

Public Hearing Testimony: Kelly Anthony, Director, Missouri Disability Vote Project - 06/03/04

**ELECTIONS ASSISTANCE COMMISSION
PUBLIC HEARING, JUNE 3, 2004
TESTIMONY PROVIDED BY:**

Kelly Anthony, Director of the Missouri Disability Vote Project

Good afternoon and thank you for the opportunity to testify here today. For the record, my name is Kelly Anthony, and I am the Director of the Missouri Disability Vote Project with Paraquad, a Center for Independent Living, and I am also affiliated with the American Association of People with Disabilities. In addition to this role I am the chair of the Help Missouri Vote Coalition, an entity comprised of 45 disability, civil rights and public interest groups around the state who are working for fair and accurate elections in Missouri.

Let me begin by saying that I am a strong proponent of provisional ballots in both principle and practice. Today I would like to outline how when broadly and uniformly implemented, provisional ballots can provide a necessary safety net for those voters who fall through the cracks of our elections process. I will also detail that while provisional ballots can be effective and trustworthy, it is a system that should ultimately become rare and unnecessary. Transparency of the process and education to voters on the provisional ballot procedures in each state is critical to increasing the likelihood that a person's vote will be counted on Election Day. What I would like to do first, however, is briefly explain Missouri's experiences with a provisional ballot system and how my state is currently threatening the effectiveness and intent of provisional ballots on the whole. I hope that as a Commission, you will not only be able to make recommendations on best practices for provisional ballots, but that you will also have the knowledge on systems that do not work for the voter's benefit, so that other states can avoid controversy and breakdowns.

In Missouri the provisional ballot system kept from happening in 2002 what had occurred on Election Day 2000, when millions of voters around the country were wrongfully disenfranchised. In my hometown of St. Louis, for instance, thousands of eligible voters arrived at the polls to find that they were not listed on the active voter rolls. Many of these individuals had been placed onto the city's inactive voter list. The overwhelming majority (96%) of people on the this list were registered to vote. It took a lawsuit resulting in a consent decree with the Department of Justice to force a simple solution of giving pollworkers direct access to this list on Election Day. The only way that a voter's eligibility could be verified was one of two ways : first, a pollworker would call the elections board to have a staff person look up the record on the computer. The problem with this however is that there was only one phone line coming into the elections board to verify the thousands of voters who were being turned away at the polls all across the city. The second way was for the individual voter to physically go downtown to the elections

board to receive a hard copy of their eligibility. However, again the elections board was not at all equipped to handle the influx of voters, and many of these individuals were left standing in line at the elections board when the polls closed, causing them to miss their chance at casting a ballot. Several factors led to this large-scale debacle, and because of situations like these around the country, the whole nation became aware of the breakdowns in our elections processes. The problem in St. Louis of pollworkers not having access to all voter files should be eradicated in 2004, by the mandate in the consent decree. Unfortunately, the decree covers elections practices in St. Louis City alone, it is not enforceable to other jurisdictions in Missouri or around the country.

Missouri passed its own provisional ballot requirement in the spring of 2002, five months before HAVA was enacted. The system proved very successful; more than 3000 provisional ballots were cast statewide, and around two-thirds of these ballots were counted. Since then, by misreading the Help America Vote Act, Missouri has wrongfully used HAVA to limit the effectiveness of provisional ballots in the state. Our state has limited so much the criteria for when a provisional ballot may count, that in this election it is doubtful that this system will provide access to the ballot for the legitimate voters it is meant to help.

As you know, it is crises like the one in St. Louis that have given rise to the federal provisional balloting system under the Help America Vote Act. If this system had been in place in 2000, many of the problems that occurred in St. Louis and elsewhere would have been significantly mitigated.

I spoke earlier about how honored I am to testify before you today. It is a great honor because you have been granted and have risen to the task of upholding the honor of our elections process; a process that I believe is fundamental to our great democracy and to this great country. Not only is it a great charge to make recommendations on provisional ballots, but it is also a great challenge. You will hear lots of different perspectives from lots of different experts. So let me take a moment to briefly explain my own perspective on behalf of myself and the many different minority communities I represent as chair of the Help Missouri Vote Coalition.

People with disabilities have directly benefited from a provisional ballot system in Missouri. During my three years of work with the disability community, I have heard horror story after horror story of pollworkers making personal judgment calls on the competency of a voter based on their perceived or actual disability. Unfortunately, this is a problem that happens consistently regardless of whether or not the voter with a disability is on the rolls. My colleagues in other states report similar disenfranchisement. Provisional ballots, when implemented correctly, will prevent attitudinal discrimination against voters with disabilities. As a person with an invisible disability, I understand the profoundly negative effects of being erroneously judged incompetent. We know that people with disabilities vote at a rate that is at least 20 percent below that of the general population. These attitudinal barriers coupled with the lack of physical access to polls and a secret ballot lead to this dismally low turnout rate.

I believe that each one of us in this room today knows and feels that the driving principle behind our success as a democracy is that of the inherent and fundamental equality of every human being. Nowhere in our country is that more evident or more practiced than in our individual right to a secret and independent vote; a vote that is exactly equal to that of anyone else in the country. On Election Day, the voice of a low-income, disabled, single mother is equal to that of the President of the United States. The farmhand's vote counts just as much as the Corporate CEO's vote. I feel that it is my charge as an organizer, much as I'm sure you feel it is in your charge as Commissioners, to preserve this fundamental equality by preserving the balance of power within our elections process. This balance is preserved when the administration of elections is handled in ways that are uniform and nondiscriminatory. The same should be true of provisional ballots. Policies around the distribution of provisional ballots should be uniform and established by statewide election officials. Just as important as uniform distribution procedures are uniform and accurate procedures for the counting of provisional ballots. Transparency to voters is critical around the processes of distribution and counting of provisional ballots. Election authorities should also be prepared to publicly account for how many provisional ballots are cast, as well as what processes are being undertaken and what criteria is necessary for a provisional ballot to count. Voters should have direct access to all of this information. Subjectivity in how provisional ballots are counted must not be tolerated.

Additionally, in order to allow for a truly accessible elections process, voters should be able to have a ballot counted in every race for which they are qualified to vote. For example, a vote for president should count for every voter who is in their correct jurisdiction. As should the vote for U.S. Senate or statewide officeholders be counted. For municipal elections, State Representative races, and others, the vote should only be counted if the voter lives in that jurisdiction. Simply put, a vote should count if you're registered and live in the district, and shouldn't count if you do not. The counting of provisional ballots ought to depend upon where you live, not where you vote. After all, I am a citizen of this country and a resident of my jurisdiction whether I am at home in my living room, or at the shopping mall across town or vacationing in a different part of the state. My vote should still count for all races for which I am eligible regardless of where I am physically on Election Day. In my remarks today, I would also like to challenge the notion of a "wrong precinct." Administrative convenience is not the issue here; the issue should be are you a citizen and are you registered to vote?

Included in the criteria for the counting of provisional ballots is that those voters who do not show proper identification must still be allowed to have their ballot counted. Whether or not you have identification should not, in our country, be criteria for one's eligibility to vote. Failure to have ID does not make one eligible. Registration status and residency should be the only criteria for voting.

And lastly, as is practice in Missouri, for those individuals who cast a provisional ballot in a jurisdiction where they are not registered, these individuals should be able to have their provisional ballot envelope count as their registration application.

A provisional ballot system that is properly and uniformly implemented can certainly provide a relatively strong safety net to catch voters who may otherwise be wrongfully disenfranchised. However let me also say that while I am a strong proponent of provisional ballots, I believe that this system should be used rarely and should ultimately become unnecessary. Provisional ballots should not satisfy our need for a large-scale solution to our elections breakdowns. Even if implemented fully and uniformly, provisional ballots only provide a band-aid solution to the cuts, blows, bruises and neglect that our elections system has undergone over the years. I feel that provisional ballots should be rare and unnecessary, because we as a society have the capability and the obligation to avoid many of the problems in our elections process that lead to the need for provisional ballots. Pollworkers' lack of access to all voter files in 2000 left many Missourians disenfranchised, and many more disenchanted with our elections process. While a provisional ballot would have been useful in 2000, it would have been a much simpler, cheaper and more effective solution to on Election Day, give each pollworker in every jurisdiction direct, physical access to the inactive voter list and other files containing registered voters.

To further reduce the need for provisional ballots, policies on how voters are removed from the active voter file should be set and directed by statewide election authorities. These policies should be implemented and enforced on a statewide and uniform basis. In Missouri, there are glaring discrepancies between local jurisdictions on how these inactive voter lists are maintained, as well as the criteria for who is placed on these lists. The inactive voter list in St. Louis was over 54,000 people (one-fifth of the entire electorate) long. The size of this list increased exponentially from the 1996 federal election when only 2000 people were on the inactive list. The reason the list in St. Louis was so large is because the city of St. Louis failed to follow the proper policies, as established under the National Voter Registration Act (NVRA) in removing from the rolls those voters who were deceased or had moved outside of the jurisdiction. Another factor for the size of the list is that St. Louis did not follow NVRA policy in moving registered voters from the active voter file to the inactive list. These shortcomings on list maintenance are spelled out in the consent decree. Uniform and statewide policies that follow federal guidelines for voter purges and other list maintenance would help to eliminate such disparities between local jurisdictions, and it would ensure that voters are not inaccurately removed.

In order for voters to be more informed on how the active and inactive voter rolls are maintained, the procedures and criteria for removal from the active rolls should be made transparent and accessible to the general public. State and local election authorities should make every reasonable attempt (i.e. mailings, websites, etc.) to make known to voters their policies and procedures for removing people from the voter files. This additional step will also prevent in the future what happened in Florida in 2000 and the removal of voters from the active voter list in that state. In 2000, some election authorities in selected parts of Florida received specific direction on how to purge voters from the active voter file. One directive involved the matching of the voter file against the database of felons in Florida. As you probably already are aware, if you are a resident of Florida and have been convicted of a felony anywhere in the nation, you lose your

suffrage for life. Election authorities in some local Florida jurisdictions received instruction from state election officials that when this match occurred, an exact match was not necessary in order to purge someone from the active voter file. In actuality, authorities were told that if the last name matched and the first four letters of a person's first name matched the name in the felon file, that voter would be stricken from the rolls. Local authorities were also told that in these instances, the birth date did not have to match, the person's race, gender or address did not have to match in order for them to be removed. What resulted was the mass chaos we witnessed on Election Day in Florida when thousands of voters showed up to the polls to discover that they had been erroneously removed from the rolls. These voters were disenfranchised on that day. While there are many things that are unethical about these practices, there was very little, if anything, that was technically illegal about it. In fact, I have heard reports that Florida will be using similar guidelines for voter roll purges for this election cycle. If this is true, I fear that we are headed for another train wreck catastrophe on Election Day 2004. We should all be able to learn from mistakes that have been made. Policies that are directed and enforced uniformly at the state level, plus making these policies available to voters, will drastically decrease the number of voters who are erroneously moved from the active voter list, thus decreasing the need for provisional ballots. In addition to the following of federal guidelines in place, local election authorities should send written notice to voters, telling them that they will be purged from the active voter file on a date certain.

Most importantly, the criteria and recommendations set around provisional ballots, and for that matter, all election policies, should be as specific as possible because we don't want to again wrongly disenfranchise legitimate voters. With this philosophy driving the policy and the policymakers, we can be more assured that every eligible voter is able to carry out their patriotic duty on Election Day.

One final recommendation that I will respectfully submit, is that along with your proposals and recommendations on policies as Commissioners, that you also encourage states to perform comprehensive, statewide audits on the current implementation practices of all federal election laws, including Voting Rights Act, NVRA and HAVA. In addition to audits on the implementation and enforcement of federal laws, states should audit the implementation and uniformity of state laws governing the distribution and counting of provisional ballots, as well as the accessibility and publication of the written policies of every local jurisdiction on how voters are removed from the active voter files. These audits will provide insight and an accurate assessment of election practices around the nation.

As our country's founding document the Declaration of Independence declares, this is a nation for the people and ruled by the people. We fall short of this standard when people's fundamental rights as a member of this democracy are not realized. We have in many ways in this country an elections process that is subjective to politics, it is inefficient, inaccurate and inaccessible. Luckily, we also have the capacity, the obligation and, as I have witnessed in this room today, the desire to do better.

Thank you again for the opportunity to speak on behalf of many communities who are underrepresented in this democracy. I look forward to your questions.