

ONEIDA TRIBAL JUDICIAL SYSTEM
OnΛyote?a·ka Tsi? Shakotiya? Toléhte

APPELLATE COURT

Michael T. Debraska, Leah Sue Dodge, et.al,

Appellant,

v.

Docket No. 14-AC-012

Oneida Business Committee, Oneida Election Board,
et.al.

Date: October 24, 2014

Respondent.

RESPONDENT'S BRIEF

COMES NOW, the Respondent, by and through counsel Patricia M. Stevens Garvey, and submits this brief, pursuant to Oneida Rules of Appellate Procedure (RAP) Rule 14, in answer to the Appellant's brief and states as follows:

ISSUE

Whether the Trial Court erred in denying a TRO and a Declaratory Ruling where the Complaint was a challenge to the Judicial Election and the Court failed to find harm or a Rule or Regulation violated to issue a declaratory ruling where the Complaint failed to follow the procedure for a declaratory ruling under the Oneida Rules of Civil Procedure and where there was a rational connection between the facts found and the ruling made.

STATEMENT OF THE CASE

This case was filed with the OTJS – Trial Division on August 8, 2014, requesting a TRO and Preliminary Injunctive Relief for the August 23, 2014 Special Election of the Judiciary. The Appellant's state they are representing the GTC as a whole and are requesting the TRO until such time as the Special Election is held at the Milwaukee polling site.

The Trial Court issued a decision on August 21, 2014 denying the request for an Injunction and TRO as there was no evidence of irreparable harm; no finding of disenfranchisement; and no

finding GTC Resolution 01-07-13-B states Judiciary elections shall be held during the tri-annual elections.

The decision was appealed to the OTJS – Appellate Division. The Appellate Court accepted the case under an arbitrary and capricious standard and issued a stay of the August 23, 2014 Judicial Election.

On August 28, 2014, the Oneida Business Committee issued BC Resolution 08-28-14-A, authorizing a one-time exception to conducting the Special Election to elect judges for the new Judiciary to include polling places in both Oneida and Milwaukee.

On August 29, 2014, the Respondent filed a Motion to Lift the Stay on the Special Election citing BC Resolution 08-28-14-A. **Exhibit 1.**

On September 5, 2014, the Appellate Court lifted the stay allowing a Judiciary election to proceed in accordance with Chapter 2, Oneida Election Law. The Court retained jurisdiction of the remaining issues in the case.

ARGUMENT

This is a challenge to the Judiciary election. Elections are governed by the Oneida Election Law. The Election Law recognizes challenges in only two (2) instances: 1) where a recount is requested under §2.11, Section C and 2) a challenge to the results of an election under §2.11, Section D. The Appellant challenged an upcoming election, Judiciary Election, and was able to cancel an election a procedure not recognized under the current Election Law. Citing Constitutional and Bill of Rights issues, the Appellant succeeded in stopping the August 23, 2014 election.

Although the election of the Judiciary has concluded, a challenge still remains regarding the decision issued by the trial court. The challenge regarding whether a Declaratory Ruling should issue and a challenge to the trial court decision as arbitrary and capricious.

The Oneida Rules of Civil Procedure, Rule 33, Declaratory Ruling provides the definition and procedure when filing a petition for a declaratory ruling.

(A) Definitions

- (1) Declaratory Ruling: A declaratory ruling is a decision by an agency hearing body or the OTJS trial court which established the applicability of any ordinance or rule enforceable by the agency to any person, property, entity, or other state of facts.
- (2) Declaratory Judgment:...
- (3) Both Declaratory Rulings and Judgments are made outside the context of a pending case. Issues of the application of a law or the validity of a law raised in pending litigation shall be settled by the trial court or appellate court assigned to resolve that pending dispute.

(B) Declaratory Rule Procedure

- (1) A petitioner whose status, rights, duties, or other responsibilities under any Rule or Ordinance may petition the agency with enforcement authority over the Rule/Ordinance in question or the OTJS trial court in order to settle the question raised. Priority of resolution forum shall lie with the agency if the agency has an established hearing body.
- (2) The petitioner shall file a petition for a declaratory ruling, which shall include, but not be limited to:
 - (a) A complete copy of the Rule/Ordinance in question;
 - (b) ...
 - (c) ...
 - (d) ...

The Appellant's request for a declaratory ruling does not apply in the instant case. The Petitioner filed a case with the OTJS – Trial Division requesting a TRO. As part of the request, the Petitioner included a request for additional relief for a declaratory ruling not citing to any law that was the subject of a declaratory ruling. The procedure for a declaratory ruling as outlined above states “declaratory ruling are made outside the context of a pending case.” The petitioners requested a TRO to stop the Judiciary election until a decision is made to allow the SEOTS polling site as part of the 2014 General Election.

This is a pending case and no ordinance or rule was presented to the Trial Court. Rule 33 requires a complete copy of the Rule/Ordinance in question **shall** be included in the Petition for a declaratory ruling. “Issues of the application of a law or the validity of a law raised in pending litigation **shall** be settled by the trial court or appellate court assigned to resolve that pending dispute.”

The pending dispute is the disenfranchisement of Oneida Tribal members in Milwaukee to participate in a Special Election. The Trial Court considered the issue stating “Petitioners further claim the elimination of the SEOTS polling site causes harm to the Judiciary in that the Judiciary inception will be clouded by the disenfranchisement of the Oneida electorate.” The Trial Court went on to distinguish the Petitioner’s claim from the Oneida Election Law recognizing section 2.12, section B as the Business Committee’s authority for setting Special Elections. In addition, the Trial Court found GTC Resolution 01-07-13-B fails to include Judicial elections held during the tri-annual elections, only that the election for judges shall be held during the 2014 general elections. Lastly, the Trial Court found no disenfranchisement and no substantiated evidence to support the irreparable harm as required for issuance of a TRO.

Much was included in the Trial Court decision in trying to identify the plethora of issues presented by the Petitioner. The Trial Court did not conclude this was the proper format for a declaratory ruling which would be a giant leap from the disenfranchisement issue resolved in the decision. The issue of a Milwaukee Polling site for all General Elections and Judicial Elections may be moot as the new Judiciary terms are tri-annual, i.e., at three (3) or six (6) years.

The proper vehicle to consider the adoption of the Milwaukee polling site for all elections including Special Elections is by present the issue to the Oneida Legislative reference office to consider amending the Oneida Election Law or by presentation of a petition to the GTC. Under the Oneida Election Law, §2.2-2, the Law may be amended by the BC or the GTC. Amendments or actions brought by the Election Board are presented to the BC for adoption or the BC can forward to the GTC for adoption.

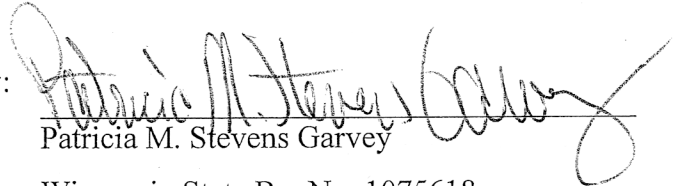
WAS THE DECISION OF THE TRIAL COURT ARBITRARY AND CAPRICIOUS?

The decision of the Trial Court is not arbitrary and capricious. An arbitrary and capricious decision is one in which no rationale or reasoning is provided. It is a conclusion without an analysis. It must be remembered, this case is an election challenge requiring strict limits on the time for decisions. Oneida Election Law, Section D. Challenges and Declaration of Result, 2.11-11. The Trial Court provided at least minimal rational for every conclusion. Barbara J. Cornelius, Geraldine R. Danforth v. C.Steve Hill, 01-AC-007, (Oneida Appeals, 8/16/2001),

Versus Law, Paragraph 22. The Trial Court made reasoned interpretations given the challenges of the Appellant. This is all that is required.

In conclusion, the Respondent's request this Court uphold the decision of the Trial Court as all of the issues presented have been resolved and if not resolved should be presented to the proper Tribal entity for resolution.

By:



Patricia M. Stevens Garvey

Wisconsin State Bar No. 1075618

Attorney for Respondents

ONEIDA LAW OFFICE

N7210 Seminary Road

Post Office Box 109

Oneida, WI 54155

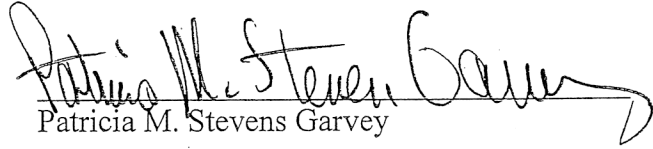
Phone: 920-869-4327

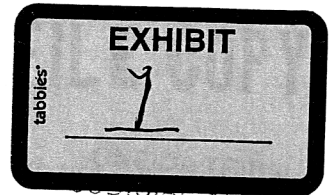
Fax: 920-869-4065

E-mail: pgarvey@oneidanation.org

Certificate of Service

On August 29, 2014, the Respondent delivered, via certified mail, return receipt requested, to Leah S. Dodge, P.O. Box 95, Oneida, WI 54155 a copy of the Motion to lift stay of Special Election.


Patricia M. Stevens Garvey



ONEIDA TRIBAL JUDICIAL SYSTEM
OnAyote?a'ka Tsi? Shakotiya? Toléhte

AUG 29 2014

APPELLATE COURT

RECEIVED BY: AB

Michael T. Debraska, Leah Sue Dodge, et.al,

Appellant,

v.

Docket No. 14-AC-012

Oneida Business Committee, Oneida Election Board,
et.al.

Date: August 29, 2014

Respondent.

RESPONDENT'S MOTION TO LIFT STAY ON SPECIAL ELECTION

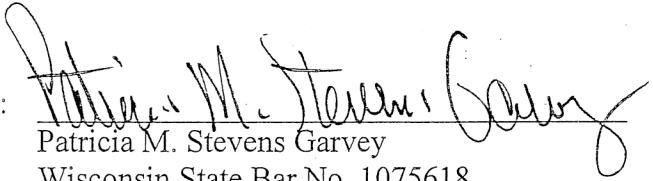
COMES NOW, Respondent, by and through their attorney, Patricia M. Stevens Garvey, and requests this Court, pursuant to Oneida Rules of Appellate Procedure, Rule 11, lift the stay on Judiciary Special Election to elect judges and states as follows:

1. A General Election for the election of Oneida Business Committee members and Tribal judges was scheduled for July 12, 2014.
2. A GTC action at the June 16, 2014 meeting withdrew the election of Tribal judges from the July 12, 2014 General Election and rescheduled the Tribal judges election to a Special Election.
3. The Special Election for Tribal judges was scheduled for August 23, 2014.
4. On August 20, 2014, the Appellant filed an "Application for a TRO & Preliminary Injunctive Relief re: the 8/23/2014 Special Election" with the Trial Court of the Oneida Tribal Judicial System.
5. On August 21, 2014, the Trial Division denied the request for an Injunction/Temporary Restraining Order.
6. On August 22, 2014, the Appellant filed a Notice of Appeal with the Appellate Court claiming the decision of the Trial Court was "arbitrary and capricious".

7. On August 22, 2014, the Appellate Court accepted the Appeal and ordered an Appellate Brief to be filed by September 22, 2014.
8. Although the Appellant failed to request relief, the Appellate Court, pursuant to Rule 17(B), issued a “stay on the August 23, 2014 Special Election of the Oneida Judiciary....”
9. On August 28, 2014, the Oneida Business Committee passed Resolution 08-28-14-A, “Authorizing an Exception to Conducting the Special Election to Elect Judges for New Judiciary to Include Polling Places in Both Oneida and Milwaukee.” **ATTACHMENT**
10. The Resolution provides in the second resolve, “the Oneida Business Committee finds that to maintain the transition timelines set forth in resolution #GTC-01-07-13-B, as amended by the two-thirds vote of the General Tribal Council on June 16, 2014, a Special Election is called for the Judiciary and a one-time exception to conduct the Special Election shall include polling sites in Oneida and Milwaukee.”

The Respondent requests the stay on the Special Election be lifted as the Milwaukee polling site will now be included pursuant to Resolution BC 08-28-14-A. In addition, pursuant to Rule 11(B)(1), the Respondent requests an exception to the 10 day requirement for a response as this request is a non-substantive or procedural motion which does not give either party additional substantive rights and is so minor in nature that the lead Judicial Officer can grant the motion as the granting of the motion will not bring any harm to the other parties in the case.

By:


Patricia M. Stevens Garvey
Wisconsin State Bar No. 1075618
Attorney for Respondent

ONEIDA LAW OFFICE
N7210 Seminary Road
Post Office Box 109
Oneida, WI 54155

Phone: 920-869-4327
Fax: 920-869-4065
E-mail: pgarvey@oneidanation.org

Oneida Tribe of Indians of Wisconsin



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.



UGWA DEMOLUM YATEHE
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

BC Resolution 08-28-14-A

Authorizing an Exception to Conducting the Special Election to Elect Judges for new Judiciary To Include Polling Places in Both Oneida and Milwaukee

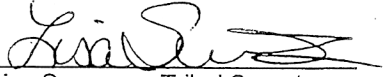
- WHEREAS,** the Oneida Tribe of Indians of Wisconsin is a federally recognized Indian Government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Tribe of Indians of Wisconsin; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS,** the General Tribal Council as adopted an Election Ordinance which identifies General Elections to be held every three years and Special Elections that would be held in the intervening years; and
- WHEREAS,** Resolution # BC-03-13-02-O designated Milwaukee as a second polling site for Oneida Triennial (General Elections) only, not for Special Elections; and
- WHEREAS,** the General Tribal Council adopted Resolution # GTC-01-07-13-B which requires the new Judiciary to officially open as of November 1, 2014 and requires the newly elected Judges to have sixty (60) hours of training; and
- WHEREAS,** GTC action at the June 16, 2014 meeting, by two-thirds vote, amended the directives in Resolution # GTC-01-07-13-B by withdrawing the election of the Judges from the 2014 general election and rescheduled it to a Special Election; and
- WHEREAS,** a request for an Injunction to stop the election of judges on August 23, 2014 was filed on August 20, 2014, denied by the Trial Court of the Oneida Appeals Commission, but granted on appeal on August 22, 2014 by the Appellate Court of the Oneida Appeals Commission; and
- WHEREAS,** the Appellate Court is not expediting the appeal and has scheduled the appellants to submit a brief in support of their complaint by September 22, 2014 after which the Tribe will be scheduled to submit response briefs thus causing an undue delay to the implementation of the Judiciary as directed by the General Tribal Council; and
- WHEREAS,** further delay of elections for the new Judiciary until the Appellate Court of the Oneida Appeals Commission rules on the merits of the case would make it impossible to train new Judges and have them ready by the November 1, 2014 deadline; and
- WHEREAS,** it is the intent of the Oneida Business Committee to support the Judiciary and be proactive by approving an exception to the rule that Special Elections are held only in Oneida and that a Milwaukee polling site be included.

NOW THEREFORE BE IT RESOLVED, that the Oneida Business Committee finds that having the election take place in Milwaukee is not required by Resolution # BC-03-13-02-O nor the GTC action that took place on June 16, 2014;

NOW THEREFORE BE IT RESOLVED, the Oneida Business Committee finds that to maintain the transition timelines set forth in resolution # GTC-01-07-13-B, as amended by the two-thirds vote of the General Tribal Council on June 16, 2014, a Special Election is called for the Judiciary and a one-time exception to the conduct of the Special Election shall include polling sites in Oneida and Milwaukee.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum; 9 members were present at a meeting duly called, noticed and held on the 28th day of August, 2014; that the forgoing resolution was duly adopted at such meeting by a vote of 8 members for, 0 members against, and 0 members not voting; and that said resolution has not been rescinded or amended in any way.



Lisa Summers, Tribal Secretary
Oneida Business Committee

*According to the By-Laws, Article I, Section 1, the Chair votes "only in the case of a tie."