

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2005-249

NOVEMBER TERM, 2005

Jessica Miller	}	APPEALED FROM:
	}	
	}	
v.	}	Washington Superior Court
	}	
Town of Cabot and Secretary of State	}	
Deborah Markowitz	}	DOCKET NO. 87-2-05 Wncv

Trial Judge: Matthew I. Katz

In the above-entitled cause, the Clerk will enter:

Plaintiff Jessica Miller appeals pro se from a superior court judgment dismissing her complaint against the Town of Cabot and the Secretary of State, in which she challenged a municipal election rescinding an earlier vote to amend the Town charter. Plaintiff contends: (1) there was no statutory authority to rescind the amendment before its enactment by the Legislature; (2) there was no authority to hold a special meeting to vote on the charter-amendment proposal. We affirm.

In response to a petition by the voters, the Town warned a special meeting to be held on election day, November 2, 2004, on two proposed charter amendments. Both articles were approved, and the results were forwarded to the Secretary of State for submission to the Legislature. See 17 V.S.A. ' 2645(b), (c) & (d) (municipal clerk shall certify charter amendment vote to Secretary of State, who shall forward it to the general assembly for approval). Before the Legislature could act, however, voters in the Town petitioned for rescission of the articles, and the rescission vote was approved at a special meeting in January 2005. Thereafter, plaintiffCa registered voter in the Town who had participated in the initial petitionCfiled a complaint in superior court, seeking to invalidate the rescission vote on the grounds, among others, that the amendment proposal could not be rescinded before it was enacted by the Legislature, and that a special meeting could not be used to vote on the charter amendment. Following a hearing in June 2005, the court issued a written decision dismissing the complaint. This appeal followed.

Plaintiff first claims that there was no statutory authority for the Town to rescind the articles approving the charter amendments because, following the initial vote in November 2004, the matter allegedly Abecame the sole province of the [L]egislature.@ Plaintiff notes that, under 17 V.S.A. ' 2645(b) & (c), the Town clerk was required to certify the charter-amendment proposal to the Secretary of State, who was then required to file the proposal with the general assembly. Under 17 V.S.A. ' 2645(d), the amendments would become effective only Aupon affirmative enactment of the proposal, either as proposed or as amended by the general assembly.@ Nothing in the sections cited by plaintiff, however, suggests an intent by the Legislature to exercise exclusive jurisdiction over charter-amendment proposals to the exclusion of the Town=s voters, and nothing in ' 2645 or the general rescission statute, 17 V.S.A. ' 2661,<sup>[1]</sup> explicitly or implicitly prohibits the voters from petitioning to rescind an article approving a charter amendment before it has been presented to, and approved by, the Legislature. On its face, ' 2661 provides no limitations or exceptions to the kind of article that may be reconsidered or rescinded at a subsequent Town meeting, and we perceive no implicit policy to prohibit the Town=s voters from rescinding a charter-amendment proposal prior to any action on the proposal by the Legislature. See Santi v. Roxbury Town Sch. Dist., 165 Vt. 476, 480 (1996) (noting that A >voters have the unlimited right of rescission in the absence of legislation and where the rights of third parties have not vested or intervened= @) (quoting Denicore v. City of Burlington, 116 Vt. 138, 140 (1950)). Accordingly, there is no basis to invalidate the rescission vote.

Plaintiff next appears to argue that the charter amendment votes could not properly be held pursuant to special meetings warned by the Town, and therefore could not be rescinded by special meeting. This claim is unpersuasive. Plaintiff argues that the use of a special meeting violated 17 V.S.A. ' 2645(a)(5), which provides, in pertinent part, that proposals to amend a charter initiated by petition shall be submitted to the voters at the next annual meeting, primary or general election. The plain objective of this provision, however, is merely to ensure that such petitions are submitted to the voters on regularly scheduled election days, i.e., annual meetings, primary elections, and general elections. The Town complied with this requirement by holding the charter amendment vote at a special meeting scheduled on the date of the general election, November 2, 2004, at the same polling place, and utilizing the same checklist, booths, and counting devices as the general election. The charter amendment proposal was properly warned as a special meeting addressed to a local municipal matter, under 17 V.S.A. ' 2643 (stating that A[t]he legislative body may warn a special municipal meeting when deemed necessary or on the application of five percent of the voters). We thus find no basis to treat the initial charter-amendment vote as other than the result of a valid special meeting. Nor do we identify any basis to invalidate the subsequent rescission vote, which was held at a special meeting called for that purpose, under the authority of 17 V.S.A. ' 2661(b) (where petition requesting rescission of question considered at previous annual or special meeting is filed with municipal clerk, the legislative body shall provide for vote in accordance with petition within sixty days at an annual or special meeting duly warned for that purpose). The complaint was thus properly dismissed.<sup>[2]</sup>

Affirmed

BY THE COURT:

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice

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<sup>[1]</sup> 17 V.S.A. ' 2661(b) provides broadly that voters may petition for reconsideration or rescission of a question considered or voted on at a previous annual or special meeting.

<sup>[2]</sup> In her reply brief, plaintiff asserts that the issue is not whether a special meeting may be the occasion for a charter amendment, but whether a special meeting may be held at a general election. Although this argument appears to differ from plaintiff's original claim, she cites no authority nor have we found any barring a municipality from calling a special meeting to address a proposed charter amendment on the date of the general election.