



Monday, September 28, 2026 *Anno Domini*

TO: Ted Gathe
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360-281-0868

RE: Greg and Gayle Kimsey / September 25, 2026 Demand Letter

Dear Mr. Gathe:

I write in response to your September 25, 2026 letter threatening litigation against Eileen Quiring O'Brien under RCW 4.24.792. We have now reviewed the statute, Washington's Uniform Public Expression Protection Act, the available authority concerning RCW 4.24.792, and the underlying communications.

Your clients' threatened claim is not supported by either the facts or the law. More importantly, the proposed claim targets political speech by a candidate concerning the official conduct of the elected Clark County Auditor during an ongoing election. That places the threatened litigation squarely within the protections afforded political speech by both the First Amendment and Washington law.

Washington's Uniform Public Expression Protection Act

Before addressing RCW 4.24.792, your clients should carefully consider RCW 4.105, Washington's Uniform Public Expression Protection Act ("UPEPA").

Ms. O'Brien's publication concerns the performance of an elected county official and his response, made expressly in his capacity as Clark County Auditor, to an election-administration issue. Whatever disagreement your clients may have with her criticism, this is paradigmatic speech on a matter of public concern.

If your clients file the threatened action, we intend to invoke UPEPA immediately. UPEPA provides an expedited mechanism for dismissal, stays proceedings and discovery subject to its terms, and requires an award of costs, reasonable attorney fees, and litigation expenses to a prevailing movant. See RCW 4.105.020-.090.

Your proposed construction of the anti-doxxing statute would produce an extraordinary result: an elected official could respond to criticism of his official performance by bringing a private damages action against the candidate criticizing him and thereby force that candidate to defend her campaign speech in court. UPEPA exists specifically to prevent litigation from being used in this manner against protected public expression.

If litigation is filed, we will seek all relief available under UPEPA. We will also pursue declaratory relief to protect Ms. O'Brien's right to engage in political speech, and we will seek CR 11 sanctions.

RCW 4.24.792 Does Not Establish a Claim Here

RCW 4.24.792 is a comparatively new statute. There is no controlling Washington Supreme Court or Court of Appeals decision construing it. Significantly, however, the leading substantive federal ruling in Washington applying this new statute goes directly against the theory advanced in your letter.

In *Bromm v. Lewis County*, No. 3:26-cv-05384-BHS (W.D. Wash. Sept. 14, 2026), published just two weeks ago, Senior United States District Judge Benjamin H. Settle addressed an RCW 4.24.792 claim involving the publication of identifying information about a public employee in the course of criticizing that employee over a matter of public

controversy. Judge Settle held that the publication was constitutionally protected and therefore fell within RCW 4.24.792's express constitutional exception.

The factual parallel here is substantial. In *Bromm*, the plaintiff's own activity generated the controversy, and the allegedly "doxxing" publication occurred as part of another person's response to and criticism of that activity. Judge Settle held that because the underlying subject was a matter of public concern, the responsive publication was likewise protected by the First Amendment, notwithstanding that it identified Bromm's contact information and his employer. The court expressly rejected the notion that the responsive speech lost constitutional protection merely because it prominently disseminated that information.

Here the case for protection is at least as strong: Mr. Kimsey himself initiated an official communication, identified himself as the Clark County Auditor, supplied contact information in connection with that communication, and addressed an election-administration matter. Ms. O'Brien then published and criticized that official communication as part of her campaign speech concerning his performance in office.

That decision is particularly significant because it is the only substantive judicial application in Washington of this new statute.

The statute itself confirms the point. RCW 4.24.792(2)(b) expressly excludes the provision of identifying information in connection with constitutionally protected speech. The statute contains additional constitutional safeguards in subsections (4)(c) and (7). Those provisions cannot be treated as surplusage.

If RCW 4.24.792 were construed as your letter proposes, to impose civil liability upon a candidate for reproducing an elected official's communication in the course of

criticizing his official performance, the statute would run directly into the First Amendment and Washington Constitution. It would also create profound tension with UPEPA's express protection of speech concerning matters of public concern. The statutes must be read harmoniously. They cannot reasonably be construed so that one statute expressly protects political expression while the other imposes damages for the same constitutionally protected speech.

The facts further demonstrate why there was no actionable doxxing.

Mr. Kimsey initiated the communication at issue. In his voicemail, he immediately identified himself by name and by his formal title as **the Clark County Auditor**. He then spoke about a matter within the responsibilities of that office. This was not a private citizen discussing a private matter. It was an elected official communicating about official business.

Mr. Kimsey also affirmatively provided a mobile telephone number. The telephone number appearing in the accompanying written communication differs from the number he gave orally by only a single digit. It appears that you are asserting that the number entered in the written communication belongs to Mrs. Kimsey. Nothing in Mr. Kimsey's communication identified it as his wife's number. To the contrary, he placed the number into his own communication as though it were his contact information. Your letter notably provides no explanation for that circumstance.

That fact substantially undermines any assertion that Ms. O'Brien knowingly or recklessly disclosed Mrs. Kimsey's private information. Mr. Kimsey supplied the number. He presented it as his own. If it was his wife's number because of a typographical error,

that was his error, not evidence of an intent by Ms. O'Brien to expose Mrs. Kimsey to harm.

There was likewise no encouragement of harassment, stalking, threats, visits to the Kimsey residence, or any other misuse of the information. The publication concerned Mr. Kimsey's official communication and his performance as Auditor. RCW 4.24.792 is not a strict-liability privacy statute. The statute requires the specified intent, knowledge, or reckless disregard concerning the risk that the information will be used to cause statutorily defined harm, together with causation and a qualifying consequence. There is no evidence establishing those elements.

Your demand concerning the residence is particularly difficult to reconcile with Clark County's own conduct. Clark County's publicly accessible Property Information Center presently identifies **Gregory and Gayle Kimsey as the property owners** and publishes both the owner mailing address and the property site address.

We recognize that RCW 4.24.792(3) provides that prior public availability, standing alone, is not a defense. We do not rely upon it as such. It is nevertheless plainly relevant to intent, reckless disregard, causation, the asserted risk of harm, and the extraordinary suggestion that Ms. O'Brien somehow exposed a secret residence. If your clients maintain that public dissemination of this address creates the security danger described in your letter, we suggest that they direct the same complaint to the Clark County Assessor, which continues to publish the address to the general public.

The Publication Has Nevertheless Been Modified

Although we reject the contention that doxxing occurred, the publication has been modified to remove the complained-of identifying information. That voluntary step

should not be misconstrued as an admission of liability. It was undertaken to eliminate an unnecessary collateral dispute while preserving Ms. O'Brien's ability to criticize and discuss the Auditor's official conduct.

The Auditor's Role in the Election

Finally, your letter raises an issue that extends beyond the threatened private lawsuit. Mr. Kimsey is not simply a private plaintiff. He is the elected Clark County Auditor responsible for significant aspects of administering an election in which Ms. O'Brien is presently a general-election candidate. He is now threatening to sue that candidate personally because of campaign speech criticizing his performance of his official duties.

The Clark County Charter and county ethics framework apply to elected officials and contain provisions addressing personal interests and apparent or potential conflicts. The intersection between a personal financial claim against a candidate and the Auditor's exercise of discretionary authority affecting that candidate therefore warrants serious examination.

We are presently considering an ethics complaint arising from this situation. You should expect that such a complaint may be forthcoming. Before taking that step, however, we will give Mr. Kimsey an opportunity to explain how he proposes to fairly administer an election involving a candidate whom he is simultaneously threatening with personal litigation for criticizing his official performance. In particular, please advise whether he has formally disclosed this conflict or potential conflict and what recusal, delegation, or other safeguards he intends to employ with respect to discretionary decisions affecting Ms. O'Brien or her campaign.

We request your response on that issue by the end of this week.

Sincerely,


D. Angus Lee