

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel. TIMOTHY )  
A. SWANSON )  
4500 Atlantic Boulevard, NE )  
Canton, Ohio 44705 )

and )

STATE OF OHIO, ex rel. LOU )  
DARROW )  
5700 East Boulevard, NW )  
Canton, Ohio 44718 )

Relators/Plaintiffs, )

vs. )

STARK COUNTY DEMOCRATIC )  
CENTRAL COMMITTEE )  
4220 - 12<sup>TH</sup> Street NW )  
Canton, Ohio 44708 )

and )

RANDY GONZALEZ, Chairman )  
c/o Stark County Democratic Central )  
Committee )  
(Official Capacity Only) )  
4220 - 12<sup>TH</sup> Street NW )  
Canton, Ohio 44708 )

Respondents/Defendants. )

CASE NO.  
13-1822

ORIGINAL ACTION IN  
MANDAMUS

FILED  
NOV 18 2013  
CLERK OF COURT  
SUPREME COURT OF OHIO

MEMORANDUM IN SUPPORT OF WRIT OF MANDAMUS

Gregory A. Beck (0018260)  
(Counsel of Record)

James F. Mathews (0040206)  
BAKER, DUBLIKAR, BECK  
WILEY & MATHEWS  
bakerfirm.com

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400 South Main Street

North Canton, Ohio 44720

Phone: (330) 499-6000

Fax: (330) 499-6423

E-mail: [beck@bakerfirm.com](mailto:beck@bakerfirm.com)

[mathews@bakerfirm.com](mailto:mathews@bakerfirm.com)

Counsel for Relators

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MEMORANDUM IN SUPPORT OF WRIT OF MANDAMUS

THE STARK COUNTY DEMOCRATIC CENTRAL COMMITTEE  
HAS THE MANDATORY DUTY TO CONSIDER ONLY THOSE  
QUALIFIED CANDIDATES FOR APPOINTMENT TO THE OFFICE  
OF COUNTY SHERIFF WHOSE APPLICATIONS WERE SUBMITTED  
PRIOR TO THE APPLICABLE QUALIFICATION DATE

**I. INTRODUCTION**

On November 6, 2013, this Court issued its judgment and decision in the quo warranto action styled *State ex rel. Swanson v. Maier*, \_\_\_ Ohio St. 3d \_\_\_, 2013-Ohio-4767. In this case, the relators, Timothy A. Swanson and Lou Darrow, seek a writ of mandamus in order to preserve the integrity of this Court's *Maier* decision.

In the *Maier* case, this Court addressed the vacancy in the office of Stark County Sheriff which occurred on January 7, 2013, which triggered an applicable "qualification date" of February 6, 2013. With those essential dates at issue, the Court determined, in part: "As he satisfied neither R.C. 311.01(B)(8)(a) nor (b), Maier does not meet the qualifications for a county sheriff." *Id.*, ¶39. In *Maier*, this Court ousted George T. Maier as Stark County Sheriff and reinstated Timothy A. Swanson as acting sheriff. *Id.*, ¶40.

While more than a week has passed since this Court issued its decision in *Maier*, to date the Stark County Democratic Central Committee ("DCC") has taken no steps to now fulfill its legal obligation "pursuant to R.C. 305.02(B), [to] appoint[] a person qualified under R.C. 311.01 to assume the office of Stark County sheriff." *Id.*, ¶40. The DCC is legally obligated to make such an appointment, to fill the vacancy created on January 7, 2013. As R.C. 305.02(B) provides, in pertinent part:

[I]f such vacancy occurs because of the death, resignation, or inability to take the office of an officer-elect whose term has not yet begun, an appointment to take such

office at the beginning of the term shall be made by the central committee of the political party with which such officer-elect was affiliated.

The DCC is required, by law, to appoint someone qualified under R.C. 311.01 to the vacancy “to take office at the beginning of the term” for which the vacancy occurred.

Not only has the DCC taken no steps to proceed in conformity with Ohio law and the Court’s opinion in *Maier*, public news reports suggest that George T. Maier, who was declared ineligible for appointment as Stark County Sheriff, plans to once again “be a candidate for the Democratic appointment.” *Canton Repository*, “Maier’s name erased from Stark sheriff’s office.” (Nov. 9, 2013). Evidently, Maier is expected to contend that his “nine months of experience as sheriff resolves the issues” surrounding his legal qualifications to fill the vacancy. *Id.* Of course, when one is ineligible for appointment to a public office, the putative appointment is a nullity and void. E.g., *State ex rel. Attorney General v. Craig* (1903), 69 Ohio St. 236, 244. Regardless, as will be demonstrated herein, the time during which Maier unlawfully usurped upon the Office of Stark County Sheriff is of no consequence whatsoever for purposes of the DCC’s appointment to fill the vacancy created on January 7, 2013. The “qualification date” established by law, and directly acknowledged by this Court in its *Maier* decision, was February 6, 2013. *Swanson v. Maier*, supra at ¶28. Neither the DCC nor its Chairman, Randy Gonzalez, have the legal authority to delay an appointment to the vacancy of Stark County Sheriff while Maier develops some theory that his credentials *now* satisfy R.C. 311.01.

The public news reports were recently confirmed by correspondence served by legal counsel for the respondents (Exhibit D), and by way of a memorandum over the signature of George Maier (Exhibit E). The memorandum suggests that Maier is attempting to build new credentials to satisfy the “technical statutory provision mentioned in the Supreme Court’s opinion,” so that he can be

appointed to the sheriff's office vacancy once again. (Exhibit E, p. 2). Maier "fully intend[s] to resubmit [his] application to the Central Committee." (*Id.*). It is as if this Court did not address the applicable "qualification date" for appointment to the vacancy at all in the *Maier* opinion. Of course, this Court did clearly and succinctly identify the applicable qualification date in its decision. *Swanson v. Maier*, supra at ¶28.

Maier had been appointed by the DCC based upon the vote taken at a meeting of the DCC held on February 5, 2013. *Id.*, ¶10. The *Maier* case settles the fact that Maier was not qualified to receive such appointment. There were, however, two other people who also applied for the appointment prior to the applicable qualification date; namely, Lou Darrow and Larry Dordea. "Three people submitted applications to the DCC to be appointed Stark County sheriff." *Id.*, ¶8. It is undisputed that both Darrow and Dordea satisfied the qualifications called for under R.C. 311.01. (See, Exhibit C). Given the passing of the qualification date, the DCC is now under a legal duty to appoint, from the two qualified and eligible people, an eligible person to fill the vacancy created on January 7, 2013. As the Court is well aware, relator, Timothy Swanson, is serving as acting sheriff, and he will serve in that capacity until the DCC appoints a person qualified under R.C. 311.01. *Id.*, ¶40.

## **II. THE McDONALD VACANCY MUST NOW BEEN FILLED FROM THE ELIGIBLE APPLICANTS WHO SATISFIED THE "QUALIFICATION DATE"**

The record for purposes of this case is largely established by the Court's decision in *Maier*. At the General Election held in Stark County, Ohio in 2012, Michael A. McDonald ("McDonald") was elected to serve as Stark County Sheriff. *Id.*, at ¶2. McDonald was unable to assume office for personal health reasons. *Id.* Thus, a vacancy in the office of Stark County Sheriff was created:

Here, McDonald indicated before the beginning of his term that he was unable to assume the office, so the vacancy occurred on January 7, the first day of McDonald's term.

*Id.*, ¶28. It is that vacancy which must now be filled by an eligible and qualified candidate for the office of sheriff.

As demonstrated herein below, the vacancy date of January 7, 2013, fixed a "qualification date" for one to be considered for the appointment of February 6, 2013. As a matter of law, only persons who satisfied the specific qualifications of R.C. 311.01 before the qualification date, including certification of an application before February 6, 2013, qualify for the appointment. In light of the *Maier* decision, it is undisputed that the only individuals who thus qualify are Darrow and Dordea.

The respondent DCC has admitted, through its counsel, that the *Maier* appointment was a nullity. (DCC Letter, Exhibit D). The respondent concedes: "It is well settled law that whether an official is elected by the public or appointed by some other authority, where said official is later found to be disqualified to hold the office by Statute, the original appointment or election is a nullity, which means the appointment is treated as though it never happened." *Id.*, Citing, *State ex rel. Vian v. Bryan*, 30 Ohio Law Bs. 61 (Ohio Ct. App. 1938). Thus, a lawful appointment to fill the McDonald vacancy has not yet occurred, inasmuch as the *Maier* ouster by this Court is as though his appointment never happened. However, that does not translate to a proposition that the appointment process never advanced. The respondents are under a clear legal duty to fill a lawful appointment for the McDonald vacancy, completing the process that was begun in February of 2013.

Importantly, the disqualification of *Maier* does not somehow taint the appointment process begun in January of 2013, and most certainly does not taint the legitimate application and

qualifications of relator Darrow. As the record fully demonstrates in this case, the relator Darrow fulfilled all legal requirements to be appointed to the McDonald vacancy, before the applicable qualification date of February 6, 2013. (Darrow Affidavit). This was previously admitted by the respondent Chairman in an affidavit which he filed with this Court in the prior *Maier* case. (See, Exhibit C, ¶8). There is nothing in Ohio law which requires that the relator qualify again. To the contrary, Ohio law imposes the clear legal duty to appoint from the qualified and eligible candidates who satisfied R.C. 311.01 prior to the qualification date.

There is no “new vacancy” as the respondents now contend. Respondents have asserted the position that this Court created a new vacancy when it ousted Maier for unlawfully holding office. (Exhibit D, p. 2). The flawed premise behind the respondents’ position is readily apparent from the DCC’s recent correspondence. According to the DCC, through its counsel, “the vacancy was created by the decision of the Court because ‘at present’ (the moment the decision was announced), there was no one lawfully authorized to assume and exercise the duties of the office.” (Exhibit D, p. 2). To the contrary, this Court not only ousted Maier but, in addition, it also contemporaneously ordered the reinstatement of relator Swanson to his lawful position as acting Sheriff. There exists no other vacancy for the respondents to fill in the office at issue other than the McDonald vacancy.

### **III. THE “QUALIFICATION DATE” FOR THE McDONALD VACANCY WAS FEBRUARY 6, 2013**

When there is a vacancy in the office of county sheriff, the process for appointment to fill the vacancy is subject to a strict “qualification date.” R.C. 311.01 provides, in pertinent part:

(H) As used in this section:

(1) “**Qualification date**” means the last day on which a candidate for the office of sheriff can file a declaration of candidacy, a statement of candidacy, or a declaration of intent to be a write-in candidate, as applicable, in the case of a primary election for

the office of sheriff; the last day on which a person may be appointed to fill a vacancy in a party nomination for the office of sheriff under Chapter 3513. of the Revised Code, in the case of a vacancy in the office of sheriff; or **a date thirty days after the day on which a vacancy in the office of sheriff occurs, in the case of an appointment to such a vacancy under section 305.02 of the Revised Code.** (Emphasis added).

Since the vacancy at issue in the case occurred on January 7, 2013, as this Court specifically recognized in *Maier*: “And 30 days after that date is the ‘qualification date,’ February 6, 2013.” *Id.*, at ¶28. For purposes of filling the McDonald vacancy, the “qualification date” fixed by law was and remains February 6, 2013.

This qualification date is inflexible and not subject to any manipulation in the process of appointment which the DCC must now complete. However, the respondents have asserted that they intend to operate under a “new” qualification date: “It is the Chairman’s position, after a thorough review of the Court’s opinion, that the qualification period shall be 30 days after the Court’s order.” (Exhibit D, p. 3). In other words, the respondents intend to ignore the “qualification date” so clearly identified in *Maier* and fashion a new one of their own design.

#### **IV. THE “QUALIFICATION DATE” ALSO FIXED THE DATE FOR COMPLETED APPLICATIONS TO BE SUBMITTED TO THE DCC**

R.C. 311.01 provides, in part:

(B) Except as otherwise provided in this section, no person is eligible to be a candidate for sheriff, and **no person shall be elected or appointed to the office of sheriff, unless that person meets all of the following requirements:**

...

(6) The person has been fingerprinted and has been the subject of a search of local, state, and national fingerprint files to disclose any criminal record. Such fingerprints shall be taken under the direction of the administrative judge of the court of common pleas who, prior to the applicable qualification date, shall notify the board of elections, board of county commissioners, or county central committee of the proper political party, as applicable, of the judge’s findings.

(7) The person has prepared a complete history of the person's places of residence for a period of six years immediately preceding the qualification date and a complete history of the person's places of employment for a period of six years immediately preceding the qualification date, indicating the name and address of each employer and the period of time employed by that employer. The residence and employment histories shall be filed with the administrative judge of the court of common pleas of the county, who shall forward them with the findings under division (B)(6) of this section to the appropriate board of elections, board of county commissioners, or county central committee of the proper political party prior to the applicable qualification date. (Emphasis added).

(F) (1) Each person who is a candidate for election to or who is under consideration for appointment to the office of sheriff shall swear before the administrative judge of the court of common pleas as to the truth of any information the person provides to verify the person's qualifications for the office. A person who violates this requirement is guilty of falsification under section 2921.13 of the Revised Code.

The only two people who timely submitted applications for appointment to the McDonald vacancy (that is, who submitted fingerprints and the residence and employment information called for in R.C. 311.01 for filing with the administrative judge and submission to the DCC *prior to the applicable qualification date*), and who were *also eligible* for such appointment, were Darrow and Dordea. No other eligible applications were submitted to the administrative judge of the Stark County Common Pleas Court and then forwarded to the DCC "prior to the qualification date." Consequently, no other applications can be considered, as a matter of law. (Affidavit of Respondent Gonzalez, Exhibit C, ¶¶ 8, 10).

**V. THE DCC ALREADY HELD A TIMELY MEETING, UNDER R.C. 305.02**

Pursuant to R.C. 305.02(C), the DCC was required to "meet" for the purpose of making an appointment under the Revised Code, within forty-five days after the vacancy occurred. The Revised Code states specifically, in pertinent part:

**(C) Not less than five nor more than forty-five days after a vacancy occurs, the county central committee shall meet for the purpose of making an appointment**

**under this section.** Not less than four days before the date of such meeting the chairperson or secretary of such central committee shall send by first class mail to every member of such central committee a written notice which shall state the time and place of such meeting and the purpose thereof. A majority of the members of the central committee present at such meeting may make the appointment. (Emphasis added).

It is undisputed that just such a meeting of the DCC occurred, on February 5, 2013. (Gonzalez Aff., ¶5).

At the meeting held on February 5, 2013, only two qualified candidates were before the members of the DCC; namely, Darrow and Dordea. George Maier was, as the record reflects, also considered for the appointment at that time. However, it has been established as a matter of law that Maier did not hold the necessary legal qualifications before the “qualification date” in order to be considered for or receive the appointment. Thus, the votes received by Maier were invalid and must be disregarded. Of the two qualified candidates, it is undisputed that relator Darrow received more votes (84 votes for Darrow and 1 vote for Dordea).

**VI. THE DCC IS REQUIRED TO APPOINT FROM THE ELIGIBLE APPLICANTS (DARROW AND DORDEA) AND RELATOR DARROW RECEIVED THE MOST VOTES**

It is undisputed that, at the DCC meeting held on February 5, 2013, Darrow received 84 votes and Dordea received 1 vote. (Exhibit C). Based upon this vote, arguably the relator Darrow is entitled to appointment by the DCC to fill the McDonald vacancy. At the very least, the relators are entitled to a writ of mandamus directing the DCC and its Chairman to appoint from the eligible applicants who satisfied the qualification date, both in terms of having completed and submitted applications prior to the qualification date and having substantively met all other requirements of R.C. 311.01 before the qualification date. Because the respondents are legally obligated to appoint from the two eligible applicants, mandamus is the appropriate remedy.

A writ of mandamus is defined as “a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.” R.C. 2731.01; *State ex rel. Sprague v. Wellington*, 2012-Ohio-1698, ¶2 (7<sup>th</sup> Dist.). Here, the DCC, and its Chairman, are specially enjoined with the duty to proceed with the appointment to fill the vacancy in the office of Stark County Sheriff, in accordance with R.C. 305.02. The DCC has already held a meeting for such purpose, and that meeting was held within 45 days of the date of the vacancy. Importantly, only two eligible applicants satisfied the qualification requirements of R.C. 311.01(B)(6), and (7) at that time, and “prior to the qualification date,” and met the balance of the legal requirements. Consequently, the DCC is authorized to consider, indeed legally obligated to consider, only the applications of relator Darrow and Dordea for now completing the lawful appointment to the vacancy of Stark County Sheriff. The “qualification date” is long passed, and no new or additional applications can be considered beyond that date.

To be entitled to a writ of mandamus, a relator must show: (1) that there is a clear legal right to the requested relief; (2) that the respondent is under a clear legal duty to perform the act sought; and (3) that relator has no plain and adequate remedy at law. *State ex rel. Fain v. Summit Cty. Adult Probation Dept.* (1995), 71 Ohio St.3d 658, citing *State ex rel. Howard v. Ferreri* (1994), 70 Ohio St.3d 587, 589. In this case, the respondent DCC has a clear legal duty, fixed by law, to comply fully with R.C. 305.02 and 311.01 in filling the vacancy of Stark County Sheriff. The DCC has already held a meeting for the purpose of appointment, and only Darrow and Dordea were the applicants eligible for appointment with timely submissions prior to the qualification date. The DCC is under a clear legal duty to appoint from those two eligible applicants.

The relators are entitled to a writ of mandamus directing the DCC and its Chairman to proceed with a lawful appointment. Either that appointment must be of Darrow or Dordea, although, relator Darrow appears to be entitled to the appointment.

In *State ex rel. Williamson v. Cuyahoga County Bd. of Elections* (1984), 11 Ohio St. 3d 90, this Court addressed the counting of ballots following a contested election for city law director. In *Williamson*, a municipal election proceeded with the names of two candidates on the ballot (Williamson and Lambros). However, it had been determined that Lambros was not qualified for the office, through a protest to his declaration of candidacy. Following the election, the Ohio Secretary of State instructed the Cuyahoga County Board of Elections to count the votes cast for both Lambros and Williamson. Williamson pursued a writ of mandamus in this Court, and the writ was allowed.

The relief sought by Williamson was an order directing the election authorities to count only the votes cast for the relator and to certify him as the winner of the election. The Court held, in part, that: "the only eligible candidate on the ballot was relator and only his votes may be counted." *Id.*, at p. 91. The Court then further rejected the respondent's argument that "Williamson must have received a greater number of votes than Lambros in order to win the election." *Id.* The Court rejected this contention because: "Only the *eligible candidate* who receives the highest number of votes for the office for which he stands is elected to such office." *Id.*, p. 92 (Emphasis original). (Citations omitted). In light of these rules, the Court concluded that: "relator was the only eligible candidate and respondents are under a clear legal duty to count only the votes cast for relator in the November 8, 1983 election for law director." *Id.*

The logical application of this Court's ruling in *Williamson* dictates the following conclusions and outcome:

1. At the February 5, 2013 meeting of the DCC, there were two eligible applicants for consideration for appointment to the office of Stark County Sheriff.
2. The only eligible applicants before the DCC on February 5, 2013, were the relator Darrow and Dordea.
3. Only the eligible candidate who received the highest number of votes was elected, or selected, for the appointment.
4. The eligible candidate who received the highest votes was relator Darrow.

Based upon the vote of the DCC which occurred on February 5, 2013, the respondent DCC should certify Darrow's appointment, as a matter of law. R.C. 305.02 otherwise provides:

(E) Appointments made under this section shall be certified by the appointing county central committee or by the board of county commissioners to the county board of elections and to the secretary of state, and the persons so appointed and certified shall be entitled to all remuneration provided by law for the offices to which they are appointed.

As the qualified candidate for appointment at the February 5, 2013 who received the most votes of the members of the DCC, relator Darrow appears entitled to the appointment and to the certification of that appointment in accordance with law. Either Darrow is entitled to a writ of mandamus compelling the DCC to complete and certify his appointment or, alternatively, he is entitled to a writ of mandamus directing the DCC to appoint one of the two eligible candidates who appeared before the DCC on February 5, 2013 and satisfied all requirements of R.C. 311.01 prior to the qualification date.

Mandamus is the appropriate remedy for the relators under these facts, since they (Darrow as a timely applicant for appointment, and Swanson as the serving acting Sheriff) are entitled to an

order compelling the respondents to comply with their duties under R.C. 305.02 and 311.01. Neither a declaratory judgment nor a prohibitory injunction would serve as alternative, adequate remedies in the ordinary course of law. See, *State ex rel. Ohio Liberty Council v. Brunner*, 125 Ohio St. 3d 315, 2010-Ohio-1845, ¶28. Mandamus relief is the proper form of relief for the relators in order to promptly and conclusively settle these matters. *Id.*

This Court addressed a mandamus claim in *State ex rel. Union Cty. Veterans Serv. Comm. v. Parrott*, 108 Ohio St. 3d 302, 2006-Ohio-92. In the *Parrott* case, this Court addressed a suit seeking a writ of mandamus to compel the proper use of statutory appointment authority. *Id.*, ¶1. At issue was a vacancy on a county veterans service commission. *Id.*, ¶5. The Court granted the writ, finding that the respondent judge was under the statutory duty, a “manifest legal duty,” to complete a requested appointment. *Id.*, ¶17. Here, the respondents are equally under a manifest legal duty to fill the McDonald vacancy via appointment of a qualified candidate, in conformity with Ohio law. R.C. 305.02 and 311.01 confer corresponding legal rights upon the relators to see that the lawful appointment is accomplished, and no adequate alternative remedy exists in the ordinary course of the law to compel the respondents’ action. *Id.*, ¶19.

## **VII. CONCLUSION**

George Maier was ousted from the unlawful appointment to the Office of Stark County Sheriff by this Court’s judgment. “When a defendant in an action is quo warranto is found guilty of usurping, intruding into, or unlawfully holding or exercising an office, . . . , judgment shall be rendered that he be ousted and excluded therefrom.” R.C. 2733.14. The judgment of ouster excludes Maier from being considered for “re-appointment” to the Office of Stark County Sheriff, in order to fill the McDonald vacancy.

It is illogical to suggest that being ousted from an office which never should have been assumed or possessed in the first instance somehow itself produces a “vacancy.” This Court must reject any contention or claim that being ousted in quo warranto, under fact such as those in *Maier*, “creates” a “new vacancy,” not only because it runs contrary to law but, further, because adopting the respondents’ position would lead to mischief and chaos in the appointment process. One simply cannot assume an office through an unlawful appointment for the purpose of creating credentials beyond a closed “qualification date.” *Maier* never lawfully filled the McDonald vacancy. There is no process for *Maier*, or anyone else for that matter, to re-apply (or apply late) seeking to fill the McDonald vacancy.

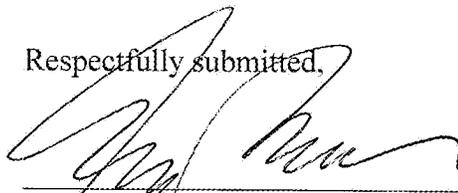
The pertinent facts are uncontroverted in this case. Further, in light of those facts and the applicable law, it appears beyond doubt that the relators Darrow and Swanson are entitled to the requested relief in mandamus. Consequently, this Court should grant a peremptory writ. See, *State ex rel. Husted v. Brunner*, 123 Ohio St. 3d 119, 2009-Ohio-4805, ¶10. Accord, *Parrott*, ¶7.

**WHEREFORE**, relators, Timothy A. Swanson and Lou Darrow, respectfully request that the Court enter judgment as follows:

- a. Granting and issuing a peremptory writ in mandamus directing the respondents to consider only the eligible applications for appointment to the vacancy in the Office of Stark County Sheriff which were submitted before the qualification date of February 6, 2013; or
- b. Alternatively, granting and issuing a peremptory writ in mandamus directing the respondents to count only the votes of the eligible applicants who were considered at the DCC meeting held on February

5, 2013, and then make and certify the appointment to the Office of Stark County Sheriff from the result of those votes.

Respectfully submitted,



Gregory A. Beck (0018260)

(Counsel of Record)

James F. Mathews (0040206)

BAKER, DUBLIKAR, BECK

WILEY & MATHEWS

400 South Main Street

North Canton, Ohio 44720

Phone: (330) 499-6000

Fax: (330) 499-6423

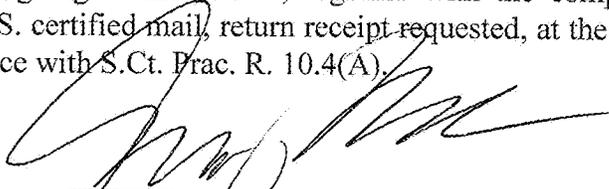
E-mail: beck@bakerfirm.com

mathews@bakerfirm.com

Counsel for Relators

### INSTRUCTIONS FOR SERVICE

Please serve copies of the foregoing memorandum, together with the complaint and summons, upon the respondents, by U.S. certified mail, return receipt requested, at the addresses listed in the caption hereof, in accordance with S.Ct. Prac. R. 10.4(A).



Gregory A. Beck

(Counsel of Record)

James F. Mathews

BAKER, DUBLIKAR, BECK

WILEY & MATHEWS

**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO, ex rel. TIMOTHY A. )  
SWANSON, *et al.* )  
4500 Atlantic Boulevard, NE )  
Canton, Ohio 44705 )

Relators/Plaintiffs,

vs.

STARK COUNTY DEMOCRATIC )  
CENTRAL COMMITTEE )  
4220 12th Street NW )  
Canton, Ohio 44708 )

and

RANDY GONZALEZ, in his official capacity )  
as STARK COUNTY DEMOCRATIC )  
CENTRAL COMMITTEE CHAIRMAN )  
c/o Stark County Democratic Central )  
Committee )  
4220 12th Street NW )  
Canton, Ohio 44708 )

Respondents/Defendants.

CASE NO.

**AFFIDAVIT OF  
JAMES F. MATHEWS**

*ORIGINAL ACTION IN  
MANDAMUS*

Now comes James F. Mathews, who first being duly sworn according to law, upon personal knowledge and information, states as follows:

1. I am an attorney licensed in the state of Ohio, and I served as one of the lawyers for the relator in the case of *State ex rel. Swanson v. Maier*, \_\_\_ Ohio St. 3d \_\_\_, 2013-Ohio-4767. This affidavit is submitted for the purpose of authenticating the exhibits attached hereto, which are matters that are not reasonably subject to dispute in this case.

2. Attached hereto, marked as Exhibit C, is an authentic copy of the Affidavit of Randy Gonzalez, filed on April 10, 2013, as part of the respondent's evidence in the *Maier* case. Exhibits 1 and 2 to the Gonzalez affidavit are also attached; however, Exhibits 3 and 4 to the subject affidavit are not attached.

3. Attached hereto, marked as Exhibit D, is an authentic copy of a letter from the Stark County Democratic Party ("DCC") dated November 13, 2013, signed by four lawyers on behalf of the DCC, delivered to relator's counsel.

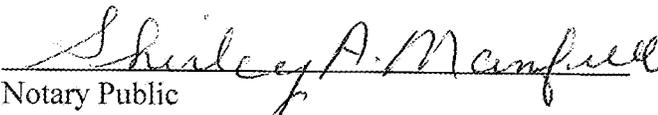
4. Attached hereto, marked as Exhibit E, is an authentic copy of a memorandum which affiant understands has been circulated to members of the DCC since the Ohio Supreme Court's decision in the *Maier* case.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
James F. Mathews

STATE OF OHIO    )  
                          )    SS:  
STARK COUNTY    )

SWORN to before me and subscribed in my presence, this 15<sup>th</sup> day of November, 2013.

  
\_\_\_\_\_  
Notary Public



**SHIRLEY A. MANFULL**  
Notary Public, State of Ohio  
My Commission Expires 7/5/2017

# EXHIBIT C

No. 2013-0274

Original Action for Writ of Quo Warranto

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**In the Supreme Court of Ohio**

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STATE OF OHIO ex rel. TIMOTHY A. SWANSON

Relator,

v.

GEORGE T. MAIER

Respondent.

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**AFFIDAVIT OF RANDY GONZALEZ**

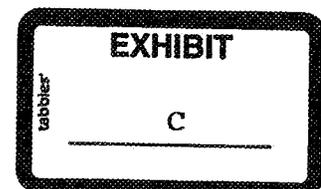
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Gregory A. Beck (0018260)  
James F. Mathews (0040206)  
BAKER, DUBLIKAR, BECK, WILEY &  
MATHEWS  
400 South Main Street  
North Canton, Ohio 44720  
Telephone: 330.499.6000  
Facsimile: 330.499.6423  
Email: beck@bakerfirm.com  
mathews@bakerfirm.com

*Attorneys for Relator*

Thomas L. Rosenberg (0024898)  
Michael R. Traven (0081158)  
ROETZEL & ANDRESS, LPA  
PNC Plaza, Twelfth Floor  
155 East Broad Street  
Columbus, Ohio 43215  
Telephone: 614.463.9770  
Facsimile: 614.463.9792  
Email: trosenberg@ralaw.com  
mtraven@ralaw.com

*Attorneys for Respondent*



STATE OF OHIO                    )  
  ) SS:  
COUNTY OF STARK                )

I, Randy Gonzalez, being first duly cautioned and sworn states as follows:

1. I am the Chairman of the Stark County Democratic Party and have been the Chairman throughout all the proceedings discussed herein.

2. On November 6, 2012, Michael A. McDonald was elected to the Office of Sheriff of Stark County.

3. On January 3, 2013, Mr. McDonald issued notice that due to a change in his medical condition, he was unable to assume the Office of Sheriff of Stark County. Mr. McDonald passed away in mid-February, 2013. A copy of Mr. McDonald's letter of January 3, 2013 is attached hereto as **Exhibit 1**.

4. As a result of the vacancy created by Mr. McDonald being unable to assume the Office of Sheriff of Stark County, I called a meeting of the Central Committee of the Stark County Democratic Party for the purposes of electing an individual to fill the vacancy in the Office of Sheriff as required by law.

5. The meeting of the Stark County Democratic Party Central Committee occurred on February 5, 2013 at the Mayfield Senior Center in Canton, Ohio. As Chairman, I ran the meeting.

6. Attached as **Exhibit 2** are the minutes of the meeting of the Stark County Democratic Central Committee held on February 5, 2013.

7. In attendance at the meeting, was Bill DeMora, Secretary of the Ohio Democratic Party and an experience parliamentarian who oversaw all voting.

8. Consideration for appointment at the meeting of the Stark County Democratic Central Committee for the position of Sheriff were three individuals, George T. Maier, Lou Darrow, and Larry Dordea. Prior to the meeting, all three individuals had submitted applications to the administrative judge of the Stark County Common Pleas Court and their applications, issued through journal entries of the court, were forwarded to the Central Committee. The Journal Entry we received on George Maier is attached as Exhibit 3.

9. As stated in the minutes, during the meeting, a Central Committee member moved that the Central Committee nominate and consider all three candidates qualified for the Office of Sheriff. That motion was seconded. John Ferrero, a member of the Central Committee and also the Prosecutor of the Stark County said at the meeting, it was the Central Committee's duty to determine if all of the applicants were qualified.

10. The motion to consider all three candidates (George Maier, Lou Darrow and Larry Dordea) qualified for the Office of Sheriff passed following a roll call vote of all members of the Central Committee in attendance.

11. As stated in the minutes, voting by all Central Committee members in attendance occurred by written ballot signed by the committee members. The vote as announced by Mr. DeMora was 92 votes for George Maier, 84 votes for Lou Darrow and 1 vote for Larry Dordea. Two ballots were unsigned and therefore not counted.

12. Following the meeting, as chairperson of the Stark County Democratic Committee, I issued a Certification by Party Central Committee to fill a vacancy in a county office, indicating that George Maier had been appointed in accordance with the law. A copy of this Certification is attached as Exhibit 4.

13. In addition to that set forth above, I had two independent attorneys (not including Mr. Maier's personal counsel) review the qualifications of George Maier to serve as Sheriff. Both lawyers advised me that he met the legal qualifications to do so. As a result, I am convinced that Mr. Maier meets the legal qualifications to serve as Sheriff of Stark County.

14. As Chairman of the Stark County Democratic Party, I am aware that there are instances such as this one, where factions develop within the Party resulting in support for more than one candidate for office. This occurred in connection with the appointment of George Maier as Sheriff of Stark County. I contend that the current controversy is nothing more than intra-party squabbling among factions of Stark County Democratic Party, as these factions sought and continue to seek support for their candidates for sheriff.

15. It is my understanding that pursuant to the law, Mr. Maier shall serve as Sheriff until the November, 2014 election at which time he will run for the office to serve out the remainder of the term which shall expire in January, 2017.

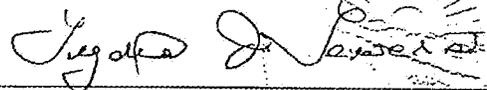
16. Throughout these proceedings, the electoral process set forth in law has been followed, monitored by the Ohio Democratic Party and as stated above, the winner of the Central Committee vote has assumed the Office of Sheriff of Stark County. As Chairman of the Stark County Democratic Party, I have informed all who have asked that if they have interest in running for Sheriff in November, 2014, they should consider doing so and allow the voters to select the Sheriff of Stark County in accordance with the law in the same manner as the Central Committee acted upon the vacancy being created by the inability of Mr. McDonald to assume office.

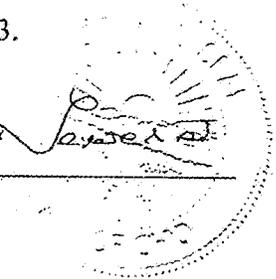
FURTHER AFFIANT SAYETH NAUGHT.

  
Randy Gonzalez

Sworn to and subscribed before me this 16<sup>th</sup> day of April, 2013.

**LYDIA J. LEWERS**  
Notary Public, State of Ohio  
My Commission Expires 04-21-2013

  
Notary Public





# TIMOTHY A. SWANSON

Stark County Sheriff

Stark County Safety Building • 4500 Atlantic Blvd. NE • Canton, OH 44705-4374  
Administrative Offices • (330) 430-3887 • Fax (330) 430-3844

Jail Division • (330) 451-1250 • Fax (330) 451-1339 • www.sheriff.co.stark.oh.us  
Court Services Division • 115 Central Plaza N., Suite A • Canton, OH 44702 • (330) 451-7425 • Fax (330) 451-7050

January 3, 2013

To Whom It May Concern:

Due to a very recent change in my medical condition, I, Michael A. McDonald, am unable to assume the Office of Sheriff of Stark County.

Sincerely,

Michael A. McDonald

Witness: Timothy A. Swanson  
Judge McDonald



STARK COUNTY DEMOCRATIC CENTRAL  
COMMITTEE MEETING  
TUESDAY, FEBRUARY 5, 2013  
5:30 PM  
MAYFIELD SENIOR CENTER  
3825 13<sup>TH</sup> STREET SW, CANTON, OH

*Attendance taken & recorded by Stark County Board of Elections staff.  
A quorum was present--see attached list.*

Call To Order

Stark County Democratic Party Chairman Randy Gonzalez called the meeting to order at 5:40 PM, and thanked all for coming. After the Pledge of Allegiance, Chairman Gonzalez announced that representatives of the Democratic clubs would be in the back of the room with information & membership cards. Also, the Democratic Woman's Club is having a Candidates Night on February 27<sup>th</sup> at 6:00 p.m. at Democratic Headquarters.

Remarks by Chairman Gonzalez

Chairman Randy Gonzalez welcomed all in attendance. He requested that only committee members be seated; all spectators should stand in the back of the room.

The Chairman stated the reason we are here this evening is that Michael McDonald suffered a major setback in his health; his stepping down is a great loss to the Sheriff's Office and, on a personal level, a tough weight to feel.

Member Cynthia Balas-Bratton repeatedly called for a point of order, asking to make a motion. She was asked to sit down by other Central Committee members & Chairman Gonzalez, who requested that she let us go forward with the meeting.



## Voting Procedure Explained

The Chairman stated this will be a public vote tonight; that all elected Central Committee members represent the people who voted for them, & those people have every right to see how you vote. Chairman Gonzalez introduced Bill DeMora, Secretary of the Ohio Democratic Party & an experienced Parliamentarian, who would oversee the vote. The Chairman explained that every Committee member's name would be called; they would come forward to receive a ballot, and must sign the ballot in order for it to be counted. Five letters of interest were received at Democratic Headquarters; three have gone through the procedure at the Court of Common Pleas and were forwarded to the Central Committee: George Maier, Lou Darrow & Larry Dordea.

## Motion to Table the Vote

Member Dave Kirven moved to table the vote until all candidates are qualified; seconded by Cynthia Balas-Bratton. Chairman Gonzalez stated he has hired Attorney Michael Thompson who researched & said we have three qualified candidates; & that Attorney Steve Okey was also asked for his opinion and confirmed we are on solid ground. After discussion, Chairman Gonzalez called for a roll call vote: the motion failed and the meeting continued.

## Motion to Vote on the 3 Candidates

Member Ed Davila moved that we nominate and consider all three candidates qualified; motion seconded by Deametrius St. John.

Under discussion, Member John Ferrero, who filed an affidavit in the court case challenging George Maier's qualifications, said it was the Central Committee's duty to determine if all of the applicants were qualified. He said he would support whoever is elected tonight, but believes the party could put itself at risk of a second lawsuit. Attorney Michael Thompson said any challenges to Maier's qualifications should be made after the

vote. Following more questions and discussion, Chairman Gonzalez restated the motion and a roll call vote was taken: the motion passed.

The Chairman announced that as the employees of the Board of Elections call members' names, they should come forward and receive their ballots and reminded them they must sign their ballots for their ballot to be counted.

### Motion to Adjourn

Member Cynthia Balas-Bratton at this point moved to adjourn the meeting (no second required). Chairman Gonzalez called for all those in favor of adjourning to stand. Motion failed and the voting began.

### Results of the Vote

Voting commenced via written ballot, signed by the committee members. Board of Elections employees, as overseen by Mr. DeMora, counted votes. The vote, announced by Mr. DeMora, was 84 votes for Mr. Darrow, 92 votes for Mr. Maier, 1 vote for Mr. Dordea, and 2 ballots unsigned & not counted. Mr. DeMora collected the ballots. Chairman Gonzalez thanked everyone for coming, congratulated George Maier and thanked Lou Darrow for contributing his experience to the Sheriff's Department. He also thanked Tim Swanson for being a friend to Stark County and the Sheriff's Office. He also announced the recent passing of a longtime Democrat & Central Committeeman, Andy Bartko. Gonzalez then asked for a motion to adjourn.

### Adjournment

Member Derrick Loy moved to adjourn; motion seconded. Motion passed by unanimous voice vote. The meeting was adjourned at 6:56 p.m.

# EXHIBIT D

**The Stark County Democratic Party**

Randy Gonzalez, Chairman  
4220 12<sup>th</sup> Street NW  
Canton, Ohio 44708

November 13, 2013

VIA FAX (330-499-6423) & REGULAR MAIL

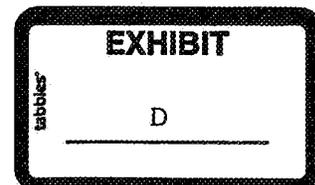
Baker Dublikar Beck Wiley & Mathews  
ATTN: Gregory A. Beck, Esquire  
400 South Main Street  
North Canton, Ohio 44720

**Re: Appointment of Sheriff**

Dear Attorney Beck:

I am in receipt of your letter dated November 6, 2013 addressed to Randy Gonzalez, Chairman of the Stark County Democratic Central Committee. In your letter, you assert that the Ohio Supreme Court's decision in *The State ex rel. Swanson v. Maier* somehow requires the Stark County Democratic Central Committee to "reconvene for the sole purpose of appointing Lou Darrow as the Stark County Sheriff." With no authority cited, you then argue that the Supreme Court's decision "voids" any votes cast for George Maier, inexplicably maintains other "viable" votes for the two remaining candidates, and then sets a qualification date that defies known principles of time. Such a result would amount to legal quantum physics, requiring complicated machinations and legal fictions, the likes of which are certainly not held by the Supreme Court in the present case, nor supported by Ohio law in any other case.

I would also remind you that Sheriff Swanson's central argument was that, "because Maier was not legally qualified to assume the office of sheriff under R.C. 311.01, **his appointment was a nullity**, leaving Swanson the duly appointed acting sheriff until a qualified successor is properly appointed." State ex rel. Swanson v. Maier, 2013-Ohio-4767 (Ohio Nov. 6, 2013) (emphasis added). It is well settled law that whether an official is elected by the public or appointed by some other authority, where said official is later found to be disqualified to hold the office by Statute, the original appointment or election is a nullity, which means the appointment is treated as though it never happened. State ex rel. Vian v. Bryan, 30 Ohio Law Abs. 61 (Ohio Ct. App. 1938). Meanwhile, your interpretation of *Maier* would demand that certain votes never happened, certain other votes did happen, certain dates were frozen in time, while other dates were not. There is simply no case, statute or other law in Ohio that instructs an appointing authority such as a party central committee to turn over a vacant office to the second place vote-getter of an appointment process that legally never



happened. If the appointment was a nullity, so too was the appointment process. The Stark County Democratic Party is therefore legally bound to treat the appointment of Maier as if no appointment had ever been made, which requires a new appointment process, just as the *Maier* court ordered. See *State ex rel. Vian v. Bryan*, 30 Ohio L.Abs. 61 (Ct.App. Lorain County 1938). 1992 Ohio Op. Att'y Gen. No. 92-008 (Mar. 20, 1992).

Contrary to the holding of the Supreme Court and the plain language of the applicable appointment Statute, you also state that, "The only vacancy in this case occurred when Mike McDonald announced his inability to serve as sheriff on January 6, 2013." This statement and your assertion that the statutory qualification date therefore occurred in the past are also incorrect. The announcement of an inability to serve does not create a vacancy under Ohio Law, rather, a vacancy exists where there is no person lawfully authorized to assume and exercise *at present* the duties of the office. *State ex rel. Hoyt v. Metcalfe*, 80 Ohio St. 244, 88 N.E. 738 (1909) (emphasis added). The vacancy now relevant is therefore the vacancy created by the Court's order in *Maier*.

The Ohio Revised Code is also clear that, "If a vacancy occurs *from any cause* in any of the offices named in division (A) of this section, the county central committee of the political party with which the last occupant of the office was affiliated shall appoint a person to hold the office and to perform the duties thereof until a successor is elected and has qualified, [...]." Ohio Rev. Code Ann. § 305.02 (West) (emphasis added). The plain language of the statute clearly contemplates vacancies "from any cause" and as applied to the *Maier* case, the vacancy was created by the decision of the Court because "at present" (the moment the decision was announced), there was no one lawfully authorized to assume and exercise the duties of the office. For the *Maier* court to have held otherwise would violate the statute and overturn 100 years of case law.

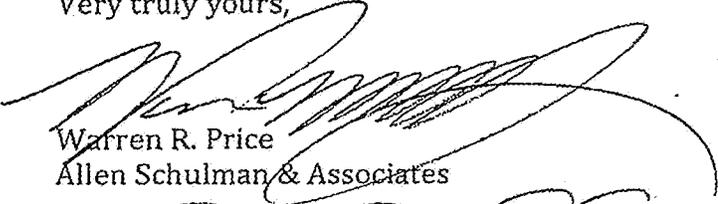
In this same vein, to reach your desired result, the Court also would have to have overturned case law that protects political parties from Courts interceding into their internal affairs. In fact, in *Maier*, the Supreme Court ruled solely on the issue of a single statutory qualification of the Sheriff. In Ohio, "the writ of quo warranto is treated as a civil action and is used chiefly to question the authority of claimants asserting right and title to public offices [...]." 38 Ohio St.2d 15, 16-17, 309 N.E.2d 860, 862. For purposes of quo warranto, it is only where party officers assume duties affecting activities beyond the sphere of the internal affairs of the party and exercise official powers that are part of the sovereign functions of the state, properly exercisable for the public benefit, that the courts will intercede. See *State ex rel. Hayes v. Jennings*, supra. *State ex rel. Cain v. Kay*, 38 Ohio St. 2d 15, 19, 309 N.E.2d 860, 863 (1974). Put another way, the Party's internal procedures for reviewing qualifications, voting, setting the meeting agenda, decorum and other policies were not reviewed by the Court. Only Maier's qualifications were at issue in the present case and while the actual appointment is made by the precinct committeemen as quasi-public officials, most of the other concerns you raise deal with internal party procedures. The forced result you request is inconsistent with the case law cited above and certainly not contemplated by the *Maier* court.

In conclusion, the Ohio Supreme Court simply ordered the Stark County Democratic Central Committee to appoint a new Sheriff pursuant to the procedures stated in R.C. 305.02. Your letter, on the other hand, calls for the party to "appoint" the second place vote getter by some unknown process that requires voiding votes, counting others, disenfranchising the Democratic Central Committee members, and then engaging in a legal contortion to arrive at a preordained result.

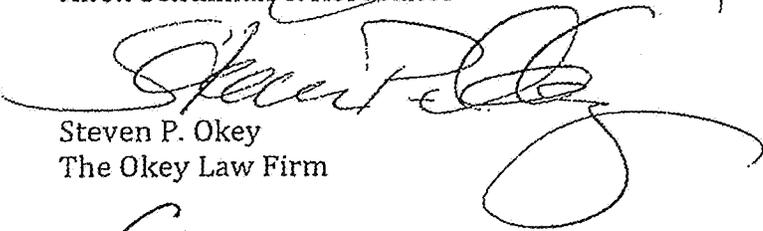
Chairman Gonzalez intends to proceed in lawful accordance with the Supreme Court's order of November 6, 2013. It is the Chairman's position, after a thorough review of the Court's opinion, that the qualification period shall be 30 days after the Court's order. This result complies with the *Maier* court's holding and is entirely consistent with R.C. 305.02.

Please do not hesitate to contact us with any questions or concerns regarding this matter via our primary contact, Attorney Warren Price, 330-428-0533 or [warrenrprice@icloud.com](mailto:warrenrprice@icloud.com).

Very truly yours,



Warren R. Price  
Allen Schulman & Associates



Steven P. Okey  
The Okey Law Firm



Allen Schufman  
Allen Schulman & Associates



Michael A. Thompson - by telephonic consent - WKAD  
The Law Office of Michael A. Thompson

# EXHIBIT E

GEORGE T. MAIER

831 Oakcrest Lane NE,  
Mansillon, OH 44646

COPY

Dear Democratic Central Committee Member,

I'm reaching out to you regarding the latest developments involving my service as your Stark County Sheriff.

Nine months ago, the Democratic Central Committee had the job of choosing the next Stark County Sheriff. I stood along with two other law enforcement officers for your consideration. As with most important issues in a democratic process, there was a spirited debate. But at the end of the debate, I was honored to accept the Committee's appointment as Stark County Sheriff.

I immediately rolled up my sleeves and went to work. Since February, there have been a lot of long days and many hours devoted to the great public trust of serving and protecting the people of Stark County. Today, I can proudly report to you that the Stark County Sheriff's Office has never been in a better position to successfully carry out that trust.

It has been a great privilege to serve with the hard working deputies and staff of the Sheriff's Office. No Sheriff could ask for more dedicated and committed professionals to have on board. They have made me proud, and I hope they are as proud of the effort I poured into the job each day. Working together, we have made Stark County safer for the families who live here.

While we were busy serving the public during the past nine months, some who disagreed with the Central Committee's decision were busy filing a lawsuit in the Ohio Supreme Court. Even though I have served as the Acting Director and Assistant Director of the Ohio Department of Public Safety, and directly supervised the divisions of The Ohio Investigative Unit and The Ohio State Highway Patrol, along with six (6) other divisions, this lawsuit disputed my qualifications to serve as Sheriff. On November 6, the court issued an opinion, stating that, despite all my years of experience in law enforcement, my positions of statewide leadership did not fit one technical requirement in one complicated statute. As a result of this technicality, the court stated that the office of Sheriff would have to be vacated.

I disagree with this opinion. But as a career law enforcement officer, I have taken a solemn oath to respect the rule of law and to follow the court's decision.

I want to reassure you that this is not a crisis. Instead, the court has pointed out a technical requirement that can be readily cured. To resolve this technicality, I have accepted the position I held prior to being appointed Sheriff, where I am again serving as a full-time peace officer with

EXHIBIT

E

GEORGE T. MAIER

COPY

831 Oakcrest Lane NE,  
Massillon, OH 44646

the Harrison County Sheriff. This service will fulfill the technical statutory provision mentioned in the Supreme Court's opinion.

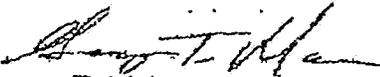
Within several weeks, it will again be the job of the Central Committee to appoint a Sheriff to fill the vacancy caused by the court's opinion. I fully intend to resubmit my application to the Central Committee; I have never left a job unfinished, and I don't intend to start now.

I'm asking for your vote!

With your support, I will continue the job of serving the hard working families of Stark County. We're off to a great start. I have faith that together, we can recommit to the progress we have already made.

Thank you for your service to our Democratic Party and especially to our great county.

Sincerely,



George T. Maier

All materials printed in house and paid for by  
Keep George Maier Sheriff Committee  
Margaret Elum Treasurer  
Misty Maier Deputy Treasurer  
831 Oakcrest Lane NE, Massillon, OH 44646