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**ONEIDA JUDICIARY  
TRIAL COURT**

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**Bradley W. Graham,  
Petitioner**

v.

**Case No: 17-TC-045**

**Oneida Election Board,  
Respondent**

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**ORDER**

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This case has come before the Oneida Trial Court, Honorable Layatalati Hill presiding.

Appearing in person: Petitioner, Bradley W. Graham and Respondent, Oneida Election Board represented by Racquel L. Hill and Attorney Michelle L. Gordon.

Appearing as witness: Everett Blackthunder, William Graham, Racquel L. Hill.

**Background**

On July 17, 2017 the Petitioner filed a temporary restraining order (TRO) and preliminary injunction complaint challenging the Oneida Election held on July 8, 2017. On July 19, 2017 Attorney Gordon on behalf of the Oneida Election Board filed a notice of representation and consent to electronic service. On July 20, 2017, Attorney Gordon filed a motion to dismiss. A hearing was held on July 20, 2017 at 3:30 p.m. During the hearing, the Petitioner clarified he was challenging the 2017 Oneida General Election based on the Election Law that allows for such challenges and as a part of his redress he was seeking a TRO and preliminary injunction against the Oneida Election Board. During the hearing, the filings by Attorney Gordon were rejected by the Court for failure to properly serve on the Petitioner. Then Attorney Gordon verbally notified the Court of its representation, consent to electronic service and motion to dismiss. The motion to dismiss was denied based on the statement by the Petitioner that a witness's testimony would prove the election results would have been different. The request for a TRO and

preliminary injunction was denied as it is not a remedy available within the Election Law. A challenge to an election may be remedied by ordering a new election.

### **Statement of the Case**

The Petitioner sued the Respondent based on his allegations that the election did not follow proper procedure with regard to handling of spoiled and rejected ballots as well as issues surrounding the maintenance of the AccuVote Tabulator Machine (voting machine) used during the election.

### **Issues**

1. Were spoiled ballots properly handled?
2. Were rejected ballots properly handled?
3. Is the voting machine required to be serviced and maintained based on the election law?
- 4.

### **Findings of Fact**

The Court finds as follows:

1. The Court has subject matter, personal and territorial jurisdiction over this matter.
2. Notice was given to all those entitled to notice.
3. The Oneida General Election was held on Saturday, July 8, 2017.
4. The ballots were left in an unlocked room at the Oneida Health Center on Friday, July 7, 2017.
5. On Friday, July 7, 2017 after discovering the ballots were in an unlocked room the ballots were recounted and examined for tampering at an Election Board meeting at 5:00 p.m. Friday, July 7, 2017.
6. All ballots were accounted for and no evidence of tampering was found.
7. The spoiled ballots were handled with proper procedure.
8. The Election Board Chairperson, Racquel Hill, assisted William Graham with a new ballot after his first ballot was rejected by the voting machine. The new ballot was filled out by Racquel Hill using the spoiled ballot as a guide.
9. Numerous ballots were rejected by the voting machine.
10. Not all rejected ballots were handled with proper procedure.

11. Whether by the person filling out the ballot or by an Election Board member, all non-spoiled and non-rejected ballots were accepted by the machine.
12. All ballots were counted by hand.
13. Prior to opening of the polls on July 8, 2017, the voting machine was checked and verified of working order.
14. The voting machine is not required to be serviced and maintained based on the Election Law.

### Principles of Law

1. **102.11-11.** Any qualified voter may challenge the results of an election by filing a complaint with the Judiciary within ten (10) calendar days after the election. The Judiciary shall hear and decide a challenge to any election within two (2) business days after the challenge is filed. Any appeal to the appellate body of the Judiciary shall be filed within one (1) business day after the issuance of the lower body's decision and decided within two (2) business days after the appeal is filed.

(a) The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, *and that the outcome of the election would have been different but for the violation* (emphasis added).

2. **102.9 Section C: Spoiled Ballots**

**102.9-10.** If a voter spoils his/her ballot, he/she shall be given a new ballot.

**102.9-11.** The spoiled ballot shall be marked "VOID" and initialed by two (2) Election Officials and placed in an envelope marked as "Spoiled Ballots."

**102.9-12.** The Spoiled Ballot envelopes shall be retained and secured for no less than fifteen (15) calendar days following finalization of any challenge of the election, at the Records Management Department.

3. **Section D. Rejected Ballots**

**102.9-13.** Rejected Ballots are to be placed in a specially marked container and sealed.

(a) Computer rejected ballots shall be reviewed by the Election Officials to verify

the authenticity of the ballot. Ballots rejected because of mutilation shall be added to the final computer total, provided that, a new ballot was not received as set out in sections 102.9-10 through 102.9-12.

(b) Ballots rejected, either during the computer process or during a manual counting, shall be reviewed by the Election Officials to verify that they are authentic. If the Election Officials determine that the ballot is not an official ballot, or that it is an illegal ballot, the ballot shall be designated 'void,' and placed in a sealed container marked "Void Ballots."

#### 4. **102.11. Election Outcome and Ties**

##### Section A. Election Results Announcement

**102.11-1.** The tentative results of an election shall be announced and posted by the Election Board within twenty-four (24) hours after the closing of the polls. Notices of election results shall contain the following statement:

"The election results posted here are tentative results. Final election results are forward by the Oneida Election Board to the Oneida Business Committee via a Final Report after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer"

**102.11-2.** The Election Board shall post in the prominent locations and publish in the Nation's newspaper the tentative results of an election.

#### Analysis

##### 1. Spoiled Ballots

The Petitioner claims that spoiled ballots were not handled properly by being marked "VOID" and initialed by two (2) Election Officials and placed in an envelope marked as "Spoiled Ballots." (see 102.9-11). The Petitioner, however, presented no actual evidence to prove that spoiled ballots were not handled properly. In fact, the Election Board Chairperson, Racquel Hill, testified that spoiled ballots were properly handled in accordance with the Election Law. Therefore, the Petitioner failed to prove by clear and convincing evidence that a violation of the Election Law occurred regarding spoiled ballots or that if there was a violation it would have changed the outcome of

the election and as a result is not entitled to a new election.

## 2. Rejected Ballots

The Petitioner claims that rejected ballots were not handled properly in accordance with the Election Law. The Election Board Chairperson, Racquel Hill, testified that not all rejected ballots were not properly handled in accordance with the Election Law. This is enough to prove a violation of the Election Law, but the Petitioner failed to prove by clear and convincing evidence that the outcome of the election would have been different but for the violation. The Election Board Chairperson, Racquel Hill, assisted Mr. William Graham with a new ballot after his first ballot was rejected by the voting machine. His rejected ballot was spoiled in accordance with the Election Law and he was given a new ballot. The new ballot was filled out by Racquel Hill using the spoiled ballot as a guide. Mr. William Graham did not testify that the new ballot was different than his spoiled one. He testified that he did not enter the new ballot into the voting machine, but somebody did and he was standing near the voting machine when it was entered. There is no evidence the new ballot was altered compared to the spoiled ballot. Therefore, this is not evidence to support that the election would have been different. In fact, the Petitioner offered no other proof that the outcome would have been different. Therefore, although there was a violation of the Election Law regarding rejected ballots, proof was not provided as required in 102.11-11 (a) that the outcome of the election would have been different but for the violation and the Petitioner is not entitled to a new election.

## 3. Voting Machine

The Petitioner claims the voting machine was not properly maintained or serviced and that the wrong type of ballot marker was used causing the voting machine to reject ballots. The Election Board Chairperson, Racquel L. Hill, testified that she did not know when the last time it was serviced and that she did not know if the type of maker used contributed to the voting machine rejecting ballots. However, the Petitioner did not point to a specific area of the Election Law that would require the voting machine to be maintained, serviced, or what type of marker should be used. Therefore, the Petitioner is

not entitled to a new election based on the alleged lack of maintenance, service or that the wrong marker was used to mark ballots.

### **Conclusions of Law**

1. Regarding spoiled ballots, the Petitioner challenging the election results did not prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation.
2. Regarding rejected ballots the Petitioner challenging the election results did prove by clear and convincing evidence that the Election Law was violated, but failed to prove that the outcome of the election would have been different but for the violation.
3. The Election Law does not require the voting machine to be maintained or serviced or require a specific maker to mark ballots.

### **Order**

The Court enters the following order:

1. The Respondent's motion to dismiss is denied.
2. The Petitioner's request for a TRO and preliminary injunction is denied.
3. The Petitioner's request for a new election is denied.

IT IS SO ORDERED.

By the authority vested in the Oneida Trial Court pursuant to Resolution 01-07-13-B of the General Tribal Council an order signed on July 20, 2017 in the matter of Bradley W. Graham v. Oneida Election Board. Case #17-TC-045.

  
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Layatalati Hill, Trial Court Judge