STATE OF DELAWARE
office of the
STATE ELECTION COMMISSIONER

Elaine Manlove
Commissioner of Elections

PHONE (302) 739-4277
FAX (302) 739-6794

June 1, 2010

Ms. Dawn Gwynn, Chairperson
Delaware City Board of Elections
407 Clinton Street
P.O. Box 4159
Delaware City, DE 19706

Ms. Rita A. Marocco
113 Adams Street
Delaware City, DE 19706

Ms. Sarah Bucic
206 Washington Street
Delaware City, DE 19706

Re: **April 6, 2010 Delaware City Board of Election Appeal**

Dear Parties:

This is my decision pursuant to 15 *Del. C.* § 7552(b) after a hearing conducted on May 27, 2010 in the above referenced case. I begin with a brief recitation of the facts and circumstances of the election.

BACKGROUND

On January 6, 2010, the Delaware City Board of Elections ("Board") posted a Notice of Election Voters Qualifications for both council and mayoral elections and referenda. Exh. 1.[1] On March 17, 2010, the Board posted a Notice of Municipal Election. Exh. 2. These Notices were timely posted pursuant to 15 *Del. C.* § 7553. The Notice of Election Voters Qualifications

[1] Exhibits 1 and 2 were not provided during the hearing but the Board and the Department of Elections for New Castle County agreed that these Notices had been filed with the Department of Elections for New Castle County in accordance with 15 *Del. C.* § 7553 on the dates of posting. Copies were provided by the Department of Elections for New Castle County.

provided that only persons who, *inter alia*, were current in all city tax and fee obligations, city charges, city liens and city debts were permitted to vote.

The offices up for election in the April 6, 2010 election were three two-year council terms and one one-year council term (to fill a vacancy created upon the resignation of an incumbent council member). The Declaration of Candidacy form used by candidates for each of these vacancies did not specify the office for which a candidate was filing. Thus, all candidates were deemed candidates for all offices. *See* Notice of Municipal Election. Exh. 2. The ballot instructed voters to vote for three different candidates for the three two-year terms and a fourth, different candidate for the one-year term. Exh. 3[2]

The charter of the City of Delaware City requires currentness on city taxes as a qualification to vote. It does not require currentness on other city financial obligation, despite the language on the Notice of Election Voters Qualifications. At the hearing, it was undisputed that a municipality may not require currentness on financial obligations, taxes or other, as a qualification for voting. At the hearing, it was alleged that, on Election Day, persons who were qualified to vote but for one or more outstanding city obligations did not attempt to vote because they believed that they did not qualify to vote. The election resulted in a tie vote for the seat with a one year term.

Ms. Marocco and Ms. Bucic each filed a complaint with the Board on April 10, 2010, four days after the election. Copies of the complaints are attached as Exh. 4 and Exh. 5. The Board convened a hearing on May 18, 2010. I note that this scheduling decision is well outside of a time frame that could reasonably be deemed "as soon as practicable" as required by 15 *Del. C.* § 7552(a). By decision dated May 19, 2010, the Board made two findings (Exh. 6). It determined that the alleged inappropriate distribution of campaign or slate cards did not violate 15 *Del. C.* Ch. 75 and so dismissed this count. It then determined that the requirement that voters be current on all Delaware City obligations to qualify to vote did not violate 15 *Del. C.* Ch. 75 but encouraged the Delaware City Mayor and Council to amend the City Code to remove this voter qualification. Ms. Marocco and Ms. Bucic appealed this decision to the Election Commissioner pursuant to 15 *Del. C.* § 7552(b).

DECISION

This election was riddled with missteps and errors from beginning to end, and blame is attributable to many persons and entities. Nonetheless, my decision must begin with a discussion of my jurisdiction to address the issues raised in this appeal, and the limitations on that jurisdiction.

Pursuant to 15 *Del. C.* § 7552, I am empowered to hear exclusively appeals from the decisions of municipal Boards of Election, which themselves are charged to hear complaints

[2] Exhibit 3 was provided by the New Castle County Department of Elections.

"regarding any aspect of pre-election activity that is contrary to the provisions of this subchapter." Thus, under the express terms of the controlling state statute, I have no power to decide issues relating to the constitutionality of election conduct. Under applicable principles of administrative law, therefore, I cannot address the constitutionality of voter qualifications. *Thunder Basin Coal Co. v. Reich,* 510 U.S. 200, 214 (1994). With these principles in mind, I memorialize the ruling I announced orally on May 27.

First, I find no violation of 15 *Del. C.* §4942, which prohibits electioneering in state elections and is expressly made applicable to municipal election by 15 *Del. C.* § 7557(c). A voter is permitted to bring his or her slate card into the polling place to use as a guide for the selection of candidates. A voter may not use the card to suggest the selection of candidates made by other voters, however. A voter may not openly exhibit the card or leave it in the polling place when the voter leaves. It is the duty of the poll workers to remove any such abandoned slate cards as soon as they observe them. I understand from the testimony at the May 27 hearing that the poll workers performed this duty. Therefore, I affirm the decision of the Board on this point.

As noted above, since I do not have the jurisdiction to hear the complaint relating to the constitutionality of Delaware City's Code, I have no power to hear the complaint relating to the voter qualification that a voter be current in all City obligations. Moreover, since the complaint was made after the polls were closed on Election Day, I would not be able to order any remedy that would correct the flawed conduct and preserve the integrity of the election. The voter qualification was clearly wrong; however, it was posted for three months prior to the election and never challenged until after the election.

If you have any questions, please contact me.

Very truly yours,

Elaine Manlove
State Election Commissioner

Cc: Ann Woolfolk, Deputy Attorney General, Dept. of Justice
Anthony Albence, Director, Department of Elections for New Castle County
Howard Sholl, Deputy Director, Department of Elections for New Castle County
Daniel Losco, Esq., Losco & Marconi, P.A.

EXHIBIT 1

"A Historic Past"

"A Bright Future"

CITY OF DELAWARE CITY
407 Clinton Street – P.O. Box 4159
Delaware City, Delaware 19706
302-834-4573

NOTICE

MUNCIPAL ELECTION

PURSUANT TO THE DELAWARE CITY CHARTER, A MUNCIPAL ELECTION WILL BE HELD AT THE DELAWARE CITY LIBRARY, IN THE MOTIVA ROOM, ON TUESDAY, APRIL 6, 2010, BETWEEN THE HOURS OF 12 NOON AND EIGHT O'CLOCK P.M. TO ELECT THREE (3) COUNCILMEMBERS FOR A TERM OF TWO (2) YEARS EACH AND A COUNCILMEMBER FOR A TERM OF ONE (1) YEAR:

CANDIDATES FOR COUNCIL
TWO YEAR TERM
(Vote for only Three)

Betty (Tranthum) Barrett
John P. Buchheit, III
Ronald R. Graham, II
Paul H. Johnson, Sr
Keith Knowlton
Paul L. Parets
Jennifer M. Sullivan

CANDIDATES FOR COUNCIL
ONE YEAR TERM
(Vote for only One - DO NOT Vote For a Candidate That You Have Already Voted For a Two-Year Council Seat)

Betty (Tranthum) Barrett
John P. Buchheit, III
Ronald R. Graham, II
Paul H. Johnson, Sr.
Keith Knowlton
Paul L. Parets
Jennifer M. Sullivan

AFFIDAVITS TO OBTAIN ABSENTEE BALLOTS ARE AVAILABLE.

AFFIDAVITS TO ACCOMPANY ABSENTEE BALLOTS AND ABSENTEE BALLOTS ARE AVAILABLE.

LAST DATE TO REQUEST AFFIDAVITS TO ACCOMPANY ABSENTEE BALLOTS AND ABSENTEE BALLOTS IS TUESDAY, MARCH 30, 2010 BY 5:00 PM.

LAST DATE TO RETURN AFFIDAVITS TO ACCOMPANY ABSENTEE BALLOTS AND ABSENTEE BALLOTS IS 12 NOON MONDAY, APRIL 5, 2010.

ANYONE WISHING TO REVIEW THE CITY CHARTER OR ORDINANCES REGARDING THE ABOVE MAY DO SO AT THE CITY HALL DURING NORMAL BUSINESS HOURS.

Posted: March 17, 2010 Town Hall, Library, Post Office, Valero Gas Station, Sunset Market, www.delawarecity.delaware.gov

EXHIBIT 2

"A Historic Past"

"A Bright Future"

CITY OF DELAWARE CITY
407 Clinton Street – P.O. Box 4159
Delaware City, Delaware 19706
302-834-4573

NOTICE

ELECTION VOTER QUALIFICATIONS

Every person residing in the City of Delaware City

1. **Who has currently paid all City taxes, fees, charges, liens and debts that are due.**
2. **Who has reached the age of eighteen (18) years.**
3. **Who is a citizen of the United States.**
4. **Who can prove the foregoing information by proper identification.**

REFERENDUM VOTER QUALIFICATIONS

1. Every corporation owning property in the City of Delaware City is entitled to one (1) vote.

2. Every person residing or owning property in the City of Delaware City

-Who has reached the age of eighteen (18) years.

-Who is a citizen of the United States.

-Who can prove the foregoing information by proper identification.

-Who has currently paid all City taxes, fees, charges, liens and debts that are due.

Posted January 6, 2010: Town Hall, Post Office, Sunset Market, Valero Gas Station, Library, www.delawarecity.delaware.gov

EXHIBIT 3

CITY OF DELAWARE CITY
MUNICIPAL ELECTION - APRIL 6, 2010 - CITY OF DELAWARE CITY -

SPECIAL INSTRUCTIONS

1. Make ALL of your selections BEFORE pushing the green VOTE button located below the lower right corner of the ballot.

2. Select your choices by pressing the "X" to the right of the person's name. Once you press the "X", you will see a red light at the upper left corner of that "X". This indicates your choice.

3. If you want to change your choice, press the "X" again and the light will go out. Then, press the "X" to the right of your choice to make a new selection.

4. Make sure that a red light is lit at the upper left corner of the "X" for ALL of your choices BEFORE pushing the green VOTE button to cast your ballot.

CANDIDATE(S) FOR COUNCIL - TWO-YEAR TERM
THREE COUNCIL SEATS
VOTE FOR ONLY THREE (3)

	Write In
BETTY (TRANTHUM) **BARRETT**	X
JOHN P. **BUCHHEIT, III**	X
RONALD R. **GRAHAM, II**	X
PAUL H. **JOHNSON, SR.**	X
KEITH **KNOWLTON**	X
PAUL L. **PARETS**	X
JENNIFER M. **SULLIVAN**	X

CANDIDATE(S) FOR COUNCIL - ONE-YEAR TERM
ONE COUNCIL SEAT
VOTE FOR ONLY ONE (1)
DO NOT VOTE FOR A CANDIDATE THAT YOU HAVE ALREADY VOTED FOR A TWO-YEAR COUNCIL SEAT.

	Write In
BETTY (TRANTHUM) **BARRETT**	X
JOHN P. **BUCHHEIT, III**	X
RONALD R. **GRAHAM, II**	X
PAUL H. **JOHNSON, SR.**	X
KEITH **KNOWLTON**	X
PAUL L. **PARETS**	X
JENNIFER M. **SULLIVAN**	X

AFTER MAKING ALL OF YOUR SELECTIONS, CAST YOUR BALLOT BY PUSHING THE GREEN "VOTE" BUTTON LOCATED BELOW THIS NOTICE.

40274

EXHIBIT 4

April 10, 2010

RECEIVED
COMM. OF ELECTIONS

2010 APR 13 A 10:01

Rita A. Marocco
133 Adams Street
PO Box 672
Delaware City, DE 19706
302-983-4885

State of Delaware
Commissioner of Elections
111 S. West Street, Suite 10
Dover, DE 19904

I am writing you this complaint in the hopes that the Commissioner of Elections could assist me regarding some voter issues in Delaware City's local election, held on Tuesday, April 6, 2010

Several disturbing events occurred both prior to the election and at the election itself that I would like to share with you. I don't know if there is any recourse to the incidents that occurred but want an investigation from the State of Delaware Commissioner of Elections to determine if the conduct that occurred rises to the level of electioneering and if voter rights were blatantly violated through interference and/or obstructionism by City staff and elected officials.

ISSUE ONE - As reported to me by Mr. Rhoades some of which City Hall employee, Kathy Clifton, confirmed when I inquired about the issue of candidate filing.

One of our residents, Mr. Kerry Rhoades, had a conflict with a builder who appears to have close ties to the City personnel. This conflict appears to have triggered action by the City Manager that appears to be retaliation on behalf of the builder by having the resident evicted from his property for a code violation. This building was this man's home for 10 years under the same circumstances existing throughout those 10 years with the full knowledge of town officials and staff. After the eviction, the resident, Kerry Rhoades, being temporarily displaced from his home, began working with New Castle County to bring his home up to code so he could return to his residence. Mr. Rhoades attempted to file as a candidate for the upcoming election at City Hall and was told that they would not allow him to file as a candidate because he was no longer a resident. This rejection of his candidacy filing was based on him having been evicted from his home during the necessary renovations. Mr. Rhoades had surgery for health issues, which prevented him from appealing the City's assertion that he was no longer a resident.

EXHIBIT 4

On the day of the election, Tuesday, April 6, 2010, Mr. Rhoades went to the poll to vote and was turned away by the Chief Poll Inspector, Kay Holmes, even though he is a registered voter in Delaware City and all his identification supports that his residence is in Delaware City. Her initial rejection of Mr. Rhoades was based on the City Manager's written instructions to the Chief Poll Inspector that Mr. Rhoades was not allowed to vote. After much research and calling, I went to the poll with Mr. Rhoades and supported Mr. Rhoades as he requested that the poll inspector use her authority to allow him to vote, based on the fact that he had voted for the past 9 years in Delaware City and had all the proper identification required by the law. Mercifully she honored the request, stating her reason for allowing him to vote was because "a precedent had been set by the City having allowed Mr. Rhoades to vote in the last 9 years of elections", and allowed him to vote. The poll inspector reported to me, on a later visit to the polling center, that she had been admonished by an employee of the City, that she "embarrassed town hall" by allowing Mr. Rhoades to vote. Ms. Holmes also stated that she also stands by her decision for the reason that she announced at the time she allowed Mr. Rhoades to vote.

ISSUE TWO

On the day of the election while I was waiting to vote, I saw a small post card sitting next to instructions on how to vote, on a polling center table. This 3"x5" card is a campaign card Mayor had handed out to many residents. This card listed the candidates he endorsed. At the bottom of the card the following instructions were clearly printed: "Bring this card & ID to the Community Center - you don't need to be a registered voter." The Community Center is our polling Center during elections.
I am doubtful that the Mayor giving voters instructions to bring political campaign literature, listing the candidates he wants voters to vote for, into the polling area is in line with campaign regulations but I request a determination from the Delaware State Board of Elections on this matter also. I do know that having it sit on a polling table that is holding voting instructions is illegal. The polling personnel did immediately remove the card when I pointed it out to them. I do not know how long it was on the table. I do know that it was there at least the 10 minutes that I was. I was told by the Chief Poll Inspector, two days after the elections were completed, that several voters showed the cards, along with their identification, in the polling center apparently thinking it was part of the information they needed to present to the poll workers in order to vote.

ISSUE THREE

When a fellow voter, Sarah Bucic, and I approached the front door to the poll center, a woman, who I believe to be candidate Ron Graham's wife, was sitting on the steps, perhaps 4 feet from the entrance with the same cards I described in issue two. I reported this to the polling personnel and they went out to ask her to remove herself from the steps, by the time they were able to do this, she had already moved away from the steps. When I went back to the polling center, later in the day, she again was stationed on the steps.

EXHIBIT 4

Delaware City had a record voter turnout on Tuesday, April 6, 2010 yet Delaware City personnel made no attempt to have monitors outside of the polling area to assure that candidates and their representatives were adhering to electioneering regulations. It was left to the poll workers, which I believe were three people assigned. They were inundated throughout most of the day inside the polling center. Though I believe the poll workers did the absolute best they could, the record turnout did not allow them the manpower or time to regularly attend to the activity outside the polling center. The City Manager apparently had not assigned police, any other City personnel or volunteers to monitor the grounds for electioneering.

ISSUE FOUR

The Delaware City Charter, Section 2-3 requires that voters must pay taxes no later than 10 days prior to the election. The notice posted by the City of Delaware City listed a voter qualification that expanded the requirement to include: "fees, charges, liens and debts that are due". This expanded list of requirements pertaining to voter qualifications seems to be in violation of the City Charter's written requirements for voter qualifications. The result of this expanded requirement denied voters who were late on water bills and other debts to the City the right to vote.

ISSUE FIVE

The election ballot was very confusing to voters. There were two columns with the same candidates listed in each. The first column represented candidates for the three vacant council seats for two-year terms and the second column represented candidates for the one-year vacant council seat. The instructions were to vote for three candidates in the column representing the two-year terms and vote for one candidate in the column that represented the one-year term. It further instructed voters to not vote for a candidate in the one-year term if you had already selected that candidate's name for the two-year term. The results of the one-year term ended in a tie between two candidates. The current Mayor and Council have decided to nullify the voters' votes for the candidates that tied for the one-year term. Instead the current Mayor and Council declared the one-year seat as "vacant" and are appointing a person of their choice to the council seat. Mayor and Council are stating that they have the right to do this under the vacancy clause in the City's Charter. Nowhere in Delaware City's Charter does it state that Mayor and Council can declare a vacancy on the council if an election ends in a tie. Sec.8-08 address the Delaware City's Charter seems to be clear that the ballot should have been one column of candidates to vote for both the two-year and one-year terms and those receiving the highest number of votes would serve in the longer terms and the one with the lesser number of votes (in this case the lesser of the top four highest number of votes) would receive the shorter term until the office is filled at the next election.

In conclusion, it is my sincere hope that the State of Delaware Commissioner of Elections investigates my complaints as well as any other voter complaint stemming from Delaware City's April 6, 2010 election proceedings as well as the fact that many voters have had their vote nullified for a council seat that they voted on. I have submitted the

EXHIBIT 4

same complaint to the Delaware City Board of Elections with an expectation that mine and other complaints from Delaware City voters be investigated and resolved expediently.

I attest that the statements above are true based on my observations, research of the Delaware City Charter and Codes, research of State of Delaware voter qualifications and conversation with the individuals identified in my statement prior to Election Day and on Election Day, Tuesday, April 6, 2010.

Sincerely,

Rita A Marocco

Rita A. Marocco
133 Adams Street
PO Box 672
Delaware City, DE 19706
Ph: 302-836-1811

Attachments:

- Notice of Elections
- Sec.8-08 of the Delaware City Charter
- Sec. 2-3 of the Delaware City Charter
- Copy of the 3"x 5" card handed out by Mayor Martin and candidates Ron Graham and Paul Parets who are listed on the card with written instructions: "Bring this card & ID to the Community Center – you do not have to be a registered voter"

Notary Signature: _____

TODD S. LIGHTCAP
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires Nov. 28, 2011

Date: 4/11/10

TODD S. LIGHTCAP NOTARY PUBLIC DELAWARE

EXHIBIT 4

"A Historic Past"

"A Bright Future"

CITY OF DELAWARE CITY
407 Clinton Street – P.O. Box 4159
Delaware City, Delaware 19706
302-834-4573

NOTICE

ELECTION VOTER QUALIFICATIONS

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4. **Who can prove the foregoing information by proper identification.**

REFERENDUM VOTER QUALIFICATIONS

1. Every corporation owning property in the City of Delaware City is entitled to one (1) vote.

2. Every person residing or owning property in the City of Delaware City

-Who has reached the age of eighteen (18) years.

-Who is a citizen of the United States.

-Who can prove the foregoing information by proper identification.

-Who has currently paid all City taxes, fees, charges, liens and debts that are due.

Posted January 6, 2010: Town Hall, Post Office, Sunset Market, Valero Gas Station, Library, www.delawarecity.delaware.gov

EXHIBIT 4

Article I Procedures for Elections

Section 2-1 Notice of an Election

The Mayor shall, by 4:30 P.M. at least twenty (20) days before any general election, give notice of such election, together with the officers to be elected thereat, by posting notices in five (5) or more public places in said City.

Section 2-2 Requirements for Candidates

All persons desiring to be candidates at any municipal election shall deliver to the Clerk at the City Hall, addressed to the attention of the Secretary of the Council, a written statement of their candidacy by 4:30 P.M. at least thirty (30) days prior to said election. All persons desiring to be candidates at any municipal election for Mayor shall deliver to the Clerk at the City Hall, addressed to the attention of the Secretary of the Council, a written statement of their candidacy by 4:30 P.M. at least sixty (60) days prior to said election.

Each candidate must be a resident of Delaware City at least one (1) year next preceding the municipal election. Each candidate must present for certification by the Clerk, proof of such residency within Delaware City, showing that length of residency complies with the requirements of the Charter of Delaware City. The Clerk will make a photostatic copy of such proof of residency showing dates of residency for record purposes.[2]

Section 2-3 Voters Must Pay Taxes

All persons desiring to vote in a municipal election must have paid taxes due, with the money or check received at the City Hall office, by 4:30 P.M. at least ten days before said election.

Section 2-4 Required Days Previous to an Election

The number of days previous to election is defined as counting the day before election as the first day.

When the final number of days required previous to election as defined in Sections 2-1, 2-2, or 2-3 above shall fall upon a Saturday, Sunday or holiday, the above specified number of days shall be the day previous to the required date, on which date the City office will be open at least until 4:30 p.m.

Sections 2-5 to 2-10 Reserved

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[2] Ordinance 09-0413-01 adopted on 5-18-0 amended Section 2-2

EXHIBIT 4

"A Historic Past"

"A Bright Future"

CITY OF DELAWARE CITY
407 Clinton Street – P.O. Box 4159
Delaware City, Delaware 19706
302-834-4573

NOTICE

MUNCIPAL ELECTION

PURSUANT TO THE DELAWARE CITY CHARTER, A MUNCIPAL ELECTION WILL BE HELD AT THE DELAWARE CITY LIBRARY, IN THE MOTIVA ROOM, ON TUESDAY, APRIL 6, 2010, BETWEEN THE HOURS OF 12 NOON AND EIGHT O'CLOCK P.M. TO ELECT THREE (3) COUNCILMEMBERS FOR A TERM OF TWO (2) YEARS EACH AND A COUNCILMEMBER FOR A TERM OF ONE (1) YEAR:

CANDIDATES FOR COUNCIL
TWO YEAR TERM
(Vote for only Three)

Betty (Tranthum) Barrett
John P. Buchheit, III
Ronald R. Graham, II
Paul H. Johnson, Sr
Keith Knowlton
Paul L. Parets
Jennifer M. Sullivan

CANDIDATES FOR COUNCIL
ONE YEAR TERM
(Vote for only One - DO NOT Vote For a Candidate That You Have Already Voted For a Two-Year Council Seat)

Betty (Tranthum) Barrett
John P. Buchheit, III
Ronald R. Graham, II
Paul H. Johnson, Sr.
Keith Knowlton
Paul L. Parets
Jennifer M. Sullivan

AFFIDAVITS TO OBTAIN ABSENTEE BALLOTS ARE AVAILABLE.

AFFIDAVITS TO ACCOMPANY ABSENTEE BALLOTS AND ABSENTEE BALLOTS ARE AVAILABLE.

LAST DATE TO REQUEST AFFIDAVITS TO ACCOMPANY ABSENTEE BALLOTS AND ABSENTEE BALLOTS IS TUESDAY, MARCH 30, 2010 BY 5:00 PM.

LAST DATE TO RETURN AFFIDAVITS TO ACCOMPANY ABSENTEE BALLOTS AND ABSENTEE BALLOTS IS 12 NOON MONDAY, APRIL 5, 2010.

ANYONE WISHING TO REVIEW THE CITY CHARTER OR ORDINANCES REGARDING THE ABOVE MAY DO SO AT THE CITY HALL DURING NORMAL BUSINESS HOURS.

Posted: March 17, 2010 Town Hall, Library, Post Office, Valero Gas Station, Sunset Market, www.delawarecity.delaware.gov

EXHIBIT 4

Sec. 8-08. Failure to Hold Election, Uncontested Election.

A failure to hold an election, or the omission to execute any authority conferred by this act, shall not dissolve the corporation, but the authority of each officer shall continue until their successors are chosen. Any qualified voter under this Charter can bring an action in any competent court in the State of Delaware to compel the Mayor and Council to cause such an election to be held, at which election the Mayor and all Members of Council shall be elected; those receiving the highest number of votes receiving the longer terms and those receiving a lesser number of votes receiving the shorter term, until all offices are filled.

In the event an election is not contested, and it shall be lawful to open the polls at one o'clock P.M. and close them at two o'clock P.M. The requirement for a voting machine shall be dispensed with in the event the entire election is uncontested.

EXHIBIT 4

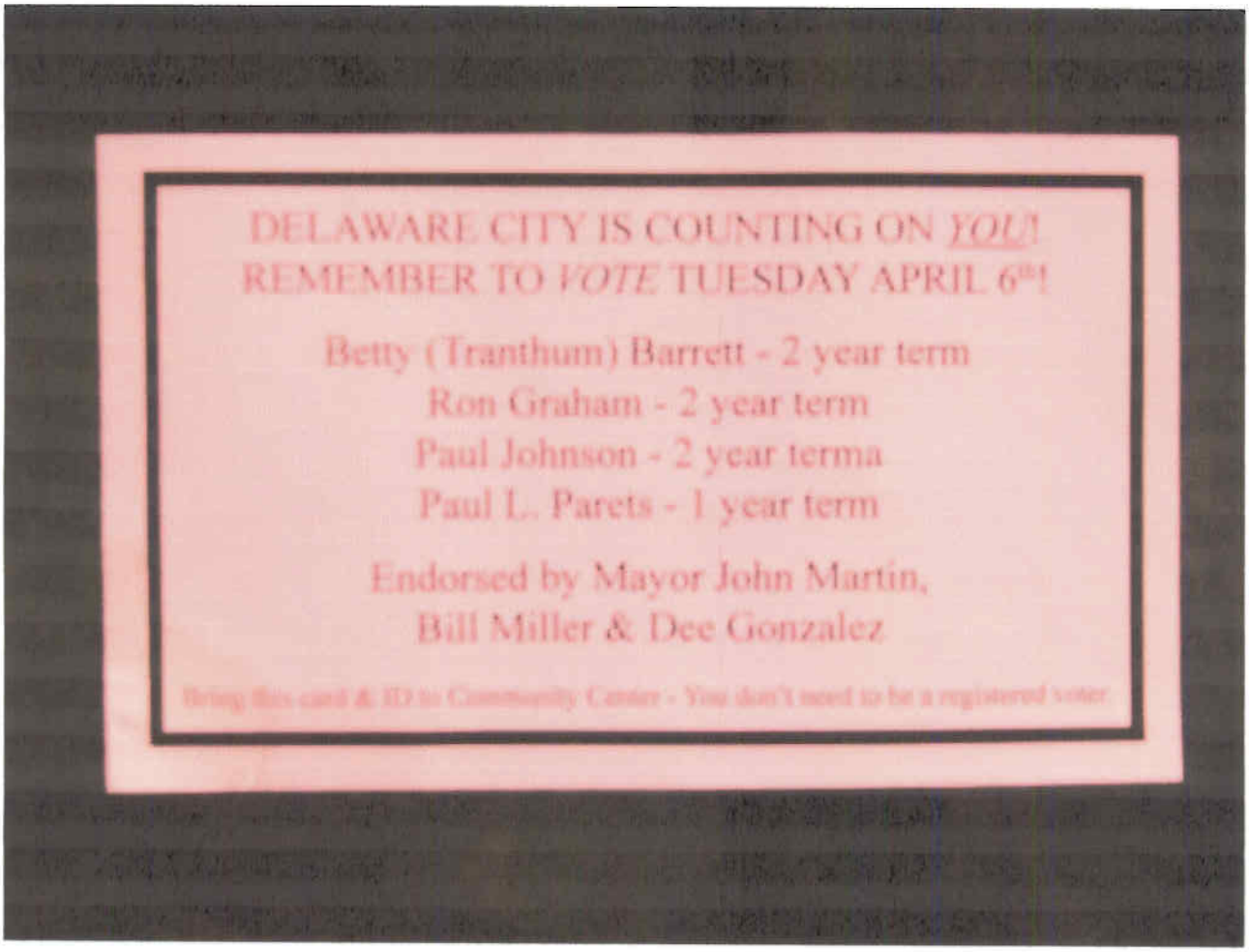
DELAWARE CITY IS COUNTING ON YOU!
REMEMBER TO VOTE TUESDAY APRIL 6th!
Betty (Tranthum) Barrett - 2 year term
Ron Graham - 2 year term
Paul Johnson - 2 year terma
Paul L. Parets - 1 year term
Endorsed by Mayor John Martin,
Bill Miller & Dee Gonzalez
Bring this card & ID to Community Center - You don't need to be a registered voter

EXHIBIT 5

RECEIVED
COMM. OF ELECTIONS

2010 APR 13 A 10:07

April 10, 2010

Sarah B. Bucic

206 Washington St

Delaware City, DE 19706-0352

302-383-6811

State of Delaware Commissioner of Elections

111. S. West Street, Suite 10

Dover, DE 19904

This is a formal complaint regarding three issues that occurred in the April 6, 2010 election that took place in Delaware City, Delaware.

First, a card was distributed prior to the election instructing voters to bring the card endorsing specific candidates by the Mayor along with their ID to vote at the polls (see attached) thus instructing residents to bring political material into the poll area. These materials were found in the poll area and were removed promptly when found but the Mayor's request to bring this material to the poll, I feel, was inappropriate. Residents were handing the card to election staff to vote thus furthering confusion. I wonder what confusion this created for people who felt they could not vote if they did not possess this card. Also, a person was less than 50 feet of the polling area handing out these cards and though she left as staff approached her to move further away, she was seen later on in the day in the same spot sitting upon the steps of one the polling entrances to the polling area (far less than 50 feet of the polling center). The election staff I believe did all they could but the candidate advocates were clearly infringing upon the area where there should be no political materials.

Second, it is my understanding that the Delaware City Manager instructed the poll instructor (who has the final authority on who is permitted to vote) to not let a resident vote as he is residing elsewhere temporarily due to renovations to comply with the county code. I feel this person is being singled out as renters in Delaware City can vote and the only qualification to vote in Delaware City is that the person has Delaware City as their primary residence and all your taxes are paid in full. This gentleman fulfills these requirements and has voted in the prior 9 elections.

Lastly, the ballot used was very confusing. I am actively involved in my community and I can only imagine how confusing it seemed to those less knowledgeable about the candidates and the current voting process. The ballot allowed for people to run for both 1 and 2 year terms simultaneously. People were told to vote for each person only once. However, I am assuming that if they did not follow instructions, the votes were thrown out. This seems very strange to me that any votes would be dismissed. In past elections in Delaware City, people had to choose a 1 or 2 year term but could not run for both at the same time.

This confusing ballot resulted in a tie for the 1 year seat. Current Mayor and Council has declared the spot a vacancy to be chosen by Mayor and Council thereby once again having Council, and not voters, choose. We had 3 appointments out of 5 seats in the last year and this

EXHIBIT 5

election was a chance for a fully democratic elected council. The Delaware City Charter states in Sec. 3-09. Vacancies and Forfeiture of Office:

A. Vacancies. The office of Mayor or Councilperson shall become vacant upon death, removal from the City, resignation, removal from office in any manner authorized by law, or forfeiture of office.

I do not believe a tie would constitute a vacancy. A tie of 103 votes per candidate was reached. To throw out 206 votes in favor of a Council selected appointment versus a run-off election seems to be undemocratic.

The tie could also have been remedied by combining the 2 year term votes and 1 year term votes for each candidate, the top 3 highest obtaining the 3 available 2 year term spots and the 4th highest getting elected for the 1 year term.

My sincere hope is that the Commissioner of Elections can look into these matters for the sake of our city and so that all the residents' voices can be heard.

I attest that the statements above are true based on my observations and conversations I have had with those in my community.

Sincerely,

Sarah B. Bucic

Sarah B. Bucic

Delaware City Resident

302-383-6811

Notary Signature _____ Date 4/11/10

TODD S. LIGHTCAP
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires Nov. 28, 2011

EXHIBIT 5

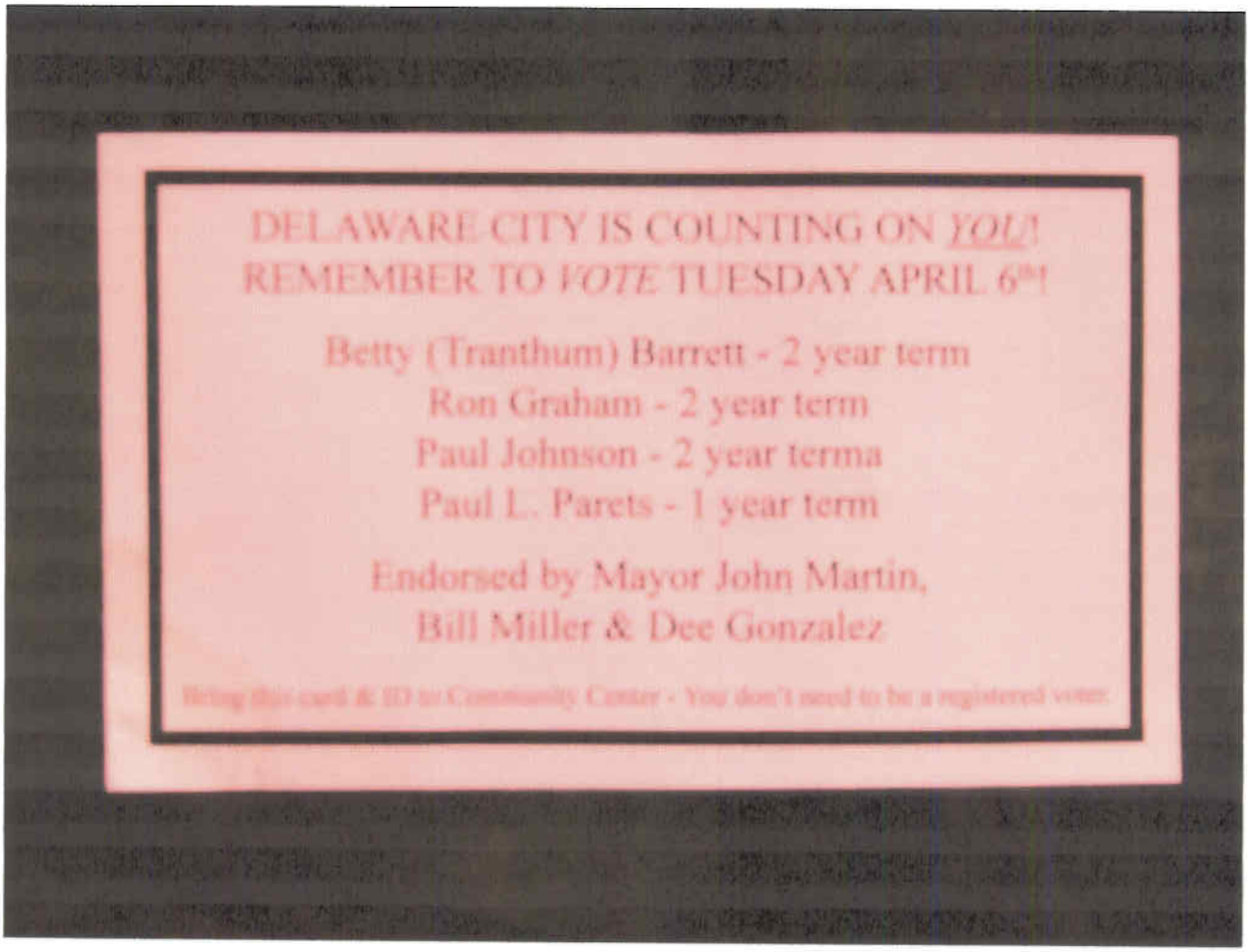
DELAWARE CITY IS COUNTING ON YOU!
REMEMBER TO VOTE TUESDAY APRIL 6th!
Betty (Tranthum) Barrett - 2 year term
Ron Graham - 2 year term
Paul Johnson - 2 year terma
Paul L. Parets - 1 year term
Endorsed by Mayor John Martin,
Bill Miller & Dee Gonzalez
Bring this card & ID to Community Center - You don't need to be a registered voter.

EXHIBIT 6

"A Historic Past"

"A Bright Future"

CITY OF DELAWARE CITY
407 Clinton Street – P.O. Box 4159
Delaware City. Delaware 19706
302-834-4573

May 19, 2010

RE: Notice of Decision of Board of Elections

Following a public hearing held on May 18, 2010 concerning certain complaints raised in connection with activities occurring before the April 6, 2010 Delaware City municipal election, the Board of Elections renders the following decisions:

1. Concerning the complaint that prior to the election, campaign cards were inappropriately distributed with instructions purportedly from Mayor John Martin to bring the cards to the polling place, the Board finds no violation of the State Municipal Election Law, Title 15, Chapter 75 of the Delaware Code and the complaint is hereby dismissed.

2. Concerning the claim that notices were posted by City staff incorrectly expanding a City Code requirement (Section 2-3 of the City Code) that voters must pay all taxes due the City no later than 10 days prior to the election to include "fees, charges, liens and debts that are due" the City, the Board finds no violation of the State Municipal Election Law, Title 15, Chapter 75 of the Delaware Code. However, in light of the constitutionality issues associated with Section 2-3 of the City Code, the Board urges the Mayor and Council to complete the repeal of said Section commenced at it regular meeting on May 17, 2010. In addition, the Board finds that the complainant raised her objection too late (after the election) though the notices in question were posted for three (3) months prior to the election, and further, that the Board has no authority to unseat a sitting Council person and order a new election whether under State law, the City Charter or City Code.

Dawn Gwynn, Chairperson
Delaware City Board of Elections

For appeal deadlines and procedures, see 15 *Del. C.* §7552