

From: "Ammons, Dave" <dammons@secstate.wa.gov>
Date: December 19, 2008 10:52:07 AM PST
To: <info@wanewscouncil.org>
Subject: News Council complaint re KIRO-TV

December 18, 2008

Mr. John Hamer
Executive Director
Washington State News Council
P.O. Box 3672
Seattle, WA 98124

Dear Mr. Hamer and the Council:

Ever since the intense public interest and concern for our elections process took centerstage after the 2000 Bush v. Gore contest in Florida and Ohio, and public confidence in elections was shaken by the the ultra-close Washington governor's election in 2004, the state Elections Division and our 39 County Auditors have worked tirelessly to correct deficiencies and begin restoring public faith in the system that is so essential to our democracy. In bipartisan fashion, the Legislature, Governor Gregoire, the Auditors and our office have generated and implemented hundreds of improvements and reforms, and we are beginning to see the fruits of that reform effort.

In that context, we were distressed when Chris Halsne, KIRO 7 Eyewitness News Investigative Reporter, aired two election-related news stories that fell far short of the most basic standards of journalism for accuracy, balance and fairness. This occurred despite our repeated efforts to correct some of his assumptions and methodology and errors before he aired his reports. To have someone purposely proceed with incorrect and misleading information after all of this was just unconscionable and had the negative effect of undermining trust and confidence in our elections process. His reports were picked up and given further attention by blogs, including one sponsored by the Evergreen Freedom Foundation. The reports still are on KIRO's website as of this date and no attempt has been made to correct or amend them, either on air or on the website. Our office was flooded with complaints about our supposed lack of concern to keeping ineligible voters off the rolls. In fact, we work tirelessly to regularly check the rolls for duplicate registrations, deceased voters, under-age voters, and, yes, felons who are ineligible to vote. We have had excellent results for dealing with the first three groups and are vigorously dealing with felons voters using all reliable databases. We have long urged the Legislature to provide a policy solution to provide a clear bright line for dealing with ex-felons.

By this letter, we are referring these two stories to the News Council's complaint and hearing process.

October 15, 2008 Story Regarding 24,000 Felons Registered to Vote

On Wednesday, October 15, 2008, KIRO-TV aired a story by Mr. Chris Halsne that claims the state voter registration “system was set up to ignore the existence of some 24,000 convicted felons.”

The general premise of the story is anyone who was ever convicted of a crime, not necessarily a felony, is not eligible to vote. That is not the law in the state of Washington.

This story is posted on the KIRO website.

Print: <http://www.kirotv.com/news/17714516/detail.html>

Video: <http://www.kirotv.com/video/17728914/index.html>

Rights Restoration Process

In Washington State a felon may have voting rights restored by a variety of means and be fully entitled to vote.

The story describes the requirements for getting the right to vote restored.

Washington's convicted felons can't legally vote until two things happen. First, they must meet all of their court ordered conditions: Prison time, restitution, the works. Then, depending on the year, that felon also needs a judge to sign an order of discharge or restoration of civil rights.

The first half of this description is not accurate. If the offense was committed prior to 2000, the felon does not have to complete all requirements of the sentence to have voting rights restored. State statutes specify that if the offense was prior to 2000, at least ten years have passed since the date of conviction or release from prison, whichever is later, and the court has not extended jurisdiction, the court must issue a certificate of discharge, and the felon is fully entitled to vote. See RCW 9.94A.750, RCW 9.94A.753 and RCW 9.94A.760.

In summary, a felon may restore voting rights by (1) completing all terms of the sentence, or (2) for felonies committed prior to 2000, by allowing 10 years to pass since conviction or release, whichever is later, so long as the court has not extended jurisdiction. In addition, the Governor may pardon a felon, thereby restoring voting rights.

The second half of the KIRO description is also not accurate. A felon does not need to get a judge to sign an order of discharge or restoration of civil rights. It is not the felon's responsibility to petition the court for a certificate of discharge; rather, it is the court's responsibility to automatically issue a certificate of

discharge once the necessary requirements have been met. While a certificate of discharge can serve as proof that the felon has completed the sentence, issuance of a certificate of discharge is not a requirement for restoring the right to vote. If the felon has performed all necessary steps to restore the right to vote, the person cannot be denied a fundamental right because a government agency has failed to issue a particular form.

Much of this was explained to Mr. Halsne by my staff on October 7, 8 and 9, 2008.

Department of Correction Records

KIRO claimed to have compared the statewide list of voters to historical felon data, resulting in almost 24,000 illegally registered voters. The KIRO story states:

An extensive computer analysis, independently conducted by KIRO Team 7 Investigators, found that Wilkinson is just one of 23,927 criminals on the active voter database.

6,812 of them are considered "very likely voters" because they already cast a ballot in other elections this year.

Unless something changes soon, every one of the felons will get a ballot for the November election, even though the state admits it has no idea if they are eligible.

Sources familiar with the election program, who asked we not identify them, tell us the new computer system was intentionally programmed to ignore a certain subset of felony data. The reasoning behind it was this: Because most of the felons on our list committed their crimes prior to the computer going online in 2006, it was going to be too difficult to research which ones can legally vote.

The foregoing is not true and proved to be extremely inflammatory to Washington voters who heard or read the story on the eve of the 2008 general election.

Our best understanding of the actual facts is as follows.

KIRO obtained a list from Department of Corrections of all persons who have ever been entered into a DOC database. The list apparently contained approximately 500,000 or more names of persons convicted of a crime in Washington from the 1800s to the present time.

KIRO then hired a contractor to compare that list against Washington's Voter Registration Database. The contractor apparently found approximately 24,000 names common to both lists.

KIRO then broadcast a story suggesting that all of these persons were felons not entitled to vote.

The list KIRO obtained from the Department of Corrections was not even a list of convicted felons. Many on this list, for example, had been charged with a felony but had been convicted of a misdemeanor. As such, these persons were never convicted of a felony and never lost the right to vote. At all times they remained eligible to vote.

KIRO undertook no analysis to determine who on the list had been convicted of a felony, or who on the list had had voting rights restored.

KIRO provided our office with its list of 6,812 "most likely" voters in advance of the October 15 airing. The first person on the list was convicted in 1956 and is now 90 years old.

This sample was reviewed by DOC. From the DOC review, we found that 24% of the names were only associated with a misdemeanor conviction. Another 28% of the names had rights restored at the time of release from DOC. So over half (52%) of the 6,812 records in the sample were invalid matches. This information was communicated to Mr. Halsne by my staff on about October 13, 2008.

Many of the remaining cases (48%) were pre-1984 offenses, prior to implementation of the Sentencing Reform Act, resulting in minimal and incomplete information in the Department of Correction records. For many of these cases, over 10 years has passed since conviction or release, so voting rights have likely already been restored.

We were never provided with the complete list of 24,000 but believe it is likely that we would find similar results.

A close analogy would be if KIRO obtained a list of 500,000 persons who had immigrated to this country since the 1800s, cross checked that list against the state's Voter Registration Database, and found 24,000 names common to both lists. Then, to carry the analogy forward, without checking to see if any of these persons had become citizens, KIRO aired a story reporting that the state is issuing ballots to 24,000 noncitizens.

Department of Corrections Study

The KIRO report claimed to rely upon a study by the Department of Corrections to conclude that 65% of names found on both the statewide list of voters and the historical Department of Correction records are ineligible to vote. The KIRO story stated:

A long-term study by the Washington Department of Corrections shows that about 65 percent of felons fail to pay off all their restitution or finish their court ordered conditions.

Using admittedly simplistic math, if our data shows 6,812 felons voted in primary elections this year, that means 65 percent of them or about 4,400 will illegally cast ballots in November.

If all active voters who also appear to be convicted felons are counted, that's more than 15,000 questionable votes.

The story claimed that a Department of Corrections study shows that 65% of felons fail to pay off all financial obligations.

Despite three requests by our office to KIRO for a copy of this study, KIRO has not provided the study. The officials we have spoken with at the Department of Corrections and the Legislature have not been able to identify such a study.

But, assuming such a study exists, the correct analysis would be as follows.

The alleged study concludes that 65% of all felons fail to complete all terms of the sentence, typically by not paying financial obligations.

Applying the 65% against the total 500,000 names in DOC records, perhaps 300,000 on this list failed to complete the terms of the sentence and are not eligible to vote. On the flip side, approximately 200,000 did complete the terms of the sentence. These 200,000 would be eligible to vote in Washington State.

Thus, KIRO finding 24,000 persons as registered to vote from the list of 500,000 should not cause alarm. One would expect that of 500,000 persons ever convicted of a crime in Washington State, that 5% would have completed all sentencing terms and be eligible to vote.

Instead, KIRO assumed that 65% of the 24,000 would "probably" be ineligible to vote. KIRO chose the wrong denominator, with the result being a completely false premise.

Tracy Joy Wilkinson

The news story claimed to feature a convicted felon who is registered to vote.

The State of Washington never stopped sending Tracy Wilkinson ballots in the mail, even though it appears she's not eligible to vote.

In 2002, she pleaded guilty to a felony prescription drug charge, then, according to court files, failed to pay all her fines.

A Snohomish County judge ruled "the defendant is not entitled to restoration of civil rights or discharge" - legal speak for "you can't vote!"

None of these claims are true.

Tracy Joy Wilkinson was charged with a felony but was convicted of a misdemeanor.

The Department of Corrections warned KIRO on about October 13, prior to the story airing, that DOC records only showed a misdemeanor conviction for Ms. Wilkinson.

KIRO proceeded to present Tracy Joy Wilkinson as a felon ineligible to vote but registered.

In fact, Tracy Joy Wilkinson was never convicted of a felony according to information from both the Snohomish County Superior Court and the Department of Corrections. A copy of the judgment and sentence document from her court file is attached, stating clearly that she was convicted of a gross misdemeanor not a felony. She never lost her voting rights, yet found herself being used as a poster-child for felon voters.

November 3, 2008 Story: 100 Dead Voters on the Voter Rolls with 15 Casting Ghost Ballots

On the eve of Election Day, Monday, November 3, 2008, KIRO-TV aired a story, reported by Mr. Chris Halsne that claims "KIRO Team 7 investigators found more than 100 dead voters still on Washington's active voter rolls, with 15 of them actually casting ghost ballots."

This story is posted on the KIRO website.

Print: <http://www.kirotv.com/news/17875191/detail.html>

Video: <http://www.kirotv.com/video/17885506/index.html>

KIRO explained that it compared lists of deceased to the statewide list of voters:

Investigative Reporter Chris Halsne, with help from outside experts, used some sophisticated computer software to match up the Social Security Administration's master death file with active voters in Washington.

...

KIRO Team 7 Investigators found more than 100 dead voters still on Washington's active voter rolls, with 15 of them actually casting "ghost" ballots.

Mr. Halsne interviewed Hazel Hanel for this story, telling her that her husband Edward Hanel cast his last ballot November 6, 2007, even though he passed

away in July 1996. In the KIRO story, Hazel Halsne is quoted as saying that was impossible because her husband is deceased.

KIRO only produced one deceased voter in support of its story. The one deceased voter featured in the KIRO story is Edward Hanel.

None of the claims in this story are true.

The Edward Hanel who returned a ballot for the November 6, 2007 General Election is not Hazel Hanel's husband, but instead her son. Her son Edward Hanel is a U.S. soldier and very much alive.

Mr. Halsne mistakenly assumed the son was the father. Both have the same name.

After the airing of the KIRO story, Pierce County Elections called Hazel Hanel to reassure her that no one was voting under her husband's name and that it was in fact her son who returned a ballot.

In response to the call from Pierce County Elections, Hazel Hanel replied, "I asked that reporter if it could have been a mixup – that my son was also named Edward."

Mr. Halsne chose to ignore this warning from Mrs. Hanel, and instead presented the false scenario that someone was forging absentee ballots in her husband's name. The ballot was legally cast by her son in her son's name.

Prior to airing both stories, elections staff in our office had cautioned Mr. Halsne that people commonly mistake two or more people with the same name, or even the same birth dates, as the same person. We informed Mr. Halsne that election officials use LexisNexis to research these cases, and actually contact the voter to determine correct identities for voting purposes.

The supposed poster-child for "voting from beyond the grave" was very much alive. Neither story was corrected. As of this date, the erroneous video clip is still on the KIRO website.

Public Response

The Secretary of State's Office maintains a voter hotline and email service for voters with questions or concerns regarding the election process.

Following the airing of the KIRO stories, our office received hundreds of calls and emails from irate voters expressing anger and frustration that the state was

allowing ineligible people to vote.

Here are four communications received by our office that illustrate the outrage caused to Washington voters by the KIRO story.

Email One.

Secretary Reed-

I am writing to express my outrage that your office has still not managed to clean up the voter roles in FOUR YEARS!!!! Ballots sent to 24,000 felons? Really?

Do you not remember how close the last Governor's election was? Did you think that the people of Washington would somehow forget about all the unpleasantness four years ago? (Clue – we haven't. Not by a long shot.) Democracy means nothing if we can't be assured our vote is counted fairly. DO YOUR JOB!!! Clean up the voter roles before you subject us to another four years of wondering if the individual living in the Governor's Mansion really deserves to be there, not to mention the possible impact on a close national election.

With all due respect, either do your job or get out of the way so we can get someone in the Secretary of State's office who can.

Radene P Rindlisbacher

A Very Angry King County Voter

Email Two.

Dear Sir/Madam,

Hope you're not planning to let it slide that illegal felons are allowed to vote. The lack of accountability in our government is getting to be appallingly intolerable.

What are we teaching the children? How can we stand there and say that honesty is the best policy when corruption goes unchecked not only in private society but in our public servants & how they are managing the system.

Get on the stick & make it one legal voter per qualified voter.

If you don't get it yet...the Voters are already in outrage over the bailout and then the vote is so corrupted that we don't trust any of the government anymore. The only people who can make it right are our elected officials. Do you believe that if a law abiding citizen/private business was told to come up with the proof for some government agency that we would be given a pass because we said it was too time consuming and difficult?

One Disgruntled Private Citizen Venting and Hoping That Someone Will Listen...

Kris Halterman

Email Three.

Elections Division of the Secretary of State,

I was disappointed to learn that you will be sending ballots to 24,000 felons this election without first verifying they are legally able to vote. I thought this would have been all cleaned up after the 2004 election, but apparently not. I'm sorry but the excuse that "it's too hard" to verify which felons have or have not had their voting rights re-instated is unacceptable. Most people can't use the excuse that "it's too hard" and expect their employer to accept it. The bottom line is that it is your job to make sure that no felon who is not qualified to vote gets a ballot.

If you can't do your job I will be voting for someone who can.

Thank you,
Kevin Engelbart
Lacey, WA

Email Four.

I am a "Legally" registered voter in Thurston County. I want Sam Reed to remove all felons from the voting rolls. I do not want my "Legal" vote being negated by an "illegal" vote that is not supposed to be there.

It infuriates me that this issue has been disregarded by the Secretary of State because they thought it was too difficult to do. It's the law and I want you to follow it like I have to.

I am upset that my vote did not count during the last election due to this same issue as well as dead people, underage people registering and people voting multiple times.

It is a shame my vote was negated by a child molester, sex offender, murderer or felon.

Rich Peregrin
Olympia

Conclusion

We deal frequently and productively with the media, and value their role in a free society. Media coverage and explanatory journalism are essential as we communicate with the readers and voters on a variety of issues. But in the case of the KIRO pieces, we simply have to object strenuously. As outlined above, neither of these pieces meets the most basic standards of journalism for accuracy, balance and fairness.

Airing these stories just prior to the 2008 general election misinformed Washington voters about the state of the voter registration rolls in Washington, and undermined public confidence in the electoral system.

Both stories impugn the hard-work of the many hundreds of election officials and workers who strive for integrity in all elections.

We urge that the Washington News Council review this manner, using its objective review and hearing process. Our staff is ready to assist in providing any addition information you may require.

Thank you in advance for your attention to this matter.

Sincerely,

SAM REED

Secretary of State

cc: Mr. Eric Lerner, Vice President & General Manager, KIRO 7
Mr. Todd Mokhtari, KIRO 7 Eyewitness News Director
Mr. Bill Benson, KIRO 7 Eyewitness News Investigative Producer
Mr. Chris Halsne, KIRO 7 Eyewitness News Investigative Reporter