

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Robert Satiacum

Appellants

Docket No. 010760

INITIAL ORDER

Agency: Secretary of State
Program: Elections and Voting

1. ISSUES

1.1. Did the Secretary of State properly assess civil penalties against Mr. Satiacum under RCW 29A.56.340 because he voted for a person other than his 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. Robert Satiacum shall pay a \$1,000 civil penalty.

3. HEARING

3.1. Hearing Date: April 19, 2017

3.2. Administrative Law Judge: Robert C Krabill

3.3. Appellant: Robert Satiacum

3.3.1. Representative: Karl Williams appeared and represented Mr. Satiacum.

3.4. Agency: Secretary of State

3.4.1. Representatives: Callie Castillo, AAG

3.5. Stipulated Facts: The parties stipulated to the facts alleged in the Notice of Violation.¹

3.6. Exhibits: I admitted Exhibits A-G by stipulation of the parties. I substituted a cleaner copy of Exhibit B for the one provided with the Request for Hearing and Notice of Violation.

¹ Stipulated Facts and Exhibits, March 3, 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 Robert Satiacum.² The Notice alleged that Mr. Satiacum violated RCW 29A.56.340 when he voted Faith Spotted Eagle for President and Winona LaDuke for Vice President. On that basis, it assessed a civil penalty of \$1,000 against her. Mr. Satiacum filed a timely request for hearing on January 30, 2017.³

Selection as Elector

4.2. Mr. Satiacum attended the Washington State Democratic Party Convention as a delegate for Bernie Sanders. He has strong personal objections to Hillary R. Clinton and vigorously opposed her candidacy for President. He detests her so much he will not refer to her by name.

4.3. At the convention, Patsy Whitefoot nominated Mr. Satiacum to be a Presidential elector. Because Mr. Satiacum considers Ms. Whitefoot an elder, her nomination was direction he could not refuse. While he made no speech or other effort to be chosen as an elector, he did not refuse the call. After long deliberation, the Washington State Democratic Party selected him as a Presidential elector from a large number of nominees.

4.4. On August 4, 2016, the Democratic Party certified a slate of electors to the Secretary of State's Office. It included Mr. Satiacum.⁴

4.5. On August 9, 2016, Mr. Satiacum 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."⁵ The Washington State Democratic Party submitted a copy of that pledge to the Secretary of State's Office on or about August 11, 2016.

4.6. On November 1, 2016, Mr. Satiacum was visiting Standing Rock, South Dakota where Faith Spotted Eagle was leading Keystone Pipeline protests. Mr. Satiacum supports the protesters against the forces trying to build the pipeline. While there, an AP reporter asked him about his elector voting intentions. He replied that he would not vote for Hillary R. Clinton.

4.7. After a worrying call from his mother, Mr. Satiacum made the long drive back home to University Place, Washington. Democratic party activists and officials kept

² Notice of Violation, December 29, 2016.

³ Request for Hearing, January 30, 2017.

⁴ Notice of Democratic Party Electors, August 4, 2016, Exhibit A.

⁵ Pledge of Presidential Elector Nominee, August 9, 2016, Exhibit B.

calling him at home about his elector voting intentions. He found the attention unwelcome and sometimes even hostile.

- 4.8. On November 8, 2016, the Democratic Party nominees for President, Hillary R. Clinton, and Vice President, Tim Kaine, won the popular vote in Washington by a large margin.⁶ So, the Democratic Party electors became Washington's electors.

Actions as Electors

- 4.9. In December 19, 2016, the Secretary of State convened Washington State's electoral college in Olympia. Mr. Satiacum attended as an elector. The Secretary of State did not specifically give Mr. Satiacum notice that she could assess a civil penalty against him, if he cast an electoral ballot contrary to his pledge.
- 4.10. When Mr. Satiacum arrived, he did not know who he would vote for. He considered voting for Hillary R. Clinton, but he could not bring himself to do it. He considered voting for Bernie Sanders and even started writing his name on the ballot. Then, he got inspired to vote Faith Spotted Eagle for President and Winona LaDuke for Vice-President. Rather than vote for the Democratic party's nominees, Mr. Satiacum voted Faith Spotted Eagle for President⁷ and Winona LaDuke for Vice-President.⁸
- 4.11. The Secretary of State submitted his votes to the President of the United States Senate as cast.⁹

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, Mr. Satiacum was an elector of the Washington State Democratic Party. The Democratic Party nominated Hillary R. Clinton for President and Tim Kaine for Vice-President. Because Mr. Satiacum cast his electoral votes for persons other than those his party

⁶ Canvass of the Returns of the General Election, December 7, 2016, Exhibit C.

⁷ Mr. Satiacum's Official Ballot for President, Exhibit F.

⁸ Mr. Satiacum's Official Ballot for Vice-President, Exhibit G.

⁹ Certificate of the Washington Electoral College Vote, December 19, 2016, Exhibit E.

nominated, the Secretary of State could assess a civil penalty of \$1,000 against him under RCW 29A.56.340.

Amount of Civil Penalty

5.3. The Secretary of State had discretion to select a \$1,000 civil penalty under RCW 29A.56.340. No evidence shows that her selection of a \$1,000 civil penalty against Mr. Satiacum was arbitrary or capricious. That civil penalty lay within her discretion, so it was the proper penalty in this case.

Notice of Potential Penalty

5.4. No rule or statute requires the Secretary of State to give electors notice of the potential for a civil penalty. Because she was not required to give Mr. Satiacum notice, not giving him prior notice does not invalidate her assessment of a civil penalty.

Constitutionality of Civil Penalties

5.5. Washington may require electors to sign a pledge committing to vote for their party's nominees.¹⁰ 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 vote consistent with their pledges.

5.6. An executive branch agency cannot negate a law that the Legislature has entrusted it to administer by finding it unconstitutional.¹¹ "Only courts have that power."¹² 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

¹⁰ *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.

¹¹ Cf. *Bare v. Gorton*, 84 Wn.2d 380, 383 (1974).

¹² *Id.*

unconstitutional, neither can I. So, I decline to find RCW 29A.56.340 unconstitutional.

5.7. Mr. Satiacum has raised a Constitutional defense. He is free to make that record in the administrative hearing process, and he did. He 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. Robert Satiacum 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.¹³ 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.

¹³ WAC 10-08-211(2).

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 010760

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

<p>Robert Satiacum 6210 Woodlake Drive W University Place, WA 98467 <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>Karl Williams Griffin & Williams, P.S. 5000 Bridgeport Way West University Place, WA 98467 <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 type="checkbox"/> E-mail</p>
<p>Callie Castillo Office of the Attorney General MS: 40100 PO Box 40100 Olympia, WA 98504 <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 type="checkbox"/> E-mail</p>
<p>Mark Neary Office of The Secretary of State MS:40229 PO Box 40229 Olympia, WA 98504 <i>Department 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 type="checkbox"/> E-mail</p>

Date: Monday, April 24, 2017

OFFICE OF ADMINISTRATIVE HEARINGS



Melanie Barnhill
Legal Assistant