

# O'TOOLE SCRIVO

A LIMITED LIABILITY COMPANY

THOMAS P. SCRIVO  
[tscrivo@oslaw.com](mailto:tscrivo@oslaw.com)

**CONFIDENTIAL AND PRIVILEGED  
ATTORNEY-CLIENT COMMUNICATION**

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**Via Electronic Mail**

Thaddeus R. Maciag, Esq.  
Maciag Law, LLC  
475 Wall Street  
Princeton, New Jersey 08540  
[maciaglaw1@aol.com](mailto:maciaglaw1@aol.com)

***Re: Opinion Regarding Power to Remove County Chairman***

Dear Mr. Maciag:

This letter provides our analysis of the standards governing the ability to remove the County Chairman of the Somerset County Republican Organization. Based on those standards, the County Chairman may not be removed before the end of their term and in the absence of any vacancy in their office.

This opinion is based on the following facts and assumptions, and we reserve the right to update and/or supplement this opinion should new facts, assumptions, or other relevant information come to our attention.

**PERTINENT FACTS**

The Somerset County Republican Organization (“SCRO”) is the official Republican organization of Somerset County. The SCRO adopted a Constitution and By-Laws to govern its affairs.

Article III, Section 2 of the Constitution authorizes the members of the SCRO to “organize and elect officers.” Article IV, Section 1 of the Constitution provides that the “County Chairman” is one of the officers of the SCRO. Article II, Section 5 of the Constitution provides that “[t]he term for each officer . . . of the [SCRO] shall be two years, or until each of their successors is elected.”

The Constitution does not contain any provision regarding the removal of the County Chairman. Rather, Article II, Section 4 of the Constitution provides that “[w]henever a vacancy

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occurs in the office of County Chairman, for any cause, it shall be the duty of the 1st Vice-Chairman to call a special meeting of the [SCRO] to fill such vacancy for the balance of the term.”

Timothy Howes (“Chairman Howes”) serves as the current County Chairman of the SCRO. Chairman Howes was re-elected to serve in a second term as County Chairman on June 27, 2022. Pursuant to Article II, Section 5 of the Constitution, Chairman Howes’s two-year term as County Chairman expires on June 27, 2024.

We have been asked to review these facts and provide a legal opinion concerning whether the members of the SCRO may remove Chairman Howes prior to the end of his term as County Chairman.

### **APPLICABLE LAW**

As a starting point, it is firmly settled that a political party possesses “discretion in ‘how to organize itself, conduct its affairs, and select its leaders.’” Hartman v. Covert, 303 N.J. Super. 326, 332-34 (Law Div. 1997) (quoting Eu v. San Francisco County Democratic Cent. Comm., 489 U.S. 24 (1989)). As such, it is the public policy of our courts to exercise “judicial restraint in this area” and refrain from delving into “intraparty controversies and fractional strife.” Deamer v. Jones, 42 N.J. 516, 521 (1964).

Pursuant to N.J.S.A. 19:5-3.2, a county committee for a political party “shall adopt a constitution and bylaws, ensuring fundamental fairness and the rights of the members of the county committee in the governance of a county party.” The interpretation of such governing documents is controlled by the traditional canons of contract construction. See, e.g., Highland Lakes Country Club & Cmty. Ass’n v. Franzino, 186 N.J. 99, 115 (2006) (applying the canons of contract construction to the interpretation of by-laws).

These canons of contract construction provide that, “[i]f the contract into which the parties have entered is clear, then it must be enforced’ as written.” In re County Of Atlantic, 230 N.J. 237, 254 (2017) (citation omitted). A court may not rewrite a contract “by substituting a new or different provision from what is clearly expressed in the instrument.” Rahway Hosp. v. Horizon Blue Cross Blue Shield of N.J., 365 N.J. Super. 120, 125 (App. Div. 2004) (citations omitted). Further, a court may not “make a better contract for either party, or supply terms that have not been agreed upon.” Bar on the Pier, Inc. v. Bassinder, 358 N.J. Super. 473, 428 (App. Div. 2003) (citation omitted).

### **CONCLUSION**

Based on the foregoing principles, the Constitution does not authorize any members of the SCRO to remove Chairman Howes as County Chairman prior to the expiration of his current term and in the absence of any vacancy in his office.

The Constitution, which governs the SCRO, contains clear language concerning the

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appointment and replacement of the County Chairman. In particular, the Constitution provides that the County Chairman is an “officer” of the SCRO, see SCRO Const., art. IV, § 1, and that the SCRO “shall . . . elect [its] officers.” Id., art. III, § 2. Once the County Chairman is elected, the Constitution provides that his or her term “shall be two years.” Id., art. II, § 5.

Significantly, the Constitution does not contain any terms authorizing the SCRO to remove a duly elected County Chairman prior to the expiration of his or her two-year term. Instead, the Constitution provides that it is only in the event that “a vacancy occurs in the office of County Chairman,” that “the 1st Vice-Chairman [may] call a special meeting of the [SCRO] to fill such vacancy for the balance of the term.” Id., art. II, § 4.

In other words, the language of the Constitution clearly provides that a County Chairman is elected to serve a two-year term, and may be replaced only upon a vacancy in their office. The Constitution does not supply any terms authorizing the members of the SCRO to remove a County Chairman during the pendency of their term and in the absence of any vacancy in their office.

In this matter, the office of County Chairman is not currently vacant. To the contrary, it is currently occupied by Chairman Howes, whose term does not expire until June 27, 2024. As such, Chairman Howes may not be removed prior to the expiration of his term or in the absence of any vacancy in his office.

Please let us know if you have any questions.

Very truly yours,

/s/ Thomas P. Scrivo

Thomas P. Scrivo