



Thursday, December 28, 2023 *Anno Domini*

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CC: County Manager Kathleen Otto [Kathleen.Otto@clark.wa.gov](mailto:Kathleen.Otto@clark.wa.gov)

**RE: COMPLAINT AGAINST AUDITOR GREG KIMSEY**

Dear Commissioners,

This letter is to formally request an investigation into Auditor Greg Kimsey's apparent violation of the Code of Ethics, the Appearance of Fairness Doctrine, and Clark County Policy 13.1. This request is premised on the concern that Auditor Kimsey did not fulfill his ethical obligations during the 2022 challenge to John Ley's voter registration. In 2022, Ley was a candidate for State Representative in the 18th Legislative District Position No. 2 in Washington.

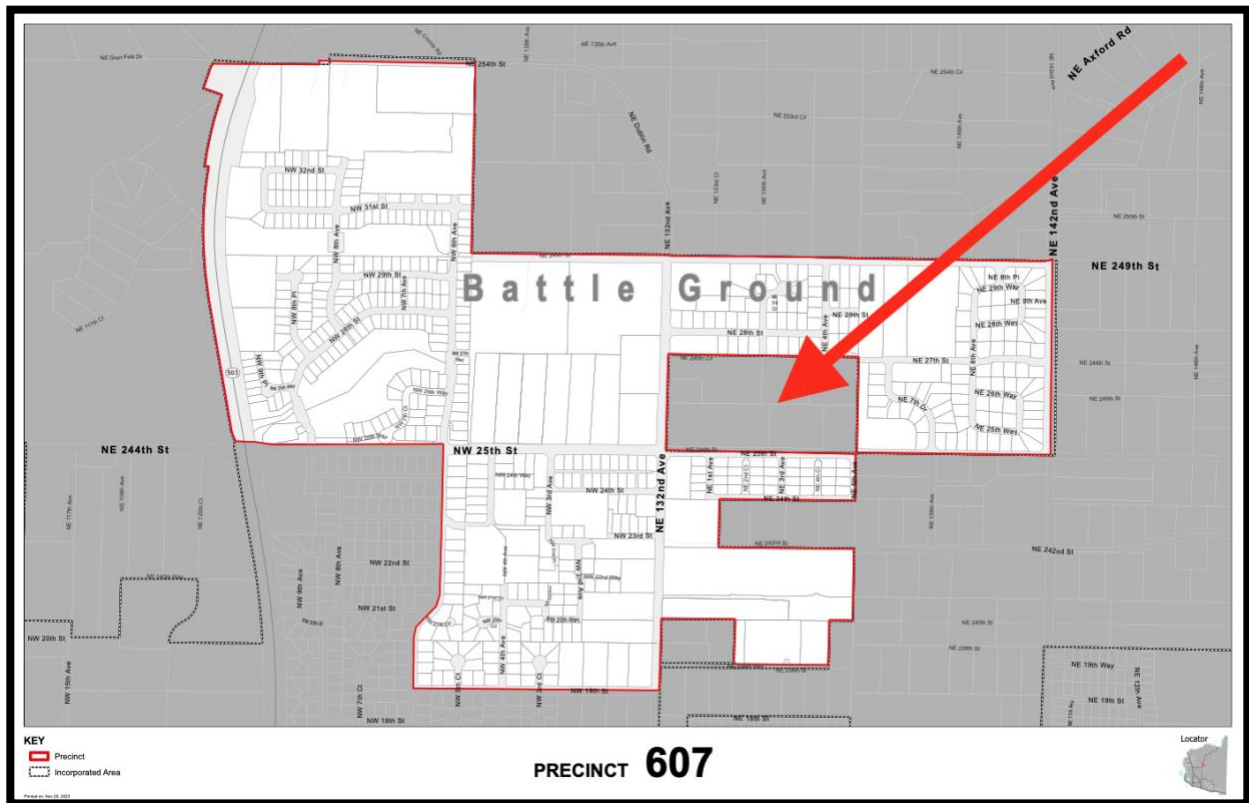
The core issue is that Kimsey allegedly assisted in initiating the challenge to Mr. Ley's voter registration and advised those opposing Ley on how to construct their case. This involvement was not disclosed by Kimsey during the hearing. If it is true that Kimsey both assisted in the challenge's initiation and provided advice on case construction, yet failed to disclose this to Ley, it would represent a clear violation of ethics laws.

#### BACKGROUND

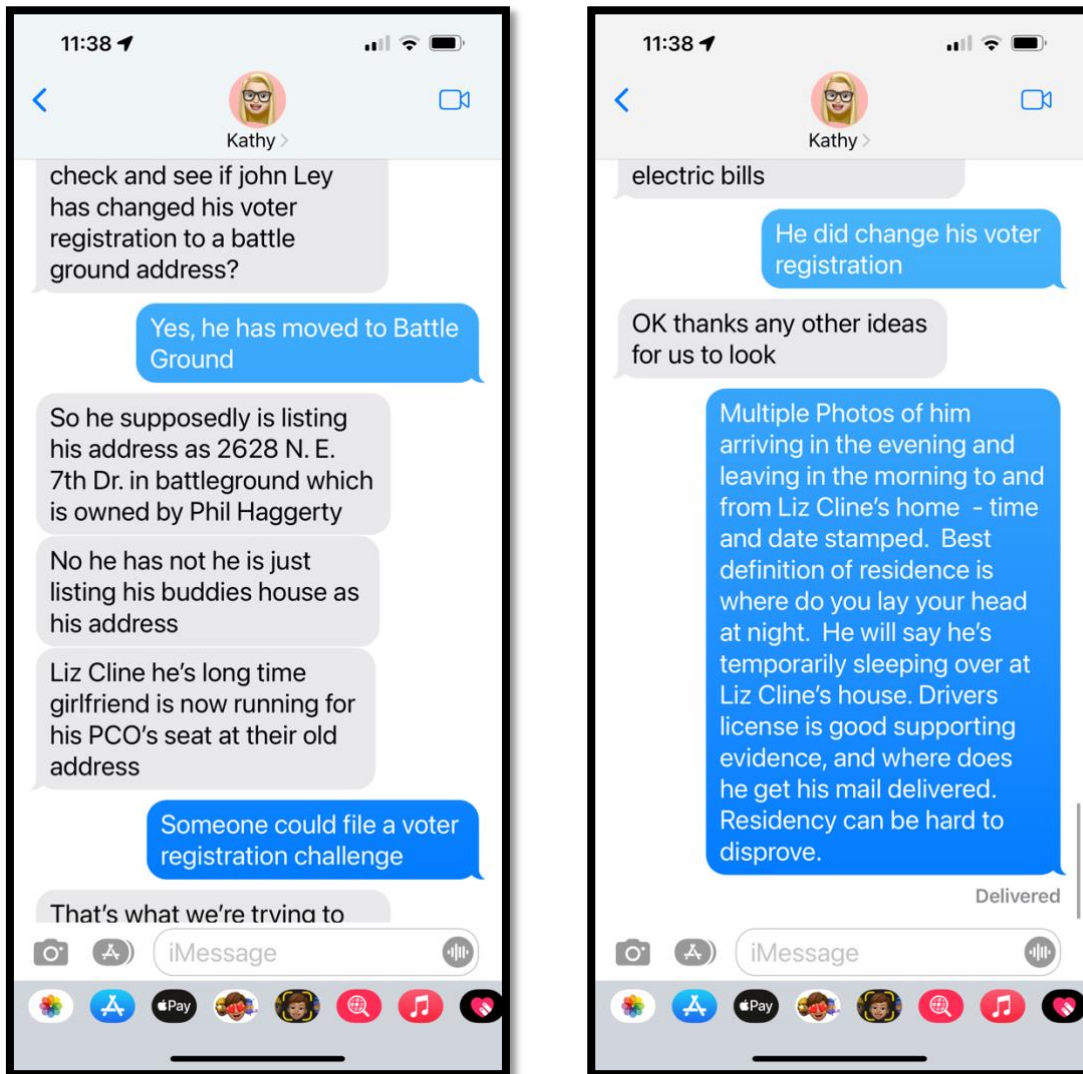
Enclosed are screenshots apparently showing conversations between Auditor Kimsey and a high-ranking Republican party official. These conversations seem to

discuss strategies to adjust voter districts in a manner that would enable Greg Cheney to run in the district where Ley's registration was later challenged. Under Clark County Code, the auditor is empowered to implement precinct boundary changes (CCC 2.12.020).

The redrawing of district boundaries is said to have made Cheney eligible to run in the same district Ley ran in. Enclosed is a map of precinct 607, which appears to have been redrawn as part of this redistricting effort. Notice the unusual cutout in the middle of the precinct. This redistricting, seemingly influenced by Kimsey, presents issues, especially in light of the subsequent challenge to Ley's registration.



As the situation unfolded, Kimsey appears to have begun advising on building a case against Ley and facilitating the presentation of the case in front of Kimsey.



Following Kimsey's prompting, a challenge was filed against Ley. This culminated in a hearing on June 28, 2022, where Kimsey presided over the challenge to Ley's voter registration under RCW 29A.08.840. Not only did Kimsey oversee the hearing, but he also engaged in direct cross-examination of Mr. Ley.

Without disclosing his prior involvement in the initiation and strategizing of the challenge, Kimsey ruled against Ley. This action significantly influenced the election outcome.

*Of note, we wish to be clear that we do not allege any wrongdoing on the part of Greg Cheney or Carolyn Crain, nor do we allege they were aware of any wrongdoing.*

However, the issue of concern remains Kimsey's conduct. His ruling letter states that the challenge "was initiated in writing and was received in the Elections Office on May 26, 2022." This statement seems to contradict the reality that Kimsey himself initiated the challenge earlier when he recommended bringing the challenge and instructed opponents of Ley as to how it should be mounted against Ley.

#### ETHICS LAW VIOLATION ANALYSIS

Kimsey's apparent conduct violates several ethical standards. Initiation of the challenge, guidance on case building, and failure to disclose such involvement conflict with the principles of fairness and impartiality.

Specifically, such actions are in breach of the appearance of fairness doctrine as delineated in RCW 42.36.060, CCC 2.07.010 (which integrates Title 42 into county code), and CCHRP 13.1 (also incorporated into Clark County Code). These statutes and policies are designed to promote honesty and openness in county government (CCC 2.07.010(1)) and forbid securing special privileges for oneself *or others* (RCW 42.23.070(1)).

According to RCW 42.36.060, a decision maker must not engage in *ex parte* communications with opponents or proponents concerning the subject of the

proceeding. If they do, they must: (1) record the substance of any *ex parte* communications concerning the decision or action; *and* (2) announce publicly the content of the communication and the parties' right to rebut it. Direct and indirect communication with Ley's opponents and his role in calling for the challenge are serious issues. He apparently failed to disclose this activity, in violation of his obligations under RCW 42.36.060 sections one and two, as evidenced by the hearing transcript and his ruling letter.

Furthermore, RCW 42.36.080 obligated Kimsey to make a full disclosure so that Ley could have challenged Kimsey's presiding over the matter. His failure to do so is another significant concern. Kimsey should have recused himself so that the matter could be presided over by someone without a conflict of interest.

Per RCW 42.52.020, having an interest, "financial or otherwise, direct or indirect," that conflicts with the proper discharge of official duties constitutes a conflict of interest. Given Kimsey's influential role in changing a voter district to favor Ley's opponent and coaching the opposition, it seems he had a personal interest in the election outcome between Cheney and Ley. He should have recused himself. His secrecy regarding the *ex parte* communications strongly suggests a personal motive in the matter.

Looking beyond a technical review of the ethics law, common sense dictates that one should not preside over a hearing related to a candidate when one provided advice as to how to bring the action against that specific candidate.

Clark County Human Resources Policy 13.1, which is incorporated into Clark County's Ethics Code, provides further insight. The policy states, "Unethical behaviors are those in which the professional role is used to pursue a personal interest", such as using an official position to secure the election of a favored candidate (CCHRP 13.1(1)(a)). "Being honest means telling the truth *but also not withholding information,*" such as providing advice to those in opposition to Ley's candidacy (CCHRP 13.1(1)(c)). The policy prohibits the Auditor from using his position to secure special privileges for "others" nor should he be influenced by "any personal or non-job-related influence or interest – financial *or otherwise*" (CCHRP 13.1(2) (emphasis added)). The policy, like state law, also places an affirmative disclosure requirement on Kimsey: "I agree to disclose to my superiors any situation in which there is the fact, *appearance, or possibility of a conflict of interest* between my interests and those of the organization" (CCHRP 13.1(1) (Code of Ethics)). It certainly appears that Kimsey failed to comply with the obligations imposed on him by CCHRP 13.1.

Given that Kimsey is now accused of violating the code, and the incorporated state law and county policy, he is subject to your review. Therefore, we request a thorough investigation of this matter pursuant to your authority under CCEC 2.07.030(1).

For any further information or questions, please feel free to call anytime. Kimsey's letter, the transcript of the hearing, the messages, and the precinct map are enclosed.

We look forward to receiving confirmation from you that this matter will be investigated by the commission.

Respectfully submitted,



D. Angus Lee

Encl.: Text Messages  
Hearing Transcript  
Ruling Letter  
Precinct Map

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