



VIA REGULAR MAIL, FACSIMILE and EMAIL TRANSMISSION

March 20, 2013

Gretchen DeJaynes
McDonough County Clerk
McDonough County Courthouse
1 Courthouse Square
Macomb, IL 61455

Macomb City Council
c/o Melanie Falk, City Clerk
City of Macomb
232 E. Jackson St.
Macomb, IL 61455

Re: Declaration and certification of February 26, 2013, election results for Ward 2 Aldermanic race

Dear Ms. DeJaynes and Ms. Falk:

The Liberty Justice Center is representing Steven Wailand in the above-referenced matter. As you know, Mr. Wailand was a candidate in the Second Ward aldermanic race and won a majority of votes cast during the February 26, 2013, election. Specifically, Mr. Wailand received 17 votes, and his opponent Kay Hill received 16 votes, of the 33 votes cast. According to state and local law, Mr. Wailand thus received the majority of the votes in the election and must be declared elected, pursuant to Sec. 2-3(5) of the City of Macomb's Municipal Code. Nonetheless, he has been advised by city and county officials that he will not be "declared elected" and that a supplementary election will be held April 9, 2013.

Mr. Wailand advised us that he received a host of varying explanations from city and county officials as to why he has not been declared elected, including the claim that there is a provision in the Macomb Special Charter that defines "majority" as requiring a "50% plus 1 vote" in order to be declared elected in an election. However, we were unable to find any such provision in the Charter. In fact, the only provision we did find in the Charter states that the person having the "highest number of votes for any office shall be declared elected." *See* Art. III, Sec. 2.

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Accordingly, we ask that the City of Macomb and McDonough County fulfill their constitutional obligations and legal responsibilities to properly enforce the election code by declaring Mr. Wailand elected as Second Ward Alderman, as set forth in the Macomb Municipal Code. Further, we ask that the appropriate county and/or city officials cancel the supplemental election for the Second Ward aldermanic seat. Given that Mr. Wailand received the majority of the votes (and the highest number of votes as well) in the February 26 election, the holding of a supplemental election for this office would be contrary to City law.

Please advise us in writing by 5:00 p.m., Friday, March 22, 2013, as to whether the City of Macomb and McDonough County intend to declare Mr. Wailand "elected" as the Second Ward alderman in accordance with Sec. 2-3(5) of the Code. We further ask that you advise by the same date and time whether the appropriate city and/or county officials intend to give Mr. Wailand a certificate of election in accordance with Sec. 2-3(7) of the Code.

The Liberty Justice Center of the Illinois Policy Institute is a nonprofit, nonpartisan public interest litigation center that is dedicated to protecting liberty and restraining government when it oversteps its authority. We are concerned that the city and county's conduct in connection with Mr. Wailand's election violates state and local law. Our hope is that this matter can be resolved short of court intervention. However, the Liberty Justice Center stands ready to institute legal proceedings, through mandamus action or otherwise, to ensure that the law is enforced properly, and that the vote of Macomb's citizens is honored. Please feel free to contact me should you have any questions or wish to discuss this matter. Otherwise, we will expect to hear from you on or before Friday evening.

Very truly yours,



Diane Cohen
General Counsel
Liberty Justice Center of the
Illinois Policy Institute
190 S. LaSalle, Ste. 1630
Chicago, IL 60603

cc.

Kristen Petrie, City Attorney, City of Macomb
James Hoyle, McDonough County State's Attorney
and McDonough County Board