

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matters of:

Levi Guerra, Esther V. John, and
Peter B. Chiafolo

Appellants

Docket Nos. 010421; 010422; 010424

INITIAL ORDER

Agency: Secretary of State
Program: Elections and Voting

1. ISSUES

- 1.1. Did the Secretary of State properly assess civil penalties against the appellant electors under RCW 29A.56.340 because they voted for a person other than their party's nominee?
- 1.2. If so, what is the appropriate penalty?

2. ORDER SUMMARY

- 2.1. The Secretary of State's action is AFFIRMED.
- 2.2. Levi Guerra shall pay a \$1,000 civil penalty.
- 2.3. Esther V. John shall pay a \$1,000 civil penalty.
- 2.4. Peter B. Chiafolo shall pay a \$1,000 civil penalty.

3. HEARING

- 3.1. Hearing Date: March 3, 2017
- 3.2. Administrative Law Judge: Robert C Krabill
- 3.3. Appellants: Levi J Guerra, Esther V. John, and Peter B. Chiafolo
 - 3.3.1. Representative: Sumeer Singla appeared and represented all three appellants.
 - 3.3.2. Appearances: Of the appellants, only Mr. Chiafolo appeared in person.
- 3.4. Agency: Secretary of State
 - 3.4.1. Representatives: Callie Castillo, AAG and Rebecca Glasgow, AAG
- 3.5. Stipulated Facts: The parties stipulated to the facts alleged in each appellant's Notice of Violation.¹

¹ Stipulated Facts, February 17, 2017.

4. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Jurisdiction

- 4.1. On December 29, 2016, the Secretary of State's Office issued a Notice of Violation to Levi Guerra.² The Notice alleged that Ms. Guerra violated RCW 29A.04.230 when she voted Colin Powell for President and Maria Cantwell for Vice President. On that basis, it assessed a civil penalty of \$1,000 against her. Ms. Guerra filed a timely request for hearing on January 19, 2017.³
- 4.2. On December 29, 2016, the Secretary of State's Office issued a Notice of Violation to Esther V. John.⁴ The Notice alleged that Ms. John violated RCW 29A.04.230 when she voted Colin Powell for President and Susan Collins for Vice President. On that basis, it assessed a civil penalty of \$1,000 against her. Ms. John filed a timely request for hearing on January 19, 2017.⁵
- 4.3. On December 29, 2016, the Secretary of State's Office issued a Notice of Violation to Peter B. Chiafalo.⁶ The Notice alleged that Mr. Chiafalo violated RCW 29A.04.230 when he voted Colin Powell for President and Elizabeth Warren for Vice President. On that basis, it assessed a civil penalty of \$1,000 against him. Mr. Chiafalo filed a timely request for hearing on January 19, 2017.⁷

Selection as Electors

- 4.4. The Washington State Democratic Party selected twelve Presidential electors that included Ms. Guerra, Ms. John, and Mr. Chiafalo. On August 4, 2016, the Democratic Party certified a slate of electors including all three appellants to the Secretary of State's Office.
- 4.5. On August 8, 2016, Ms. Guerra signed the pledge, "I will vote for the candidates nominated by the Democratic Party for President of the United States and Vice President of the United States." On August 2, 2016, Ms. John signed the same pledge. And, on August 3, 2016, Mr. Chiafalo signed the same pledge. The Washington State Democratic Party submitted copies of those pledges to the Secretary of State's Office on August 9, 2016.
- 4.6. On November 8, 2016, the Democratic Party nominees for President, Hillary R. Clinton, and Vice President, Tim Kaine, won the popular vote in

² Guerra Notice of Violation, December 29, 2016.

³ Guerra Request for Hearing, January 16, 2017.

⁴ John Notice of Violation, December 29, 2016.

⁵ John Request for Hearing, January 19, 2017.

⁶ Chiafalo Notice of Violation, December 29, 2016.

⁷ Chiafalo Request for Hearing, January 19, 2017.

Washington by a large margin. So, the Democratic Party electors became Washington's electors.

Actions as Electors

4.7. On December 19, 2016, the Secretary of State convened Washington State's electoral college in Olympia. Rather than vote for the Democratic party's nominees, the three appellants voted as follows:

Electors	Presidential Vote	Vice Presidential Vote
Levi Guerra	Colin Powell	Maria Cantwell
Esther V. John	Colin Powell	Susan Collins
Peter B. Chiafalo	Colin Powell	Elizabeth Warren

4.8. The Secretary of State submitted their votes to the President of the United States Senate as cast.⁸

5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions:

Jurisdiction

5.1. I have jurisdiction to decide this matter under RCW 34.05.413 and chapter 34.12 RCW.

Liability for Civil Penalties

5.2. Under RCW 29A.56.340, the Secretary of State may assess a civil penalty up to \$1,000 against any elector "who votes for a person or persons not nominated by the party of which he or she is an elector". Here, all three appellants were electors of the Washington State Democratic Party. The Democratic Party nominated Hillary R. Clinton for President and Tim Kaine for Vice-President. Because the appellants each cast their electoral votes for persons other than those their party nominated, the Secretary of State could assess a civil penalty of \$1,000 against each of them under RCW 29A.56.340.

5.3. The Secretary of State did assess \$1,000 civil penalties against each appellant under RCW 29A.56.340. Those civil penalties lay within her discretion, so they are proper in these cases.

⁸ Certificate of the Washington Electoral College Vote, December 19, 2016.

Constitutionality of Civil Penalties

- 5.4. The Secretary of State and the appellants agree the U.S. Constitution delegates to Washington the power to determine the method of selecting its electors. They also agree that power includes the authority to require electors to sign a pledge committing to vote for their party's nominees.⁹
- 5.5. Washington does not prevent electors from voting contrary to their pledges. It does not unseat electors who attempt to vote contrary to their pledges, and it has not criminalized electors voting contrary to their pledges. The Secretary of State certifies those votes to the President of the Senate just the same as the votes of electors who voted consistent with their pledges.
- 5.6. The appellants argue that the Constitution does not delegate to Washington the power to punish electors for voting contrary to their pledges. Without that power, Washington could not punish them. The Secretary of State argues that the Constitution does delegate that power to Washington the same as the power to demand a pledge.
- 5.7. An executive branch agency cannot negate a law that the Legislature has entrusted it to administer by finding it unconstitutional.¹⁰ "Only courts have that power."¹¹ Here, the Legislature has entrusted the Secretary of State to administer RCW 29A.56.340. Therefore, the Secretary of State cannot negate it as unconstitutional. The Secretary of State has delegated authority to determine this case to the Office of Administrative Hearings and through the Office of Administrative Hearings to me. My authority extends no farther than the Secretary of State's. Because the Secretary of State cannot negate RCW 29A.56.340 as unconstitutional, neither can I. So, I decline to find RCW 29A.56.340 unconstitutional.
- 5.8. The appellants have raised a Constitutional defense. They are free to make that record in the administrative hearing process, and they did. They can raise that defense on appeal in court.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. The Secretary of State action is AFFIRMED.
- 6.2. Levi Guerra shall pay a \$1,000 civil penalty.

⁹ *Ray v. Blair*, 343 U.S. 214 (1952). A political party may require candidates for elector to pledge their electoral votes to the party's national nominees for President and Vice President without violating the Twelfth Amendment to the U.S. Constitution.

¹⁰ Cf. *Bare v. Gorton*, 84 Wn.2d 380, 383 (1974).

¹¹ *Id.*

6.3. Esther V. John shall pay a \$1,000 civil penalty.

6.4. Peter B. Chiafalo shall pay a \$1,000 civil penalty.

Issued from Tacoma, Washington on the date of mailing.



Robert C Krabill
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE ATTACHED

APPEAL RIGHTS

Any party that disputes this Initial Order may file a Petition for Administrative Review with the Secretary of State. A Petition for Administrative Review may be mailed or delivered to the physical address listed below:

Secretary of State
416 Sid Snyder Ave SW
PO Box 40220
Olympia, WA 98504-0220

Whether you mail or deliver the Petition for Administrative Review, the Secretary of State must actually receive the Petition for Administrative Review during office hours at the office within 20 days of the date this Initial Order was mailed to the parties.¹² Part of filing a Petition is providing copies to the other parties at the same time.

If the Secretary of State does not receive a Petition for Administrative Review within 20 days from the date of the Initial Order, the Initial Order shall become final with no further right to appeal

If you timely file a Petition for Administrative Review, the office will conduct an administrative review under chapter 34.05 RCW.

¹² WAC 10-08-211(2).

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 010421, 010422, 010424

I certify that true copies of this document were served from Tacoma, Washington via Consolidated Mail Services upon the following as indicated:

<p>Levi Jennet Guerra 20507 Rd 1 SE Warden, WA 98857 <i>Appellant</i></p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Esther V. John 1807-13th Ave S Seattle, WA 98144 <i>Appellant</i></p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Peter Bret Chiafalo 2106-131st Place SW Everett, WA 98204 <i>Appellant</i></p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Jonah Harrison Sumeer Singla Impact Law Group PLLC 1325 4th Ave Ste 1400 Seattle, WA 98101 Email: Sumeer@impactlawgroup.com <i>Appellant Representative</i></p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail</p>
<p>Callie Castillo Office of the Attorney General PO Box 40100 Olympia, WA 98504 MS: 40100 Email: calliec@atg.wa.gov <i>Agency Representative</i></p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail</p>

Mark Neary
Office of The Secretary of State
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Department Representative

- First Class Mail
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Date: Wednesday, March 08, 2017

OFFICE OF ADMINISTRATIVE HEARINGS



Melanie Barnhill
Legal Assistant