

VIA EMAIL

October 7, 2024

Waynesville Village Council  
c/o Jamie Morley, Clerk of Council  
1400 Lytle Road  
Waynesville, Ohio 45068  
jmorley@waynesville-ohio.org

**RE: Waynesville Village Council's Unconstitutional Discrimination in Filling Vacant Village Council Seat**

Dear Mayor Isaacs and Members of the Waynesville Village Council,

The ACLU of Ohio has recently become aware of the Waynesville Village Council's unlawful treatment of Mr. David Nation, who applied for the vacant Village Council seat that was filled at Council's July 31, 2024, Special Meeting. We write to express our grave concerns about this governmental action, which is unconstitutional and violates both State and Federal law. We urge the Village to immediately implement a policy of nondiscrimination to ensure no future applicants or current or prospective employees of the Village experience this discriminatory conduct.

Council's conduct blatantly violates the United States Constitution which prohibits discrimination on the basis of one's sexual orientation. *See* U.S. Const. amend. XIV, § 2. Treating individuals differently based on a protected classification triggers "heightened" scrutiny under the Fourteenth Amendment and is presumptively unconstitutional. *See City of Cleburne, Tex. V. Cleburne Living Ctr.*, 473 U.S. 432, 439-41 (1985); *Bostock v. Clayton Cnty.*, 590 U.S. 644, 660 (2020) (extending Title VII's prohibitions against sex discrimination to include one's sexual orientation). Recognizing the seriousness of this constitutional protection, Waynesville's own Code of Ordinances prohibits a public official from knowingly depriving, or attempting to deprive, "any person of a constitutional or statutory right." Sec. 136.12(A).

Here, Mr. Nation, a longtime resident of Waynesville and well-known local activist in the LGBTQ+ community, eagerly applied for the vacant Village Council seat the day after the vacancy was announced at Council's June 17, 2024, meeting. Council then engaged in a series of procedural irregularities by soliciting, considering, and adjourning to consider, three additional applicants for the vacant seat, none of whom applied on their own initiative or by Council's stated deadline. Council then called a Special Meeting for July 31, 2024, for the sole purpose of considering the applicants in executive session, but then, after adjourning from executive session, proceeded to conduct a vote against Mr. Nation.

**ACLU**

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In justifying this flagrant discrimination against Mr. Nation, Council Member Chris Colvin pointed to Mr. Nation's involvement with organizations that advocate for Diversity Equity and Inclusion (DEI) initiatives, including Rainbow Alliance ERG, of which Mr. Nation is a founding member.<sup>1</sup> Council thereafter attempted to rationalize their decision to vote against Mr. Nation as a matter of "policy concerns," and not because of his sexual orientation.

Council's stated reasons for their lack of support for Mr. Nation are nothing more than pretextual. Council received the signatures of 100 Waynesville residents in support of Mr. Nation. He was the only one who applied by Council's stated deadline and was, indeed, the only applicant who was not belatedly solicited by a council member to apply. Pointing to Mr. Nation's involvement with organizations that support DEI initiatives, when many cities and counties in Ohio,<sup>2</sup> including the State itself,<sup>3</sup> continue to utilize DEI efforts and policies, is nothing more than a flagrant attempt to cover up Council's discrimination against Mr. Nation.<sup>4</sup>

Council also appears to have violated Ohio's Open Meetings Laws, which require public bodies to provide clear notice of each meeting, including the meeting's purpose. R.C. 121.22(F). The laws also prohibit any official action to be taken in an executive session, including voting. R.C. 121.22(A). Here, notice of the special July 31<sup>st</sup> meeting indicated that Council would be considering applicants for the vacant Council seat in executive session. It did not provide notice of any roll call or vote, but instead indicated that Council would adjourn following executive session. Failure to provide notice that any business would be conducted during a regular session was a violation of Ohio's Open Meetings Law.

It is clear that Mr. Nation has legal avenues to redress the discrimination he suffered should he be so inclined. To avoid this outcome, we urge the Village of Waynesville to immediately implement a policy of non-discrimination. As Mr. Nation expressed in his letter to Council, it is important for any successful business to bring in different perspectives and strengths to grow and move forward. Our hope is that Waynesville recognizes that excluding individuals because they are

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<sup>1</sup> In further justifying his decision, Mr. Colvin noted that 30 states have "taken steps to remove DEI initiatives" because of their harmful practices. Mr. Colvin seemed to reference the fact that many states, including Ohio, have introduced legislation to ban DEI initiatives *in higher education*. As of May 2024, however, only 10 bills had actually become law. See Jessica Bryant and Chloe Appleby, *These States' Anti-DEI Legislation May Impact Higher Education*, BEST COLLEGES, (May 22, 2024), <https://www.bestcolleges.com/news/anti-dei-legislation-tracker/> (last visited Oct. 1, 2024).

<sup>2</sup> The City of Hamilton, for example, which is also in Warren County, has a Diversity & Inclusion Commission whose stated purpose is to "study internal and external barriers to diversity and inclusion and provide recommendations regarding such barriers." See City of Hamilton, <https://www.hamilton-oh.gov/diversityandinclusion> (last visited Oct. 1, 2024). Nearby Franklin County Board of Commissioners also has an Office of Diversity Equity & Inclusion that seeks to "advance principles of diversity, equity, and inclusion [through the means in which they] hire, retain, develop, procure, and offer [their] services." See Franklin County, <https://equity.franklincountyohio.gov/> (last visited Oct 1, 2024).

<sup>3</sup> See *Office of Opportunity and Accessibility*, Ohio Department of Administrative Services, <https://das.ohio.gov/employee-relations/office-of-opportunity-and-accessibility> (last visited Oct 1, 2024); *Diversity & Inclusion at the AGO*, Ohio Attorney General, <https://www.ohioattorneygeneral.gov/Careers/Diversity> (last visited Oct 1, 2024).

<sup>4</sup> In fact, Mr. Colvin's own employer, Applied Research Solutions, has a DEI policy and commitment. See *Our DE&I Policy*, Applied Research Solutions, <https://www.appliedres.com/now-hiring> (last visited Oct 1, 2024).

different is not only prohibited by law, but also inhibits a community's growth and ability to thrive. Please be advised that we have included below a request for public records for further investigation. We look forward to your prompt action addressing this matter.

Sincerely,



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cc (by email):

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