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COURT OF APPEALS

STATE OF NEW YORK

MATTER OF WAITE,

Appellant,

-against-

No. 82

TOWN OF CHAMPION,

Respondent.

20 Eagle Street
Albany, New York
June 7, 2018

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE PAUL FEINMAN

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE DIFIORE: The next matter on the
2 calendar is appeal number 82, Matter of Waite v. Town of
3 Champion.

4 Good afternoon, counsel.

5 MR. PINSKY: Good afternoon. I would like to
6 reserve two minutes for rebuttal.

7 CHIEF JUDGE DIFIORE: You may, sir.

8 MR. PINSKY: May it please the court, my name is
9 Brad Pinsky, and we represent the appellants in this
10 matter. This court has often recognized that words matter,
11 and the legislature knew the difference between division
12 and disillusion. The legislature used those words
13 "division" in Town Law 73 and 74, and the inescapable
14 conclusion is that what happened here was a division - - -

15 JUDGE RIVERA: But is - - - does the Champion - -
16 - Town of Champion Fire Protection District, did that exist
17 once they created the other two fire protection districts?

18 MR. PINSKY: Of course it did, because the - - -
19 all the - - -

20 JUDGE RIVERA: It had the same boundaries?

21 MR. PINSKY: Yes, it - - - it previously was the
22 entire town. It's still the entire town whether it's one
23 or - - -

24 JUDGE RIVERA: Yeah, but the two districts have
25 different boundaries; do they not?



1 MR. PINSKY: The two districts encompass the
2 entire town.

3 JUDGE RIVERA: Yes, but they have different
4 boundaries. Each one is different; is it not?

5 MR. PINSKY: True, but let's look at what a fire
6 protection - - -

7 JUDGE RIVERA: And they contracted with different
8 villages; did they not?

9 MR. PINSKY: They were still in control just as -
10 - - the town was still in control just as it was when there
11 was one first protection - - -

12 JUDGE RIVERA: Yes, of course, but did they
13 contract with different villages?

14 MR. PINSKY: They did contract with different
15 fire departments. They got rid of their fire department
16 who had been serving them for a hundred years.

17 JUDGE RIVERA: So then how is it a failure to
18 dissolve within the statutory meaning?

19 MR. PINSKY: Sure. How much time do we have?
20 The - - -

21 JUDGE RIVERA: Not much.

22 MR. PINSKY: Let's look at first what the
23 legislature intended. The legislature recognized when it
24 passed the Citizens Empowerment Act that citizens have no
25 right to cause the dissolution at the end of the process,



1 the dissolution of a local government entity, so they
2 created the Citizens Empowerment Act. It would make no
3 sense to - - -

4 JUDGE RIVERA: Yes, but it seems here - - - I've
5 got to stop you on the long road - - -

6 MR. PINSKY: Sure.

7 JUDGE RIVERA: - - - through the law. It seems
8 here that they did follow technically what they needed to
9 every step of the way. Your clients are dissatisfied. It
10 strikes me that the law provides some recourse for them
11 which is to gain signatures to dissolve these two or create
12 another - - - or create a fire district, but they weren't
13 successful. It seems to me that the law and the system has
14 worked as intended.

15 MR. PINSKY: Ah, no. The law is working because
16 we are here. What that petition process is is only if the
17 residents do not like the outcome. But the law permits
18 five residents or more to petition when the local
19 government is unable or unwilling to accomplish and
20 complete. The legislature used the words "accomplish" and
21 "complete."

22 JUDGE STEIN: So at the - - -

23 JUDGE FAHEY: Isn't the - - - isn't the - - - I'm
24 sorry, Judge. Go ahead. You go ahead.

25 JUDGE STEIN: At the end - - - at the end of the



1 day, under the Town Law, the town has the right to make the
2 decision after going through certain processes, for one
3 thing. So my - - - my question is - - - and it's sort of
4 the interplay between these two sets of laws. My question
5 is is let's assume you're right, okay, and what the town
6 did not was not permitted. And just keep in mind, too, I'm
7 not sure what - - - what dissolution of - - - of a fire
8 protection district that has no assets and no - - - no
9 bills and all that stuff is. But anyway, let's assume that
10 - - - that the town properly dissolved the fire protection
11 district. So how long - - - so does that mean that never
12 again - - - never can the town create a new fire protection
13 district the same or similar to the one that existed?

14 MR. PINSKY: The legislature thought about that,
15 so what happens in this law is the legislature recognizes
16 that the existing local government entity cannot exist any
17 longer. There were only certain available options such - -
18 - such as, but not that we demanded, a fire district or a
19 joint fire district. The power to dissolve a joint fire
20 district or a fire district lies with the district and no
21 longer the town, so, no, the town could not create a fire
22 protection district because a fire district would be in its
23 place.

24 JUDGE STEIN: Well, I'm not sure where the
25 statute says that when you dissolve a fire protection



1 district then the end result must - - - or must be a fire -
2 - -

3 MR. PINSKY: It doesn't say what it must be.
4 It's clear what it cannot be, and it cannot be - - -

5 JUDGE RIVERA: But - - -

6 MR. PINSKY: - - - the exact same local
7 government entity.

8 JUDGE STEIN: Well, let's say - - -

9 JUDGE RIVERA: But that's the problem, it's not
10 the same. There are two different districts contracting
11 with different villages to provide those fire services.

12 MR. PINSKY: Let's look at a fire protection
13 district. We must look at this. A fire protection
14 district, *Miller v. Savage*, in numerous cases at the
15 Appellate Division level have recognized quote, "that a - -
16 - a fire protection district has no independent existence
17 from a town". The town is in control under 1402 of the
18 Not-for-Profit Corporation Law, under 184 of the Town Law.

19 JUDGE FAHEY: So who's - - - who's in control of
20 the fire district?

21 MR. PINSKY: Fire district under 174 I believe of
22 the Town Law is a separate political subdivision of the
23 state, five commissioners are in charge. The - - -

24 JUDGE FAHEY: And how are the commissioners
25 chosen?



1 MR. PINSKY: It depends where it's a fire
2 district or a fire protect - - - or a joint fire district.

3 JUDGE FAHEY: So at the core of it - - -

4 MR. PINSKY: But generally, they're elected every
5 year.

6 JUDGE FAHEY: - - - they're elected. So the
7 volunteer firemen on one hand are - - - are running the
8 fire districts and the town board is running the fire
9 protection district? Is that a fair characterization?

10 MR. PINSKY: Well, it's - - - it's fair to say
11 that the town board is absolutely by law in control of a
12 fire protection district, but the residents are in charge
13 of a fire district because they're elected.

14 JUDGE FAHEY: I see. So - - - but isn't the core
15 of your argument, and you can correct me if you think I'm
16 wrong, is - - - is that, in effect, dissolution didn't take
17 place, what took place was division?

18 MR. PINSKY: That's exactly right.

19 JUDGE FAHEY: And so it - - - so on this scenario
20 that we have in front of us which argues for a procedural
21 compliance with the law it is, in fact, an attempt to
22 subvert the electoral process?

23 MR. PINSKY: The town thumbed its nose at the
24 voters and the legislature, and we would like to propose a
25 bright-line test so that this court - - - it's not in our



1 brief so if I may - - -

2 JUDGE FAHEY: So how do we - - - how - - - you
3 can get to your test, I do want to hear it. But how do we
4 look at what Judge Rivera said which is that they've
5 created a new fire protection district with different
6 lines? It is not the same legal entity.

7 MR. PINSKY: Of - - - of course it is. A fire
8 protection district has no separate independent existence.
9 The town is still in control of contracting. The town
10 still sets the tax rate. The town still choose - - -

11 JUDGE FAHEY: Okay. But if have the town of - -
12 - of Buffalo, New York, and it's thirty-two square miles
13 and I cut it in half and call it Buffalo One and Buffalo
14 Two, then they're not the same thing, are they?

15 MR. PINSKY: Because a town has a separate
16 political existence. Again a - - - look at a sewer
17 district, a lighting district, a resident says - - -

18 JUDGE FAHEY: Okay.

19 MR. PINSKY: - - - I don't want to live with the
20 lights above me anymore. Cut it into two and they still
21 live with the lights above them because it's under the
22 control of the town. It's not a separate entity.

23 JUDGE RIVERA: But doesn't - - - but doesn't the
24 case really boil down to - - - because they have followed
25 the technical requirements for dissolution - - - I



1 understand your argument about division, but let's go to
2 something else. Doesn't it boil down to your clients don't
3 want a fire protection district, but doesn't the law, at
4 least now as it stands, leave that choice about how best to
5 provide fire services to the town? You have your - - -
6 your clients have their recourse through the electoral
7 process. So far they have not been successful. Maybe they
8 will be in the future. But right now, the town made a
9 choice that this is the best way to deliver these services,
10 services that they must under the law deliver.

11 MR. PINSKY: But they have to create a new local
12 government entity within the bounds of the law. And let's
13 be clear, the Fourth Department has - - -

14 JUDGE RIVERA: Right, and they did.

15 MR. PINSKY: They did not - - -

16 JUDGE RIVERA: - - - and your clients may be
17 unhappy with it, and they have their recourse under the
18 law.

19 MR. PINSKY: We disagree because they never
20 accomplished and completed dissolution. And if - - - if I
21 may, I'd like to give this court - - - it was not in our
22 brief, the test to determine. As we know, what happened
23 when Article 17 - - - when the - - -

24 JUDGE STEIN: Tell me - - - before you do that,
25 how would you dissolve an entity such as this, as I said,



1 that had no - - - no outstanding debts, no assets, no - - -

2 MR. PINSKY: They had a contract. They had a
3 five-year - - - they had successive one-year contracts that
4 they had with fire - - - with the fire department.

5 JUDGE STEIN: Was the contract terminated?

6 MR. PINSKY: The contract was terminated. It - -
7 - it expired in the record I believe.

8 JUDGE STEIN: Okay.

9 MR. PINSKY: But it - - - it no longer existed so
10 they wound up - - -

11 JUDGE STEIN: So aside - - -

12 MR. PINSKY: - - - that contract.

13 JUDGE STEIN: - - - aside from creating a
14 completely different type of entity, what more could the
15 town have done to dissolve the existing entity?

16 MR. PINSKY: It's - - - it's not just about this
17 town.

18 JUDGE STEIN: It's not about what they do next.

19 MR. PINSKY: Right, it - - -

20 JUDGE STEIN: What do they - - - what could - - -
21 more could they have done with what already existed?

22 MR. PINSKY: So under Town Law, a - - - Town Law
23 184, a fire - - - a town has the right to own equipment,
24 own fire apparatus, own other assets as part of that. If
25 this town had owned them they would have wound up and had



1 to sell them.

2 JUDGE STEIN: They didn't. But they didn't.

3 MR. PINSKY: They didn't, but going forward in
4 precedent that's a non, non-sequitur. It - - - they could
5 have owned them. They - - -

6 JUDGE STEIN: But how can we tell whether it was
7 dissolved if none of those things existed?

8 MR. PINSKY: That's what I want to tell you. So
9 what happened when the state legislature created the
10 Citizen Empowerment Act, they repealed every single
11 dissolution statute and took every single dissolution and
12 consolidation statute and put it inside 17-A. So here's
13 what happens. We have a test for you. So if it deals with
14 dissolution it's inside 17-A. If it - - - if the ultimate
15 formation of the new entity can be achieved outside 17-A it
16 cannot constitute dissolution, right. Only - - -
17 dissolution can only be accomplished inside.

18 So here's the test, here's what happened. They
19 could have - - - the town's plan could have been achieved
20 by diminishing the boundaries outside 17-A. Under 172(c)
21 they could have diminished the boundaries of the fire
22 protection district, and then under Town Law 170 they could
23 have formed a new fire protection district. That achieves
24 the exact same goal. Thus, as a matter of law, it cannot
25 constitute dissolution because all of the dissolution



1 statutes were repealed and put into this.

2 JUDGE STEIN: So if they changed the boundaries
3 by an inch, that - - - that's enough? That will - - - that
4 will take care of it?

5 MR. PINSKY: No, that would be more gamesmanship.
6 This court should not allow any - - -

7 JUDGE STEIN: Under your scenario, they've
8 changed the boundaries and now they've created a new one.

9 MR. PINSKY: They changed the boundaries outside
10 of 17-A, which shows you that it's not dissolution. They
11 would have to dissolve the entire government entity inside
12 of 17-A. If you can achieve it outside of 17-A it can't as
13 a matter of law constitute dissolution.

14 CHIEF JUDGE DIFIORE: Thank you, counsel.

15 MR. PINSKY: Thank you.

16 CHIEF JUDGE DIFIORE: Counsel.

17 MR. FELLOWS: Thank you, Your Honor; Jonathan
18 Fellows, Bond, Schoeneck & King for the town.

19 JUDGE GARCIA: Counsel, before you start, just a
20 quick question following up on what Judge Stein, and I'm a
21 little confused over exactly what was dissolved here. So
22 the town had a fire protection district. They had a
23 contract with an independent service to provide this fire
24 protection?

25 MR. FELLOWS: Yes, Your Honor, there - - - well,



1 there were contracts with three entities. Two of them were
2 village fire departments, the Village of West Carthage and
3 the Village of Copenhagen, and the third entity is the
4 Champion Volunteer Fire Company.

5 JUDGE GARCIA: Right, and that's the contract
6 that then is dissolved is the Champion Volunteer?

7 MR. FELLOWS: The contract that was between the
8 town on behalf of the fire protection district and the
9 Champion Volunteer Fire Company has been terminated by the
10 town on the grounds of breach.

11 JUDGE GARCIA: On this dissolution?

12 MR. FELLOWS: And there's a separate legal
13 proceeding by the - - -

14 JUDGE GARCIA: I see.

15 MR. FELLOWS: - - - by the volunteer fire company
16 to challenge the termination of that contract. And, Your
17 Honor, I think you go right to - - -

18 JUDGE GARCIA: Just before you get there, so then
19 you split it into two fire protection districts, and those
20 are with the two towns that you just mentioned you had
21 contracts with before?

22 MR. FELLOWS: Villages, Judge.

23 JUDGE GARCIA: Villages, I'm sorry, yeah.

24 MR. FELLOWS: So now - - -

25 JUDGE GARCIA: And that's what exists now?



1 MR. FELLOWS: - - - the fire - - - fire
2 protection district number one has a contract with Copenhag
3 - - - Village of Copenhagen, and fire protection district
4 number two has a contract with the Village of West
5 Carthage.

6 JUDGE GARCIA: I see. Okay. Thank you.

7 JUDGE WILSON: So did you have to split it at all
8 to comply with the dissolution statute?

9 MR. FELLOWS: Well, yes, I believe we did, Judge.
10 But we - - - that's what we did, so we created two new - -
11 -

12 JUDGE WILSON: No, I guess what I'm asking is
13 suppose you had just - - -

14 MR. FELLOWS: - - - entities.

15 JUDGE WILSON: - - - dissolved the existing one
16 and created a new one that was exactly the same, one
17 district. Would that have complied?

18 MR. FELLOWS: No, Your Honor, I don't believe so.

19 JUDGE WILSON: Why? If you've gone through the
20 same processes that you did go through but it was just one
21 district, why wouldn't that comply?

22 MR. FELLOWS: The point that appellant keeps
23 making is everything is the same now as it was before, and,
24 Your Honor, everything is not the same. If I lived in the
25 fire protection district before this dissolution I was



1 taxed on the basis of the entire expense of providing fire
2 protection in that district and payments to three different
3 - - - two departments and one company. And that's in the
4 record what was paid before to those three - - - two
5 village departments and one fire company, and I was taxed
6 for that. Now we've divided it, and I live in fire
7 protection district number two. I'm taxed on the cost of
8 providing fire protection in that district alone. And - -
9 -

10 JUDGE WILSON: I get the - - - I get that - - -

11 MR. FELLOWS: - - - we have - - -

12 JUDGE WILSON: - - - what happened is not my
13 hypothetical but I was still trying to get an answer to why
14 under my hypothetical you think that would not comply with
15 your obligations?

16 MR. FELLOWS: Well, Your Honor, technically, if
17 you read through the statute it would. I mean the statute
18 says here's what a plan of dissolution must do, and Judge
19 Stein's questions really go to a point of perhaps the
20 statute - - - perhaps the legislature should have done more
21 or less in terms of including fire protection districts
22 because they aren't really what they were after in this
23 statute. What they were after was separate taxing entities
24 that owned assets and had employees, and when you look at
25 what must be in a plan of dissolution, Your Honor, it says



1 what are you doing with the employees, what are you doing
2 with the assets? The fire - - -

3 JUDGE STEIN: What I'm confused about is it seems
4 to me that dissolution is one thing. Okay. There's a
5 process of dissolution and whatever it was ends and then
6 the creation of something else is - - - is a completely
7 separate process, okay. So my question is is in this exact
8 circumstance, how do you know that - - - that the old one
9 was dissolved?

10 MR. FELLOWS: You know that because the town
11 board on August 10, 2015, passed a resolution dissolving it
12 and approving a plan of dissolution, and that resolution's
13 in the record.

14 JUDGE STEIN: But that wouldn't be enough if it
15 had assets that needed to be sold or whatever or - - -
16 right?

17 MR. FELLOWS: If there were assets that plan of
18 dissolution would have had to resolve what's happening to
19 those assets.

20 JUDGE STEIN: But it's enough here because there
21 - - - there was nothing to do?

22 MR. FELLOWS: Correct. And, Your Honor, if I - -
23 -

24 JUDGE FAHEY: Well, let me - - - let me ask - - -

25 JUDGE RIVERA: Well, there is something to do.



1 You've got to walk through the - - - as you say, there's a
2 process. You followed all those procedures, including
3 developing and adopting a plan, voting on the plan at the
4 town board, having public hearings about the plan, all of
5 that. You put together a document that sets out all the
6 requirements that the statute sets out that you have to say
7 whether or not there are liabilities, how you're going to
8 wind down, and all of that. So it's - - - you are doing
9 something, are you not?

10 MR. FELLOWS: Your Honor, we did a lot, and we
11 followed the exact roadmap in Article 17-A. But the point
12 that my opponent, respectfully, completely forgets is
13 Article 17-A was intended to ease the elimination of
14 overlapping separate taxing entities, and what he's doing -
15 - - and he said again, not today, is what this statute
16 required was the creation of an overlapping taxing entity.
17 There's nothing in Article 17-A which says you must create
18 a new overlapping taxing entity.

19 There was no overlapping taxing entity before,
20 and now he's saying because of the statute you must create
21 a fire protection district, which as Judge Fahey noted,
22 requires elections, commissioners, and typically in upstate
23 New York they're then controlled by the volunteer
24 firefighters. And they can impose taxes to pay for their
25 fire equipment, and that's not what the town board wanted



1 to do. And the notion that the town board thumbed their
2 nose at the results of the election is completely
3 incorrect.

4 JUDGE FAHEY: Well - - -

5 MR. FELLOWS: What the resolution - - -

6 JUDGE FAHEY: Hold on a second, Mr. Fellows. So
7 the problem is is the logic of your solution to the
8 dissolution - - - let's take it two ways. First, you've
9 got the statutory interpretation problem, and the statutory
10 interpretation problem is what is the meaning of
11 dissolution? Dissolution's defined as, "A termination of
12 the existence of a local government entity." You can
13 rationally argue that that's what you did. So the only
14 problem is is you created two entities that duplicated
15 geographically the exact same thing as - - - as the one you
16 had before. The logic of what you're saying is that
17 another dissolution, you - - - you could then go out and
18 create four entities and do the same thing and another
19 dissolution you could create eight. And that's the logic
20 of what you're arguing. So then if we're confronted with
21 that absurd situation - - - because that would be a
22 patently absurd situation - - - we had to say what's the
23 statutory construction? What's the meaning of the text
24 here? And it seems the meaning of the text is is that if
25 you dissolve it, a - - - it's kind of absurd to think that



1 you're not creating something - - - you don't recreate the
2 thing you just dissolved. And that seems to be what you've
3 done, even though you've distributed the contracts. And
4 that's the core of their argument the way I understand it.

5 MR. FELLOWS: Your Honor, but a fire protection
6 district is nothing but typically a contractual
7 relationship between a town and a village fire department
8 or a volunteer fire company.

9 JUDGE FAHEY: Right.

10 MR. FELLOWS: And we entered into new, different
11 relationships that will have different costs to the
12 taxpayers. And, Your Honor, what the voters voted was on a
13 proposition of shall the Town of Champion Fire Protection
14 District be dissolved, and they voted yes. They didn't say
15 and you will then create a separate fire district with
16 taxing authority and separate commissioners. No one voted
17 for that because it wasn't on the referendum. What was
18 left when Article 17-A was adopted, the legislature
19 repealed certain provisions of the Town Law. They did not
20 repeal Sections 170 and 171 which govern the creation of
21 fire districts and fire protection districts and alarm
22 districts, and so that's still in place. And - - -

23 JUDGE RIVERA: So if they're dissatisfied, am I
24 correct as to what their options are?

25 MR. FELLOWS: Under Section 171?



1 JUDGE RIVERA: The options being the residents of
2 the town.

3 MR. FELLOWS: Your Honor, under Section 171 they
4 can submit a petition to require the town board to hold a
5 public hearing on whether a fire district is appropriate,
6 and that's their remedy. And - - -

7 JUDGE WILSON: And ultimately, that is vested in
8 the town to decide yes or no. And am I right that there is
9 a pending Article 78 to challenge the creation of the two
10 districts, or am I making that up?

11 MR. FELLOWS: No, that's what this proceeding is,
12 Judge, in my mind. There is a separate challenge when the
13 town board voted to terminate the contract between the town
14 on behalf of the fire protection district, the old fire
15 protection district, and the Champion Volunteer Fire
16 Company. That was challenged in an Article 78 which was
17 then converted to a breach of contract action. I believe
18 on the first page of our brief, Judge, we say what the
19 status of that litigation is.

20 JUDGE GARCIA: Counsel, do you know if the tax
21 implications for this, are they positive, negative, neutral
22 in terms of what was paid before by the residents and
23 what's paid after?

24 MR. FELLOWS: We believe it will be less. It's
25 not in the record what the taxes are today, Judge.



1 JUDGE GARCIA: Was it part of - - -

2 MR. FELLOWS: But we believe it's less because we
3 believe we were getting overcharged by the Champion
4 Volunteer Fire Company.

5 JUDGE GARCIA: Was it part of the consideration
6 of whether or not to split these into two districts the way
7 you did? Were you considering the tax implications?

8 MR. FELLOWS: Absolutely, Your Honor. The - - -
9 the town board looked at what's the cost of fire districts
10 versus fire protection districts, and typically, the cost
11 is about twice that. But that goes back to my point, Your
12 Honor, of if I'm in fire protection district number one,
13 I'm only taxed now for fire protection in that district.
14 And if I'm in fire protection two, I'm only taxed for fire
15 protection in fire protection district number. So I'm in a
16 very different place than I was in 2014.

17 JUDGE GARCIA: It seems to me part of the
18 legislative intent here was to save taxpayer money, right,
19 by dissolving government entities.

20 MR. FELLOWS: By - - - exactly, Your Honor. By
21 eliminating separate overlapping taxing authorities, and
22 what appellant is saying is we were legally required by
23 this statute to create the very type of situation the
24 legislature said they were trying to eliminate.

25 CHIEF JUDGE DIFIORE: Thank you, counsel.



1 Counsel, what about resp - - - is respondent
2 correct when he argues that the will of the voters was not
3 frustrated here because they got exactly what they voted
4 for?

5 MR. PINSKY: No, they never got - - - what the
6 petition said was to dissolve and terminate the fire
7 protection district. The primary question before this
8 court is whether a fire protection district, whether it's
9 one or two, is still in the control of the town. The town
10 is still in control. The residents did not want the town
11 in control of setting taxes, in control of contracting.

12 JUDGE RIVERA: But then - - - but then why wasn't
13 the request to create a fire district - - - is he incorrect
14 about that - - -

15 MR. PINSKY: No problem with the law.

16 JUDGE RIVERA: - - - that you can't - - - can you
17 request that?

18 MR. PINSKY: We think you - - - you - - -

19 JUDGE RIVERA: Is he correct?

20 MR. PINSKY: Well, you can't request it as part
21 of this process, and it's been a red herring they've been
22 arguing since day one. We've never once said what they
23 have to create. What we are saying is you must dissolve
24 and terminate the fire protection district.

25 JUDGE RIVERA: But you're basically saying



1 there's not anything else they could create.

2 MR. PINSKY: Oh, sure there are. There's a joint
3 fire district, a fire district - - -

4 JUDGE RIVERA: But you're still talking about
5 fire districts.

6 MR. PINSKY: But there's three different versions
7 of what - - -

8 JUDGE RIVERA: But I'm sorry. Just to be clear
9 again - - - and if I'm asking you to repeat yourself, my
10 apologies. But I just want to know is he correct when he
11 says that you do have an electoral process by which you can
12 request - - - not you, obviously, the residents - - -

13 MR. PINSKY: Yes.

14 JUDGE RIVERA: - - - can request - - - the voters
15 can request that the town form a fire district?

16 MR. PINSKY: Request but not - - - not mandate is
17 - - - is true. I think Town Law 171 I think is where he's
18 going. It's not part of this process. It's outside 17-A.

19 JUDGE RIVERA: Did - - - did the voters do that
20 at any point in time?

21 MR. PINSKY: No. They didn't need to because
22 they have no authority to. It is - - - we agree it is not
23 up to the residents to demand what should exist after, but
24 it is clearly the will of the legislature that what existed
25 before cannot ever exist then. That's what the residents



1 had the right to. And - - -

2 JUDGE RIVERA: Well, the - - - they - - - the
3 residents now could seek dissolution of these two fire
4 protection districts and request the formation of a fire
5 district?

6 MR. PINSKY: Yeah, they - - - they - - -

7 JUDGE RIVERA: Could they do that?

8 MR. PINSKY: Sure they could, and then we'll get
9 four and then we'll get six and then we'll get eight, and
10 then we'll get a hundred different fire protection
11 districts. Your Honor is right. That's what we're going
12 to end up with.

13 JUDGE RIVERA: No, no, no. Dissolve this and
14 create a fire district. Can they not request that?

15 MR. PINSKY: We can't force that. No.

16 JUDGE RIVERA: I didn't say force that. I said
17 can you request that?

18 MR. PINSKY: They could petition to dissolve
19 under 17-A, and then as a separate matter they could
20 request the fire district. Note today - - -

21 JUDGE RIVERA: And then there would be public
22 hearings on that?

23 MR. PINSKY: There would be a public hearing but
24 there's no mandate that they follow it.

25 JUDGE STEIN: And then if what they did was



1 irrational is there any - - -

2 MR. PINSKY: No.

3 JUDGE STEIN: - - - remedy for that?

4 MR. PINSKY: No, as long as all the people in are
5 benefitted, all the people outside are benefitted.

6 JUDGE RIVERA: Were the - - - the town board
7 elected officials?

8 MR. PINSKY: Town board is elected officials.

9 JUDGE RIVERA: You could vote them out.

10 MR. PINSKY: You could. The supervisor's gone.

11 JUDGE RIVERA: If they're not following the will
12 of the voters expressed through these various requests.

13 MR. PINSKY: But the legislature gave the
14 residents the right to petition, as we're here, when the
15 government is unwilling and unable. And the legislative
16 memo in support says that the legislature recognizes that a
17 town board may be unwilling to accomplish dissolution.
18 They have not accomplished dissolution. And we take note
19 that they didn't even follow the process. 782(2)(i) of the
20 General Municipal Law requires that the plan of dissolution
21 provide for the termination of the existence of the local
22 government entity. Their plan of dissolution didn't plan
23 for the termination of the existence. They planned for a
24 word that matters, division. That's all they planned for.
25 So the Appellate Division was wrong. They never

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accomplished - - - they never followed the process because they never planned for the dissolution. Even if you accept the Fourth Department's argument that all they had to do was follow a process despite the result, they never even followed the process.

CHIEF JUDGE DIFIORE: Thank you, counsel.

MR. PINSKY: Thank you.

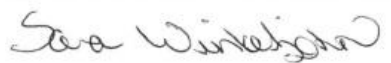
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C E R T I F I C A T I O N

I, Sara Winkeljohn, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Waite v. Town of Champion, No. 82 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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