

Kosowski v Donovan
2011 NY Slip Op 33605(U)
January 18, 2011
Supreme Court, Nassau County
Docket Number: 18962/10
Judge: Thomas A. Adams
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. THOMAS A. ADAMS,
Acting Supreme Court Justice

TRIAL/IAS, PART 33
NASSAU COUNTY

PAUL KOSOWSKI, ANTHONY S. GIAMMARINO, ROBERT
E. PENDELTON, PATRICIA A. FRIEDMAN and ROBERT
LOSOWSKI,

Petitioner(s),

MOTION DATE: 10/22/10
INDEX NO.: 18962/10
SEQ. NO. 1

For a Judgment Pursuant to the Election
Law Declaring the County Committee of the
Conservative Party of Nassau County to be
Illegally Constituted and to Annul All
Action Taken by it and to Invalidate the
Election of Officers of the Illegally
Constituted Committee

-against-

DANIEL F. DONOVAN, JR. MARYANN T. HUGHES,
CHRISTOPHER M. MISTRON, MARTY BLESSINGER,
JOHN J. FANNING, DANIEL J. LANG, VINCENT A.
CICCOLELLA, KEVIN J. CREAN, MICHAEL LANDMAN,
MICHAEL R. LONG, PAUL ATANASIO, JOHN A.
DEGRACE, and WILLIAM T. BIAMONTE,

Respondent(s).

The petitioners' motion, pursuant to Election Law §2-104, to disqualify the respondents (excluding the respondents John A. DeGrace and William T. Biamonte) as duly elected members of the county committee of the Nassau County Conservative Party is determined as hereinafter provided.

During a contentious September 24, 2010 meeting of the Nassau County Conservative Party, the respondents (with the exception of the respondents John A. DeGrace and William T. Biamonte) were elected as members of its "county committee" (see Election Law §2-104[1]). On October 6, 2010 the petitioners commenced this special proceeding asserting, in sum, that an insufficient number

of committee members were elected to constitute a legally constituted committee in accordance with Election Law §2-104(3). Following joinder of issue on or about October 19, 2010, oral argument was held on October 22, 2010.

Election Law §2-104(3) mandates, in pertinent part, that "a county committee of a party shall be legally constituted if twenty five per centum of the committeemen required to be elected in such county, as provided in subdivision one of this section, have been elected" (Emphasis added). Subdivision one states, inter alia, "[t]he county committee of each party shall be constituted by the election in each election district within such county of at least two members (Emphasis added). "Thus, if a minor party has only enrolled a few voters in that county, it may be either legally or pragmatically impossible to form a county committee" (Mulholland v Carey, 976 F. Supp 166,167).

However, contrary to the petitioners' contention, the committee members need not be elected from each election district within the county. Rather, assuming, arguendo, that this proceeding is not time barred (see Election Law §16-102.2), only 524 members were required and the Board of Elections has certified that 572 were elected.

More specifically, although, as the petitioners note, a committee member need not be a resident of the election district in which he or she serves (see Gordon v Monahan, 89 AD2d 1030,1031), "it is clear that he [or she] can be elected to that office only by enrolled voters of the party residing in the election district he [or she] represents" (Matter of DeCesare, 11 AD2d 750). The term "each election district within such county" in subdivision one, as modified by the phrase "required to be elected" in subdivision three, can not therefore be fairly construed to include election districts in which no conservatives reside.

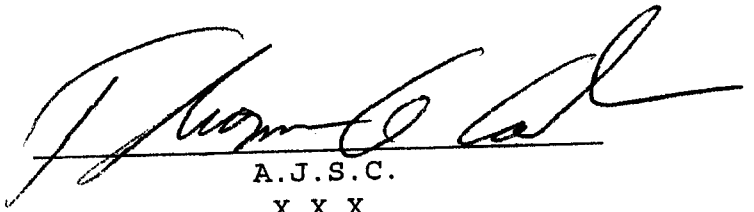
Instead, since only 1,048 of the 1141 election districts within the county contain enrolled members of the Conservative Party, a total of 524 members, or two members for at least twenty-five per cent (i.e., 262) of those districts, was required. The Board of Elections certified that 572 members were elected and the petitioners appear to acknowledge that "the Committee had [at

least] 558 members" (see petitioners' memorandum of law, p.3).

Accordingly, the petitioners' motion, pursuant to Election Law §2-104, to disqualify the respondents (excluding the respondents John A. DeGrace and William T. Biamonte) as duly elected members of the county committee of the Nassau County Conservative Party is denied.

The foregoing constitutes the Order and Judgment of the Court.

Dated: JAN 18 2011


A.J.S.C.
X X X

ENTERED
JAN 18 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE