

Recount in Hanover vote goes to Via

Court upholds win by 15 votes for Board of Supervisors seat

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An election recount held yesterday in Hanover County Circuit Court upheld the narrow victory of Republican G.E. "Ed" Via III for the Ashland District seat on the Hanover Board of Supervisors.

Independent candidate Kevin R. Damian filed for the recount after he lost the Nov. 6 election to Via by 15 votes.

Damian said he was disappointed but not surprised by the outcome after a three-judge panel ruled that election officials were to rely only on printouts from data tapes from machines used to tabulate optical-scan paper ballots.

Damian had asked for a manual examination of 19 ballots that were counted as undervotes, which occur when a voter does not choose any candidate for a particular race, to verify the intent of the voter. He contended that voters could have marked ballots in a way that could not be read by the machines.

"I am disappointed that there were undervotes that we didn't get a chance to look at," Damian said.

Attorney Phyllis C. Katz, who represented Damian pro bono, said identifying those undervote ballots would have first required re-feeding each paper ballot through optical-scan tabulators and setting aside those containing undervotes. State law allows the step if a tabulator's printout is not clear or on the request of the court.

"This was the only contested race on the ballot," making it less likely that the undervotes came from voters not selecting a candidate, Katz said. "I ask you to exercise discretion because there are 19 votes that we know have not been counted."

Attorneys Kirk Schroder and Roger G. Bowers, who represented Via, argued that the court lacked sufficient evidence to go beyond the tapes and doing so would set a precedent that the presence of undervotes means something is wrong.

"To say there are 19 votes not counted is a far-reaching statement," Schroder said. "The mere presence of undervotes does not suggest that votes were not counted or were not able to be read."

Katz countered that re-rerunning the ballots through the tabulator would assure that every vote was counted and went to the correct candidate.

"None of us in this room know what those ballots say. We do know 19 were not part of the final tally," Katz said. "I want to read the ballots. I want to see what they are."

The decision of the court, whose members were appointed by the chief justice of the Virginia Supreme

Court, is final. The members were Judge Harry T. Taliaferro III of Richmond County Circuit Court, Judge William N. Alexander II of Franklin Circuit Court and Judge Thomas S. Shadrick of Virginia Beach Circuit Court.

The recount again showed that Via received 922 votes, compared with 907 received by Damian. A third candidate, Steven D. Wright, lost by more than 600 votes. Incumbent Timothy Ernst did not seek re-election.

Damian, a systems technician for Verizon, must pay for the cost of the recount because the losing margin remained at 0.8 percent. If he won on the recount or if the losing margin fell below 0.5 percent, the county would have paid the cost. Damian said he will not know the amount until he receives a bill from the Hanover registrar's office.

Damian said he would not have asked for the recount if he knew that the judges were not going to allow election officials to retabulate each ballot.

"There would be no point in it," he said. "The whole point was to rerun the ballots."
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