

Oneida Tribal Judicial System

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Trial Court

Linda S. Dallas
Elaine Reed-Doxtator
Steve Mittag
Dorothy A. Skenandore
Dale Wheelock,
Petitioners
v.

Docket No. 08-TC-091
Date: July 14, 2008

Oneida Election Board,
Oneida Business Committee
Respondents

MOTION FOR INJUNCTION

This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers, Stanley R. Webster, Sandra Skenadore, Jean M. Webster presiding.

I Background

Petitioners filed a motion for injunctive relief claiming they witnessed violations of the Oneida Election Law. Petitioners claim ballots filled out by individuals were illegally or wrongfully processed because information was not filled in on the electronic ballot issued or the electronic ballot was not processed properly and according to procedures and past practice as indicated in the sworn statements or affidavits. The count of final voters participating in the tri-annual elections is improper because of ballots that should have been construed as spoiled that will change the final count. Petitioners believe the integrity of the Oneida election process was compromised. Petitioners seek the following relief:

1. Oneida Business Committee not be permitted to certify any portion of the current Oneida Tribe of Indians of Wisconsin tri-annual elections that transpired on July 5, 2008, because of violations and/or infractions against the Oneida Election Law; and
2. The Oneida Business Committee be compelled to call another "Special Election" on a date to be determined in accordance with the petition submitted to the Oneida

Business Committee Secretary's office on or about July 11, 2008 and in accordance with the Oneida Election Law Section D. Initiation of Special Elections 2.11-7, 2.11-8, and 2.11-9; and

3. The currently seated Oneida Election Board members be prevented from working in the "Special Election"; and
4. The Oneida General Tribal Council appoint a new Election Board and that these individuals be selected at the "Special Election" by majority vote of the Oneida General Tribal Council; and
5. Monetary relief for each plaintiff in the amount that was spent during their respective campaigns for materials and/or time; and
6. Any other remedy the Oneida Appeals Commission may deem necessary and appropriate for a timely resolution in this matter.

II Issue

Is the Petitioners' motion for injunctive relief sufficient for granting an injunction?

III Analysis

Petitioners' claim they witnessed violations of the Oneida Election Law and list the following sections; *Section 2.9-0. Counting of Ballots:*

2.9-2. The ballots shall be secured in a sealed container for transportation to the ballot counting location if necessary. The sealed ballots shall be transported by an Oneida Police Officer with at least three (3) of the Election Officials for counting/tallying of ballots.

And *Section C. Election Results and Ballots.*

2.9-6. The sealed election results shall be opened by the Election Board Chairperson, witnessed by the Elections Officials, who shall certify the results of the election. Provided that, any certified election results are subject to recount challenges and ineligible voter challenges.

2.9-7. The sealed ballots shall be locked or otherwise sealed to prevent tampering and delivered to the Oneida Records Management Department for responsibility of retainment. The

sealed ballots shall be opened only by a quorum of the Election Board. The ballots shall be destroyed after thirty (30) days or the final declaration of elections results occurs whichever is longer.

Petitioners attached copies of statements and/or affidavits to the motion. Petitioners claim ballots filled out by individuals were illegally or wrongfully processed because information was not filled in on the electronic ballot issued or the electronic ballot was not processed properly according to the procedure and past practice as indicated in the sworn statements or affidavits. Each statement and/or affidavit will be reviewed to determine how it supports petitioners' claim.

- 1) Petitioner Dallas states that when she entered the doors, she noticed an Oneida Police Officer by the wall to the south of the doors. When she entered the area she refers to as the cafeteria and voted she did not see a Police Officer. After filling out her ballot, Petitioner Dallas placed her ballot in the ballot box and it did not come back out. In the past when she cast her ballot and it was not completely filled out, the machine would reject the ballot. Petitioner Dallas' statement does not assert any violation of the Oneida Election Law.
- 2) Petitioner Debraska states that he went to the polls at the Southeastern Oneida Tribal Services Offices located in Milwaukee. He states that he did not vote in specific areas and indicated this on the ballot by writing on the ballot. The ballot was not rejected. Petitioner Debraska states that the electronic ballot machine's acceptance of his ballot is a violation of the Oneida Election Law. Petitioner Debraska does not show how the electronic ballot machine's acceptance of his ballot violates the Oneida Election Law.
- 3) Petitioner Doxtator states that on July 9th she went to the Business Committee floor and found Councilman Ed Delgado seeking information. He told her to ask Kitty Melchert about the amount of spoiled ballots in Oneida and Milwaukee. Petitioner Doxtator believes she mentioned something about a recount and Kitty stated that they had done a recount. Petitioner Doxtator states that afterwards she was thinking, wouldn't the recount be done after the five days, not prior to five days to ensure everyone had an opportunity to file for a recount if they wanted one. Petitioner

Doxtator states that this usurps the candidates' rights as identified in Section D.

Recount Procedures of the Oneida Election Law. Petitioner Doxtator fails to show how Ms. Melchert's statement, that a recount had been done, usurps the candidates' right under the Recount section of the Oneida Election Law.

- 4) Bradley Graham states that he participated in the tri-annual elections for the Oneida Tribe of Indians of Wisconsin at the Oneida Turtle School on July 5, 2008. He did not see a police officer when he registered. There was no officer in the voting room. After filling out the ballot he placed his ballot in the machine and the ballot was rejected. He was told to turn the ballot over and do it again. The machine accepted the ballot. Mr. Graham does not assert a violation of the Oneida Election Law.
- 5) Julie King states that when she placed her ballot in the ballot machine, she noticed a printed receipt (similar to that of a cash register receipt) hanging over the back of the ballot machine. It had a signature at the bottom. Ms. King does not assert a violation of the Oneida Election Law.
- 6) Petitioner Skenandore states that she voted in the Oneida Tribe of Indians of Wisconsin tri-annual election on July 5, 2008. There were candidates listed on the electronic ballot that were not candidates she would have selected, so she chose not to vote in some categories. Hence, the electronic ballot machine did not cause the ballot to be rejected because certain areas of the ballot were not completely filled out. Petitioner Skenandore claims this is a direct violation of the Oneida Election Law. She states that as a past member of the Oneida Election Board, any ballot that was not completed or written upon was rejected. If the ballot was not properly filled out, an Election Board official was supposed to acknowledge the individual completing the electronic ballot to ensure their ballot is incomplete or not filled out properly. The board member must either allow the individual to complete a new ballot or let the ballot enter into the box as completed by overriding the electronic ballot machine. This law was not enforced when she voted on her ballot on Saturday July 5, 2008. Petitioner Skenandore states that election board members were standing by the machine. They could visibly see whom she selected as well as see how other voters

tended to vote and states this is not acceptable. Petitioner Skenandore concludes these infractions make the entire election process and the election itself highly suspect and could be construed as fraud. Petitioner Skenandore asserts that the electronic ballot machine's acceptance of her ballot, which was not completely filled out, is a direct violation of the Oneida Election Law. Petitioner does not show how a ballot that is not completely filled out violates the Oneida Election Law.

Review of the statements and/or affidavits do not support Petitioners' assertion that the Oneida Election Law was violated, during the Oneida Tribe of Indians of Wisconsin tri-annual election, of Sections 2.9-0. *Counting of Ballots, Sub-Section 2.9-2.* or *Section C. Election Results and Ballots, sub-section 2.9-6.,* or *sub-section 2.9-7.,* at the poll site located at the Southeastern Oneida Tribal Services Office in Milwaukee or at the poll site located at the Oneida Elementary Turtle School in Oneida.

IV Decision

Petitioners' motion for injunctive relief fails to substantiate the charges asserted and will not be considered by this Court. Consequently, Petitioners' requested relief is dismissed. The motion for injunctive relief is hereby dismissed.