficial to military voters⁷.

Today, the Netherlands uses a permissive system of proxy voting for national elections. Voters may designate anyone to be their Proxy simply by signing over their voting card for a given election⁸. Since at least 1918, the U.K. has allowed voters to designate a proxy to vote in their place if they are unable to vote in person. Their system does require the voter to give a reason and, in some cases, proof of the validity of the reason given. In fact, proxy voting was the only method of absentee voting allowed for overseas voters in the U.K. until 2000⁹. Absent military voters in India have been able to vote by proxy since 2003.¹⁰

Common Trust Requirement

Although the systems used or proposed for use by UOCAVA voters vary considerably in their technical approaches, all share at least one common requirement: the voter must place trust in the security and reliability of the system. As the complexity and scale of systems based solutions for UOCAVA voters grows, the number of individual designers, developers, technicians, and operators that have access to the system increases. Some of these individuals are necessarily given high security rights to the systems and could violate the voters' trust. The voter would typically not know who, or even how many, individuals he/she is being required to trust.

Potential Risks of Proxy Voting

Commonly cited concerns about proxy voting include the necessary sacrifice of ballot secrecy, possible infidelity by the Proxy, susceptibility to coercion or vote buying, and susceptibility to impersonation. Each of these are valid concerns but, our analysis shows that they likely present no more risk to UOCAVA voters than other methods proposed to improve these voters' voting success.

Secrecy. In a proxy system, the Principal gives up ballot secrecy with respect to the Proxy. This may seem like a high price to pay, but, when considered against the alternatives available to UOCAVA voters,

this choice may present less concern than the alternatives. First, the required disclosure is made to a person of the Principal's own choice. The recipient would often receive the disclosure, even if not serving as a Proxy (e.g., spouses, parents/children, and friends often discuss their votes). By using the chosen Proxy, the UOCAVA voter eliminates the need to use other methods that could result in loss of secrecy. For example, some jurisdictions allow return of completed ballots by fax which puts the ballot content and voter identity together, in the open, at the EO. Alternatively, a UOCAVA voter might return a hard copy ballot by mail. Many such voters' mail is subject to inspection by their employers and others along the chain of delivery. The voter may reasonably have a higher level of concern about loss of secrecy with respect to his/her employer than with respect to a chosen Proxy.

Using automated systems to return voted ballots introduces additional concerns. Even systems that are designed to ensure secrecy are susceptible to misuse by the operators (people) and most such systems use communications channels that are subject to possible eavesdropping or interception. Even if the content of the ballot is encrypted today, there can be no assurance that copies of the data are not made and subjected to later decryption.

Finally, it should be noted that use of proxy voting should be exclusively at the discretion of the UOCAVA voter. If the voter does not want to give up his/her secret ballot right in this way, then he/she should be permitted to vote by any other method allowed for absentee voters.

Reliability/Fidelity. When a Proxy votes for a Principal, there is a chance that the Proxy will not faithfully execute the Principal's instructions. The Proxy may fail to vote at all (lost vote) or might vote in a manner inconsistent with the Principal's intent (erroneous vote). Taken as absolutes, this possibility tends to make proxy voting unattractive, but, as with secrecy, the proper comparison is with other methods of voting actually available to the UOCAVA voter.

A fundamental strength of proxy voting is that the voter is able to determine where to place their faith. When a Principal selects their Proxy, they know that the votes cast for them are in the control of the person in whom they trust. In the context of the actual choices available to UOCAVA voters, the risk of infidelity of the Proxy may be small compared to the risks inherent in other methods.

For example, ballots returned by mail may go through many intermediaries who could lose or (potentially) change the content of the ballot. This possibility is exacerbated by proposals to deliver blank ballots electronically because such ballots can be copied and substitute marked ballots can be easily made. Ballots returned by fax are typically transcribed at the EO onto official ballot forms. This process is susceptible to accidental and intentional changes. Finally, complex electronic systems are subject to accidental failure as well as many intentional acts that could prevent ballots from being delivered or violate the integrity of the ballots. Even perfectly designed systems are subject to unintentional errors and misuse by the operators. Possibly of more concern, if automated systems are used on a large scale, they become susceptible to "wholesale attacks" that have the potential to violate the reliability of many voters' ballots. Such attacks would become more attractive as the number of users increases. In contrast, a system of widely distributed and independent proxy voters would not be susceptible to wholesale attacks.

Some Suggested Limitations

Placing limits on the use of proxy voting can mitigate associated risks. At a minimum, proxy voting schemes should place limits on the allowable reasons to vote by proxy, constrain who may serve as a proxy, and limit the number of votes a single proxy may cast.

Allowable Reasons. We urge that proxy voting not be implemented permissively. Proxy voting should only be available to bona fide UOCAVA voters. Other voters might benefit from use of proxies (or simply prefer a proxy to other absent voting methods) but those voters do not face the same impediments as UOCAVA voters and can more easily "work around" common problems with absentee voting. Second,

proxy voting should only be available to UOCAVA voters who have a good faith expectation that they will be absent from their voting jurisdiction for an election.

Constraints on Proxy Selection. Specific criteria should be adopted to limit proxy selection. First, only natural persons should be permitted to serve as proxies and corporations, associations, institutions, or other fictitious persons should be prohibited from proxy designation. Second, a pre-existing relationship between the Principal and the Proxy should be required. Coworkers, employers, union colleagues and other similar relations might be excluded from serving as proxies entirely.

Limits on Number of Proxy Votes. The number of Principals that a given Proxy may represent must be limited. Low limits would reduce the attractiveness of proxy voting to abuses such as coercion and vote buying schemes. Under the present U.K. rules a person may serve as Proxy for any number of close relatives but only two Principals who are not close relatives¹¹. This seems to set a reasonable balance between voter convenience and limiting the potential for abuse.

Some Possible Metrics

A number of measurements could be used to gauge the relative benefits of Limited Proxy as compared to

current and proposed complex system approaches. Simple statistics like the percentage of UOCAVA voters who would choose proxy voting over the alternatives would be instructive. Post election comparison of the success rate for proxy voters to those using other methods could be made as well as post election surveys of voter satisfaction/voter confidence. A cost analysis describing the total cost and cost per successful ballot return could be useful. (Comparing the total development, operation, and maintenance costs for automated systems to the costs of implementing and operating a proxy alternative.)

Conclusion/Call for Action

UOCAVA voters deserve effective remedies to the problems they face when attempting to vote in elections at home. Use of complex systems to serve the needs of UOCAVA voters may provide one remedy but complex systems introduce new risks and costs into the election process. Allowing UOCAVA voters to designate a Proxy to vote in their stead could increase access and reduce errant rejection of UOCAVA votes, could be effectively employed to supplement existing systems and would not introduce risks or costs beyond those that are already inherent in election systems.

We urge organizations concerned with UOCAVA voting to evaluate the feasibility, risks, and benefits of allowing Limited Proxy Voting for UOCAVA voters.

¹ Election Process Advisory Commission, Additional information on e-voting from the Netherlands (Sept. 27, 2007), available at http://www.coe.int/t/dc/files/themes/forum_democratie/netherlands_en.pdf

² Fla. Stat. s. 101.051

³ See <http://www.elections.state.md.us/voting/absentee.html>

⁴ Pew Trusts, "No Time to Vote", January 6, 2009, http://www.pewtrusts.org/news_room_detail.aspx?id=47924

⁵ Ibid

⁶ See <http://rules.senate.gov/public/index.cfm?p=RuleXXVI>

⁷ Donald S. Inbody, "Political Barriers to Military Voting: A Brief Historical Overview," OVF Research Newsletter, Volume 2, Issue 3, May/June 2010, available at <http://cts.vresp.com/c/?OverseasVoteFoundati/afb29c668a/41ad76a0f3/acefba5ad>

⁸ Election Process Advisory Commission, Additional information on e-voting from the Netherlands (Sept. 27, 2007)

⁹ Representation of the People Act, 2000, c.2, (Eng.) available at <http://www.opsi.gov.uk/acts/acts2000a>

¹⁰ The Election Laws (Amendment) Act, 2003, No. 24, Acts of Parliament, 2003 (India). Available at <http://www.indiacode.nic.in/>

¹¹ See http://www.aboutmyvote.co.uk/how_do_i_vote/voting_by_proxy.aspx