

TESTIMONY OF ALEX KNOPP ON ABSENTEE BALLOT VOTING (LCO 3576)
GOVERNMENT ADMINISTRATION AND ELECTIONS COMMITTEE
JULY 21, 2020 [BY ZOOM]

Thank you for holding this virtual public hearing on enacting legislation to protect the right of residents to vote while preventing the spread of the Covid-19 virus in Connecticut during the November general election.

I testify today as someone who had the high privilege of sitting behind your desk when I co-chaired the GAE Committee for three sessions, from 1999 to 2001, during my service as a State Representative from Norwalk from 1987 to 2001. I currently serve on the Board of Common Cause of Connecticut and retired last semester after co-teaching in the Yale Law School Clinic for 14 years.

My purpose today is to ask you to please reconsider the absentee ballot expansion draft language in LCO 3576 to correct its twin flaws of imprecision and under inclusiveness. My testimony recommends a substitute phrase to correct these flaws.

The first problem is that the draft language in lines 19 and 20 of LCO 3576 is ambiguous because it is susceptible to two differing interpretations and therefore sets a weak standard for implementation. It also becomes a standing invitation to a time-wasting judicial challenge by its opponents.

Here is the question for you: Does the new LCO draft construct of “Any elector...unable to appear...for the following reason: (7) the sickness of COVID 19” mean that the elector must be infected by the virus in order to qualify? The draft language is simply unclear. It could be read either yes or no. This new fragment needs more definition to make statutory sense. Such a lack of precision will likely compound an already contentious and somewhat partisan issue.

I doubt that the sponsors of this proposal intended such a limited view because it would not constitute any real change from existing law! Indeed, Gov. Lamont’s language in the Special Session call is slightly less restrictive: He called for legislation to “temporarily expand absentee balloting for the August 2020 primary and November 2020 general election in response to the COVID-19 pandemic so that voters may lawfully cast absentee ballots because of the sickness of COVID-19.”

To make the call for expanded absentee voting “because of the sickness of COVID-19” more meaningful, I urge you to consider this substitute language for the new eligibility condition in subsection CGS 9-135(a) (7): “the risk of getting COVID-19.” The full new construct would thus provide: “Any elector...unable to appear...for the following reason: (7) to protect him or herself from the risk of getting COVID-19.” There would be no confusion over the meaning of this new language in terms of the current health status of the elector as there appears to be now in the current draft.

I have adapted this language from the section of the Centers for Disease Control website addressing “People at a Higher Risk for COVID-19”: “It is especially important for people at increased risk of severe illness from COVID-19, and those who live with them, to protect themselves from getting COVID-19.”

Enacting this broader language would put the elector facing a risk of getting COVID-19 in the same legal and practical position that a person with a physical disability now holds under CGS 9-135(a)(4). When an elector with a self-identified physical disability fills out the current state-produced absentee ballot application form, the elector simply checks off the box labeled “My Disability” as the reason for the application and signs under penalty of law in order to qualify.

Similarly, a person who would face a self-identified heightened risk due to getting COVID-19 if he or she ventured into an indoor public setting, such as a precinct voting site, could check off a new box labeled “Due to COVID-19 Risk” and sign under penalty of state law to complete his or her absentee ballot application.

The second reason why the draft language in LCO 3576 should be revised is because it is fatally under inclusive: It fails to cover explicitly and clearly the many Connecticut voters whom the CDC has identified as having a higher risk either of becoming infected or of becoming more severely ill if they get the virus-- either because they come from vulnerable populations, like the elderly or pregnant women, or they suffer from underlying health conditions, like cancer, high blood pressure, asthma, obesity or Sickle Cell Anemia.

There is no doubt that the purpose of expanding absentee voter eligibility should be to reduce the risk for voters from getting COVID-19, especially those electors with an underlying pre-existing medical condition.

Does the current LCO 3576 language clearly apply to an elector who does not have COVID-19 but is 65, 75 or 85 years old? No, even though older adults are identified as a vulnerable population at increased risk of COVID-19 by the CDC. But because older voters are at a higher risk of getting COVID-19, the substitute “at risk” requirement would be fulfilled.

Does the current statute requiring an elector’s “illness” or the LCO draft (“the sickness of COVID-19”) apply to a pregnant woman seeking an absentee ballot before she ventures into an indoor poll setting? No, at least not by any dictionary definition. But she needs the enhanced protection created by the substitute criteria of “Due to COVID-19 Risk” to protect her and her unborn child if she wishes to vote safely.

I also view these issues of coverage from a personal perspective because my own immune system is compromised. I spent 7 months in the hospital in 1989-90 during my tenure in the General Assembly, suffering from a severe case of an autoimmune disease known as “French Polio.” As a result, I am now not permitted by my

physicians to get a flu shot. I will not be permitted to get a COVID-19 vaccine shot even if one is approved. Should I be required to vote in person if a second wave of the virus hits Connecticut this fall? I can't say with confidence that the draft LCO language would authorize me to apply for and receive an absentee ballot, but I am confident the substitute I am recommending above would protect all of us with compromised immune systems.

Governor Lamont has led a best-in-the-nation state defense against the virus. In my view, the best way to continue our progress and for the General Assembly to protect the right to vote while containing the COVID-19 virus is to adopt the expansive legislative standard of "risk reduction" recommended above (or some similar wording).

I believe such an enactment would be entirely consistent with the Connecticut Constitution's mandate in Article VI, Section 4, for the General Assembly to "support the privilege of free suffrage" and its authorization in Article V, Sec. 7, for the General Assembly to "...provide by law for voting... by qualified voters of the state who are unable to appear at the polling place on the day of election because of... sickness..."

All of us have heard the truism repeated many times in the last 72 hours that the best way to honor Congressman John Lewis is to act without delay or compromise to strengthen voting rights for all Americans. Connecticut now has the opportunity to lead the nation again.

Alex Knopp was elected Mayor of Norwalk, Connecticut, in 2001 for two terms after serving 8 terms in the Connecticut General Assembly, where he chaired the Government Administration & Elections Committee for 3 years. He was a Visiting Clinical Lecturer in Law at Yale Law School from 2006-2020 and is now President of the Norwalk Public Library. He can be reached at alex.knopp20@gmail.com or 203-554-7307.