

# ***Oneida Tribal Judicial System***

OnΛyote ʔ aka Tsiʔ Shakotiyaʔ Tolé hte

February 27, 2015

Michael T. Debraska,  
Franklin L. Cornelius,  
John Orie,  
Bradley Graham,  
c/o Leah Sue Dodge  
P.O. Box 95  
Oneida, WI 54155

Oneida Business Committee,  
Oneida Election Board,  
Oneida Law Office  
Attorney Patricia Stevens Garvey  
P O Box 109  
Oneida, WI 54155

RE: Docket #14-TC-173, Michael T. Debraska, Franklin L. Cornelius, Leah Sue Dodge, John Orie and Bradley Graham vs Oneida Business Committee, Oneida Election Board and Oneida Law Office

Please find enclosed the Oneida Tribal Judicial System Decision – Declaratory Ruling filed on February 26, 2015, in the above captioned case. This correspondence is sent to the legal advocate/counsel of record, and Oneida Tribe Administration for enforcement, if necessary.

Should you have any questions regarding this correspondence, please do not hesitate to contact me.

Sincerely,



Kristina Danforth  
Clerk of Trial Court

Enc: Decision

c: Secretary, Oneida Business Committee  
File

# ***Oneida Tribal Judicial System***

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## **TRIAL COURT**

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**Michael T. Debraska,  
Leah Sue Dodge,  
Franklin Cornelius,  
John Orie, and  
Bradley Graham,  
Petitioners**

**Docket No: 14-TC-173**

**v.**

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

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## **DECISION DECLARATORY RULING**

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This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers, Jean M. Webster, Kathy Hughes, and Chris J. Cornelius, presiding.

The above-captioned matter came before the Oneida Tribal Judicial System for a hearing on the 16<sup>th</sup> day of January 2015.

Appearing in person: Petitioners: Leah Sue Dodge and Bradley Graham; Respondent: Attorney Patricia Garvey-Stevens, Oneida Law Office.

### **Background**

On August 22, 2014, Petitioners filed an appeal with the Appellate Court.

On December 18, 2014, the appellate court issued their decision and remanded the matter to the original hearing body of the trial court stating: *"The trial court shall conduct further*

*proceedings consistent with this opinion within thirty (30) days including issuing a decision on the Appellant's request in Docket No. 14-TC-173 of a Declaratory Ruling that all Business Committee and Judiciary elections (all significant elections) include the SEOTS polling site."*

The Trial Court scheduled a hearing for January 16, 2015 to address the Petitioner's request for a Declaratory Ruling that all Business Committee and Judiciary elections include the SEOTS polling site.

### **Finding of Facts**

On January 7, 2013, the General Tribal Council approved and adopted GTC Resolution 01-07-13-B Adoption of the Judiciary Law. The resolution states the Judges shall be elected at the 2014 general elections.

On October 27, 2013, the General Tribal Council reaffirmed its support for the SEOTS polling site in Milwaukee, WI.

On February 16, 2014, the General Tribal Council approved the date of July 12, 2014 for the triennial election. The triennial election included the election of the Judiciary (Judges) per GTC Resolution 01-07-13-B.

On June 16, 2014, a General Tribal Council Special Meeting was held. On the agenda under New Business 1.a. read: "Adopt resolution for Judiciary Law Amendments Re: Clarification of education requirements for Chief Judges" In the end the General Tribal Council voted to remove the Judiciary Election from the 2014 triennial election and schedule a Special Election for the Judiciary.

On August 20, 2014, Petitioners sought a Temporary Restraining Order/Preliminary Injunction regarding the August 23, 2014 Special Elections. Petitioners also sought a declaratory ruling that a SEOTS polling place be available for all elections.

On August 21, 2014, the Trial Court issued their decision denying the Petitioners request for a Temporary Restraining Order/Preliminary Injunction.

On August 22, 2014, the Petitioners filed an appeal regarding the Trial Court's decision. The Appellate Court accepted the Petitioners' filing and placed a stay on the August 23, 2014 Special Elections of the Judiciary.

On August 28, 2014, the Oneida Business Committee adopted 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. The Resolution further states this is a one-time exception to the conduct of the Special Election.

On December 18, 2014, the Appellate Court rendered their decision remanding the Petitioner's case back to the Trial Court's original hearing body to schedule a hearing to address the Petitioners' request for a Declaratory Ruling that all Oneida Business Committee and Judiciary elections include the SEOTS polling site.

On February 12, 2015, the Trial Court held a deliberation.

On February 16, 2015 the Trial Court issued Extension of Written Decision to both parties.

#### Petitioners' argument

Petitioners argued there is no provision within the Oneida Election Law about the omission of the SEOTS polling site for Special Elections. Petitioners further argued there are no provisions within Oneida Election Law for selective or permanent discontinuation of the SEOTS polling site regarding elections where the original plan was to include SEOTS polling site.

Petitioners argued the Oneida Tribal Constitution Article III identifies who the governing body is, General Tribal Council, whom are composed of the qualified voters. Further they argued the

Oneida Tribal Constitution Article IV provides equal opportunity for the membership to participate in the economic resources and activities of the tribe.

Petitioners argued on October 27, 2013, the GTC motion to support the SEOTS polling site for the 2014 General Elections and for all significant elections including the elections for the Judiciary.

Petitioners argued the Oneida Election Law, 2.12-12 states that all Special Elections shall follow the rules established for all other elections; therefore, Special Elections would include the SEOTS polling site.

Petitioners argued BC Resolution 3-13-02-O established a polling site in Milwaukee, WI that affords the enrolled Oneidas living within the surrounding Milwaukee, WI an opportunity to participate in the elections. By excluding the SEOTS polling site for the Special Election of the Judiciary is violating the Oneida Tribal Constitution Article III and IV.

#### Respondents' arguments

Respondents argue the Petitioners failed to cite what Rule/Ordinance was violated and failed to supply a complete copy of the Rule/Ordinance that was being violated.

Respondents argued the GTC Resolution 01-07-13-B failed to include the Judicial elections to be held during the triennial elections. The Resolution simply stated the Judicial election to be held at the 2014 general elections.

#### **Analysis and Conclusion of Law**

The Oneida Election Law 2.12-12 states: *"All Special Election shall follow rules established for all other elections. This includes positions for all Board, Committees and Commission."* This language states that Special Election shall follow "rules" established for all other elections. Is

the establishment of a polling site in Milwaukee a rule? In our view it is not. The decision of where to have polling sites is a different kind of election decision, different from the rules that govern the election such as the hours, restrictions on campaigning, hours, etc. In fact, the issue of where to establish polling places is important enough that it has been the subject of stand-alone GTC action. As such, it is more of a leap than we are willing to take that Sec. 2.12-12, a general statement about election rules, requires a SEOTS polling place for all elections.

The Oneida Election Law 2.3-11 states: *“General Election” shall mean the election held every three (3) years in July to elect the Chairperson, Vice-Chairperson, Secretary, Treasurer, and the five Council Members of the Business Committee and may include contest for elected boards, committees and commissions positions.*”

Business Committee Resolution 08-28-14-A states in part:

- *“....the election take place in Milwaukee is not required by Resolution # BC-03-02-O nor the GTC action that took place on June 16, 2014.”*
- The resolution further states in part: *“...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.”*

The Judiciary Law was approved and adopted by General Tribal Council on January 7, 2013.

GTC Resolution 01-07-13-B Adoption of the Judiciary Law states in part: *“.... the election of the Judiciary shall be held during the 2014 general elections.”* Further, the Judiciary Law says election of the Judges to be held at the general elections beginning with the 2014 general elections and the terms of the Judges for the first election are six (6) and three (3) years terms with all the Judges eventually being six (6) year terms. However, on June 16, 2014, the General Tribal Council voted to remove the Judiciary Election from the 2014 triennial election and schedule a Special Election for the Judiciary.

October 27, 2013 a General Tribal Council meeting was held. One of the agenda items was a resolution to dissolve the SEOTS polling site. The following was the motion: *"Motion by Madelyn Genskow to allow the voting process in Milwaukee to continue, seconded by Mike Debraska. Motion approved by a show of hands."* The motion did not reference all significant elections, nor did the motion reference the Judiciary elections.

The Trial Court is not convinced that Special Elections shall include a second polling site, namely SEOTS. The current Election Law is not explicit in defining polling sites for Special Elections. The Oneida Election Law is silent if a portion of the general election ballot had to be removed from the ballot and set for a Special Election. Until the Oneida General Tribal Council, Oneida Business Committee, and Oneida Election Board amends the Election Law, the SEOTS polling site is only used during the triennial elections as noted in Resolution # BC-03-02-O.

#### **Decision**

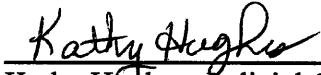
The Trial Court declares the Milwaukee, WI polling site is only required for Triennial elections, per Resolution BC-03-02-O.

IT IS SO ORDERED.

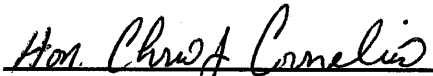
By the authority vested in the Oneida Tribal Judicial System pursuant to Resolution 8-19-91A of the General Tribal Council a hearing was held on January 16, 2015 and the Order regarding a Declaratory Ruling was issued and signed on the 26<sup>th</sup> day of February, 2015 in the matter of: Michael T. Debraska, Leah Sue Dodge, Franklin Cornelius, John Orie, and Bradley Graham v Oneida Business Committee, Oneida Election Board, and Oneida Law Office, Docket Number 14-TC-173.



Jean M. Webster, Lead Judicial Officer



Kathy Hughes, Judicial Officer



Chris Cornelius, Judicial Officer