



POLICY BRIEF

Benefits and Detriments of Online Voting

By Ryan Patrick

August 1, 2013

Executive Summary

At present, there is no comprehensive system for allowing voters to do so online. While there have been experiments with electronic voting in political party primaries or in response to natural disasters, there is no state that provides for voters to exclusively return a ballot electronically. The only online voting in the United States is through the Military and Overseas Voter Empowerment (MOVE) Act, which requires states to provide ballots electronically to those voters. Thirty-three states have done more than required by the MOVE Act and allowed those voters to cast their ballots electronically also.

With the proliferation of internet access across the United States the call for internet and online voting has grown. The United States has dramatically low voter turnout in each election and it is thought that opening up online ballots will increase civic participation. Beyond initial start-up costs, benefits include reduced manpower during elections and reduced ballot costs. Detractors have pointed out the possibility of hackers or other interference with electronic voting as well as disenfranchisement of minority voters who may not have access to a computer. However, online voting is not considered a replacement to in-person voting but a supplement to it to reach additional persons who may find it easier than voting in-person.

Grants have been offered to study the implications of the MOVE Act's utility and, if offered in the future, may be taken advantage of by Nebraska to research the possibilities offered by electronic balloting. Nebraska should investigate this possibility. It is possible that large numbers of Nebraskans who do not or cannot presently vote may become more active if there was an option to do so online. Increased rates of

turnout simply from allowing voter registration to take place online seem to indicate this possibility.

1. Introduction

Online Voting (OLV) is still a new concept in the United States. As recently as 1999, the President instructed the National Science Foundation (NSF) to study the idea of OLV and, at that time, it was decided that it was “not legally, practically or fiscally feasible” to institute an OLV system. Instead, it was decided that OLV should be phased in gradually.¹

However, the Pew Institute noted that in 2012 roughly 40% of Americans now get the majority of their news online.² Use of and ease of use of the Internet is growing and, with it, the push to allow voting online. In 2000, the Arizona Democratic Primary was open to online voting, with the results including 39,942 online votes.³ This online turnout matched mail-in and in-person voting at a time when many homes didn’t even have computers, much less Internet connection.⁴ As of 2012, roughly 94% of Americans now have internet access, with rural and tribal areas among those least connected.⁵

There are still no online voting capabilities in the US as of 2013 other than for military members and those voting from overseas.⁶ This form of online voting was allowed in 33 states in the 2010 election. The purpose of this paper is to look at the possible benefits and detriments of online voting and what we can learn from efforts to allow military and overseas voters to vote online, and how this could be utilized in Nebraska.

2. OLV Nationwide

2.1 Benefits to Online Voting

¹INTERNET SECURITY EXPERTS TELL PANEL REMOTE ONLINE VOTING NOT YET FEASIBLE, ELECTION ADMINISTRATION REPORTS 1 (vol. 30, Oct. 26, 2000); CALIFORNIA INTERNET VOTING TASK FORCE, A REPORT ON THE FEASIBILITY OF INTERNET VOTING 1 (Jan. 2000).

² In Changing News Landscape, Even Television is Vulnerable: Trends in News Consumption; 1991-2012, PEW RESEARCH CENTER FOR THE PEOPLE & THE PRESS (Sept. 27, 2012), <http://www.people-press.org/2012/09/27/in-changing-news-landscape-even-television-is-vulnerable/>.

³ Dick Morris, *Direct Democracy and the Internet*, 34 Loy. L.A. L. Rev. 1033, 1034 (April, 2001).

⁴ See Jeremy Garson, “Like” Your President: A Case for Online Voting, 2 U. Mich. J.L. Reform A33 (Nov. 23, 2012).

⁵ Allison Terry, *Got Broadband? Access Now Extends to 94 Percent of Americans*, THE CHRISTIAN SCIENCE MONITOR (Aug. 24, 2012), <http://www.csmonitor.com/USA/Society/2012/0824/Got-broadband-Access-now-extends-to-94-percent-of-Americans>.

⁶ Ian Urbina, *States Move to Allow Overseas and Military Voters to Cast Ballots by Internet*, THE NEW YORK TIMES (May 8, 2010), <http://www.nytimes.com/2010/05/09/us/politics/09voting.html?th&emc=th>.

America, it seems, has lost its interest in voting. Turnout is low, with the US ranking toward the bottom of the list in participation in democratic countries.⁷ One way to alleviate this is to allow people to register online. Even if people still had to vote in person, online voter registration (OLVR) increases the rates of turnout.⁸ Internet voting may increase responses and turnout as well. Because there are no functional online voting systems for major elections in the US, there are no studies on results, but among those who do not have access to a polling place for reasons such as health, distance, or having to work through polling hours, this would increase the ability to vote. The convenience aspect alone may increase likelihood of voting when a person may otherwise not do so. The only case by which to compare is that of the 2000 Arizona Democratic primary. In that instance, though, turnout nearly doubled the normal rate.⁹

Online voting should reduce errors in voting. By utilizing technology online similar to that of electronic voting machines currently in place, the online voting programs could make sure that the voter would not be allowed to submit a vote for more than one candidate (an overvote), and would ask before allowing the voter to submit without a selection (an undervote).¹⁰ The computer program simply would not allow the errors that are common in paper ballots.

Online voting should reduce overall costs of elections. Not only would the number of paper ballots be reduced, but the state would need less polling machines and workers. However, there are initial set-up costs for software and programming and verification of voters' identity will increase costs.¹¹ Additionally, by focusing on Internet-based elections, campaigns themselves may follow. By reducing costs of physical advertising, costs to campaign may decrease, reducing reliance on large campaign contributors.¹²

⁷ Derek Dictson & Dan Ray, *The Modern Democratic Revolution; An Objective Survey of Internet-Based Elections*, White Paper (Jan. 2000) at 4, <http://www.SecurePoll.votingpaper.com>.

⁸ Matt Barreto, *Online Voter Registration (OLVR) Systems in Arizona and Washington*, PEW FOUNDATION (2010) at 25.

⁹ Associated Press, *Arizona Primary Turnout Doubled with Online Voting* (March 13, 2000), *available at* <http://www.freedomforum.org/templates/document.asp?documentID=11877>.

¹⁰ About Overvotes and Undervotes, VOTESPA, http://www.votespa.com/portal/server.pt/community/preparing_for_election_day/13517 (last visited July 2, 2013).

¹¹ Deborah M. Phillips & David Jefferson, *Is Internet Voting Safe?*, (July 10, 2000), <http://www.voting-integrity.org/text/2000/internetsafe.shtml>.

¹² Morris, *supra* note 3 at 1033-1034.

2.2 Detriments to Online Voting

One question to ask regarding OLV is if online voting could lead to underrepresentation of those who do not have access to computers. Those with higher incomes and levels of education have greater access to the Internet than poor, minority, and rural voters. Poor and minority voters do not have equal access at home or to an in-person ballot sent online. There is a “digital divide” that may keep poorer and minority voters from being able to vote online while increasing the rates of youth votes among those with higher education and white voters.¹³

Security of online voting is probably the most pressing issue against its implementation. Michael Coates, from the Open Web Application Security Project (OWASP) told CNN, “It’s guaranteed that such a system would be attacked, for sure. There are security flaws in every system.” However, he continued, “[I]t’s a matter of how you detect and respond to them.”¹⁴ In 2010, while testing online voting for overseas and military voters, hackers were able to infiltrate the system within 36 hours and change the votes to whomever they wished.¹⁵ This type of flaw can be fixed. Americans use secure internet transactions to do banking, paying bills, federal student loan applications, and purchasing stock, all with relatively few issues.¹⁶ So long as it was safe from fraud, 48% of polled persons favored online voting, with 60% of younger voters favoring the idea.¹⁷

3. Legal Implications

3.1 Lawsuits

Inequality in access resulting from online voting has been the source of some litigation. When Arizona used online voting for the 2000 Democratic primary, the Party first precleared the process through the Department of Justice per the Voting Rights Act (VRA).¹⁸ However, the non-profit Voting Integrity Project filed a lawsuit on behalf of two

¹³ Kevin Coleman, Richard M. Nunno, RS20639: INTERNET VOTING: ISSUES AND LEGISLATION (Jan. 16, 2001), <http://www.cnie.org/nle/crsreports/government/gov-41.cfm>.

¹⁴ Julianne Pepitone, *Why You Can’t Vote Online Yet*, CNN (Nov. 6, 2012), <http://money.cnn.com/2012/11/06/technology/innovation/online-voting-election/index.html>.

¹⁵ *Id.*

¹⁶ Kristen E. Larson, *Cast Your Ballot.com: Fulfill Your Civic Duty over the Internet*, 27 Wm. Mitchell L. Rev. 1797, 1802-1803 (2001).

¹⁷ Dictson et al., *supra* note 7 at 9.

¹⁸ Kevin Coleman, RS20639: INTERNET VOTING (Jan. 31, 2003), <http://fpc.state.gov/documents/organization/22714.pdf>.

minority voters for vote dilution under the VRA, calling it a modern-day “literacy test.”¹⁹ The judge ruled that the internet vote could go through, but stated that the election would be set aside if the results showed “disproportionate participation by white voters with Internet access.”²⁰ The judge did state, though, that there was a “digital divide,” but wouldn’t know until after the fact what difference it would make.

3.2 Time-Frame for Implementation

California and Washington have created task forces to study the implementation of online voting.^{21,22} California found that online voting would allow for millions of potential voters who do not presently participate in elections to do so.²³ But, the task force recommended gradually phasing-in online voting, first at supervised polling places to verify reliability, and then remotely, from home, across different election periods.²⁴ Both states refer to the same possibility of hacking or “page jacking” in which a voter is led to a fake voting site which does not register a true and real vote. During this phase-in period, the possibility of errors, or intervention from hackers, etc. is a consideration and may result in lawsuits or simply miscounted elections.

3.3 Additional Requirements from Voters

Among places that utilize online voting, there are drawbacks that some may oppose. Estonia is known for utilizing an online election, but it also requires each citizen to use a government-issued ID with a scannable chip and a PIN.²⁵ Canada, Norway, and Australia have used online voting.²⁶ These states additionally require an ID from a voter, or in the case of Canada, another voter from the same district who does have ID and is willing to vouch for the first.

4. Federal Grants for Nebraska

¹⁹ Rebecca Fairley Raney, *Suit Seeks to Block Net Vote in Arizona*, THE NEW YORK TIMES (Jan. 22, 2000), <http://www.nytimes.com/library/tech/00/01/cyber/articles/22vote.html>.

²⁰ Rebecca Fairley Raney, *Judge Lets Internet Primary in Arizona Proceed*, THE NEW YORK TIMES (March 1, 2000), <http://www.nytimes.com/library/tech/00/03/cyber/articles/02vote.html>.

²¹ Bill Jones, California Internet Voting Task Force, *A Report on the Feasibility of Internet Voting* (Jan. 2000).

²² David M. Elliott, Office of the Secretary of State, *Examining Internet Voting in the State of Washington* (June 1998).

²³ Jones, *supra* note 21 at 1.

²⁴ *Id.* at 3,13-14.

²⁵ Brad Plumer, *Estonia Gets to Vote Online. Why Can't America?*, WONKBLOG (Nov. 6, 2012), <http://www.washingtonpost.com/blogs/wonkblog/wp/2012/11/06/estonians-get-to-vote-online-why-cant-america/>.

²⁶ Pepitone, *supra* note 14.

In 2009, Congress voted to require all states to provide electronic ballots to all overseas and military citizens at least 45 days before an election.²⁷ This was known as the Military and Overseas Voter Empowerment (MOVE) Act. The time provided is to allow a paper ballot to be mailed back to the United States from wherever a voter is located. By the next year, overseas and military voters from 33 states were able to cast their ballots online rather than mail them.²⁸ Although the online programs were not required by law, many states sought it on their own. In 2011, the Election Assistance Commission noted that 93.2% of overseas votes were successfully counted.²⁹

The Effective Absentee Systems for Elections (EASE) grants have provided federal funds on a competitive basis to states who wish to research effective ways to utilize online voting per MOVE. The second round of grants, for 2013, closed in June.³⁰ This grant, however, prohibits the electronic return of a voted ballot.³¹ The program's intent is to evaluate the return of ballots sent electronically and mailed in return.

Nebraska currently allows for a ballot to be sent via email or fax to military or overseas voters, but one of the possible issues arising from this program is that some email servers, especially military servers, may block third-party emails, causing a non-delivery of a ballot.³² This could be alleviated by allowing a service by which those voters could "pull" their own ballots from a server.

5. Recommendation

Nebraska would be benefitted by and should implement online voting options for its voters. At present, no state provides online vote return for anyone beyond military and overseas voters as required by the MOVE Act. By doing so Nebraska would be a leader in the country for increasing access to democracy and implementation of technological advancement. Studies should be performed to gain insight into the costs

²⁷ Ian Urbina, Congress Approves Bill Helping Overseas Voters, THE NEW YORK TIMES (Oct. 22, 2009), <http://www.nytimes.com/2009/10/23/us/politics/23vote.html>.

²⁸ Urbina, *supra* note 6.

²⁹ POST-MOVE ACT DATA SHOWS 92.3% SUCCESS RATE FOR BALLOTS CAST BY MILITARY AND OVERSEAS CITIZENS, ELECTION ASSISTANCE COMMISSION (Oct. 11, 2011), http://www.eac.gov/post-move_act_data_shows_93.2_success_rate_for_ballots_cast_by_military_and_overseas_citizens/.

³⁰ 2013 EASE 2 GRANT PROGRAM, FEDERAL VOTING ASSISTANCE PROGRAM, <http://www.fvap.gov/leo/grants2.html>.

³¹ *Id.*

³² Letter from Bob Carey to John A. Gale, Director, Federal Voting Assistance Program (Nov. 16, 2011), http://www.fvap.gov/resources/media/ne_ceo_2012.pdf.

of introducing an online ballot for all Nebraskans to determine if the long-term benefits would outweigh initial set-up costs for the program.

In order for Nebraska to implement an online voting system several things would need to be considered: the authentication of voters, the design and programming of the voting system, and the security of the votes cast and information of voters. While Nebraska is not a Voting Rights Act (VRA) covered state, upon the return of VRA coverage and preclearance, online voting would need to be approved and shown to be non-discriminatory in its function before completion.

5.1 Authentication of Voters

In the countries that have instituted OLV each has required some form of universal or voting ID from voters as well as a Personal Identification Number (PIN) by which to access the voting website.³³ Right now, there is no universal method to identify voters across the United States. Each state would be required to format their own authentication around each state's ID. Even if an ID is not required for in-person voting, a voter ID bill would need to be passed, required for online verification of voters. In order to fall in line with the Voting Rights Act and not disenfranchise voters, funding for this ID would be necessary to assist those who could not afford or otherwise obtain one.

5.2 Ballot Programming

Costs for initial institution of voting software would need to be set aside, for studies regarding the implementation and distribution, but also for the software programming itself. The State would need to establish funds to begin this program. Initial set-up costs could be similar to those of online voter registration programs and could be done in concert with such a program to save money. In neighboring states, these programs have been estimated at roughly \$50,000.³⁴ Washington state spent \$280,000 for set-up and saved over \$125,000 in the first year alone.³⁵ These costs, of course, would need to be studied for Nebraska's needs, but may be similar in scope.

5.3 Security of Online Ballots

³³ Plumer, *supra* note 25.

³⁴ Carl Wicklander, Republicans Oppose Illinois Online Voter Registration over Fraud Concerns, IVN (June 11, 2013), <http://ivn.us/icon/2013/06/11/illinois-online-voter-registration-draws-critics/>.

³⁵ Voter Registration Modernization in the States, BRENNAN CENTER FOR JUSTICE, <http://www.brennancenter.org/analysis/voter-registration-modernization-states>.

The greatest fear and counter-argument against online voting is that of fraud.³⁶ In the abovementioned overseas and military votes from 2010, it was shown that security flaws were easily exposed. However, e-commerce is now widely considered as safe and the same online security measures provided for shopping or paying taxes electronically would certainly be sufficient for voting as well.

³⁶ James Ledbetter, Eruption Over E-Voting in Arizona, CNN (Dec. 20, 1999), <http://archives.cnn.com/1999/TECH/computing/12/20/arizona.voting.trouble.idg/>.