

V.I.P. BRIEF – SPECIAL

Oct. 20, 2008—Evergreen Freedom Foundation response to Secretary of State Sam Reed on felon voting

Will thousands of felons illegally vote in this election? Or do KIRO-TV and EFF simply have it in for Washington Secretary of State Sam Reed? Because so many EFF members and others have received the email below from Secretary Reed, attacking EFF and our Voter Integrity Project, we've decided to offer this point-by-point response. Judge for yourself.

From: Sam S. Reed <sam@samreed.org>
To: Sam S. Reed <sam@samreed.org>
Sent: Sunday, October 19, 2008 4:02:37 PM
Subject: Help!

Hi.

You probably have noticed that I haven't asked you for any campaign help (including money) since the August Primary.

Now, I need help. I hope you will be able to take a few minutes to do this.

Last Tuesday, a story was run on the 11:00 P.M. news on KIRO TV alleging that the Secretary of State's Office is allowing 24,000 felons to illegally register to vote: <http://www.kirotv.com/news/17714516/detail.html>. We were appalled. We had been talking with the reporter, Chris Halsne, for a month. This report was so reckless that other major news organizations – including the Seattle Times, KING TV and KOMO TV never used the story. Some news organizations used a brief, balanced Associated Press story.

But, as happened during the 2004 gubernatorial recount, a few of the blogs have gone wild – particularly the Evergreen Freedom Foundation's blog and -- to a lesser degree -- Sound Politics. Also, Bobby Williams has gone on talk radio to blast me and my office. So, learning from that experience, **I ask for your help to respond to those blogs and talk radio shows.**

Needless to say, this is also a shot at Rob McKenna – since he and his staff have provided all the legal direction for us on this issue, and he personally handled the felon voting case when we appealed it to the State Supreme Court.

Of course, neither the KIRO story nor EFF's concern for voter integrity are a "shot" at anyone—not Secretary Reed and certainly not General McKenna who won the felon voting case (more on that below). Our concerns are about the law and the facts.

So, what are the problems with this? Here is a succinct summary

1. **KIRO's assertion is reckless.**
2. **They acknowledge they have no proof these voters are ineligible.**
3. **We cannot deprive citizens of their right to vote based on inconclusive evidence.**

Saying the story is reckless does not make it so. And KIRO did find specific persons, convicted of felonies, whose rights are not restored and who voted this year—including one woman who agreed to be interviewed on TV. It's true that citizens cannot and must not be deprived of the right to vote "based on inconclusive evidence." But when the Secretary discovers that a voter has been convicted of a felony, it is his legal duty to determine whether or not the person's rights have been restored. If not, they shouldn't vote.

4. The KIRO list is unreliable because:

- a. **The state Dept of Corrections has removed from their supervision 99% of the people on this list (based on the 6,000 sample we checked);**
- b. **Undoubtedly most have paid their debts to society and are eligible to vote;**
- c. **On many others, the state has no way of determining whether their rights have been restored**
- d. **Many may not have been felons to begin with.**

- a. This is exactly the point: state law says that felons, *including* those no longer under Department of Corrections (DOC) supervision, shall not vote until their rights are legally restored. Secretary Reed is only checking DOC's "active" list, that is, felons under DOC supervision. That's great, but it satisfies only a fraction of his legal duty. KIRO, using a public records request, obtained the list that Secretary Reed should be using to fulfill the rest of his duty. The Secretary's statement here represents either his confusion about the law, an attempt to confuse others about the law, or a flat refusal to carry out his legal duty.
- b. KIRO provided the list of about 6,000 apparent felons who voted this year to the Secretary of State's election staff. According to State Elections Director Nick Handy, who works for Secretary Reed, about 28% of the felons on that list had their rights restored. That seems like less than "most," but it's a great start to narrowing down who in the remaining 72% are illegal voters.
- c. A felon's voting rights are only restored by government action, which is always recorded. The exceptional 'courthouse burned down' scenario does not diminish Secretary Reed's duty and the general requirement that felons provide proof that their rights have been restored.
- d. Director Handy found that another 24% of the sample list of 6,000 felon voters were not actually felons because they had plea bargained a felony charge down to a misdemeanor. Again, this is a great start toward paring down the list to those who are actually illegal voters. Secretary Reed should have begun this process long ago and should now be conducting these investigations to clean up the voter rolls rather than in an attempt to discredit his critics.

5. Our voter database project was rigorous and used every reliable resource.

6. We have removed over 480,000 ineligible voter registrations.

7. Among that number, we found and removed 11,600 felons from the rolls.

8. We have publicly called attention to the shortcomings of our state's records.

9. Washington State is a national leader in creating the cleanest, most modern voter database management possible.

These are all laudable achievements. Most of the voter registrations removed were "low hanging fruit," that is, obvious duplicates (or triplicates or worse), dead people, and the like. The felons removed are mostly recent convicts who are relatively easy to identify. The older data is more difficult to use and requires a few more investigative steps, but the law is the law. A vote by a felon convicted a decade ago is just as illegal as a vote by a felon convicted this year.

Why was it reckless? Because the list they used consists primarily of old, closed files of the Department of Corrections going back into the 1800s – with most from the 1950s, 1960s and 1970s. When we looked at a 6000 name sample of the list they used, it became obvious that there are multiple problems with using such a list – including the fact that many were convicted of misdemeanors (therefore not losing voting rights), many were convicted as juveniles (therefore not losing voting rights), and most probably had their voting rights restored by now. When we asked Chris Halsne if he checked to see if these people had their voting rights restored by Superior Courts or the Board of Prison and Paroles or governors, he said no: “We have no way to use a computer to show which felons may have had their rights restored...” Most of those felons were just sentenced to prison time, and when their time was served, the Department of Corrections issued them a Discharge Certificate restoring their civil and voting rights. KIRO didn't ask for that list either.

When we looked at their list, the first person is from Franklin County , was born in 1918, was convicted in 1956, and has voted since 1962. It turned out that he was good example of the list.

Red herring alert: What difference does it make that the DOC file goes back to the 19th Century? It also goes right on up into the 21st Century.

Why does KIRO have to do all the work for Secretary Reed? KIRO did not challenge a single voter; their story was intended to bring this issue up in hopes that election officials would solve the problem. Because KIRO is not a government agency, it has to pay for public records and does not have access to certain confidential records. Director Handy apparently did obtain some of this information, but thus far is using it only to attack KIRO and not to improve Washington's election integrity.

Also, according to KIRO, the 90 year old cited by Secretary Reed has the oldest felony in the entire list used by KIRO.

After their lengthy search for someone who is a felon and is voting, they came up with Tracy Wilkinson from Snohomish County , who was charged with a felony for a prescription drug charge in 2002. They included an interview with her in their report. We were perplexed how we could have missed her, so we checked with the Department of Corrections. It turned out that her attorney “plead” for her, and she ended up being convicted of a misdemeanor – therefore not losing her voting rights. (We are still checking to see if she was ever convicted of a felony.)

KIRO tells us that they double checked this before their story ran and confirmed that Wilkinson was convicted of a felony and her rights were not restored. In fact, DOC apparently miscoded Wilkinson's felony conviction as a misdemeanor. The bright side of KIRO's investigative work is that now that someone has explained the law to Wilkinson, she has the opportunity to have her rights restored and become a legal voter. Shouldn't the Secretary of State help felons who can recover their rights to do that, rather than simply ignore the law and allow ineligible voters to vote?

KIRO basically used the name crude name-matching process that got Florida into serious trouble in 2000: http://en.wikipedia.org/wiki/Florida_Central_Voter_File.

Florida's Secretary of State was recently informed that 30,000 felons are illegally registered to vote there. Instead of attacking the media, he has admitted to the problem and is working to fix it.

To further illustrate just how bad this data is, I provide you with this analogy. It would be like someone taking all the immigration rolls of everybody who immigrated into the United States since 1900, running it against our voter rolls, and concluding that everyone on that list is an illegal alien not allowed to vote – without checking it against the list of naturalized citizens.

No, it would be like taking a list of immigrants and refusing to run it against the list of naturalized citizens and then claiming that since all the data is not in one single simple file it's meaningless.

In the State of Washington, a person who has been convicted of a felony does not lose the right to vote for life. A felon can regain the right to vote if he or she completes all requirements of the sentence. In fact, as a matter of public policy, we want people who were convicted of felonies to complete their sentences, to reform, to become upstanding citizens, and to participate in our electoral process. To become a registered voter, a person has to sign an affidavit (under penalty of law) that if convicted of a felony, his or her civil rights were restored.

In the State of Washington, a person who has been convicted of a felony does lose the right to vote for life unless and until a judge reinstates that right following the completion of all the terms of the felon's sentence. And it is debatable whether "we want" felons ever to vote again (the historic definition of a felony was a crime punishable by death—the permanent severing of a person's right to vote seems mild in comparison).

Signing that affidavit becomes less and less of a deterrent as people discover that election officials simply trust and do not verify.

On the other hand, the Evergreen Freedom Foundation wants us to go through that list of 24,000 and take anybody off the rolls whose birthday matches (<http://www.effwa.org>) -- no matter whether they were ever convicted of a felony, whether they were juveniles, and, most significantly, whether their voting rights were restored. The most recent EFF message was that I supported the Madison case to loosen up the requirements for convicted felons – in spite of the fact that I was **the defendant** in the case and succeeded by appealing it to the State Supreme Court! That is incredible! The same writer attacks me for complying with the Superior Court ruling when I lost the first round. He doesn't seem to understand that I took an oath of office to uphold the law and, with that ruling, it was the law – until we successfully appealed it.

These people were matched already using names and birthdates, but Secretary Reed simply misstates EFF's position. Our position is what the law says, granting discretion to Secretary Reed to ensure that legal voters are not disenfranchised. First, pare the list down to people who we know were convicted of felonies where we have no record of their rights being restored. (Again, Reed has access to records not available to the public.) Second, send those left the notice that the law requires, giving them 30 days to show that their rights have been restored (or to go to superior court and have them restored). Third, cancel the registrations of those known convicted felons who fail to show that their rights are restored. This is [what the law says to do](#).

Here is the EFF statement that Secretary Reed claims says he "supported the Madison case."

In 2005, a coalition of liberal groups went to court in an attempt to force the state to allow all felons not currently in prison to vote. During the case, Sam Reed

changed the [original felon voter registration rule](#) that followed state law and required finding and removing felons—including felons who are no longer in prison but who have not had their rights restored. Reed [stripped out the requirement to find and remove these felons](#).

I don't see it there either. The lower court decision forced Reed to change the Washington Administrative Code provision, but when that decision was overturned by the State Supreme Court, Reed ignored it. He left the new, reduced process in place. Why? Maybe for two reasons. First, it's easier for his office not to do the more intensive screening to prevent ineligible persons from voting. Second, [he wanted the law changed](#) to allow all felons not currently in prison to be allowed to vote.

Just because he was the defendant in the case does not mean that his policy preference was to win the case. People familiar with government know that sometimes agencies are involved in lawsuits that they'd just as soon lose—this wouldn't be the first time and Secretary Reed knows it. Nevertheless, the Supreme Court upheld the state law and the legislature refused to pass the change Secretary Reed supported. But he has continued to act as if the law was changed and has refused to reinstate the original provision in the Washington Administrative Code.

Unfortunately, they are succeeding in riling up their troops throughout the state.

So, I would appreciate it if you would defend me by writing on the EFF blog, the Sound Politics blog, and any of the others.

You may want to listen to me refuting Bobby Williams on the Kirby Wilbur Show Monday morning at 7:05 A.M. (570 AM on your dial).

Kirby is very fair, but if he accepts callers, it would be nice to have some friendly calls.

Thanks for any help that you may be able to give.



Four years ago, our governorship was decided by just 133 questionable votes. This issue, raised by KIRO-TV based on data from the Department of Corrections and the Secretary of State, reveals probably several thousand illegal voters who are likely to vote in the current governor's race.

Secretary Reed has cleaned hundreds of thousands of bad registrations of the voter rolls and we applaud him for that. But now is not the time to rest on his laurels, nor is it appropriate for him to attack the media and EFF when we are simply asking him to follow existing law and better safeguard the integrity of our elections.