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[Long v. Town of Caroga](#)

Supreme Court, Appellate Division, Third Department, New York - August 17, 2023 - N.Y.S.3d - 2023 WL 5284765 - 2023 N.Y. Slip Op. 04352

Petitioner brought special proceeding petition pursuant to Election Law to validate three petitions seeking permissive referendum on three bond resolutions passed by town board.

The Supreme Court dismissed the petition. Petitioner appealed.

The Supreme Court, Appellate Division, held that:

- Town board's rescission of underlying bond resolution mooted appeal as to dismissal of petition challenging town clerk's rejection of referendum challenging that resolution, and
- Referendum petitions satisfied statutory requirements.

Appeal of trial court's dismissal of petitioner's special proceeding petition pursuant to Election Law, challenging town clerk's determination rejecting permissive referendum petition pertaining to town board resolution authorizing issuance of serial general obligation bonds for construction of town salt/sand storage building, was rendered moot by town board's subsequent rescission of underlying resolution.

Any attempt to prevent a permissive referendum should be viewed with utmost circumspection since the right to petition the government is deeply rooted in democracy.

A town clerk has a statutory duty to accept and file all papers required by law to be filed in his or her office, which includes the authority to perform a ministerial examination of a referendum petition and to reject its filing if said petition is insufficient on its face.

The distinction between "ministerial acts" and "judicial acts," in context of Town Law statute governing powers and duties of town clerks, is that where the law prescribes the rule to be followed so as to leave nothing to the exercise of judgment or discretion, the act is a ministerial act, but where the act involves the exercise of judgment or discretion in determining whether the duty exists, the act is judicial.

Referendum petitions satisfied statutory requirements for permissive referendum on town bond resolutions, and thus town was required to fulfill its statutory duty to hold elections on referendums; although town clerk rejected petitions as invalid and later issued determinations that petitions were facially defective for failing to satisfy certain statutory requirements, petitions were legally received and accepted for filing within 30-day statutory deadline after passage of resolutions, clerk's subsequent determination for rejecting petitions was issued after five-day statutory deadline to file objections to petitions, and no person challenged referendum petitions within five days of their filing by submitting written objections to town clerk and by filing verified petition with trial court.

