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Oneida Appeals Commission
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Michael T. Debraska, Leah Sue Dodge,
Franklin Cornelius; Petitioners

ORIGINAL COMPLAINT - Application
for a TRO & Preliminary Injunctive
Relief re: the 11/22/2014 Special Election

v.

Oneida Business Committee, Oneida
Election Board, Oneida Law Office;
Respondents

Docket # 14-TL-19D

Date 11-5-14

Petitioners:

M. Debraska, L. Dodge, F. Cornelius
C/O Leah Sue Dodge
P O Box 95
Oneida, WI 54155
920-321-8133

Respondents:

Oneida Business Committee, Oneida Election
Board, Oneida Law Office
P O Box 365
Oneida, WI 54155
920-869-2214

Instructions: Please attach your responses to the questions listed below to this form. List all responses in short, clear and plainly written statements. All statements of the complaint should be set forth in separate paragraphs and should be numbered. Each paragraph should address a single occurrence, event, circumstance or issue. Please use 8.5 X 11 inch paper and type with 1.5 or double spacing, leaving at least a one inch margin on all sides. Include any written exhibits or attachments that you may have with this form and complaint. Also, it is advised that parties refer to the Oneida Appeals Commission Rules of Civil Procedure for further information.

1. **Jurisdiction** Establish who you are, who the respondent is, and the authority of the O.A.C. trial court to hear the case.
2. What happened? Give the facts surrounding your claim. Describe what happened, who did it, where it took place and when it occurred. List each statement in a separate, numbered paragraph.
3. **What laws apply?** Explain, in short numbered paragraphs which rule(s), law(s), regulations(s), etc. apply to your facts and exactly how each was violated.
4. **How were you harmed by the violation(s)?** Explain the causal link between the violation(s) and damages that you suffered.
5. **What damages did you suffer?** Explain how you were harmed and describe your damages in detail. What do you want?

Petitioner's Signature and Date Michael T. Debraska/Leah Sue Dodge Franklin Cornelius/led 11-5-2014

SPECIAL NOTICE: The Petitioner is required to file an original plus seven copies of this form - and all attachments for use by the Appeals Commission. In addition, a filing fee of \$25.00 must accompany the complaint. This fee may be waived upon a showing that the petitioner is unable to pay the fee.

I. Jurisdiction

1. We, the Petitioners, as members of the Oneida Tribe of Indians of Wisconsin (OTIW) and members of the General Tribal Council (GTC), hereby request a Temporary Restraining Order and Preliminary Injunctive Relief in accordance with Rule 31 of the Rules of Civil Procedure, for a Stay on the November 22, 2014 Special Election to address a vacancy on the Oneida Business Committee (OBC) due to the illegal actions of the Respondents [OBC, Oneida Election Board (OEB) and the Oneida Law Office (OLO)], which have resulted in the scheduling of an illegal election in violation of the current Oneida Election Law as amended by GTC in 2008 regarding the requirement for a primary to be held sixty (60) days prior to the election of OBC at-large member positions when there are sixteen (16) or more candidates.

2. We, as Petitioners, are requesting a postponement of the November 22, 2014 Special Election until such time that a duly noticed and held GTC Meeting is arranged in order for GTC to determine how to best proceed legally and during which GTC will be allowed to discuss the only two legal options included in the October 26, 2014 GTC Meeting Packet as approved by OBC in conjunction with OEB and OLO. Specifically, Option D, which was to delay filling the OBC vacancy until the next scheduled Special Election to be held in July of 2015 which, presumably, would have been held in keeping with the Oneida Election Law, and Option F, which was to leave the OBC position vacant for the remainder of the unexpired term, taking into consideration the OTIW's financial condition as indicated by OBC's actions and voting records.

II. Facts Surrounding Claim

1. On Friday, September 12, 2014, OBC member Benjamin Vieau officially resigned from OBC [Exhibit A], and on Monday, September 15, 2014, OBC held an Emergency OBC Meeting to "Schedule a Special GTC meeting to address the vacant Business Committee council member position," and voted to select Sunday, October 26, 2014, as the date to hold the Special GTC Meeting [Exhibit B] in keeping with the Oneida Tribal Constitution [Exhibit C].

3. On Wednesday, September 24, 2014, OBC Treasurer Trish King, OBC Secretary Lisa Summers, and OBC Council members Fawn Billie, Brandon Stevens, Tehassi Hill, and Jenny Webster, voted to approve the GTC Meeting Packet for the October 26, 2014, GTC Special

Meeting which contained six (6) options (listed as A through F) for GTC to address the OBC vacancy [Exhibit D], yet the packet contained five (5) options (listed as A, B, C, D, and E) regarding holding an election or hand count to fill the OBC vacancy without any mention that the majority of the options could be in violation of the Oneida Election Law [Exhibit E], as amended by GTC in 2008 [Exhibit F], which requires OEB to schedule a primary sixty (60) days prior to the election of OBC at-large council member positions if sixteen (16) or more candidates were deemed eligible by OEB as qualifying for an election to fill an OBC vacancy.

4. The materials designed and distributed by OBC in preparation for the GTC meeting, as well as statements made by Tribal representatives at public discussions prior to the GTC meeting, emphasized that the cost to address the OBC vacancy would range between \$200,000 and \$207,000, ignoring the fact that leaving the position vacant (Option F) was the only option that would truly cost the Tribe only the \$200,000 cost of the GTC Meeting while the estimated costs of the other 5 options did not factor in the salaries of an additional OBC member and an assistant, benefits, office supplies, and other costs. Therefore, the materials ordered and approved by OBC, OEB and OLO, which appear to have been unnecessarily costly in nature [Exhibit G], created – intentionally or otherwise – an inaccurate conveyance to GTC members about the true costs of selecting options other than leaving the OBC position vacant, and the OBC’s distributed material failed to convey the actual costs of Options A-E by fifty percent (50%) or more.

5. At the October 26, 2014 GTC Meeting OBC Chair Tina Danforth ruled that a motion to adopt Option E was out of order and stated that it contained “procedural irregularities,” and was “not in the Election Law” and “not in the Constitution” [Exhibit H]. When GTC members asked why OBC had voted to present GTC with options in the GTC Meeting packet that were in violation of Tribal laws and then also asked which OBC members had voted for inclusion of invalid and illegal options the OBC members present at the GTC Meeting said nothing, other than OBC Vice-Chair Melinda J. Danforth who claimed that all of OBC's decisions regarding the options included in the meeting packet were made in the presence of OBC’s legal counsel (OLO) and that no one raised any objections regarding the legality of the options [Exhibit H].

6. OBC Vice-Chair Melinda J. Danforth and OBC members in attendance on October 26, 2014, including OBC Treasurer Trish King, OBC Secretary Lisa Summers, and OBC at-large members Fawn Billie, Brandon Stevens, Tehassi Hill, and Jennifer Webster made no objections to the decisions made and actions taken by OBC Chair Tina Danforth and Chief Counsel & Parliamentarian Jo Anne House which were in violation of Tribal laws which OBC members take oaths to know, understand, uphold, and defend, when their actions have been instead to participate in, contribute to, and tolerate the violation of, those same Tribal laws [Exhibit H].

7. As also seen in the video of the October 26, 2014, GTC Meeting [Exhibit H], OBC Chair Tina Danforth, after consultation with OBC Chief Counsel & Parliamentarian Jo Anne House, conducted the October 26, 2014, GTC Special Meeting illegally by failing to observe and enforce Robert's Rules of Order As Used by the General Tribal Council which is posted on the OTIW website [Exhibit I] and requires a two-thirds (2/3) majority vote of GTC members to overturn previous actions taken by GTC, including GTC's amendments to the Oneida Election Law in 2008 requiring that OEB schedule a primary sixty (60) days prior to any election wherein there are sixteen (16) or more candidates for OBC at-large council member positions.

8. As further seen in the video of the October 26, 2014, GTC Meeting [Exhibit H], GTC voted by a hand count of 539 yes votes to 728 opposed votes, with 14 abstentions, against a motion by Leyne Orosco to adopt Option B which was seconded by Paul Smith, yet OBC Chair Tina Danforth later illegally approved the adoption of Option B by a hand count of 738 yes votes to 469 opposed votes, with 51 abstentions [Exhibit J], despite that fact that overturning GTC's previous vote against adopting Option B required a two-thirds (2/3) majority vote to be in compliance with Robert's Rules of Order As Used by the General Tribal Council [Exhibit I] and the General Tribal Council Ten Day Notice Policy [Exhibit K]. The number of votes required to overrule GTC's previous decision would have been 804 yes votes, thus, the motion failed.

9. To further confuse matters, the video of the October 26, 2014, GTC Meeting [Exhibit H] shows that OBC Chair Tina Danforth illegally approved GTC's second vote on Option B despite the fact that there was confusion expressed by a GTC member who conveyed to the Chair that the volume of the speakers in the overflow room were too low to be able to hear what was

happening in the main meeting room, and, most importantly, questions as to whether the second vote taken regarding Option B was only for GTC's "reconsideration" and further discussion of the merits of and problems with Option B or whether the secondary vote was for the actual "adoption" of Option B which, by Tribal law [Exhibit I] [Exhibit K], required a two-thirds (2/3) majority vote to overrule GTC's prior vote to reject Option B. According to the GTC Meeting Action Report Draft [Exhibit J] and the motion as typed on the projector monitors at the meeting [Exhibit H], the specific language of the motion was: "To reconsider the adoption of option B."

10. The video of the October 26, 2014, GTC Meeting [Exhibit H] also shows that when a GTC member asked OBC Chair Tina Danforth whether the vote to reconsider adoption of Option B required a two-thirds (2/3) majority vote due to the previous vote to not adopt Option B, the Chair claimed that the vote only required a simple majority vote based on her conversation with Chief Counsel & Parliamentarian Jo Anne House, which might have been true if the intent of the motion was to go back into discussion regarding the merits of Option B but is demonstrably false given that, when asked for clarification of the intent of the motion versus the wording, OBC Chair Tina Danforth stated it was her understanding the intent of the motion was to reconsider and adopt Option B, which GTC had already voted to reject by a majority hand count.

11. When questions were lodged by GTC members about the meaning of the wording of the motion following the second vote, the Chair improperly went back to the motioner, Linda Dallas, and the seconder, Madelyn Genskow, and asked them to clarify what their intent was after the vote had already taken place and been illegally approved by the Chair without a two-thirds (2/3) majority vote [Exhibit H]. Therefore, OBC Chair Tina Danforth conducted the October 26, 2014, GTC Meeting illegally, and did so following consultation with and the approval of Chief Counsel & Parliamentarian Jo Anne House even after questions about the legality of the vote were asked.

12. As further seen on the video of the October 26, 2014, GTC Meeting [Exhibit H], when asked if a primary would be required before the Special Election, OBC Chair Tina Danforth falsely claimed that a primary was not required despite the fact that a two-thirds (2/3) majority vote is clearly required by both Robert's Rules of Orders As Used by the General Tribal Council as posted on the OTIW website [Exhibit I] as well as the General Tribal Council Ten Day Notice

Policy [Exhibit K] in order to forgo the primary if there are sixteen (16) or more candidates. Therefore, the decisions and actions of OBC Chair Tina Danforth and Chief Counsel & Parliamentarian Jo Anne House were in violation of the Oneida Election Law, Robert's Rules of Orders As Used by the General Tribal Council [Exhibit I], and the General Tribal Council Ten Day Notice Policy [Exhibit K]. Indeed, sixteen candidates accepted their nominations during the caucus held at the October 26, 2014, GTC Meeting [Exhibit L].

13. Following the October 26, 2014, GTC Meeting where OBC Chair Tina Danforth's and Chief Counsel Jo Anne House's illegal decisions and actions resulted in the selection of an option to illegally hold a Special Election on November 22, 2014, without holding a primary sixty (60) days before the election as required by the Oneida Election Law whenever there are sixteen (16) or more candidates for at-large OBC council member positions, OEB has commenced organizing an illegal Election for November 22, 2014 [Exhibit M] whether or not OEB determines sixteen (16) candidates are eligible candidates for the ballot, including the sixteen (16) candidates who accepted their nominations during the caucus held at the illegally conducted October 26, 2014, GTC Meeting and other candidates who might be deemed eligible by OEB following their petitions to be included on the ballot which, according to materials published by OEB, will not be known until November 10, 2014. [Exhibit M] Therefore, a caucus was held at the October 26, 2014, GTC Meeting for a November 22, 2014, Special Election which was illegally scheduled in violation of the Oneida Election Law and based on the unlawful decisions and actions to overrule a previous decision made by GTC without having achieved the requisite two-thirds (2/3) majority vote as is mandated by Robert's Rules of Order As Used by the General Tribal Council and the General Tribal Council's Ten Day Notice Policy.

III. Applicable Laws

1. The Oneida Tribal Constitution, Article III - Governing Body, Section 4 [Exhibit C] says:
The General Tribal Council may at any regular or special meeting fill any vacancies that occur on the Business Committee for the unexpired term.
2. The Oneida Tribal Constitution, Article III - Governing Body, Section 4 [Exhibit C] says:

...The General Tribal Council shall enact necessary rules and regulations governing the election of tribal officials.

3. GTC Resolution 01-04-10-A, *Amendments to the Election Law* [Exhibit F], says that on October 11, 2008, “GTC approved the amendments that pertained to conducting primary elections.”

4. The current Oneida Election Law as amended by GTC [Exhibit E] says:

2.12. Elections, Section A. Primary Elections Business Committee:

2.12-1. When a primary is required under 2.12-2, it shall be held on a Saturday at least sixty (60) calendar days prior to the election.

2.12-2. There shall be a primary election for Business Committee positions whenever there are three (3) or more candidates for officer positions or sixteen (16) or more candidates for the at-large council member positions. ...

(b) The fifteen (15) candidates receiving the highest number of votes cast for the at-large council member positions shall be placed on the ballot.

And:

Section D. Initiation of Special Elections ...

2.12-12. All Special Elections shall follow rules established for all other elections.

This includes positions for all Boards, Committees and Commissions.

5. Robert’s Rules of Order As Used by the General Tribal Council, which is posted on the OTIW website [Exhibit I] says:

Two-Thirds Vote – used to overturn a previous action as identified in the *Ten Day Notice Policy*. Requires two-thirds of those voting to take action, excluding those who choose to abstain. The total number of votes, divided by three, multiplied by two. Fragments are included in the ‘yes’ votes as that is where two-thirds of the vote lies.

6. The Oneida General Tribal Council Ten Day Notice Policy [Exhibit K] says:

III. Procedure:

1. Any resolution or motion pertaining to due process, or action that would have a direct impact on budgets or operations of the tribe shall be subject to a 10-day notice requirement.

- a. Motions: ...

3. Action to overrule previous motions or resolutions shall require a 2/3 majority vote.

IV. Harm Caused by Violations

1. The actions of OBC, OEB, and OLO caused immediate disenfranchisement of enrolled Oneida Tribal Members, especially the illegal decisions and actions of OBC Chair Tina Danforth and Chief Counsel & Parliamentarian Jo Anne House through their denial of and interference with GTC's right to have legally conducted meetings which abide by Tribal laws, including the Oneida Election Law, the General Tribal Council Ten Day Meeting Policy, and Robert's Rules of Order As Used by the General Tribal Council.

2. GTC members were misled, intentionally or otherwise, by the options presented in the October 26, 2014, GTC Meeting packet approved by OBC and made in conjunction with OEB and OLO, and GTC members were told unlawful untruths by OBC Chair Tina Danforth when they challenged the illegal decisions and actions of the Chair, following her consultation with and the approval of Chief Counsel & Parliamentarian Jo Anne House, all while the other OBC members present, including officers and at-large council members, sat idly by and allowed GTC to be given unlawful, untruthful answers which undermines GTC's authority and its right to have any level of confidence or trust in OBC's, OEB's, or OLO's competency and ethics, and raises questions of ulterior motives regarding OBC, OLO and OEB intentionally attempting to undermine the authority of GTC which is the supreme governing body of the OTIW.

4. Harm was also inflicted on GTC members who would otherwise have sought to be nominated or petitioned to be candidates in a Special Election to fill an OBC vacancy but declined to participate in an illegal vote and subsequent caucus regarding an attempt to unlawfully schedule an election in violation of the Oneida Election Law, Robert's Rules of Order As Used by the General Tribal Council, and the General Tribal Council Ten Day Notice Policy.

5. Harm was additionally inflicted on GTC members who were misled into believing that they were nominating Tribe members, or accepting nominations, as candidates for a lawful election when in fact the decision to schedule a Special Election for November 22, 2014, was done in an unlawful manner, and the decision to schedule the election was made without any regard for the requirement in the Oneida Election Law as approved by GTC in 2008 which requires that a primary be held sixty (60) days prior to any General or Special Election for which there are sixteen (16) or more candidates for OBC at-large member positions.

6. Harm was also caused to all Tribe members by the illegal scheduling of an election by OEB in violation of the Oneida Election Law as amended by GTC in 2008 in order to require a primary sixty (60) days prior to an election for which there are sixteen (16) or more candidates for OBC at-large council member positions, whether the vote is during a General Election or during a Special Election, and thereby undermined the Constitutional authority of GTC.

V. Damages Suffered and Relief Requested

1. As General Tribal Council members, damages include disenfranchisement of Oneida Tribe members to participate in properly and legally held GTC meetings due to the unethical and unlawful decisions and actions of the OBC, OLO, and OEB, especially by the OBC Chair and the Chief Counsel & Parliamentarian, regarding a highly significant vote to place an individual in a position of power by which they'll be able to make decisions that could have negative impacts on all current and future members of the Oneida Tribe of Indians of Wisconsin.

2. The materials designed and distributed by OBC in preparation for the October 26, 2014, GTC Meeting, as well as statements made by Tribal representatives at public discussions in preparation for the meeting, which misleadingly conveyed that the cost of addressing the OBC vacancy would range between \$200,000 and \$207,000, while ignoring the fact that only the option of leaving the OBC position vacant (Option F) was anywhere near the costs advertised by OBC, and that all other options would actually cost the Tribe as much as \$400,000 or more, despite the fact that the General Tribal Council Ten Day Notice Policy states that, "Any resolution or motion pertaining to due process, or action that would have a direct impact on budgets or operations of the tribe shall be subject to a 10-day notice requirement," yet OBC,

OEB, and OLO failed to accurately inform GTC what the true impact of Options A–E would have on the Tribal budget, whether their misrepresentations were intentional or otherwise.

3. The illegal decisions and actions of OBC, OLO, and OEB, as well as their inactions, regarding adopting an illegal path, both in the details of the decision which violates the Oneida Election Law as amended by GTC in 2008 and in the way in which the decision to adopt Option B was unlawfully allowed and approved by the OBC Chair and the Chief Counsel & Parliamentarian in violation of Robert's Rules of Order As Used by the General Tribal Council and the General Tribal Council Ten Day Notice Policy, which both require a two-thirds (2/3) majority vote to overrule previous decisions made by GTC, has resulted in unnecessary monetary damages to the Tribe during a time of financial crisis, and includes not only the cost of the money wasted on the October 26, 2014, GTC Meeting and the public discussions prior to the GTC Meeting, but also the costs of creating, printing, and distributing costly materials to GTC that were financially misleading, and possibly illegal, and which contained only one completely described legal option (Option F) which GTC was not allowed to fully discuss nor vote on, not to mention the costs of holding another GTC Meeting which has been necessitated in order for GTC to re-address the OBC vacancy in light of the unlawful actions of OBC, OLO, and OEB.

4. This damaging waste of Tribal resources caused by the illegal actions of OBC, OLO, and OEB is especially egregious given that on September 24, 2014, OBC passed BC Resolution 09-24-14-A, *Continuing Resolution for Fiscal Year 2015* [Exhibit N], which includes:

- Ongoing Comprehensive Hiring Freeze
- Suspension of All Wage Increases
- Reduction of Overtime
- Delay of All Consulting Contracts
- Delay of All Donations & Scholarships
- Suspension of Capital Improvement Projects until the Fiscal Year 2015 Budget is adopted by GTC at a GTC Budget Meeting that OBC delayed from September 22, 2014 to January 19, 2015

5. This unnecessary waste is compounded by the fact that on September 24, 2014, OBC also adopted BC Resolution 09-24-14-Q, *Emergency Amendments to the Oneida Personnel Policies and Procedures Regarding Job Duties and Reassignments* [Exhibit O], which:

- Allows employees' job duties to be increased to include work from other divisions & departments, even permanently, without any kind of pay increase.
- Denies employees' right to claim that being assigned, even permanently, extra work from other areas of the Tribe without any kind of pay increase is an adverse employment action.
- Affirms the right to discipline employees who refuse to do extra work from other areas of the Tribe without any kind of pay increase.

6. Therefore, it was the height of hypocrisy for OBC to put forward illegal options to fill an OBC vacancy rather than strongly recommend that, due to the Tribe's current financial crisis as evidenced by OBC's voting records, it is in the Tribe's best interest to leave the OBC position vacant for the remainder of the unexpired term and for OBC to be willing to do what they demand of other Tribal employees by taking on additional duties if necessary given that OBC's, OLO's, and OEB's illegal decisions and actions will only worsen the economic condition of the Tribe by inflicting financial damage through necessitating that a new, legally conducted GTC Meeting be properly scheduled, noticed, held and conducted so that GTC can consider its legal options in light of the Tribe's financial crisis which OBC, OLO, and OEB have only exacerbated through their ignorance of, disregard for, or desire to subvert the Tribal Constitution and laws, as well as actions that subjugate the authority of GTC, the supreme governing body of the OTIW.

7. For the Court to allow an illegally scheduled election approved unlawfully to proceed, rather than issue a Stay until GTC can address the mess created by OBC, OLO, and OEB, will only add to the financial damages to the Tribe by incurring the cost of an election that GTC members have the right to challenge the legitimacy of based on its non-compliance with the Oneida Election Law and the manner it was adopted in violation of both Robert's Rules of Order As Used by the General Tribal Council and the General Tribal Council Ten Day Notice Policy.

8. The Relief requested is for the Appeals Commission to issue a Temporary Restraining Order and Preliminary Injunctive Relief in accordance with Rule 31 of the Rules of Civil Procedure, for a Stay on the illegally scheduled November 22, 2014, Special Election, or any other unlawfully approved election to address the OBC vacancy, until such time as a duly and lawfully scheduled, noticed, and conducted GTC Meeting is held in order for GTC to be able to

address the OBC vacancy through the consideration of options that are in keeping with the Oneida Tribal Constitution and Tribal laws, including the legal and significantly cost saving option of leaving the OBC position vacant during a financial crisis that has led OBC to pass BC Resolutions 09-24-14-A and 09-24-14-Q, and, further, that the Parliamentarian for that future GTC meeting, which is necessitated by the shockingly unlawful decisions and egregiously illegal actions of OBC Chair Tina Danforth and Chief Counsel & Parliamentarian Jo Anne House, be an enrolled OTIW member trained in Robert's Rules of Order who is not an employee of the Tribe nor has familial nor financial connections with any member of OBC, OLO, or OEB.

Signed this 5th day of November, 2014,

Michael T. Debraska /sd

Michael T. Debraska, Petitioner

Franklin Cornelius /led

Franklin Cornelius, Petitioner

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