

**WHATCOM COUNTY PROSECUTING ATTORNEY
ERIC J. RICHEY**

**CHIEF CRIMINAL DEPUTY
DEPUTY**

Erik Sigmar

**ASST. CHIEF CRIMINAL DEPUTY
Warren Page
Buckingham**

**Waldron
CRIMINAL DEPUTIES
Quinn**

David Graham
Dona Bracke
Jonathan Richardson
Melissa Stone

**DEPUTIES
Kellen Kooistra
Wilson/Lead**

**Brandon Waldron
Benjamin Pratt**

**DEPUTIES
Gordon Jenkins
Thulin**

Kacie Emerick
Christina Garcia
Ariane Takano

**ADMINISTRATOR
Jesse Corkern**

Whatcom County Courthouse

**311 Grand Avenue, Suite 201
Bellingham, Washington 98225-4079
(360) 778-5710 /Main Office FAX (360)778-5711
Appellate FAX (360) 778-5712**

Dionne Clasen

CHIEF CIVIL

Karen Frakes

**CIVIL DEPUTIES
Royce**

Brandon

Christopher

George Roche

**CIVIL SUPPORT
ENFORCEMENT**

Janelle

Evan Jones

APPELLATE

Kimberly

Hilary Thomas

OFFICE

Vanessa Martin

12/31/20

To: Kathy Kershner, Whatcom County Republican Party Chair

From: Royce Buckingham on behalf of Eric Richey

re: "Pay for votes" allegation.

Party Chair Kershner,

Thank you for bringing your concerns regarding "pay for votes" to the attention of the Whatcom County auditor, Diana Bradrick. Ms. Bradrick contacted us promptly upon receiving your November 24, 2020 email (copied below), and she referred the information to our office pursuant to her duty under RCW 29A.84.010.

RCW [29A.84.010](#)

Voting, registration irregularities.

(1) A county auditor who suspects a person of fraudulent voter registration, vote tampering, or irregularities in voting shall transmit his or her suspicions and observations without delay to the canvassing board.

(2) The county auditor shall make a good faith effort to contact the person in question without delay. If the county auditor is unable to contact the person, or if, after contacting the person, the auditor still suspects fraudulent voter registration, vote tampering, or irregularities in voting, the auditor shall refer the issue to the county prosecuting attorney to determine if further action is warranted.

(3) When a complaint providing information concerning fraudulent voter registration, vote tampering, or irregularities in voting is presented to the office of the prosecuting attorney, that office shall file charges in all cases where warranted.

Our office then reviewed the evidence for potential charges under subsection (3).

Upon review, the Prosecuting Attorney's Office found the following: The core facts, as contained in the complainant and videos, are that gas cards and other things of value were being given to voters (and "raffled" to voters) in exchange for the voter casting a vote. This was done to "get out the vote," i.e. to encourage people to vote. There was not evidence that the reward was contingent on the vote being "for or against" any particular candidate or measure.

State and federal laws prohibit making an offer/expenditure of a thing of value to a voter in order to influence their voting. Below are the state and federal statutes with the relevant portions highlighted:

- Under the state law, it is illegal to offer anything of value in exchange for a vote "for or against" a candidate or ballot measure.

RCW [29A.84.620](#)

Hindering or bribing voter.

Any person who uses menace, force, threat, or any unlawful means towards any voter to hinder or deter such a voter from voting, or directly or indirectly offers any bribe, reward, or any thing of value to a voter in exchange for the voter's vote for or against any person or ballot measure, or authorizes any person to do so, is guilty of a class C felony punishable under RCW [9A.20.021](#).

- Under the federal law, it is illegal to make an expenditure to any person "to vote or withhold their vote" or to "vote for or against any candidate."

18 USC §597. Expenditures to influence voting

Whoever makes or offers to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate; and whoever solicits, accepts, or receives any such expenditure in

consideration of his vote or the withholding of his vote shall be fined under this title or imprisoned not more than one year, or both; and if the violation was willful, shall be fined under this title or imprisoned not more than two years, or both.

Under the federal law, it appears to be illegal to offer gas cards (or other items of value) to voters in order to get them to “vote or withhold their vote” at all. However, under Washington state law, a reward for voting is illegal only if the thing of value is given to the voter in order to get them to vote “for or against” a candidate or ballot measure.

Based upon the evidence referred to our office, there is not sufficient evidence to prove beyond a reasonable doubt that a thing of value was exchanged for votes “for or against” a particular person or measure. The County Prosecutor cannot charge a federal crime, and so charges under federal 18 USC section 597 would be a matter for the FBI to investigate and potentially refer to a federal prosecutor.

To that end, we advised Ms. Bradrick to also refer this matter to the FBI, and she did so on December 18, 2020, emailing the details to an Agent Wilson at the FBI in our region.

Our office also called the Secretary of State’s Office to speak with the Director of Elections. We received a return call from the Attorney General’s Office who told us that her client preferred that we speak to her through the AG. The AG related that the Director did not take a position on whether the activity constituted a crime or whether it ran afoul of election rules. We asked for but received no direction from the AG or, by extension, the Secretary of State. Our office also advised Diana Bradrick to call the Secretary of State’s Office to ask about this issue. She did so and has received no return call as of this date.

Additionally, our office made a call to the King County elections civil deputy prosecutor, who said she had not encountered this situation before. We then sent a general question to prosecutors across the state. We received a number of replies from civil deputies. They had, variously, investigated dead voters, double voters, and spouse voters. Most cases were cleared up through investigation. None involved “pay for votes.” Both the King County prosecutor and the AG agreed that the state statute does not criminalize rewards for voting, but only rewards for voting for a particular candidate or measure.

The current status of the case is that the Whatcom County Prosecutor has declined to prosecute under the state law based upon the facts presented, and the case has been referred to the FBI to consider federal action.

Sincerely,

/s/ Royce Buckingham, via electronic signature

Royce Buckingham, Senior Civil Deputy Prosecutor

cc: Diana Bradrick