



INVESTIGATION REPORT
City of Cape Coral
Councilmember Cummings'
Residency in District 4
June 15, 2023



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I. Background

On March 24, 2023, the City of Cape Coral retained the undersigned attorney, Vicki L. Sproat ("Sproat"), to conduct an outside independent investigation into whether Patty Cummings ("Cummings") was a resident in Council District 4 ("District 4") at the time she filed her paperwork to run as the District 4 candidate for City Council ("Council") in May 2022 and at all times thereafter ("relevant period").

The issue of Cummings' residency in District 4 during the relevant period is important because of the provisions in the City Charter which govern whether a candidate is qualified to run and hold the office of Councilmember. City Charter Section 4.05(b) provides that a candidate must meet the following qualifications to run for City Council:

Any person eligible to hold office of council member may have his or her name placed on the ballot as a candidate for council member for the council district in which he or she resides upon filing with the City a sworn statement of qualifications and the payment of one hundred dollar (\$100) filing fee. Proof of residence shall be established by a valid voter's registration card [emphasis added].

Once a candidate is elected to Council, he or she is subject to Section 4.11(b)(1) of the City Charter which reads:

(b) Forfeiture of office. The Mayor or a Council member shall forfeit his or her office if he or she: (1) Lacks at any time during the term of office any qualification for the office prescribed by this Charter or by applicable law...

City Charter Section 4.12, *Judge of Qualifications* authorizes Council to determine the qualifications of its members. Charter Section 4.12 states:

The council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office and for that purpose shall have the power to subpoena witnesses, administer oaths and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of office shall be entitled to a public hearing on demand and notice of such hearing shall be published in one or more newspapers of general circulation in the city and published in Lee County at least one week in advance of the hearing. Decisions made by the council under this section shall be subject to review by the courts.

There is no definition of "resident" or "residency" contained in the City charter or in the Florida statutes. However, over the years, the courts and the Florida Department of State/Division Elections have construed legal residency to be a convergence of facts and intent. In Minick v. Minick, 149 So. 483 (1933) the Florida Supreme Court defined legal residence as the place where a person has a fixed abode with the present intention of making it their permanent home. The City Attorney's Office has issued two opinion letters discussing what constitutes residency under the City Charter and both refer to the Mintz case. The May 16, 2013 opinion letter authored by City Attorney Dolores Menendez also cited to the following language from Kevalough v. Carter, 699 So, 2d 285 (Fla. 5th DCA 1997): "Legal residence consists of concurrence of both fact and intention and thus mere intention to acquire a new domicile without fact of actual removal avails nothing; neither does fact of removal without intention. Change of residence is accomplished and becomes effective when there is a good faith intention to establish it, coupled with the actual physical move to a new residence, as evidenced by positive overt acts."

For purposes of the investigation, Sproat adopts the definition of residency used by the City Attorney's office which is consistent with applicable Florida case law. Therefore, in determining Cummings' residency at any given time during the relevant period, Sproat considered evidence as to where Cummings was living and her then present intent to make that address her home.

On May 10, 2022, Cummings filed Form DS-DE 84 Statement of Candidate to qualify for City Council District 4 and Form DS-DE 302NP Appointment of Campaign Treasurer. On the campaign treasurer form, Cummings listed her address as 3827 Palm Tree Blvd. On June 11, 2022, Cummings filed Form DS-DE 302NP Candidate Oath on which she also listed her address as 3827 Palm Tree Blvd. It is undisputed that Cummings presented her Voter's Registration Card to the Clerk of Courts as proof of her residence. The Voter's Registration Card that Cummings presented showed 3827 Palm Tree Blvd as Cummings' residence and mailing address.

Cummings' name appeared on the November 2022 ballot for District 4 Councilmember together with the name of the incumbent, Jennifer Nelson. Cummings won the election for District 4 by 51% of the vote. On November 18, 2022, Council approved Resolution 247-22 certifying the results of the general election. When Cummings took the oath of office as District 4 Councilmember on November 18, she swore she was entitled to hold the office under the Constitution of the State of Florida and the Charter of the City of Cape Coral. On November 18, 2022, Cummings completed new hire paperwork for the City. On her W-4 and benefits enrollment form, Cummings listed her address as 3827 Palm Tree Blvd.

On January 30, 2023, a signed complaint letter ("Complaint") was sent by certified mail to the Attorney General Ashley Moody with copies to Governor Ron DeSantis. The Complaint was also hand delivered by the author to Lee County Republican State Committeeman Matt Caldwell who in turn delivered a copy to the Governor's office and to Lee County Supervisor of Elections Tommy Doyle. Among other things, the Complaint alleged that when Cummings filed her paperwork to run for Council in May 2022, Cummings and her family lived in at 2842 SW 50th Terrace in a house she rented from Marvin Sealy; that Cummings continued to live at the SW 50th Terrace house until it was rendered uninhabitable in the September 28 hurricane; that Cummings claimed the SW 50th Terrace house as her residence when she made a claim for FEMA assistance; that FEMA reimbursed Cummings for her family's temporary accommodations in Orlando following the hurricane; that Cummings signed a lease with Sandra Cassidy and moved to a house at 2425 Embers Parkway in November 2022; and that Cummings was living at the Embers Parkway home at the time the Complaint was submitted. The Complaint alleged that Cummings never lived or intended to live at the Palm Tree Blvd address owned by Jill and Robert Hiatt. The Complaint further alleged that Cummings falsely claimed that she lived at the Palm Tree Blvd address in order to qualify to run for the District 4 seat. The author of the Complaint requested that her identity be protected and not be disclosed. The author's name, signature and address were redacted from the letter delivered by Matt Caldwell to the Mayor. However, the certified letter sent to Governor DeSantis or the Honorable Ashley Moody contained the author's name, contact information and signature.

The redacted Complaint was brought to the attention of Mayor John Gunter. (Mayor"). On March 6, 2023, the Mayor sent Cummings a letter ("Mayor's letter") on which he copied the City Attorney, City Clerk, and Interim City Manager. In the letter, the Mayor said he had been notified of a complaint lodged against Cummings alleging that she currently resided at 2425 Embers Parkway in District 6. The Mayor enclosed copies of Cummings' Statement of Candidate and Candidate Oath forms and a copy of her Voter's Registration Card, all of which listed Cummings' address as 3827 Palm Tree Blvd. The Mayor stated that the Supervisor of Election advised him that Cummings submitted an update to his office on May 9, 2022 (the day before she submitted her paperwork to run for the District 4 seat), changing her address from 3537 Malagrotta Circle (District 7) to 3827 Palm Tree Blvd (District 4). The Mayor's letter asked Cummings to submit a formal response to his letter within 7 calendar days addressing the allegations as to her current permanent residency in Cape Coral. "If an issue does exist in your residency requirement, please outline an action plan to resolve the issue."

On March 7, 2023 Cummings sent a letter to the Mayor, Council, City Attorney, City Clerk and Interim City Manager ("Cummings March 7 response letter"), the body of which is reprinted in full below:

As you are all aware, many of us in Cape Coral have been affected by the recent hurricane that swept through our community and I am no exception. I am currently a part-time resident in District 4 with the full intent to be living in District 4 full-time by March 23, 2023.

I relocated from my full-time residence due to hurricane damage and I have been actively looking for a full-time residence since then. Unfortunately, it has been difficult due to the housing shortage.

At one point, I was presented with an opportunity on a home but had to decline due to severe mold growth throughout the house. To further articulate, my family has recently experienced a problem with mold which

hospitalized one of them. Thus, it was highly important that we find a home that was clean and safe.

I am still a part-time resident in District 4 with a driver's license and voter's registration card that displays my District 4 address. Additionally, I receive mail at the same address.

My corrective action is that by March 22, 2023, I will be residing at my full-time permanent address at 318 SE 21st Street, Cape Coral, FL 33990. This will fulfill my residency requirements as a full-time District 4 Councilmember.

The letter enclosed a copy of Cummings driver's license which also showed her address as 3827 Palm Tree Blvd.

The Mayor sent Councilmembers copies of the redacted Complaint, the Mayor's letter and Cummings' March 7 response prior to a Council meeting held on March 15, 2023. The *District 4 Residency Complaint* was listed on the meeting agenda as a matter of unfinished business. When the Mayor introduced the agenda item, he said he was informed that the Governor's office decided not to act on the complaint because it was "anonymous".

The Mayor opened discussion on the agenda item by suggesting that Council consider whether there was a way to preliminarily address the allegations of Cummings' residency and her qualifications to hold office before deciding whether to invoke the process outlined in Section 4.12 of the City charter. The Mayor suggested one alternative might be to retain a third party to gather information, interview the individuals involved and provide a report to Council as to whether or not the preponderance of the evidence showed Cummings met the Charter's residency requirements before Council decided to proceed to the next level by bringing a formal charge under section 4.12. After

discussion¹, a motion was made and seconded to move forward with a third-party investigation into Councilmember Cummings' residency. The motion carried 6-2, with Councilmembers Sheppard and Cummings voting against the motion.

On March 22, 2023, Attorney Jay Lechner ("Lechner") sent a letter to the Mayor, the City Attorney and the Interim City Manager announcing he represented Councilmember Cummings. Lechner's letter demanded that the City refrain from moving forward with the investigation into Cummings' residency stating that the investigation would be a waste of taxpayer money and that any action to remove Cummings from her seat in contravention of the will of voters would be contrary to Florida statute. Lechner said the City should disregard the "anonymous complaint" which he called "frivolous", "false", "defamatory", and "unreliable". As to the actual issue of Cummings residency, Lechner represented that Cummings began "leasing the 3827 Palm Tree Blvd property in District 4 from homeowner Jill Hiatt on or about March 2022." The letter states that "per the terms of the lease, Councilmember Cummings is allowed free access to the residence." Lechner stated that "[a]t the time she filed her statement of qualifications with the City Clerk – and at all times thereafter - Councilmember Cummings resided in District 4, at 3827 Palm Tree Blvd., Cape Coral, FL 33904."

On March 24, 2023, the Mayor signed an engagement letter whereby the City retained Sproat to conduct an independent, outside investigation to determine whether Cummings was a resident of District 4 on May 10, 2022 at the time she filed her sworn statement of qualifications for City Council and whether Cummings continued to reside in District 4 thereafter. In the engagement letter, Sproat said she would prepare a written

¹ Cummings was present at the March 15 Council meeting where she had an opportunity to speak. Cummings chose not to make any public comment on the agenda item.

report describing her investigatory findings after interviewing witnesses and reviewing relevant records.

II. Investigation Process:

A. Sproat's attempts to interview and obtain documents from Cummings

Sproat planned to begin the investigation by interviewing Cummings. On April 4, 2023, Sproat contacted Lechner in accordance with Rule 4-4.2 of the Rules of the Florida Bar² to schedule Cummings' interview. Sproat explained that she was retained by the City to conduct the independent outside investigation into Cummings' residency during the relevant period. She asked Lechner to provide dates in April when she could interview Cummings. Sproat also asked Lechner to provide documents that were relevant to the issue of Cummings' residency during the relevant period. Sproat sent a follow up email to Lechner on April 10, 2023 reminding him that she needed to schedule Cummings' interview.

On April 17, 2023, Lechner sent an email to Sproat stating that he advised Cummings that it was "unnecessary" for her to participate in an interview. The email attached the following six documents which Lechner maintained "clearly demonstrated" and "conclusively established" that Cummings "was and is a resident in District 4 at all pertinent times":

- Cummings drivers' license issued May 9, 2022 showing an address on Palm Tree Blvd.
- A document from Lee.Vote listing Cummings' residency and mailing address as 3827 Palm Tree Blvd.

²Rule 4-4.2 prohibits a lawyer from communicating about the subject of representation with a person the lawyer knows is represented by another lawyer unless the other lawyer gives consent.

- Cummings' Statement of Candidate Form (DS-DE 84) signed on May 10, 2022

- A document purportedly signed by Cummings on April 13, 2023 which stated:

I Patty Cummings have been a resident in district 4 on and before the date I filed for city council candidate on May 10, 2022 at the time I qualified. I qualified for district 4 when I submitted my paperwork as a resident of district 4 and swore an oath with the City Clerk of Cape Coral. I am a resident in district 4 currently.

- A document purportedly signed by Jill Hiatt on April 13, 2023 which stated:

I am the home owner and resident of property located at 3827 Palm Tree Blvd. in Cape Coral, FL. 33904. Patty Cummings was a resident in my home at 3827 Palm Tree Blvd., Cape Coral beginning April 2022 – Feb. 2023.

- Cummings' new voter's registration card issued March 27, 2023 listing her address as 318 SE 21st Street, Cape Coral Fl. 33990

Sproat responded to Lechner's April 17 email in a letter dated May 20, 2023. Sproat said she reviewed Lechner's April 17 email and the six attachments, and she did not accept Lechner's representation that they provided "conclusive evidence" that Cummings met the residency requirements to qualify for and continue to hold the District 4 seat. Sproat explained why she believed her request to interview Cummings was both reasonable and necessary for an effective, independent, and thorough consideration of the facts relating to Cummings residency in District 4. Sproat reiterated her prior request that Cummings cooperate in the investigation by making herself available for an interview

and by providing the following specific documents for Sproat's inspection before or at the time of the interview:

- All contracts and agreements governing Ms. Cummings' ownership, lease, rental or use of property or premises for residential purposes during the Relevant Period, including but not limited to, the property or premises located at 3827 Palm Tree Blvd, 2842 SW 50th Terrace, 2425 Embers Parkway, and 318 SE 21st Street in Cape Coral, Florida ("Subject Properties")
- Documents indicating any payments made to any person or entity to occupy or use the Subject Properties during the Relevant Period
- Utility bills for the Subject Properties during the Relevant Period and documents indicating payment of same
- Insurance policies covering the Subject Properties or their contents during the Relevant Period
- Documents relating to any insurance claims for damage to the contents or loss of use of the Subject Properties during the Relevant Period
- Documents relating to any request for disaster relief assistance associated with damage to or loss of use of the Subject Properties or their contents during the Relevant Period, including but not limited to any applications for assistance to the Federal Emergency Management Association ("FEMA")
- Any documents related to Ms. Cummings' "active search" for a full-time residence in District 4 during the Relevant Period as referenced in her March 7, 2023 letter to Mayor Gunter and City Councilmembers
- Any other documents not previously submitted which you or Ms. Cummings maintain are relevant to the subject of this investigation.

Lechner responded to Sproat in a letter dated June 1, 2023 where Lechner said Sproat had falsely accused Cummings of failing to cooperate in the investigation. Lechner wrote that Sproat and her law firm had a conflict of interest in conducting the investigation. Lechner suggested that the investigation was politically motivated. Lechner also alleged that Sproat exceeded the scope of the investigation because she "arbitrarily and capriciously" demanded to "interrogate" Cummings under oath in a court reporter's office. Lechner asked that the documentation "that [his] client repeatedly supplied be accepted by the Council and this investigation be closed". Lechner wrote: "To continue this investigation would not only be harassment but would increase damages suffered by [Cummings] recoverable in a civil lawsuit to be filed against the City of Cape Coral".

On June 4, Sproat sent Lechner a letter responding to each of his allegations and once more reiterating her request that Cummings produce the requested documents and appear for an interview. Sproat told Lechner that she would agree to conduct Cummings' interview without a court reporter if that would satisfy his objections to the interview request. Lechner has not responded to Sproat's June 4 letter.

Sproat has been forced to proceed with the investigation and evaluate available evidence to reach her factual findings that are described later in this Report without the benefit of personally interviewing Cummings. Although Sproat was unable to interview Cummings, she considered Cummings' position as to her residency during the relevant period as reflected in the paperwork Cummings submitted to run for office, Cummings' March 7 letter to the Mayor and statements and letters that Lechner submitted to the City and to Sproat on Cummings' behalf.

B. Documents and other physical evidence reviewed and considered

Because this investigation was not undertaken in connection with a formal court or administrative proceeding, Sproat could not compel production of documents pursuant to a subpoena. Therefore, Sproat was unable to review some documents that might be relevant to the investigation and instead had to rely on documents that were voluntarily produced or otherwise available in the public domain. Sproat considered the following categories of documents and physical evidence in making findings of fact.

- Map of City Council Districts
- Records from the Lee County Property Appraiser's Office
- Cummings' Statement of Candidate dated May 10, 2022 (DSDE 84)

- Appointment of Campaign Treasurer and Designation of Campaign Depository (DSDE 9) signed on May 10, 2022
- Form 1 Financial disclosure signed by Cummings and dated June 6, 2022
- Canvassing Board Meeting Dates signed by Cummings and dated June 13, 2022
- Cummings' check for qualification fees dated June 13, 2022
- Cummings' Candidate Oath signed and dated June 14, 2022
- Cummings Voter Registration Records as updated on May 9, 2022
- Cummings drivers' license as updated on May 9, 2022
- Cummings Candidate Qualifying Receipt
- Minutes and video of the November 18, 2022 Council meeting
- Resolution 247-22 certifying election results
- Signed Complaint dated January 30, 2023
- Redacted Complaint
- Letter dated March 6, 2023 from the Mayor to Cummings
- Letter dated March 7, 2023 from Cummings to the Mayor and City Council
- Video and minutes of the March 15, 2023 Council meeting
- Sproat's engagement letter signed by the Mayor
- Letter dated March 22, 2023 from Lechner to the Mayor, City Attorney and Interim City Manager
- Emails and letters between Sproat and Lechner with enclosures and attachments
- Jill Hiatt's statement dated April 13, 2023

- Cummings' Statement dated April 13, 2023
- Cummings' Voter Registration Records as updated on March 23, 2023
- Cummings' personnel file
- Cummings' payroll records
- Emails
- Texts
- Facebook Posts
- Photos

C. Individuals contacted and witnesses interviewed

In addition to reviewing documents and physical evidence, Sproat attempted to speak to individuals other than Cummings who might have information relevant to the matters under investigation. Because the investigation was not undertaken in connection with a formal court or administrative proceeding, Sproat did not have the authority to subpoena witnesses or otherwise compel people to talk to her. To the extent that individuals agreed to an interview, Sproat considered their credibility by considering factors such as whether their witness account was corroborated by other information; whether their account was plausible and reasonable under the circumstances, whether the witness had the means and opportunity to know about the matters they described; and whether the witness made contradictory or inconsistent statements. In making credibility determinations, Sproat also considered witnesses' possible bias and their motive to tell the truth.

Sproat was able to speak to the following individuals who provided information pertinent to Cummings residency in District 4 during the relevant period.

Julia Ettari³

Ettari currently lives in District 4 with her two teenage children. Ettari has lived in Cape Coral for 22 of the past 30 years. Ettari was first introduced to Cummings by a mutual friend at one of Cummings' campaign events at Rusty's Bar in June 2022. Ettari and Cummings became friendly, and Ettari became a very active volunteer in Cummings' campaign for the District 4 seat beginning in July 2022. Ettari told Sproat she communicated with Cummings daily during the campaign and that she frequently visited the house on SW 50th Terrace where Cummings lived with her fiancée, Aaron Bathory, her twin teenage sons, an adult son and two dogs. Ettari showed Sproat photographs on her phone taken at 2842 SW 50th Terrace. Ettari told Sproat that Councilmember Sheppard was a good friend of Cummings, and he publicly supported her campaign. Sheppard frequently visited Cummings at her home on SW 50th Terrace during Cummings' campaign.

Cummings told Ettari she paid nearly \$4,000 in monthly rent to lease the house on SW 50th Terrace. Cummings told Ettari that after the lease expired, she was going to look for a cheaper place to rent.

Ettari said the day before the hurricane she was riding in the car with Cummings. Ettari heard Cummings on the phone attempting to secure rental insurance for the house at SW 50th Terrace. Ettari said Cummings and her family were physically present at their SW 50th Terrace home when Hurricane Ian hit Cape Coral on September 28, 2022. Cummings posted a video on her Facebook on September 28. Ettari said Cummings took the posted video in front of the SW 50th Terrace house. Sproat viewed the Facebook

³Sproat interviewed Ettari in person on May 19, 2023.

video which was narrated by Cummings. Cummings described the weather conditions at her house. The video showed a truck and an SUV parked in the driveway 2842 SW 50th Terrace. Both vehicles prominently displayed signs that said Vote for Patty Cummings for City Council District 4.

Ettari told Sproat that Cummings phoned and texted her as the hurricane came closer. Ettari produced a screenshot of a text Cummings sent her on Sept 28 at 12:20 PM. where Cummings wrote: "Our signal goes in and out When this is over please send a rescue team out to us Cape Coral 2842 S.W. 50th Terrace Cape Coral FL 33914 United States Praying we get out." Soon after receiving the text, Ettari lost her phone signal.

Ettari went to 2842 SW 50th Terrace on September 29 to check on Cummings and to wish her a happy birthday. The house did not have power. Cummings showed Ettari the lanai and portions of the garage and house that were damaged in the hurricane. Later, Cummings told Ettari that she hired a public adjuster named Vitor DeOliveira from All Claims. DeOliveira told Cummings he would come to the Overtime Pizza and Sports Pub to help her file a claim under her renter's policy and asked if Cummings would help him sign up more clients. Ettari, Cummings, Sheppard, DeOliveira and others attended the private event at Overtime Pizza and Sports Pub. Ettari heard DeOliveira tell Cummings he would give her a generator and have it delivered to her home. Ettari was at 2842 SW 50th Terrace when the neighbor Rich Pitts helped Cummings set up the generator from All Claims. A few days after the hurricane, Cummings and her family left the house at 50th Terrace for Orlando.

Cummings told Ettari that that she filed a claim with FEMA and that FEMA paid for her family to stay in Orlando for ten days.⁴ Cummings and her family left Cape Coral for Orlando after the generator was delivered to 2842 SW 50th Terrace. Cummings stayed in touch with Ettari by phone and text while Cummings was in Orlando. During one of their conversations. Cummings told Ettari that she found a house to rent on Embers Parkway in Cape Coral.

Ettari stayed in continuous contact with Cummings after the Cummings family returned to Cape Coral to move from SW 50th Terrace to Embers Parkway. Cummings told Ettari that she received \$9,000 from her insurance claim with her renter's insurance but that DeOliveira was fighting to get more money from her renters' insurance company for hurricane damage to her family's damaged personal property.

Ettari told Sproat that right before the election she helped Cummings move from the SW 50th Terrace house to the house on Embers Parkway. Cummings rented a box truck to move the household furnishings and the family's belongings. Ettari brought lunch to Cummings and the moving crew (who were Cummings' friends) at the Embers Parkway house. Ettari told Sproat she also spent time with Cummings and her family at the Embers Parkway home after the election. Ettari remembered being with Cummings in the house making Christmas candles.

Ettari said she first learned that the City Charter required that a councilmember reside in her district to run on or about November 13. On that day, Ettari was with Cummings when Cummings was summoned to a meeting in the Mayor's office. Sheppard went to the meeting with Cummings. After the meeting Ettari learned that Cummings had

⁴ Ettari was present in Cummings' kitchen at 2842 SW 50th Terrace when Cummings' mother called FEMA to apply for disaster relief assistance on Cummings' behalf.

been questioned about her residency in District 4. Sheppard told Ettari that Cummings would not have a problem; all she needed was the intent to live in District 4.

Ettari said her relationship with Cummings deteriorated after Ettari started to question the validity of the resident requirement. Once Cummings learned about the Complaint, Ettari said Cummings' attitude and demeanor toward her changed because Cummings suspected Ettari was behind the Complaint. Ettari told Sproat that Cummings became hostile. Cummings intimidated and threatened Ettari. Sproat has not included Ettari's descriptions of Cummings' alleged retaliatory actions in this report because those matters are beyond the scope of this investigation.

Ettari told Sproat that despite interacting with Cummings on a near daily basis between June 2022 and December 2022, Cummings never referenced the Palm Tree Blvd address. Cummings never said she had a lease or other agreement with the owners of Palm Tree Blvd. to reside in or use their house. Cummings never mentioned Jill Hiatt's name in Ettari's presence.

Ettari told Sproat that after she became increasingly suspicious of the facts surrounding the residency, Ettari contacted Marvin Sealy, the owner of the SW 50th Terrace home. Cummings asked Sealy if he leased the house to Cummings. Sealy told Ettari that Cummings was the sole signatory on a lease that ran from November 2021 through November 2022. He said he was not aware whether anyone besides Cummings and her sons lived there. Sealy told Ettari, he agreed to release Cummings from the lease before it officially expired due to the hurricane. Sealey told Ettari he gave Cummings \$8,000 to move before the lease expired.

After Ettari was interviewed, Ettari acknowledged to Sproat that she was the individual who wrote the Complaint. Ettari said she initially asked to have her identity protected due to fears of retaliation. Ettari said she had given the matter further consideration, and decided she would permit Sproat to disclose in this Report that she was, in fact, the author of the Complaint because Cummings had already told so many people that Ettari sent the letter, which had caused considerable stress to Ettari and her family. Ettari also told Sproat she did not want the citizens of Cape Coral to believe that the letter was “anonymous” when all she wanted was to have her name redacted as a whistleblower who feared retaliation.

Richard Pitts⁵

Pitts is an owner and longtime resident of a single-family home at 2846 SW 50th Terrace next door to 2842 SW 50th Terrace home owned by Marvin and Ana Sealy. Pitts told the Investigator he met Cummings when she and her family moved into the Sealey house in the fall of 2021. Cummings told Pitts she was paying Sealey \$3,750 in monthly rent under a one-year lease. Pitts told Sproat that Cummings lived continuously at SW 50th Terrace from late 2021 until sometime after Hurricane Ian hit in September 2022. Pitts said members of Cummings’ family parked their two large vehicles in the driveway on a daily basis. Both vehicles prominently displayed Elect Patty Cummings signs. Although Pitts never went inside the Cummings house, it appeared to him that Cummings was running her election campaign from the SW 50th Terrace address. At one point during the campaign, Pitts asked Cummings whether she was required to reside in District 4 to qualify for Council. Cummings told Pitts she did not need to reside in District 4 to run.

⁵ Sproat interviewed Pitts by telephone on May 19, 2023.

Pitts said Hurricane Ian caused significant damage to the house at 2842 SW 50th Terrace. The house lost the pool cage and there was damage to the roof trusses. Pitts said the homes on SW 50th Terrace lost power after the hurricane. Pitts helped Cummings start a generator to power some of the house. Pitts said Cummings and her family left Cape Coral for Orlando two days after he helped Cummings connect the generator. Pitts did not see Cummings again after the family left for Orlando although Pitts said he saw other people loading their furniture in a truck. Pitts told Sproat he did not know where Cummings and her family moved after they left the house on SW 50th Terrace.

Sharyn Waidzunas⁶ is a director and the membership chair of the Cape Coral Republican's Club. When Cummings decided to run for District 4, she asked Waidzunas to be her treasurer. Waidzunas first met Cummings when they got together to set up Cummings' campaign account at Regions Bank in May 2022. Waidzunas said she never saw where Cummings lived, and Cummings never discussed her living arrangements. Waidzunas said she "assumed" Cummings lived on Palm Tree Blvd because that was the address Cummings used for the campaign account and that was the address listed on Cummings' voting card when she filed her candidate paperwork.

Waidzunas is a notary public. In April 2023, Cummings called Waidzunas to ask if she would notarize Jill Hiatt's signature on a statement. Waidzunas agreed. Waidzunas did not know Hiatt. Hiatt came to Waidzunas' home and signed a statement on April 13, 2023. Waidzunas notarized the signature after looking at Hiatt's drivers' license. Waidzunas did not administer an oath to Hiatt before Hiatt signed the statement.

⁶ Sproat talked to Waidzunas by phone on May 30, 2023.

Waidzunas had not met or heard of Hiatt before Waidzunas notarized her signature. Waidzunas and Hiatt did not discuss the contents of the statement that Hiatt signed.

Lisa Williams⁷ has worked as a Legislative Executive Assistant to Council since July 2022. She has a desk in the City Council office suite. Williams has been assigned to Cummings since she was elected in November 2022. Williams said that Councilmember Sheppard endorsed Cummings in her bid for the District 4 seat. Williams said Cummings and Sheppard communicate frequently and appear to be close friends. Williams has composed, transcribed, and typed letters and documents for Cummings. Williams is familiar with Cummings' writing style and the format and font Cummings used when she prepares documents on her personal computer. Williams looked at the statement signed by Cummings on April 13 and the statement signed by Jill Hiatt on April 13, 2023. Williams said both statements appeared to be authored and typed by the same person, who she believed was Cummings.

Connie Griglin⁸ has been employed as a Legislative Executive Assistant to Council since 2017. Griglin has a desk in the Council office suite at City Hall. Griglin said Councilmember Sheppard actively campaigned for Cummings' election to the District 4 seat. Griglin said Cummings and Sheppard communicate frequently, and they appear to be friends.

James Kowalski⁹ has been the Legislative Executive Clerk for Council for over three years. He has a desk in the City Council office suite. Kowalski said Cummings and

⁷ Sproat interviewed Williams on May 23, 2023.

⁸ Sproat interviewed Griglin on May 24, 2023.

⁹ Sproat interviewed Kowalski on May 24, 2023.

Sheppard are friends and they are often together in the City Council office suite. Kowalski said Sheppard publicly endorsed Cummings as the candidate for the District 4 seat.

Sproat contacted but was unable to obtain information from the following individuals who she believed might have information pertinent to Cummings' residency during the relevant period.

Jill Hiatt was one of the owners of the house at 3827 Palm Tree Blvd. (Property records indicate that during the relevant period the Palm Tree Blvd. house was owned by Jill and Robert D. Hiatt). The Hiatt's single-family house has 1,838 gross square feet of living area. The property is subject to a homestead and disabled veteran exemption.

Sproat wanted to interview Ms. Hiatt because Cummings represented that she resided at 3827 Palm Tree Blvd. in the paperwork she filed to become a candidate for District 4. Also, in his March 22 letter to Sproat, Lechner indicated that Cummings "leased" the property from Hiatt. And Hiatt purportedly signed the typed statement on April 13, stating Patty Cummings was a resident in her home at 3827 Palm Tree Blvd. Cape Coral, FL beginning April 2022 – Feb. 2023.

Sproat wanted to ask Ms. Hiatt whether and how Cummings and her family used the property during the relevant period and whether they had a lease or rental agreement. Sproat also wanted to ask Hiatt who prepared the document that she signed on April 13, 2023, and what evidence Hiatt had to support her statement that Cummings resided at 3827 Palm Tree Blvd. from April 2022 through February 2023.

Sproat attempted to reach Ms. Hiatt by email on May 19, 2023, and by a letter sent to the 3827 Palm Tree Blvd address on May 28, 2023. Hiatt did not respond to Sproat's communications.

Marvin Sealy (and his wife Ana) were listed in property records as the owners of the 2842 SW 50th Terrace property during the relevant period. According to property records, the single-family house has 2,396 gross square feet of living area. The property is not subject to a homestead exemption.

Sproat wanted to ask Sealy whether he leased the property to Cummings and whether Cummings resided in the house during the relevant period. Sproat spoke with Sealy by telephone on May 11, 2023. Sealy asked Sproat to send him an email explaining why she wanted to interview him. Sproat sent Sealy an email on May 11, 2023 explaining her engagement as an outside independent investigator and requesting that Sealy advise whether he rented his home at 2842 SW 50th Terrace to Cummings. Sproat also asked Sealy to send her a copy of any lease or rental agreement. Sealy did not respond to Sproat's email.

Sandra Cassidy was listed in property records as owning the house at 2425 Embers Parkway during the relevant period. According to property records, the house has 2,234 gross square feet of living area. The property is not subject to a homestead exemption.

Sproat wanted to speak with Cassidy to ask her whether she leased the property to Cummings and whether Cummings resided in the house during the relevant period. Sproat called Cassidy at her work number in Buffalo, New York. Cassidy did not want to talk to Sproat from work. Sproat gave Cassidy her phone number and email and asked Cassidy to contact her. Cassidy said she would contact Sproat, but Cassidy never followed up.

Dan Sheppard was elected District 2 Councilmember in 2020. Witnesses said Sheppard and Cummings are close friends and that Sheppard actively supported Cummings in her campaign for the District 4 seat. Ettari said Sheppard frequently visited Cummings at SW 50th Terrace during Cummings' campaign. Sproat wanted to ask Sheppard what he knew about Cummings' residency during the relevant period. Sproat sent Sheppard an email on May 19 asking to meet and/or talk with him. Sproat sent a follow up email to Sheppard on May 27, 2023. Sheppard did not respond to Sproat's emails.

III. Factual Findings:

This Section of the report contains Sproat's factual findings concerning Cummings' residency during the relevant period. Some of the matters described in this section are undisputed. However, where matters were disputed, Sproat resolved factual disputes using a "preponderance of the evidence standard. This standard of proof is less exacting than the" beyond a reasonable doubt" standard used in criminal proceedings.

A. Cummings failed to cooperate in the investigation.¹⁰

The greater weight of the evidence as described in Section II A. of this report, supports the finding that Cummings did not cooperate in the independent outside investigation conducted by Sproat despite allegations to the contrary in Lechner's correspondence. Cummings refused numerous requests for an interview, and Cummings has made no attempt to produce the documents that Sproat requested.

¹⁰ Sproat recognized that Cummings had every right to vote against the motion to hire a third-party investigator at the March 15 council meeting. However, once the motion passed, Cummings had a duty to cooperate in the Council ordered investigation by participating in interviews and by producing documents as requested.

B. Cummings was not a full time or a part time resident of 3827 Palm Tree Blvd in District 4 during the relevant period.

Sproat examined numerous documents where Cummings listed her address as 3827 Palm Tree Blvd., including the voter's registration card she submitted as proof of residency when she filed her paperwork to qualify as a candidate for District 4 in May 2022. These documents demonstrate that Cummings had an intent to "claim" Palm Tree Blvd as her residence, but they do not prove Cummings ever intended to live there or that she ever actually lived at 3827 Palm Tree Blvd. during the relevant period.

Cummings' representation in documents that she resided at the Palm Tree Blvd address when she filed her election paperwork and thereafter is contradicted by other witnesses and by other evidence reviewed by Sproat. The greater weight of the evidence supports a finding that Cummings leased a house on SW 50th Terrace in District 2 when she filed for election and that she intended to continue to live there until the lease expired in November 2022. There is ample evidence to show Cummings and her family occupied the house on SW 50th Terrace as their home at the time she filed to run and continuously thereafter until they evacuated the house after Hurricane Ian.

The overwhelming weight of the evidence shows that Cummings was living at 2842 SW 50th Terrace in District 2 when the hurricane hit. Her neighbor Pitts and Ettari gave compelling statements on that subject. And Cummings represented that she was living there in the video she posted on Facebook on September 28. In addition to Cummings' own Facebook posts, Sproat found corroborating Facebook posts from Cummings' two adult children. On September 28, Cummings' adult son who reportedly lived with her posted: "Southwest Cape Coral: Entire lanai has folded inward and outward, roof of lanai

has caved in, trees are falling on neighbors' homes. Extremely high winds, flooded streets. Everyone be safe, and careful even during the calm." On September 28, Cummings' adult daughter (who lives out of state) posted: "Since my brother posted this status, my mom texted me that water is now coming in their home, the roof has been torn off, and she doesn't think it will be long until the rest of the house is gone. She sent me a message asking me to contact the rescue team for them because she is unable to make calls, but I haven't been able to get ahold of anyone. For now, they are trapped in the house and their phones are all shut off." And Ettari received a text message from Cummings at 12:20 PM on September 28 asking Ettari to send a rescue team to 2842 SW 50th Terrace to save them. The evidence suggests that the hurricane was the reason Cummings left a full-time residence in District 2, not District 4 as implied in Cummings March 7 response letter to the Mayor.

The greater weight of the evidence does not support the statement in Cummings' letter to the Mayor that she was still a part-time resident in District 4 as of March 7. Even Hiatt's notarized statement suggests that Cummings residency in her home ended before March 1, 2023. Ettari said that when Cummings returned from Orlando she and her family moved into a house that they leased on Embers Parkway in District 6.

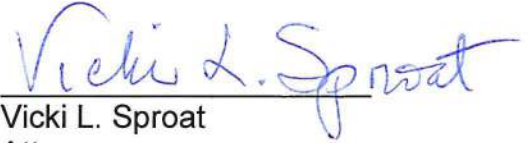
C. Cummings did not reside in District 4 until March 22, 2023.

Cummings response to the Mayor's letter indicated that as of March 7 she had the intent to reside full time in District 4 by March 22, 2023. Sproat has not reviewed any evidence to suggest that Cummings did not finally establish residency in District 4 in late March 2023 by moving to 318 SE 21st Street, the address she has listed on her drivers' license and voter's registration records as of March 27, 2023.

IV. Conclusion

This report is respectfully submitted to the City on June 15, 2023.

By:



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Update 6/16/2023 from Vicki Sproat

I would like to make the following corrections to the June 15, 2023 report on Councilmember Cummings' Residency in District 4:

1. On page 2, in the second full paragraph, the seventh line should reference the Minick case, not the Mintz case.
2. On page 3, in the first full paragraph, the second to last sentence should read: "It is undisputed that Cummings presented her Voter's Registration Card to the City Clerk as proof of her residence."