

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Edward J. Delgado
Petitioner,

v.

CASE NO: 22-TC-009

Oneida Business Committee
Respondents,

DATE: November 10, 2022

ORDER

This case has come before the Oneida Trial Court, the Honorable John E. Powless, III presiding.

Appearing in Person: Petitioner, Edward J. Delgado, and Respondents' Attorneys Kelly M. McAndrews and Krystal L. John.

STATEMENT OF THE CASE

On November 1, 2022, Petitioner filed a petition seeking a temporary restraining order to stop the November 15, 2022 virtual General Tribal Council (GTC) meeting, until such time the meeting can be determined unconstitutional. On November 4, 2022, Respondents filed a motion to dismiss. A hearing on the motion was held on November 7, 2022.

ANALYSIS

Subject Matter Jurisdiction:

Pursuant to 8 O.C. 801.5-2(b), the Trial Court shall have subject matter jurisdiction over cases and controversies arising under the Constitution. In this case, Petitioner is seeking a temporary restraining order related to GTC meetings and Article III – Section 6 of the Oneida Nation's Constitution. Therefore, the Court has subject matter jurisdiction.

Motion to Dismiss:

In accordance with 8 O.C. 803.9-2(a)(6), a party may assert a defense for failure to state a claim upon which relief can be granted. In this case, Petitioner alleges that a virtual GTC meeting will disenfranchise or discriminate Petitioner and the Nation's membership from participating. After reviewing the Oneida Code of Laws and the Oneida Nation's Constitution, the Court does not find that Petitioner stated a claim upon which relief could be granted. Specifically, the

information presented does not lead the Court to find that immediate and irreparable injury, loss, or damage would result to the movant. Additionally, nothing in the Constitution prohibits a virtual meeting. There are in-person appearance requirements; however, those apply to elections. That same in-person requirement could have been applied to GTC meetings and it was not. Therefore, Petitioner's claim fails.

As the Court found that there was a failure to state a claim upon which relief may be granted, the Court did not find it necessary to further analyze the argument regarding standing and whether Petitioners' "fairness" questions are nonjusticiable political questions.

FINDINGS OF FACT

The Court finds as follows:


1. The Court has subject matter, personal and territorial jurisdiction over this matter.
2. Petitioner filed a complaint on November 1, 2022.
3. Respondents filed a motion to dismiss on November 4, 2022.
4. A hearing on the motion to dismiss was held on November 7, 2022.
5. Peacemaking was offered to the parties.
 - a. A party declined to participate.

ORDER

1. Respondents' motion to dismiss is GRANTED with prejudice.

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 was signed on November 10, 2022.



John E. Powless III, Trial Court Judge