Stephen L. Nass
Wisconsin State Representative

Testimony on 2013 Senate Bill 317
Indian Nicknames, Logos and Mascots
October 9, 2013
Senate Committee on Government Operations, Public Works, and Telecommunications
Presented by Representative Steve Nass

Chairman Farrow and committee members thank you for the opportunity to testify on Senate Bill 317, relating to logos, mascots, nicknames and team names. Its companion in the Assembly is AB 297 (as amended by ASA 1).

I have been involved in the Indian logo, mascot and nickname debate since my first term in January 1991. Despite serving through three reapportionments I have been honored to represent several communities that have traditionally utilized Indian nicknames, mascots and logos.

From my very first public statement on this issue in the early 1990s, I have always believed this issue needs to be resolved at the community level and after thorough discussion involving all the interested parties. I support the decisions of communities that opt to maintain their traditional logos, mascots and nicknames and those school districts with community support that decide to adopt a new tradition.

Since 1985, every student has been protected by the Wisconsin Pupil Non-Discrimination Law (ss. 118.13). This law combined with federal protections has provided a legal route for students and their families to address any denial of access to, benefit of, or discrimination in educational services provided by our schools. On a few occasions in the past, there were complaints raised regarding Indian logos, mascots and nicknames under the Wisconsin Pupil Non-Discrimination Law. In those instances, the Department of Public Instruction determined the mere existence of Indian related logos, mascots, and nicknames didn't violate state law.

For nearly, two decades there had been sporadic attempts to change state law to achieve the goal of banning Indian logos, mascots and nicknames. All of those efforts failed until 2009. In 2009, Governor Doyle signed into law Act 250 creating the race-based nicknames, logos, mascots and team names statute (ss.118.134). This unfair law is nothing less than a creeping state ban on the use of certain logos, mascots and nicknames.

It's important to keep in mind that something thought to be offensive by an individual(s) isn't automatically discriminatory. These are two separate matters under the law and societal norms.

We are here today because of the principled stand taken by the citizens of the Mukwonago School District in battling the unfair implementation of current law and a biased decision reached by the Wisconsin Department of Public Instruction. There will be testimony from the Mukwonago participants in that case, so I will allow them to speak in greater detail on that matter.

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The original version of AB 297 proposes a complete repeal of the 2009 Act 250 provisions. After numerous discussions led by Speaker Robin Vos, Representative Dave Craig and myself, the committee now has before it Senate Bill 317.

Senate Bill 317 and AB 297 (as amended by ASA 1) do the following:

-It maintains a complaint process under state law, but requires a complainant to obtain the signatures of school district residents equal to at least 10% of the number of students enrolled in that district. Those signatures must be obtained in the 120 days prior to the date of the complaint filing.

-A complaint forwarded to the state triggering a hearing would be administered by the Division of Hearings and Appeals within DOA, instead of the Department of Public Instruction. It's important to note that the Department of Public Instruction will still participate in the review of the complaint and be able to share their findings with the hearing officer.

-In the hearing process, the burden of proof will return to the individual making the complaint. The complainant will have to demonstrate how the use of a logo, mascot or nickname promotes pupil discrimination, harassment or stereotyping. This is the standard protocol in complaint procedures.

-Encourages school districts to reach an agreement with one of Wisconsin's federally recognized Indian Tribes enumerating the appropriate uses of a logo, mascot or nickname. If a district has reached such an agreement, the State Superintendent is allowed to forego a hearing on a complaint.

-The State Superintendent would be prohibited from promulgating an administrative rule that creates a presumption of what constitutes a race-based logo, mascot or nickname that promotes pupil discrimination, harassment or stereotyping.

-Prohibits the enforcement of a decision or an order issued under the provisions of 2009 Act 250 after the effective date of this new legislation.

-Prohibits a school district from being a member of the WIAA, if that athletic association bars a member school from using an Indian logo, mascot or team name, unless such a member school has been ordered or blocked from that use by the state under the provisions of SB 317 or AB 297 (as amended by ASA 1).

I want to stress that SB 317 and AB 297 (as amended by ASA 1) create a fair and balanced process going forward that encourages this issue to be addressed at the community level through discussions with the tribes, but still provides a remedy procedure to address legitimate cases of pupil discrimination and harassment.

Mary Lazich
State Senator - Senate District 28

Senate Committee on Government Operations,
Public Works, and Telecommunications
October 9, 2013
Senate Bill 317 and Assembly Bill 297

Good morning committee members. Senate Bill 317 (SB 317) and Assembly Bill 297 (AB 297) improve the procedure for objecting to and ordering termination of the use of race-based mascots, nicknames, and logos. Current law allows one person to file a complaint about a mascot or logo triggering a hearing requiring a school board meet an unrealistic burden. SB 317 and AB 297 are a common sense approach to conflicts about mascots, logos, and nicknames.

First, the bills require complaint signatures from 10% of the school districts' membership. 10% is not an unreasonably high threshold and helps maintain a healthy balance between popular sentiment and protecting concerns about use of mascots, nicknames, and logos.

Second, the bill restores due process to the complaint process by requiring the complainant bear the burden of proving an offensive nature of the mascot, nickname, or logo. The burden of proof should be on the complainant.

Third, the bill requires the complaint be heard by the Division of Hearings and Appeals rather than the Department of Public Instruction. The Division of Hearings and Appeals routinely conducts hearings about administrative law issues. They are far more qualified to make findings of fact and determinations of law.

Fourth, the bill allows mascots, nicknames, and logos approved by a federally recognized tribe with ties to Wisconsin to be exempt from challenges. The purpose of complaints and hearings is to remove offensive mascots, nicknames, and logos from public schools. Allowing approval by a group supposedly offended is a logical process.

I ask the committee to approve SB 317 and AB 297. Thank you for your attention to this bill.

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October 9, 2013

Members of the Senate Committee on
Government Operations, Public Works
and Telecommunications
Wisconsin Capitol
Madison, WI 53703

RE: SB 317 – Wisconsin Indian Nicknames and Logos

Dear Committee Members:

My law firm and I represent the Mukwonago Area School District with regard to issues surrounding its use of an "Indians" nickname and logo. Mukwonago High School has used its Indians nickname and logo for over 100 years. I support this proposed bill since it requires a fair and impartial hearing before any district is compelled to spend taxpayer money to change the nickname or logo.

There is not (nor has there been) a problem with racial harassment or discrimination within Mukwonago High School. Instead, the actions taken by DPI against Mukwonago under current law have been based on the nickname alone – without any evidence of specific harassment or discrimination occurring inside of the halls of Mukwonago High School. The DPI took action against Mukwonago, despite even the Obama Administration's recognition that the use of Indians nicknames, standing alone, does not even allow for an inference (much less prove) that racial discrimination or harassment is occurring within a school (*See* enclosed OCR Correspondence Regarding Michigan Schools).

Importantly, the Waukesha County Circuit Court has already concluded that the existing law was unconstitutionally applied against the Mukwonago School District. Specifically, Judge Donald Hassin, Jr., who by all accounts is a fair and non-partisan judge, found that the DPI officials showed an impermissible risk of bias and that the DPI was not prepared, ***under any circumstances***, to rule in favor of the Mukwonago School District. Additionally, Green Lake County Circuit Court Judge Mark Slate issued an injunction related to some of the same issues that occurred during the Berlin School District's hearing. While the Court of Appeals eventually ruled that taxpayers did not have standing to file lawsuits on this issue, the substantive findings of these judges were never questioned by the appellate court.

Not only does the law, as currently enforced, require DPI officials who have already clearly articulated their opposition to Indians nicknames to be the decision-makers, but it also allow for DPI officials with little to no knowledge of adequate constitutional protections to preside over the hearings. In Mukwonago's hearing in front of DPI, it sought to question the one and only person who filed a complaint against it; however, the DPI did not permit the District to confront its accuser and question him regarding the allegations made in his complaint. This was incredibly important to the Mukwonago School District because it felt that the complainant was using the Act 250 process to essentially get back at the District for completely unrelated issues that developed while the complainant was a student at the high school, as opposed to any true concerns of stereotyping, harassment or discrimination.

The existing law also violates the equal protection clause of the 14th Amendment in that it allows one person in a school district to subject that school district to an adversarial hearing over a nickname and logo that is identically used in other school districts, which face no such scrutiny. The complaint plus petition mechanism contained in this proposal satisfies this issue since it requires the same 10% of petitioners from each school district.

This, however, does not mean that DPI has no role in this issue. The proposal before the Committee simply provides that DPI not conduct and decide contested hearings, but instead relies on the State's division of hearings and appeals – examiners trained in due process - to conduct the hearing and issue rulings. However, complaints are still filed with the DPI and that initial investigation and review is still conducted by DPI. This proposal simply inserts a fair and impartial decision maker into the adversarial process.

The issue of racial harassment and discrimination, involving Native Americans or any other races, should not be taken lightly and this bill does not do so. Given the limited scope of the current law, in that it does not address gender, sexual orientation, disabilities and other suspect classes - I would argue that current law should not even truly be considered a discrimination law at all. However, even if it is, to the extent that racial harassment or discrimination occurs in our schools, whether because of a school nickname or not, state and federal law adequately provide guidance and legal remedies.

Senate Bill 317 does not foreclose the possibility that a school may be compelled to eliminate a nickname or logo. This proposal simply renders an existing law constitutional and levels the playing field to ensure that a school district gets a fair hearing. If those opposed to these nicknames and logos truly believe that the nicknames are so clearly discriminatory, then why are they fearful of allowing due process?

I am of Native American descent and am a member of the National Native American Bar Association. While my own Native American heritage takes me back to my parents' childhood on the East Coast, I am cognizant of the rich Native American heritage here in Wisconsin. Throughout the nearly three years that I have been involved with this issue, I am grateful to have

had the opportunity to speak with many regular Native Americans. Almost without exception, these Native Americans have confided that they are indeed not offended by the use of Indians-related nicknames. It was no surprise to me that the University of Pennsylvania conducted a large national poll of Native Americans and ***only 9% of those Native Americans indicated that they believed that the "Redskins" nickname is offensive***. I can tell you that those opposed to this bill certainly do not represent a majority of this State and, in fact, they don't even represent a majority of Native Americans.

Many Native Americans, like me, believe that the use of these nicknames provides an important opportunity to teach Native American history and culture to young students in a way that students can relate to and feel a part of. We live in a society where very few of our nation's history books were written by Native Americans. A majority of the time, Native American history and heritage is taught from the European-immigrant's perspective. The respectful use of these nicknames in our schools keeps local Native American history alive and provides an important opportunity for tribal members to become involved in educating students who currently reside on the land that they first nourished. Mukwonago and the other impacted school districts around the State that I have worked with, look forward to a day that the state's tribes are willing to work with them to use this nickname and logo issue to better the educational opportunities of their students.

This proposal simply protects the constitutional rights of school districts and taxpayers and I urge prompt passage of this bill on that basis.

Very truly yours,

Samuel C. Hall Jr.

SAMUEL C. HALL, JR.

Enclosure

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

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CLEVELAND, OH 44114-2611

MAY 29 2013

Daniel M. Levy, Esq.
Director of Law and Policy
Michigan Department of Civil Rights
3054 W. Grand Boulevard, Suite 3-600
Detroit, Michigan 48202

Re: OCR Docket #15-13-1120 thru #15-13-1154

Dear Mr. Levy:

On February 8, 2013, the U.S. Department of Education (the Department), Office for Civil Rights (OCR), received the complaints you filed against 35 school districts (the Districts), alleging discrimination on the basis of race, color, or national origin (American Indian). Specifically, your complaints allege that the continued use of American Indian mascots, names, and other associated imagery by the Districts creates a hostile environment based on race, color, or national origin and denies American Indian students equal access to the Districts' programs and activities.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, at 34 C.F.R. Part 100, which prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance from the Department. As recipients of such assistance, the Districts are subject to Title VI and its implementing regulation.

During the evaluation of your complaints, OCR determined that we needed further information and clarification in order to determine whether we had a sufficient basis to initiate an investigation of your complaints. By letter dated March 4, 2013, OCR outlined the type of information we needed before we could determine whether to open your complaints for investigation. On March 18, 2013, OCR staff contacted you by telephone, during which call you explained the information set forth in your complaints and responded to OCR's March 4 letter. You also provided OCR a written response with numerous attached documents on April 1, 2013.

After carefully reviewing all of the information you provided in support of your complaints, OCR is dismissing your complaints for the reasons explained below.

Under OCR's case processing procedures, OCR will not initiate an investigation unless a complaint provides sufficient detail (i.e., who, what, where, when, how) for OCR to infer that discrimination under one of the laws we enforce may have occurred or is occurring.

As OCR informed you in its March 4 letter, in complaints involving mascots, names, and other associated imagery, OCR examines whether the complaint allegations are sufficient to constitute a racially hostile environment. A racially hostile environment is one in which racially harassing conduct takes places that is sufficiently severe, pervasive or persistent to limit a student's ability to participate in or benefit from the recipient's programs or services.

In response to OCR's request for clarification of your complaints, you assert that empirical evidence supports that race-based athletic nicknames and associated activities, including the use of American Indian mascots, are psychologically harmful to American Indian students attending schools with race-based nicknames and that their use denies such students equal access to educational opportunities. You further assert that, given this empirical evidence, OCR should not require identification of specific students or individuals who have been harmed to support a claim. You did not provide to OCR any specific examples of race-based incidents nor identify any students or individuals who have suffered specific harm because of the alleged discrimination at any of the named school districts.

Based on the foregoing, OCR concludes that the information you provided is not sufficient for OCR to infer that racial discrimination has occurred or is occurring. OCR is therefore dismissing your complaints as of the date of this letter.

There may be state and local laws relevant to your complaints. You may wish to consult with a private attorney, local legal aid organization, and/or state or local bar association, which may be able to assist you further.

We regret that we were unable to assist you in this matter. If you have questions or concerns about this letter, please contact OCR staff members Mr. Jason Katz at (216) 522-4977 or Ms. Denise C. Vaughn at (216) 522-7574.

Sincerely,

Catherine D. Criswell

Catherine D. Criswell
Director

MUKWONAGO AREA SCHOOL DISTRICT

BUILDING BETTER
SCHOOLS TOGETHER

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Director of Student Learning

October 8, 2013

Wisconsin Senate Committee
on Government Operations,
Public Works, and Telecommunications
Wisconsin Capitol
Madison, WI 53703

Dear Committee Members,

My name is Shawn McNulty. I am the superintendent of the Mukwonago Area School District. This is my twenty-first year in our district and I have worked as a social studies teacher, coach, associate principal, and principal at Mukwonago High School. My family lives in Mukwonago and our children attend Mukwonago public schools.

On behalf of the School Board, I want to thank you for your support of Senate Bill 317. I want to assure you that the School Board of the Mukwonago Area School District fully endorses the passage of this bill.

Mukwonago High School is an outstanding school. Recent DPI report cards place the school in the top 10% of the state. We have a positive school climate bolstered by a wonderful PBIS (Positive Behavior and Intervention Supports) program called the **Mukwonago Way** which stresses to our students the importance of respect, responsibility, being on time, and safety. We have a strong SAVE (Students Against Violence Everywhere) group and thriving Best Buddies program which promotes friendship and activities with our students in regular and special education.

Our school also takes a tremendous amount of pride in our Indian nickname and logo. The Indian nickname has been a piece of our school's history for over 85 years. We have worked hard to educate our students on the significance of Native American history and culture in the Mukwonago area and have strived to demonstrate respect toward nickname and logo. When complaints have been brought to our attention, we have addressed them in good faith. In fact, the DPI ruled in 1995 that the MHS logo was not discriminatory and didn't violate the provisions of Wis. Stats. § 118.13.

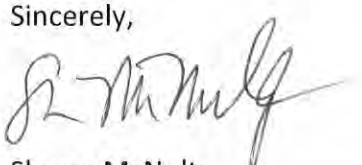
With this in mind, I hope you can understand the frustration that our community has experienced with Act 250. Despite our good intentions and efforts, we were not treated fairly due to the process established by this poorly written legislation. As the principal of Mukwonago High School at the time of the August, 2010 DPI hearing, I was extremely disappointed with the following:

1. **One student** accused us of discrimination due to the nickname and logo. Contrary to the entire American legal system, Act 250 established a process where schools are **presumed to be guilty and must go to Madison to demonstrate that they are innocent**. Yet when we attempted to introduce evidence to prove our innocence at the hearing, we were not allowed to do so by the DPI official, Paul Sherman. What happened to innocent until proven guilty? We were never even allowed to ask our accuser any questions.
2. Despite establishing a hearing procedure that we assumed to be fair, Paul Sherman later admitted in a deposition that there was nothing that Mukwonago High School could have done in August of 2010 to demonstrate our innocence. We had spent countless hours and over $20,000 on legal costs to find out later that we never had a chance.
3. Finally, we have a hard time explaining to our students and residents the fairness of a law that eliminates our use of the Indian nickname and logo but other high schools in our own county and throughout the state are allowed to continue their use.

Despite our frustrations, I want to make it clear that we respect Rain Koepke's (former MHS student that filed complaint) and other's opinions regarding the Indian logo and nickname. Our MHS students are familiar with Voltaire and his famous statement, "I do not agree with what you have to say, but I'll defend to the death your right to say it." We want a school environment that welcomes a variety of viewpoints and fosters discussion on issues. We certainly don't condone racial hostility and take discrimination complaints seriously. Although we may disagree with Rain's complaint, our concern and frustration is with the legislation.

We understand that this issue has become a political challenge for both parties. We are hoping that Senate Bill 317 will lay the groundwork to start discussions between our school district and the Native American tribes in Wisconsin. We would be extremely interested in meeting with the Potawatomi to discuss ways to improve the education of our students regarding the history, culture, and sovereignty of the Native Americans in Wisconsin and the United States. We strongly encourage you to pass Assembly Bill 297. Thank you.

Sincerely,



Shawn McNulty
Superintendent of Schools

flowing freely in cyberspace whenever communities try to mount a defense of their race-based nickname and logo. Partly because the mainstream media and school districts have done little to discuss the research, community members often start to repeat irrelevant arguments about place names, "offensiveness" and how they work so hard to make their logo use an "honor" to Native Americans.

At the same time, some logo supporters start to personally threaten and attack those who have asked for change. This should cause alarm in 'Indian' logo school districts since threats, graffiti, and taunts can constitute hate crimes. Why would any school even put itself in the position to be a passive accomplice to this kind of behavior?

2. There are huge disadvantages for all students in preparing for a successful career. No school that retains a race-based logo can accurately claim to be preparing their students for jobs in the 21st Century.

Because elected tribal leaders and educational leaders across the state have worked so many years to eliminate race-based nicknames and logos, the very idea of claiming to "honor" Wisconsin Indian people with 'Indian,' nicknames and logos demonstrates a huge lack of cultural sensitivity. Schools must teach respect for other cultural perspectives to be effective in the emerging global business environment.

Wisconsin tribes contribute both culturally and economically to the wealth of Wisconsin. Ignoring their wishes on this matter and promoting the harmful process of stereotyping is most certainly a red flag to any forward thinking business seeking to locate in Wisconsin.

IV. MOVING FORWARD

School districts that still retain 'Indian' nicknames and logos need to understand the importance of educating their communities about the empirical research and the many tribal resolutions. The issue will not go away by ignoring it, by changing a law, or by court challenges because the advocates for change are fighting to stop proven harms to the most precious commodity Wisconsin has --- our children. There is no "once and for all" action districts can take to preserve practices that harm students. More than 120 health, educational and tribal organizations are committed to seeing schools eliminate these nicknames and logos and they will not stop because of local attempts to preserve behavior proven injurious to children.

There are many ways to engage classrooms and local communities in the discussion. Start with some thought-provoking questions: 1. Why is no other race of people singled out this way? 2. No matter how hard you cheer FOR your nickname, what is going to happen on the other sidelines? 3. When you group your school nickname with others in the conference, what feelings are evoked when predatory animals, occupations and objects are put in competition with an entire race of people?

V. THERE IS LIFE AFTER LOGO CHANGE

More than 30 Wisconsin School Districts have changed to new nickname and logo identities. Recently Kewaunee changed to become the "Storm," a nickname that accurately reflects their history as a lakeshore community. Before them, Seymour became the "Thunder," Shawano the "Hawks," and many others chose nicknames and logos that harm no one and can be celebrated by everyone. Districts that change continue to experience the same pride in student achievement with their new nicknames and logos and join with all other schools in a universal spirit of celebration.

Please join the efforts to share this information with all those who care about education. You will find more ways to help at **www.indianmascots.com and aistm.org.**

UNDERSTANDING THE HARMS CREATED BY THE USE OF 'INDIAN' NICKNAMES, LOGOS AND MASCOTS

This publication is sponsored by the Wisconsin Indian Education Association Mascot and Logo Task Force

I. WHY WE ALL NEED TO UNDERSTAND THIS ISSUE

Public schools exist to give every student the opportunity to achieve his or her full potential. When schools maintain policies and take actions that harm students, we all have an obligation to help make changes. Even the possibility of future harms have brought forth rather rapid change in the past. For instance, with the issue of asbestos in school buildings, we acted decisively to make the school environment safer, even though the threat wasn't immediate or observable to most people. The key in situations like this was the use of scientific studies that demonstrated a level of threat to the well-being of students.

With the nickname and logo issue, very compelling scientific studies have been conducted as well. Surprisingly, even though each district was given information about the studies, they have been ignored. This has happened in spite of the fact that most educators have recognized over the years that school endorsed stereotyping of an entire race of people, regardless of the intent, is educationally and morally wrong.

Many schools have carried out local discussions and have seen the anti-educational nature of 'Indian' nicknames, logos and mascots. They, then, made the needed changes. Others, though, have convinced themselves that they are upholding a local tradition and have insisted that their perception of "respectful" logo use is okay. They insist that their local interpretation of what constitutes harm should "trump" the growing body of research evidence and the personal testimony from American Indians. The discussion over what is the best educational practice becomes a victim of local popularity. Explanations from American Indian nations, psychologists, sociologists and educational organizations from across the country about the harms of 'Indian' nicknames and logos go unrecognized in the restricted environments these schools construct.

II. EVIDENCE IS JUST TOO IMPORTANT TO IGNORE

One of the ongoing problems is the disconnection between local opinion saying, "We are honoring 'Indians,'" and the realities of Wisconsin Indian tribes and educational organizations unanimously calling for an end to 'Indian' nicknames and logos. This can largely be explained by the scientifically conducted research of Dr. Stephanie Fryberg (Tulalip, U. of Arizona).

One finding in the six studies she conducted (that were validated by a doctoral board of world-renowned psychologists at Stanford University and by the American Psychological Association and American Sociological Association) was that non-Indians get a boost to their self esteem from using 'Indian' nicknames, logos and mascots. So there is a logical element in the resistance to change because a significant number of people in these schools districts have a good time "playing Indian."

Huge problems emerge, though, because Dr. Fryberg's research also shows that, for American Indian students, school use of **'Indian' nicknames and logos:**

1) Lowers their self esteem
2) Negatively affects their beliefs that their community has the power and resources to resolve problems (community efficacy)
3) Reduces the number of achievement-related future goals they see for themselves (self-efficacy)

All schools that retain 'Indian' nicknames and logos produce these effects. By itself, the finding that non-Indians experience a boost to self-esteem while American Indian students experience reduced self-esteem is *prima facie* proof of discrimination. Furthermore, we must remember the importance of nurturing esteem and efficacy. As Dr. Ernesto Randolfi tells us, "Self esteem and self efficacy are central to the sustained success of any individual. They combine to formulate a powerful vaccine against distress, depression, helplessness, dependency, and irrational cognition. They are the key to optimism, positive behavior change and the achievement of goals."

Schools try to say these findings don't apply because they police student behavior related to their nickname and logo and they use only "honorable" images. They fail to understand the nature of behavioral research where data is meticulously checked, control groups are used, and the findings are peer reviewed. In this case, the Fryberg research showed it didn't matter if the images were perceived as honorable or not. When these districts find some residents "with Native American ancestry" who say they support their nickname and logo, it is very important to note that the Fryberg research shows more damage is done to American Indian students who endorse an 'Indian' nickname and logo than to those who oppose the use of these symbols.

In addition, two more studies have now been completed that show **the damage extends to ALL students** in yet another way. Research from Dr. Chu Kim Prieto and three other scholars, all from different universities, concluded that students exposed to 'Indian' nicknames and logos increased their stereotyping of other minority groups.

It is stunning to think that schools would ignore all this research, especially since there is no scientifically conducted research that shows any value to retaining race-based nicknames and logos.

III. OTHER DIMENSIONS OF THIS ISSUE THAT ADD TO THE URGENCY FOR CHANGE

1. Cyberbullying and harassment through Facebook, online blogs and other social media have both spread and intensified the harms. Any element of perceived control by school districts is now totally gone. Studies by Dr. Jesse Steinfeldt (Oneida) of Indiana University and others have now documented the high level of hurtful rhetoric that is

Senate Committee on Government Operations, Public Works, and Telecommunications Hearing of SB 317

October 9, 2013

Entry to the Record on Behalf of Great Lakes Inter-Tribal Council By Barbara E. Munson (Oneida)

GREAT LAKES INTER-TRIBAL COUNCIL, INC.
P.O. Box 9, Lac du Flambeau, Wisconsin 54538
Phone: 715-588-3324 Fax: 715-588-7900
Email: glitc@glitc.org

Resolution 2006-01.03
Address to Public School Districts Regarding Indian Nicknames, Logos and Mascots

Whereas, the Great Lakes Inter-Tribal Council, Inc. is a consortium of eleven federally recognized Indian tribes located in Wisconsin and Michigan; and

Whereas, some Wisconsin public schools still have school nickname/logo policies based on race which target Native Americans; and

Whereas, the American Psychological Association has confirmed the growing body of knowledge indicating that these race-based school policies can harm all students, but particularly Native American students; and

Whereas, a diverse and growing body of professional opinion has shown that these policies reduce the self-esteem of Native American students and reduce the number of future roles Native American students visualize for themselves in society; and

Whereas, a diverse and growing body of professional opinion has shown that these policies constitute discrimination based on race because they raise the self-esteem of non-Native Americans while lowering the self-esteem of Native Americans; and

Whereas, the Wisconsin Superintendent of Public Instruction has recently re-affirmed support for the elimination of Native American nicknames, logos, and mascots in public schools, and has written to public school districts across the State of Wisconsin, encouraging them to consider alternatives to Native American imagery; and

Whereas, the "boost' in self-esteem experienced by non-Native Americans helps explain why some non-Native Americans support these race-based policies and have difficulty understanding why Native Americans could have a different view based on a different experience; and

Whereas, a diverse and growing body of professional opinion has shown that this harm occurs below the conscious level so that Native Americans are often not aware of the psychological impact; and

Whereas, these race-based policies also harm non-Native students by "teaching" them that it is "acceptable" to stereotype Native Americans; and

Whereas, the harm extends beyond the boundaries of the school district and similarly affects Native and non-Native athletes and fans in other school districts which compete against these schools; and

Whereas, members of Native American tribes are living in these school districts and are affected by these race-based 'Indian' nickname policies;

Therefore, be it resolved that the Great Lakes Inter-Tribal Council, Inc. respectfully asks that all school boards in school districts with these polices act quickly to find an alternative to using the Native American race for a school nickname, logo and/or mascot.

Certification

I, the undersigned Executive Director of the Great Lakes Inter-Tribal Council, Inc., do hereby certify that the foregoing resolution was adopted by the Board of Directors the 30th day of January, 2006.

Michael W. Allen, Sr., Executive Director

Great Lakes Inter-Tribal Council, Inc.
Resolution No. 99-01.05

WHEREAS, The Great Lakes Inter-Tribal Council, Inc., is a consortium of twelve federally recognized Indian tribes native to the region of the North American continent and the area around Lake Superior, and

WHEREAS, the strength of GLITC lies in the resolve of the tribes to be independent, yet to come together in a unified forum to address those issues which require intertribal unity and attention, and

WHEREAS, "Indian" mascots and logos are offensive, disrespectful, and demeaning; "Indian" logos mock Indian people, cultures, and traditions; "Indian" logos contribute to a societal environment that is racist, oppressive, and harmful to harmonious relationships between people; and

WHEREAS, all children in schools depicting "Indian" stereotypes are encouraged to tolerate, perpetuate, and maintain racist practices against a group of people, and

WHEREAS, children in Wisconsin schools have been exposed to this form of racial, ethnic discrimination since the early 1920's, and continue to be exposed to such racism today, although other forms of stereotyping such as blackface minstrel shows have long since disappeared from the American landscape, and

WHEREAS, the presence of these symbols in state-supported schools, at the expense of Indian and non-Indian taxpaying constituents constitutes state-supported racism, and

WHEREAS, appropriate means of recognizing Native American people exist through teaching Native American history accurately, by treating Native American students with the same respect afforded other students, and by removing "Indian" mascots and logos, and

WHEREAS, Native American Indian Tribes and other organizations have voiced their condemnation of such images by adopting similar resolutions, providing education, and taking political action.

NOW THEREFORE BE IT RESOLVED, the Great Lakes Inter-Tribal Council, condemns the use of "Indian" logos as offensive and will work alone and in concert with other organizations to eliminate the use of depictions of and cultural references to American Indians as mascots, logos, and team nicknames in Wisconsin public schools.

BE IT FURTHER RESOLVED, that this form of racism which damages Native American children and cultures be removed from Wisconsin Public Schools before the new millennium.

CERTIFICATION

I, the undersigned, as Secretary/Treasurer of the Great Lakes Inter-Tribal Council, Inc. Board of Directors comprised of 11 members, of which 10, constituting a quorum, were present, do hereby certify the foregoing resolution was adopted at a meeting duly called, noticed, convened and held on the 21st day of January, 1999, by an affirmative vote of 10 member for, 0 members against, and 0 members abstaining.

Signed by Al Trepania, Secretary/Treasurer

Senate Committee on Government Operations, Public Works, and Telecommunications Hearing of SB 317

October 9, 2013

Entry to the Record on Behalf of Wisconsin Indian Education Association
By Barbara E. Munson (Oneida)

WISCONSIN COURT OF APPEALS
DISTRICT II

Appeal No. 2011AP002917

JAMES R. SCHOOLCRAFT and CRAIG VERTZ,

Plaintiffs-Respondents,

THE MUKWONAGO AREA SCHOOL DISTRICT,

Involuntary Plaintiff,

v.

STATE OF WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION, TONY EVERS and PAUL A. SHERMAN,

Defendants-Appellants.

Appeal from a Final Judgment of the Circuit Court of
Waukesha County, the Honorable Donald J. Hassin, Jr. Presiding,
Circuit Court Case No. 2010-CV-4804

BRIEF OF AMICI CURIAE GREAT LAKES INTER-TRIBAL COUNCIL AND WISCONSIN INDIAN EDUCATION ASSOCIATION

Brian L. Pierson, #1015527

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INTERESTS OF AMICI

Great Lakes Inter-tribal Council ("GLITC") is a nonprofit, inter-tribal organization composed of the eleven federally recognized Indian tribes in Wisconsin and one tribe in Michigan's Upper Peninsula. GLITC is governed by a Board of Directors composed of the highest elected officials of its twelve member tribes. The Wisconsin Indian Education Association ("WIEA") was formed in 1985 to promote educationally related opportunities for American Indian people in Wisconsin. Both Amici have actively supported the elimination of race-based nicknames, logos and mascots from Wisconsin public schools.

ARGUMENT

In 2010, the State Legislature approved Senate Bill 25 and the governor signed it into law as 2009 Act 250, codified at Wis. Stat. § 118.134 (hereinafter "SB 25," "Act 250" or "Section 118.134"). Respondents disagree with the statute's presumption that race-based mascots, logos and nicknames[1] promote discrimination, pupil harassment and stereotyping. They also disagree with hearing examiner Paul Sherman's determination that the Mukwonago School District ("District") failed to overcome the presumption. Finally, they disagree with the District School Board's decision to comply with the DPI order rather than devote District

[1] Amici will sometimes use "mascot" as a shorthand for mascots, logos and nicknames

resources to litigation. Instead of seeking judicial review under ch. 227, the procedure prescribed by the Legislature, Respondents sued the Department of Public Instruction ("DPI"), Superintendent Tony Evers and Paul A. Sherman ("Appellants") under the Civil Rights Act of 1871, 42 U.S.C. § 1983, alleging that Appellants violated their rights under the Fourteenth Amendment of the U.S. Constitution.

Like the Respondents, Judge Hassin disagrees with Section 118.134, which he calls "uncommonly silly."[2] According to Judge Hassin, the DPI violated the Respondents' Fourteenth Amendment right of Due Process because Sherman knew the DPI opposed Indian mascots, was paid by DPI and, under post-hearing cross-examination, declined to explain how the District might have prevailed. While purportedly striking down Section 118.134 only as applied to Mukwonago, Judge Hassin's radical reimagining of Section 1983 invites a collateral attack on *every* adverse DPI Section 118.134 decision.

Judge Hassin's decision is conceptually, analytically and legally wrong. The Plaintiffs were not even parties to the hearing at which their Due Process rights were supposedly violated. No one challenged Sherman's

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[2] Slip. Op. p. 21. Section 118.134 embodies legislative judgments that: (1) mascots presumptively promote discrimination, pupil harassment and stereotyping; (2) discrimination, pupil harassment and stereotyping are bad things; and (3) school districts should, therefore, eliminate them if they cannot overcome the presumption. Judge Hassin does not say which of these judgments is silly or wherein their silliness lies.

impartiality before or during the hearing. The conjuring of "evidence of impermissible bias" from DPI policy and Sherman's resolutely *impartial* post-hearing testimony has no apparent precedent in the annals of Due Process jurisprudence. Judge Hassin's decision not only subverts the Wisconsin Legislature's efforts to eliminate racial bias from education but also remakes the Civil Rights Act of 1871 into an instrument hostile to its essential anti-discrimination purpose.

The Court should reverse Judge Hassin's decision because (1) Section 118.134 is a legitimate exercise of legislative power under Wis. Const. art. X, § 3 entitled to respect, not ridicule, from the judiciary, (2) the DPI's policy encouraging school districts to eliminate race-based mascots cannot serve as "evidence of impermissible bias," as Judge Hassin supposed, because the same policy informs Section 118.134 and (3) Respondents failed to state, much less prove, a Due Process violation pursuant to 42 U.S.C. § 1983.

I. Section 118.134 Is a Legitimate Exercise of Legislative Power Entitled to Respect, Not Ridicule, from the Judiciary

A. A Brief Overview of the Mascot Issue

Most Americans of European descent ("Euro-Americans") are familiar with fictitious Hollywood depictions of 18th and 19th Century Indians, especially the High Plains tribes who hunted the buffalo and fought

the U.S. cavalry. They know little, however, of Indians living today and even less about their tribes. [3] The cultures, languages and political systems of Britain, France and Germany are far more familiar.

For all their ignorance of modern, living Indians, Euro-Americans have nonetheless found ancient, dead Indians useful for one very curious purpose – to serve as mascots for their games. At elementary schools, high schools and colleges across the Nation, "Indians," "Braves," "Chieftains" and "Warriors" abound, often accompanied by feathered headdresses, war clubs, tomahawks and other accessories associated with the celluloid Indians of popular imagination. No other ethnic group is routinely singled out for mascot treatment at the hands of the majority society.

While sharing in the dominant culture, Indians today cherish important values and practices of their respective tribes. By reducing Indians to a one-dimensional caricature, mascots prevent Euro-Americans from recognizing what they have in common with their indigenous fellow citizens. At the same time, mascots perpetuate lack of awareness of the diverse tribal identities that distinguish Indians from each other.

The apparent idea behind Indian mascots is that a school's "Indians," "Braves" or "Warriors" are fierce and courageous competitors.

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[3] The federal government currently recognizes 566 tribal entities. To be fair, tribal members make up less than one percent of the U.S. population, and many live on reservations in remote rural areas. Most Americans have likely never met an Indian.

Since ferocity and courage in competition are widely regarded as admirable, it is sometimes asserted that Indian mascots "honor" Indians. If honor depended solely on the intentions of the giver, then an Indian mascot might be an honor, albeit an exceedingly insensitive, uninformed and meaningless one. But an honor depends very much on the perception of the putative honoree. Living Indians overwhelmingly repudiate the "honor" of serving as mascots for Euro-Americans' entertainments. The National Congress of American Indians ("NCAI"), the oldest and most representative national Indian organization, expresses the sentiments of the overwhelming majority of Indians in its 1998 resolution: "The use of Native American mascots, logos and symbols depicting American Indian people are offensive to us, and such depictions are inaccurate, unauthentic representations of the rich diversity and complex history of the more than 560 Indian Tribes in the United States and perpetuate cultural and racial stereotypes."[4]

Some Non-Indians assert that efforts to eliminate Indian mascots are misguided exercises in political correctness. They criticize Indians for "making a fuss over nothing" and attempting to coerce the majority into conformity with exaggerated Indian sensibilities. This criticism reflects a

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4 http://www.ncai.org/attachments/PolicyPaper_xxgSJZZhcugIijBDbNsolTeMqtXOaUYhIPQfJhGIVbXTMNybuhZ_NCAI%20Position%20on%20Sports%20Mascots.pdf

fundamental misunderstanding. Indians do not seek to eradicate mascots to score points at the expense of other ethnic communities or to soothe hurt feelings. They oppose mascots because mascots cause real and lasting harm, especially to Indian children.

Documentation of the damage done by Indian mascots is extensive and growing.[5] In a 2001 statement, the U.S. Civil Rights Commission[6] found that Indian mascots "create a racially hostile educational environment that may be intimidating for Indian students" and called for an end to their use.[7] In 2002, the American Psychological Association ("APA"),[8] citing peer-reviewed academic studies, recommended the "immediate retirement" of Indian mascots, declaring that "the continued use of American Indian mascots, symbols, images, and personalities establishes an unwelcome and often times hostile learning environment for American Indian students that affirms negative images/stereotypes that are promoted in mainstream society."[9]

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[5] See academic studies collected at http://www.indianmascots.com/education/research/

[6] The Commission was created by the Civil Rights Act of 1957, Pub. L. 85-315 http://www.usccr.gov/about/index.php

[7] http://aistm.org/fr.usccr.htm

[8] According to its website, the APA is "the largest scientific and professional organization representing psychology in the United States." http://www.apa.org/about/index.aspx

[9] http://www.apa.org/about/policy/mascots.pdf. For a list of the many other Indian, professional and educational organizations opposing race-based mascots, see Appendix E

The Amici acknowledge the sincere emotions associated with school mascots. In many communities, the public high school virtually defines "community" in its most meaningful sense. The Amici do not belittle this sentiment but deny that it deserves priority over the State's obligation to provide Indian and non-Indian youth with an educational experience free of discrimination, stereotypes and harassment. Countless school districts have replaced old mascots with new ones. Community members rapidly form an attachment to the new mascot for a very obvious reason: Their real allegiance is not to a mascot randomly chosen by an unknown administrator in the distant past but to the children who represent the community in interscholastic competition.[10]

B. Section 118.134 Was Enacted Pursuant to the Legislature's Constitutional Duty to Provide a System of Public Education Free of Discrimination

When they adopted their Constitution in 1848, the People of Wisconsin made the establishment of a public education system the Legislature's responsibility and created the position of superintendent to

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to the March 8, 2012 report to the Oregon Board of Education, available at http://www.ode.state.or.us/superintendent/priorities/native-american-mascot-report.pdf.

[10] In the past month, the voters of North Dakota retired the "Fighting Sioux" by referendum vote and Oregon eliminated race-based mascots. As in Wisconsin, the affected schools will survive and prosper with new nicknames.

supervise public instruction. Wis. Const., art. X, §§ 1, 3.[11] The Legislature's first school anti-discrimination law, Wis. Stat. § 118.13, enacted in 1985,[12] (1) prohibits discrimination in public schools based on race and other grounds, (2) requires school districts to adopt policies and procedures to consider complaints, (3) provides for appeals to the DPI superintendent, (4) directs the superintendent to review school policies for compliance and (5) directs the school superintendent to "[p]eriodically review school district programs, activities and services to determine whether the school boards are complying with this section."[13] In 1989, in the wake of lawless, racially motivated interference with the exercise of treaty-reserved Chippewa fishing rights,[14] the Legislature enacted 1989 Act 31, Wis. Stat. § 21.01(1)(L)4, which requires school districts to include instruction in the "history, culture and tribal sovereignty" of Wisconsin tribes.

The enactment of Section 118.134 did not come easily. Substantially identical versions of Act 250 were introduced during the 1999, 2001, 2003,

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[11] Art. X, § 1 provided, and still provides: "The supervision of public instruction shall be vested in a state superintendent and such other officers as the legislature shall direct"; Article X, § 3 provided, and still provides: "The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of 4 and 20 years; and no sectarian instruction shall be allowed therein...."

[12] 1985 Act. 29

[13] Wis. Stat. § 118.13(3)(b)(1)

[14] See *Lac du Flambeau Band v. Stop Treaty Abuse Wisconsin, Inc.*, 41 F.3d 1190 (7th Cir. 1994)

2005, 2007 and 2009 legislative sessions.[15] At its January 13, 2010 hearing on Senate Bill 25,[16] the Senate Education Committee heard extensive evidence of the discriminatory effects of race-based mascots logos and their deleterious impact on children.[17] Section 118.134 reflects the Legislature's finding that race-based logos presumptively promote discrimination. The Supreme Court's observations in *Kimel v. Florida Board of Regents*[18] relating to the deference due Congress also applies to the Wisconsin Legislature in this case:

> It is for Congress in the first instance to determine whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment, and its conclusions are entitled to much deference. (Citations omitted.)

Section 118.134 is not an unconstitutional law, as the Respondents believe, or a silly law, as Judge Hassin believes. It is, rather, a principled, even courageous, effort by the Legislature to carry out its responsibility under Wis. Const. X, § 3, and U.S. Const. amend. XIV, to provide the State's schoolchildren with a public education free of discrimination.

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[15] 1999 SB 217/AB 433, 2001 SB 25/AB 92, 2003 AB 357, 2005 SB 172/AB 395, 2007 SB 132/AB 176, 2009 SB25/AB 35.

[16] Record of Committee Proceedings, http://docs.legis.wisconsin.gov/2009/proposals/SB25

[17] The entire six-hour hearing is available in video and audio at the Wisconsineye.com website, http://www.wiseye.org/Programming/VideoArchive/EventDetail.aspx?evhdid=2455

[18] 528 U.S. 62, 80-81 120 S.Ct. 631 (2000)

II. The DPI'S Mascot Policy Cannot Pose an Impermissible Risk of Bias Because It Is the Same Policy That Informs Section 118.134

According to Judge Hassin, Mr. Sherman showed an impermissible risk of bias because "Sherman knew that the Department publicly and actively supported the total eradication of Indian nicknames. Sherman's deposition indicates he was fully aware of the Department and Evers position on Indian nicknames." (Op. p. 16) Judge Hassin's statement is based on the false premise that the DPI's policy is inconsistent with Section 118.134.

The State Constitution vests the responsibility for the supervision of public instruction in the DPI.[19] The Legislature has expressly empowered the DPI to "spread as widely as possible a knowledge of the means and methods which may be employed to improve the schools" and "give the public information upon the ... subject of education."[20] By constitutional and statutory mandate, the DPI serves as the official repository of educational expertise in the State of Wisconsin.

Long before Act 250 became law, the DPI recognized the potential discriminatory effects of race-based mascots. Pursuant to Section 118.13, the DPI issued regulations that defined "discrimination" to mean "any action, policy or practice, including bias, stereotyping and pupil

[19] Art. X, § 1

[20] Wis. Stat. § 115.28(1), (4)

harassment, which is detrimental to a person or group of persons and differentiates or distinguishes among persons ...."[21] In 1992, Attorney General James Doyle concluded in a formal opinion that "Wisconsin Administrative Code chapter PI 9 is consistent with legislative intent, and American Indian logos, mascots and nicknames used by public schools may violate section 118.13, whether or not they are intended to be discriminatory."[22] State Superintendent Herbert Grover informed school districts of the Attorney General's opinion and urged them to review their mascots. In 1994, Superintendent John Benson called Indian mascots "entirely inappropriate" and urged districts to eliminate them.[23] In 2005, Superintendent Elizabeth Burmaster, citing the position taken by the American Psychological Association, stated that Indian logos "do not support sound educational practice" and encouraged school districts to find positive alternatives.[24] DPI actively supported predecessor bills as well as Act 250 itself, including, specifically, the hearing provisions challenged in this case.[25]

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[21] Wis. Admin. Code PI 9.02(5) (1986).

[22] 80 Op. Att'y Gen. 321-26 (1992)

[23] http://www.indianmascots.com/education/materials/

[24] *Id. See also*, Legislative Council Staff Memorandum, http://legis.wisconsin.gov/lc/committees/study/2006/STR/files/memo5_str.pdf

[25] See note 17, testimony of Paul Sherman, J.P. Leary.

The "clear and convincing" evidentiary standard of Section 118.134 reflects the Legislature's *strong presumption* that Indian mascots are discriminatory. Far from evidencing an "impermissible risk of bias" in a Section 118.134 hearing, the DPI policy is in perfect accord with the policy that informs the statute itself. There is no contradiction between DPI policy encouraging elimination of mascots and DPI's strict and fair application of the procedures prescribed by Section 118.134.

III. The Respondents Failed to State a Due Process Claim Pursuant to 42 U.S.C. § 1983

As discussed above, the hearing procedures prescribed by Section 118.134 are entirely consistent with DPI policy. Moreover, the same statute that vests the Superintendent of DPI with the "general supervision" of public schools also authorizes the superintendent to "[e]xamine and determine all appeals which by law are made to the state superintendent and prescribe rules of practice in respect thereto, not inconsistent with law."[26] That an administrative agency may appoint, *and pay*, a hearing examiner without calling into question the fairness of a contested hearing is a fundamental premise of state and federal administrative procedures acts.[27] State law and DPI rules include detailed

[26] Wis. Stats. § 115.28(1) and (5).

[27] 5 U.S.C. § 556(b); Wis. Stat. § 227.46(1);

provisions to assure an examiner's impartiality.[28] Ignoring these basic features of administrative law, Judge Hassin insinuates that Sherman was pressured to rule against the District for fear that he would otherwise lose his job. From this unexplained and unsupported insinuation, Judge Hassin somehow fashions an "impermissible risk of bias," ignoring completely the impartiality provisions of the administrative law and the utter lack of evidence that Evers had supervisory authority over Sherman, much less that Sherman felt threatened by Evers.

Equally erroneous was Judge Hassin's criticism of Sherman for declining, under interrogation by Respondents' counsel, to describe a theoretical winning strategy for the District. Advising the parties is not the hearing examiner's role. Contested cases are decided on their unique facts within their unique contexts. The quality and quantity of evidence that may be sufficient to overcome the statutory presumption of Section 118.134 will become known when (1) a DPI decision is subjected to Ch. 227 judicial review and (2) the court either affirms a DPI decision in favor of a district or reverses an adverse DPI decision, pursuant to the standards of Wis. Stat. § 227.57. In the meantime, courts should protect hearing examiners from phony civil rights lawsuits.

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[28] Wis. Admin. Code Pi 1.07(3); Wis. Stat. § 227.46(6); See also, 5 U.S.C. § 556(b)

Finally, Respondents assert that an impermissible risk of bias arose from the fact that, on several occasions unrelated to the challenged proceedings, Sherman "met and interacted with" Barbara Munson, WIEA Indian Mascot and Logo Task Force chair. Under this theory, a similar impermissible risk of bias would arise whenever a judge finds that an advocate in a particular case is an attorney with whom the judge has "met and interacted."

CONCLUSION

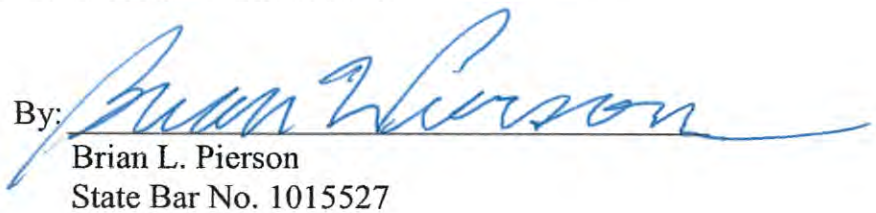
The Legislature acted pursuant to its constitutional responsibility for public education when it enacted Section 118.134. The DPI acted pursuant to its constitutional and statutory responsibility for public education when it adopted a policy encouraging school districts to eliminate race-based mascots and when it supported the enactment of Act 250. The hearing examiner acted pursuant to his constitutional and statutory responsibility when he determined, pursuant to the evidence presented at a contested case hearing, that the District had not overcome the statutory presumption of its logo's discriminatory effect.

The Civil Rights Act of 1871 was enacted to complement the Fourteenth Amendment by providing a federal remedy for state-sanctioned discrimination, not to empower those seeking to undermine the State's own efforts to eradicate discrimination. This Court should (1) reverse the trial

court, (2) affirm the primacy of the legislative branch in matters of public policy and the respect due its legislative acts and (3) clarify that Chapter 227 judicial review, not a third-party lawsuit, is the appropriate means of challenging DPI determinations under Section 118.134.

Dated this 14th day of June, 2012.

GODFREY & KAHN, S.C.

By: 

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FORM AND LENGTH CERTIFICATION

I hereby certify that this Response conforms to s. 809.19(8)(b) and s. 809.62(4) for a brief and appendix produced with a proportional serif font. The length of this response (excluding table of contents, table of authorities, signature and certifications) is 2996 words.

By: 
Brian L. Pierson

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this response to petition for review, excluding the appendix, if any, which complies with the requirements of s. 809.62(4). I further certify that:

This electronic response is identical in content and format to the printed form of the response filed as of this date.

A copy of this certificate has been served with the paper copies of this response filed with the court and served on all opposing parties.

By: _____
Brian L. Pierson

7971793_10

Comments pertaining to SB317/AB 297

Chairman, Committee on Government Operations, Public Works, and Telecommunications

As a former legislator and one of the authors of Act 250, I was dismayed to hear that there is another attempt to gut the legislation that those of us involved in civil rights fought almost 20 years to pass. At least in the last session the republican chair of the committee assigned this misbegotten bill buried it, and it was never brought to the floor.

I know one of the points repeatedly brought up by these authors and some of the bigots who write to the newspaper blogs is that only one person is required by Act 250 to protest the use of Native American mascots and logos. I have two comments of my own to make on this point. This is a civil rights issue, and being a civil rights issue, there is no lower limit on the number of people bringing this to the DPI, much like Rosa Parks on the bus. No one asked why she did not have 10% of the population of Montgomery Alabama with her to claim her seat on the bus.

Secondly, some of you may protest that I used the term bigots in the prior paragraph, so let me direct you attention to the following list of articles describing this legislation. When you open the articles be sure to read all of the comments sections, but I warn you not to do it on a full stomach because your cheering section is definitely a group of Racists, with a capital R. I'm sure your intention wasn't to bring out the worst in our society.

http://www.jsonline.com/news/opinion/indian-mascots-nicknames-harmful-to-children-b9995935z1-223537181.html

http://www.jsonline.com/news/statepolitics/wisconsin-assembly-bill-would-rewrite-rules-on-mascot-objections-b99107295z1-225351032.html

http://www.jsonline.com/sports/national/wis-bill-would-guard-racebased-school-nicknamesf918dc929149446491ab192e244c0f1c-225381632.html

http://host.madison.com/news/state-and-regional/wis-bill-would-guard-race-based-school-nicknames/article_9d8325a8-638c-59f7-a25b-dbad82c8652e.html

http://www.jsonline.com/news/opinion/92454409.html

One of the current districts contesting this law claims it will cost in excess of $100,000 to make this change to uniforms and letterhead. When the Kewaunee school district made the change it cost approximately $10,000, due to their efforts to remove the logos from their uniforms entirely before passage and not buying a warehouse full of letterhead. Their expense was almost entirely for lawyers fees. I'm guessing Mukwonago has a lot more cash reserves than other school districts. The governors tools must be working for them.

Finally, this is an educational issue and should be handled by the Department of Public Instruction, not the Department of Administration. I do not believe that the Dept. of Administration has any expertise in psychological studies of effects on students by the use of mascots and logos in our school. This legislation completely ignores definitive, repeatable findings which prove it has a deleterious effect on not only students of Native American decent, but also on students of all backgrounds.

I urge you all to not support this legislation.

Jim Soletski

496 Menlo Park Road

Green Bay, WI 54302

WISCONSIN CATHOLIC CONFERENCE

TESTIMONY RELATED TO SENATE BILL 317

Presented to the Committee on Government Operations, Public Works, and Telecommunications

By John Huebscher, Executive Director

October 9, 2013

On behalf of the Wisconsin Catholic Conference, I wish to share our views for information only regarding Senate Bill 317.

Fundamentally, this issue of mascots is about respecting those who are different from the majority. As a society, we need to ask: Do we make members of minority groups feel welcome or not? Are we open to hearing their voices? Do we make it easier or more difficult for them to ask the majority to respect them?

Our current law regarding school mascots and other symbols, while not perfect, represents a reasonable effort to make sure our schools are welcoming communities that don't stigmatize or marginalize members of minority populations. We urge you to assess SB 317 in light of its impact on that policy objective.

We are concerned that, in some key respects, this bill does not further that objective.

The provision in Section 2 of the bill is particularly worrisome. Section 2 requires that those who wish to challenge any mascot or symbol obtain the signatures of 10 percent of the school district on any challenge. This places a severe burden on any minority group. Given that challenges primarily involve Indian names, the fact that few, if any, schools have Native American populations to generate sufficient signatures is problematic.

We suggest that the Catholic experience in Wisconsin is relevant to this discussion. No such "numbers" requirement existed when Catholic parents in the Edgerton School District filed their challenge to the practice of reading the King James Bible in public schools in 1890. Their ability to challenge the practice did not depend on whether the majority shared their concerns.

Other examples are also relevant. Nine children were enough to challenge the segregation in the public schools of Little Rock. One man was sufficient to challenge the "whites only" tradition of the University of Mississippi. In the twenty-first century, Wisconsin should not impose a higher barrier when the issue is one of asking our public school system to address race-based symbols.

We also have reservations about Section 19, which prevents the Superintendent of Public Instruction from creating a presumption of what constitutes discrimination. Creating such a presumption can offer useful guidance to schools and the Division of Hearing and Appeals as to the kinds of mascots that have traditionally been viewed as prejudicial or intolerant.

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We do not equate race-based school symbols with the harsh aspects of past discrimination. But that does not mean the impact of such symbols is trivial. Injuries caused by police dogs, water cannons, and billy clubs are visible and explicit. Other wounds, though less apparent, are wounds nonetheless.

The pain caused by a symbol that demeans or ridicules is real. In some respects, it can be more lasting than physical hurt. Symbols that serve to undermine a person's sense of worth can inflict damage that endures for years. This is especially true if the symbol is reinforced by policies that suggest a person is wrong to feel the pain, or that actively discourage him or her from asking society to recognize that pain and address its causes.

In opposing race-based mascots, we make no judgment about the communities whose schools may have them. We presume no ill intent is involved. We also understand that when a practice goes unchallenged for a long time it can be difficult to grasp why it seems problematic now. But the longevity of a policy is not always a measure of its wisdom.

Here too, our experience with Bible reading in public schools may be relevant. It is probable that Catholics resented the practice long before they made an issue of it in the late 1880's. It is likely they needed time to be comfortable as Americans and distanced enough from the era of church burnings, before they were sufficiently confident to assert their right not to be proselytized in public schools. Our experience as a religious minority helps us grasp that Native Americans or other minorities may only now be comfortable challenging what has long troubled them.

We ask you to consider whether the public interest may best be served by retaining current law.

Thank you for your consideration in this matter.

Testimony of Harvey S. Gunderson, Ph.D.
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To: Senate Committee on Government Operations, Public Works, and Telecommunications

There's an elephant in the room that needs to be addressed directly. The elephant in the room is White Republican racism. Some have called the Nass bill "the most racist legislation of the current generation."

Think about that: "the most racist legislation of the current generation". Why would people say that? Because research shows that exposure to "Indian" sports identities increases receptivity to negative stereotypes about **other** minorities, so this Republican bill is not only anti-American Indian but it's also anti-African American, anti-Asian American, and anti-Hispanic.

This bill hurts innocent minority children! Children! **All** minority children! That's even more reason for this Republican bill to be called "the most racist legislation of the current generation."

Do you as Republican legislators want your legacy be that you voted for an anti-civil rights bill? Do you want your legacy be that you voted for legislation that targets innocent minority children, that's not only anti-American Indian but also anti-African American, anti-Asian American, and anti-Hispanic. Do the honorable thing and kill this bill in committee.

And what about Governor Walker? Do you want to put a bill onto his desk that would force him to decide whether to sign a bill that's been called "the most racist legislation of this generation"? If he ever runs for national office or is considered for a federal appointment, do you realize what signing such a bill will do to him? If Walker signs a bill that's anti-American Indian, anti-African American, anti-Asian American, anti-Hispanic and been called "the most racist legislation of this generation", that will brand Scott Walker nationally as being a racist politician which could be the kiss of death for a politician having national aspirations. That's likely why killing this anti-civil rights bill in committee made sense as was done two years ago. And it made sense again this year, to

avoid the racial controversy and nationwide publicity that inevitably accompanies this issue.

With the Washington Racial Slurs currently receiving so much media attention, action on this bill will receive national media coverage. Wisconsin's racist legislation will get nationwide media coverage at every step in the process, in committee actions, in floor votes in the Assembly and in the Senate, and if it were to reach the Governor's desk. Is that the media attention Republicans want for Wisconsin, to be seriously considering a bill that's anti-American Indian, anti-African American, anti-Asian American, anti-Hispanic?

There's a saying that "Be careful what you ask for because you might get it!" that applies to Mukwonago and to Republicans. Is racial conflict good publicity for Wisconsin? On the Aug. 25 episode of "UPFRONT with Mike Gousha," Assembly Speaker Robin Vos said that he wasn't going to bring up right–to-work because he learned from the first two years the Republicans were in control that controversy is not good for the economy of Wisconsin because businesses shy away from states with controversy.

So how is this racial conflict and controversy good for Wisconsin's economy? How is this bill good for Mukwonago which will be tied up in Federal courts for months and perhaps years while Mukwonago only has less than $7,000 in cost to achieve full compliance, based on Mukwonago's own official numbers?

This bill is bad for Mukwonago taxpayers, bad for the Republican party and it's reputation for having "a race problem", bad for Scott Walker if he aspires to the nation stage, bad for school board members and administrators who need the current law so they can keep their jobs, but most importantly this bill is bad for children, and therefore bad for education and the state of Wisconsin. You will be doing a favor everyone including Mukwonago and your own Republican Party if you let this horribly racist legislation die a peaceful death in committee.

To Wisconsin Senate Committee on Government Operations Public Works, and Telecommunications

Wisconsin Capitol, Madison WI 53703

October, 9 2013

My name is Sue Haase. I am a lifelong resident of Berlin and have served for 28 years as a member of the Berlin Area School Board. All three of my sons graduated from Berlin.

The "Indian" nickname has always been a symbol of pride for Berlin. We have a rich Indian history which we value and respect.

I testified on Berlin's behalf at the DPI hearing in Madison in 2012. I feel that the process was unfair. Because of one persons' objection to our use of the Indian nickname, the overwhelming majority of our community was going to be forced to change a rich tradition that we have been proud of for 70 years.

I personally feel this is not only about the Indian nickname, it is about allowing one person to dictate change in a district even though it is contrary to the desire of the majority.

Please allow us the discretion to make choices that we feel are in the best interest of our district by passing Senate Bill 317.

Respectfully submitted,

Sue Haase

Sue Haase

Berlin Area School Board

Testimony from Tom Sobieski, .: Against Senate Bill 317 related to: Race Based Mascots

N8161 State Road 49, Berlin, WI 54923 920-290-2012 sobieski@centurytel.net

My name is Tom Sobieski from Berlin, Wisconsin. I have lived my entire life in the Berlin School District, graduating in 1962. In 1994 I was advised by a friend who was on the Berlin School board that the Department of Public Instruction had requested that Berlin and all other schools with Indian mascots change them. I supported the Berlin School Board in denying the request. The only information I used in my choice was how I felt.....who can be hurt by the Indian mascot? As many schools in the area began to drop their Indian mascots there was much more information available about the effects of race-based mascots not only on Native Americans but all students. I read many articles and editorials pro and con about the mascot issue. The most common reasons given not to change were: #1. We are honoring the Indians with our mascot and #2. It would cost too much for a school district to change. With further study of available information, it became obvious to me that the Native Americans made it clear in Wisconsin and nationally that in no way did they feel honored by these mascots. Three years ago I wrote a letter to the school board advising that it may be a good time to take a look at the merits of our mascot in light of all the schools near us that had changed mascots with positive results. Among those schools were Marquette University, Ripon College, La Crosse University, Seymour and Oshosh West. I received a call from the superintendent a few weeks after writing the letter that the School Board was not going to do anything at this time. I then wrote a letter to the student council president after checking with the adviser on the proper procedure. I never got a reply. I then wrote a letter to the editor of the school newspaper. I never got a reply. Several months later during a discussion with a group of students, I discovered that the student council had voted to have me come in for a visit with them, but I was never notified by the adviser or principal. After discussing this with them I was scheduled to meet with the student council for 20 minutes. However 2 days before the meeting the principal left me a message on the phone, cancelling the meeting, because "some parents might not want me talking to their child." These experiences indicate to me that the Berlin School system made it clear that the issue of race-based mascots was not going to be addressed in spite of its state and national exposure.

During this period I had discussed the issue with many individuals. I discovered that there were many others in the community who shared my feelings that Berlin should change their Indian mascot. These people included church members, past and present teachers, past and present school administrators, business owners, friends and family members. After failing in my attempt to initiate any kind of an educational process on the mascot issue, with Act 250 in place I filed a complaint on Berlin's Indian mascot with the DPI in June, 2011. For anyone to say that I

acted alone in this is completely incorrect. I never would have proceeded without knowing that all previously mentioned were supporting me fully, and they have all continued that support and encouragement throughout the extended process. For this committee to even consider the idea of requiring 10% of the student enrollment number on a petition in order to file a complaint is absurd. I know that most of these people who support the change in Berlin would be reluctant to sign a petition exposing themselves to the public criticism that a complainant endures. I was in a unique position..... a 67 year old retired farmer, who as I told District Superintendent Bob Eidahl, "I was not prom king when I was in high school and I still do not want to be prom king." I think it is sad when at the first meeting I had with the superintendent and the principal I was told that if they would get involved in any way with changing the mascot they might as well update their resume. That is why when I indicated to the superintendent of my intention to file the complaint I told him it is better for the citizens to be upset with me than with the school superintendent. That is one of the reasons why Act 250 works. It takes the burden off the administrations back. However I disagree with their obvious intent not to allow an education process on the issue.

Act 250 in its present form is sufficient. The existence of Act 250 brings dialogue to communities with race-based mascots. The effect of the law should not be judged by what has occurred in Mukwonago. The school districts of Kewaunee, Osseo-Fairchild, Gayle-Ettrick, Menomonee and Winter have all changed their mascots as a result of Act 250 in its present form.

The members of this committee will have the opportunity to vote on the future of Senate Bill 317. I ask you not to vote as a Democrat or Republican, but as an American. Do not think only of your constituents, but give some thought to statements made here by Native Americans and consider the effect on all the future graduates of high schools in Wisconsin.

In a conversation with my daughter about this issue she said, " Anything done not to perpetuate insensitivity in today's world is a good thing."

Thank you for the opportunity to address this committee,

Thomas Sobieski

Save the Berlin Indian Committee Treasurer

Peter Nicholas • (920) 361-2710• W733 Oak Drive • Berlin, Wisconsin 54923

October 9, 2013

Wisconsin Senate Committee on Government Operations,

Public Works, and Telecommunications

Wisconsin Capitol

Madison, WI 53703

RE: Senate Bill 317

Dear Committee Members,

Commonly known to family, friends and Berlinites as 'The Indian,' I am damned proud of my Indian heritage. My great-great grandfather was Chief of the Penobscot Indian Tribe of Maine. My father was born in Dover-Foxcroft, Maine and raised a large family of seven. We were poor and moved quite frequently, never finding where we belonged until the early 1960s, when we discovered Berlin, Wisconsin. Finally, we had found a place where our Indian family was accepted.

After my tour of duty in the Cuban Crisis, I joined my family in Berlin. My sister Theresa, my brother Joe, my daughter Kimberly, and my son Todd all graduated from Berlin High School, and we are all proud of the Berlin Indian name.

Herbert Hoover, the thirty-first President of the United States, said "no greater nor more affectionate honor can be conferred on an American than to have a public school named after him." My family and I are very proud of the Berlin Indians.

For a school to pick the Indian name was done so because of the Indian's honesty, bravery, endurance and pride in himself as well as his race. The Government of the United States picked the emblem of the Indian on their coins with the word 'liberty' emblazed on them. The legendary Indian, Jim Thorpe was first president of the American Football Association, which later became known as the NFL. The first image to greet visitors to the Pro Football Hall of Fame is the statue of Jim Thorpe with a football under his arm. The words King Gustav V of Sweden spoke in 1912 are inscribed on Thorpe's rose granite sarcophagus: "You, sir, are the greatest athlete in the world."

The Western States 100, a race in which participants run for a hundred miles up mountain peaks, down in valleys and into the desert all in an endurance-testing span of just 24 hours, was highlighted on Wide World of Sports in 1986. The winner in the Women's Division was my sister Theresa, a graduate of Berlin High School.

I was proud to attend the investiture ceremony for the Honorable Daniel J. Bissett to Circuit Court Judge for Branch 6 of Winnebago County and the Oath of Office of Judicial Assistant Kim Stone. Kim Stone is my daughter and a graduate of Berlin High School. The Master of Ceremonies, retired Branch 6 Judge Robert A. Hawley, gave an eloquent speech. He had a stone with the word 'TRUTH' embrowned on it and kept this on his desk as a remembrance to seek the truth.

My father died in 1974. His three brothers came back from Maine to take his body back and have him buried on the Reservation. My family and I refused them for my Dad was happy where he lived. We sent them back with his guns and my dad is buried with my mother in St. Stanislaus Cemetery in Berlin, Wisconsin.

I thank you for your time. Please when giving a decision, be truthful to yourself and to the school and kids who picked the Indian name.

Sincerely,

Peter Nicholas

Save The Berlin Indian Committee

Barbara J. Resop, President • (920) 229-5856 • luvluv@charter.net • PO Box 414 • Berlin, Wisconsin 54923

October 9, 2013

Wisconsin Senate Committee on Government Operations,

Public Works, and Telecommunications

Wisconsin Capitol

Madison, WI 53703

RE: Senate Bill 317

Dear Committee Members:

The following essay is a plea from the Berlin community to help us to save a piece of our heritage and community identity: the Berlin Indian nickname and logo. As you may know, the Wisconsin Department of Public Instruction (DPI) used Act 250 to hold Berlin and the Berlin Indian guilty until proven innocent of stereotyping and discriminating Native Americans. At Berlin's hearing in Madison, the DPI violated due process by stacking the hearing with prejudiced DPI members appointed by State Superintendent Tony Evers who already had their minds made up as to the fate of the Berlin Indian before testimonies were given. As it is our constitutional right, since our tax dollars are being used to pay the people who aimed to change our logo, and considering it will cost Berlin taxpayers thousands of dollars to do so, Berlin was entitled to have proper due process and a more meaningful voice in this matter.

Theory Driving DPI's Actions – *Political Correctness*

The People of Berlin, Wisconsin are confused. The tyranny in our society of sterilized and often state-mandated, words and symbols continues to reach its zenith. Political censorship and the destruction of free speech, expression, and choice that is done in the name of cultural sensitivity has been effective on national and local levels for at least the past two decades. Political correctness censors controversy. It also shames and litigates people into one way of thinking, speaking, and expressing themselves or others. As is the case with the Berlin Indian, political correctness strips us of the ability to make basic choices concerning our publicly-funded schools and our children.

The dominant ideology of political correctness in the United States resembles an uncritical straightjacket of government's officially-condoned truth, which flip-flops when politically advantageous. The proponents of a politically correct society say that the average person is too uneducated to understand the meaning of the words or symbols when he or she uses, and may unintentionally or intentionally "harm" a person or group of people as a result. Rather than promoting robust discussion to educate and to discover history, meanings, and perspectives by

using diverse terminology and symbology, proponents of the politically-correct agenda think and act on the premise that freedom of speech must be restricted because people cannot be trusted to choose and exercise their own words and symbols.

Berlin Indian – *Harmless to All, Meaningful to Berlin*

Contrary to the claim that the Berlin Indian logo stereotypes or discriminates Native Americans, if you ask any citizen in the Berlin area, including those of Native American heritage, to describe the identity of the Berlin Indian, citizens will not discuss the figure in a demeaning or unfair way. The average Berlinite will say the logo and nickname represents a Mascoutin or a member from one of the many other tribes historically and culturally integral to the identity of the Berlin Community. As early as 1675, European explorers visited the Mascoutin Village, now known as Berlin. When settlers arrived they became friends with the many tribes in the area including the Mascoutin, Ho-Chunk and Menominee. Despite hostilities occurring among Native Americans and Europeans in many instances across the continent, it should also be celebrated that there were also instances of peaceful trading, social celebrations, and cohabitation between Native Americans and Europeans. The interaction between Native Americans and French fur traders is one excellent example where two cultures had positive, meaningful interaction particularly in Wisconsin.

Several examples of the codependency of Native American and European heritage follow. First, Chief Poegonah (Big Soldier) was a Menominee (Winnebago) chief. His son, Big Thunder, always wore a stovepipe hat and became affectionately known as Chief Highknocker by Berlinites. Berlin was known as a fur and leather city and manufactured a high-quality glove known as the "Highknocker." Second, Berlin schools' annual yearbook has been called "The Mascoutin" since the first 1918 edition. In 1925 Superintendent Carl Wolf decided to use the Indian nickname and logo when he organized the first B-Club for boy athletes. During the game in the gym it was announced, that since Berlin wants to remember and to honor the Mascoutin, the school district was adopting the name "Berlin Indians" to honor all tribes of the area. Attending Native Americans cheered this decision. Third, since 1930 the local golf course has been called the "Mascoutin Country Club." Fourth, since school buses started taking children to school, the bus company has been called the "Mascoutin Transportation Company." Fifth and most recently –within the last five years-the City of Berlin named its new recreation trail the "Mascoutin Trail." *Please note:* Berlin proclaiming itself as the fur and leather city capital of Wisconsin does not discriminate against other communities and people manufacturing fur and leather any more than Berlin choosing to be labeled as "Indian Country" is derogatory to Native Americans. It's absurd.

Berlin's Grievances – *Violation of Due Process, Destruction of Identity*

Regarding the legal process, the Berlin Indian should not be discriminated against and subsequently banned unless the community of Berlin at the very least is able to exercise due process in a fair and balanced manner. The Berlin Area School District was deemed guilty and had the burden of proving innocence at a biased hearing stacked with a predetermined agenda by Tony Evers and the DPI. That was unjust. If the Berlin Indian is to be annihilated without due process, Wisconsin would not be protecting the identity of Native Americans or fighting racism by destroying a harmful stereotype as proposed. Instead, the State of Wisconsin would be discriminating against the Berlin community and sponsoring the dictated elimination of a positive, community-supported, idealized cultural icon representing Native American and European heritage.

Native Americans or American Indians themselves have diverse views concerning their name, symbolic representation, and identity. The U.S. Census of 1990 (prior to the influence of political correctness) asked a question of preference to American Indians concerning racial or ethnic terminology and 47.76% preferred "American Indian" while 37.35% chose "Native American." Another 3.66 preferred other terms while 3.51% chose "Alaska Native." A total of 5.72% of Native

Americans surveyed had no preference. We are also aware of the terms "Aboriginal Indians," "First Nations," as well as other Indian references to the people of the western hemisphere. Some people prefer to be referred only by their tribal name. However, as the U.S. Census survey demonstrates, most Native Americans desire labeling themselves with the comprehensive – daresay stereotyped-term "American Indian."

Likewise, the term "Indian," as in "Berlin Indian," is simply a practical term used to conceptualize a group of people. This proud minority represented by the Berlin Indian symbol are the former and current Native Americans of the Berlin area as well as the present-day Berlin community – or tribe if you will. Stated again, one must first rip the Berlin Indian logo and nickname out of its socio-historical context in order to incorrectly twist its meaning and then negatively apply it to Native Americans for our caricature to be considered a racist or discriminatory statement to the Native America ethnicity.

In Conclusion – *A Plea for Justice*

Berlin schools enroll all races, ethnic groups, foreign exchange students and the citizens feel the attack on the Berlin Indian by one reasonless person in a biased theater is an unfair destruction of community identity and the traditional grassroots approach to public education. The Berlin Area School District already follows all the State of Wisconsin educational guidelines set forth by Act 31 regarding education concerning Native Americans and there are already laws and procedures to cover student situations.

There are many graduates of Native American heritage who want Berlin's Indian logo and nickname to represent them. There are also many Native Americans outside the Berlin school district who are afraid to speak up against their elders for fear of facing reprisal from some in control who will fight to maintain their monopoly on casinos. Certain powers controlling the multi-billion-dollar casino industry would rather destroy Berlin's small-community Indian logo than risk the fact it might draw questions as to why Native Americans still have this monopoly, despite the fact that their lifestyles are very similar to other Americans. The fact remains that there are entire tribes that have publicly stated they support Indian nickname and logo use.

We thank you for your time and respectfully request your endorsement of Senate Bill 317.

Sincerely,

Save the Berlin Indian Committee

Barbara Resop, President: 143 Water St Apt 108, Berlin WI 54923

Catherine Kuble, Secretary: 115 East Moore St, Berlin WI 54923

Peter Nicholas, Treasurer: W733 Oak DR, Berlin WI 54923

David Gneiser: N401 30th DR, Berlin WI 54923

Jack Butler: W2563 Puchyan RD, Berlin WI 54923

Testimony in Opposition to Wisconsin's proposed State Legislation: SB317
Senate Committee on Government Operations, Public Works, and Telecommunications Hearing
October 9, 2013
Submitted by: Ethan J. Keller

I didn't drive to Madison from Milwaukee because I am overly sensitive. I came not from some pompous place of political correctness, nor will I ever hop on some bandwagon just for the buzz and press. I came to get off my high horse of indifference on a fundamental matter of human decency. I came not because I think this is more important than picketing an abortion clinic or marching against a war. I came to speak on record to the citizens in a village I grew up in, to administrators in a district I went to school in, and to legislators in the state I've lived in and loved my whole life. I came to testify before this committee because my 4-year-old son wore blue at kindergarten the other day in honor of anti-bullying month. I came to speak because I can no longer be silent while so many people in Wisconsin clamor and mobilize to sign state sponsored bullying legislation into law.

I am a musician and have been blessed to travel and perform in 15 states this year, but I have an intense love for Wisconsin, my home. I was born and raised mostly in Waukesha County, mostly in Mukwonago, which seems to be embracing its infamy as the epicenter of the race-based mascot debate. I never bashed Mukwonago growing up there and I won't start now. However, these intense feelings of shame and embarrassment for Mukwonago are also what motivate me today. I am also fueled by fear that my hometown and old school are not wholesome places to learn good life lessons. I am also puzzled. How can a superintendent who was once a science teacher ignore science? How can a community be okay with subjecting their children to institutionalized racism? Why do so many cherish and tenaciously cling to symbols of ignorance, and when pleaded with (or forced) to let go, only grasp more desperately? (And perhaps most confounding to me personally), why are so few of my friends from high school ever persuaded to acknowledge there is an issue, much less listen to the opposition or accept simple some simple reasoning when told earnestly and flatly?

Some Mukwonago residents feel indignant about being called out for having an offensive logo, because they surely didn't mean to offend. However, they are not the ones being reduced to a logo, so their perspective is utterly irrelevant. Because the offenders are not the people being overgeneralized, trivialized, and transmogrified to a mascot as morale boost for a sports team, their opinions cannot matter on what constitutes honor for the human being being carelessly portrayed.

A logo is just a logo, yes. Symbols themselves are inert, and dead. No symbol itself can bring any real honor to anyone. But everyone knows it's what's BEHIND these symbols that counts.

I drew a swastika once in 3rd grade art class before I knew what it meant. My art teacher quickly eradicated it from my project and I was educated. I got new info. I learned. I grew. I remember thinking the confederate flag was cool looking the first time I saw it. Now, when I see one flying in a yard I get sick to my stomach because I know what it stood for. I got new info and grew up. Today, when I see a decapitated head on a helmet, jersey, or flag, I get sick to my stomach now because I have learned that this kind of emblem relates back to a historical symbol used at trading posts where merchants sold scalps of Native Americans. Before I knew that, I didn't get that feeling. But I got new info, and grew up. Please, look beyond the symbol. It's not about a sports mascot; it's about the perpetual disrespect behind it.

The best and simplest analogy I can think of for people to relate to is saluting a soldier incorrectly. If you saluted a soldier improperly, and you saw he/she was upset, would you bother to inquire? Would you apologize and say, "I wasn't aware of the deeper meaning. I'll try and be conscious of that from now on," or would you say, "I think I'm doing it fine; this MY way of honoring you," even after he/she systematically explained dishonor?

There are real, live people who know about honor. They are not dead and frozen in history; they are here today. But to say, "We are not interested in your history," would be sacrificing knowledge of your own history. The lack of perspective does not make the picture clearer. Do not settle for a limited, blurry image. Being complicit in such dullness is really just callousness.

Representative Craig has said: "*...a single individual should not be able to dictate their will over a whole community...* " This lie that somehow the minority is trampling the rights of the majority is a legal farce, and a smokescreen. The real issue is that even non-malicious ignorance hurts the entire community, but stubbornly refusing to look at science, nor listen to teachers' and elders' lessons of respect, equates to malicious ignorance.

The worst argument for racism in its death-throws is one of the economics; the monetary cost of change. The representative who brings up rebranding expenses risks looking like the biggest bigot in the room. Ending racism and ignorance is never about dollars and sense; it's about common sense.

During my years of Tae Kwon Do training, Grand Master Yun would sometimes say, "The higher you are in rank, the lower you must bow." Perhaps, it's like Jesus saying, "the first shall be last and the last shall be first." Perhaps if you desire to feel pride, practice humility and admit some shame. If you want to be a wise teacher, become a student and study new things always. If you want to be a real leader, follow those with indomitable spirit.

We surely could learn much about respect, honor, and history from our native neighbors. All we have to do acknowledge and honor their wishes, invite them to the conversation, ask them questions, and listen to the answers.

A perfect solution for Mukwonago School District: Listen to what science, law, and courtesy tell you how to behave, and be that shining example of a way we can grow and learn. Seize the opportunity to teach your students about building character and help them learn to stop clinging to a caricature.

And a final message for all sports teams clinging to offensive mascots: Simply obliterate the inert symbols, as an attempted act of honor. Torch them, immediately, in unity, without a single tear, and never look backwards. Be free of them. Burn the disgrace out of your collective memories quickly, and easily, and start fresh.

NIEA Resolution 09-05: Elimination of Race-Based Indian Logos, Mascots, and Names

WHEREAS, the National Indian Education Association (NIEA) was established in 1970 for the purpose of advocating, planning, and promoting the unique and special educational needs of American Indians, Alaska Natives, and Native Hawaiians; and

WHEREAS, NIEA as the largest national Indian organization of American Indians, Alaska Native, and Native Hawaiian educators, administrators, parents, and students in the United States, provides a forum to discuss and act upon issues affecting the education of Indian and Native people; and

WHEREAS, through its unique relationship with Indian nations and tribes, the federal government has established programs and resources to meet the educational needs of American Indians, Alaska Native, and Native Hawaiians, residing on and off their reserved or non-reserved homelands; and

WHEREAS, self-representational use of American Indian logos, mascots and names remains a cherished tradition in many American Indian communities; and

WHEREAS, NIEA has advocated for the elimination of Indian logos, mascots and names in educational settings by providing workshops, presentation of professional papers, adopting resolutions, providing legal briefs, and forums organizing networks of Indian educators as advocates; and

WHEREAS, years of advocacy on this issue has resulted in the elimination of Indian logo, mascot, and name symbolism from hundreds of educational facilities across the nation; and

WHEREAS, educational institutions choosing to use race-based Indian logos, mascots, and names harm children, exposing graduating class after graduating class to these stereotypes, and indoctrinating them with the idea that it is acceptable to stereotype an entire race of people; and

WHEREAS, institutions choosing to retain such imagery negatively impact students, faculty, and parents from other schools by exposing them to race-based imagery in interscholastic competitions; and

WHEREAS, the limited and sparse representations of American Indians in media and popular culture comprise a significant portion of what children learn about American Indian people and thereby impact the identity formation of Native students while reinforcing stereotypes about American Indian cultures, past and present; and

WHEREAS, there is a growing base of support calling for the elimination of Indian logos, mascots and names as evidenced by endorsements from professional organizations, for example the American Psychological Association; educational advocacy organizations, such as the National Education Association; human rights organizations, like the National Association for the Advancement of Colored People; and sports regulatory agencies, i.e. the National Collegiate Athletic Association; and

WHEREAS, research conducted by Stephanie A. Fryberg finds:

- Exposure to race-based Indian stereotypes harms American Indian Students,
- Attractive stereotypes cause as much harm as cartoon caricatures,
- American Indian students who approve the use of Indian logos, mascots and names experience more harm that do American Indian students who oppose the use of such imagery,
- Euro-Americans experience a boost to self-esteem when exposed to the same race-based Indian stereotypes; and

WHEREAS, Dr. Fryberg's research has been expanded upon and replicated in the social psychological arena and the research base has grown in other academic fields; and

WHEREAS, educational institutions should not be the vehicles of institutionalized racism.

NOW THEREFORE BE IT RESOLVED that the National Indian Education Association calls for the immediate elimination of race-based Indian logos, mascots, and names from educational institutions throughout the Nation;

BE IT FINALLY RESOLVED that the National Indian Education Association supports the creation and dissemination of resources and research, and commits its members to assist educational institutions in the elimination of these stereotypes.

Gay Straight Alliance
for Safe Schools
122 E. Olin Avenue, #290
Madison, WI 53713
voice: 608-661-4141
fax: 608-661-1360
www.gsafewi.org

October 9, 2013

Dear Members of the Assembly,

My name is Kristen Petroshius and I am the Co-Director of Gay Straight Alliance for Safe Schools, or GSAFE. GSAFE is a statewide organization whose mission is to create schools in Wisconsin where all LGBTQ youth can thrive.

I am here today to oppose AB297 and ask that you oppose it with me. Our current Act 250 is an important part of making our public schools a safe space for all students and teaching all of our students that stereotypes are not acceptable.

In our specific work, we know all too well the effects of stereotypes on young people. Because of bias against LGBT youth in Wisconsin, lesbian, gay, and bisexual youth have higher rates of suicide, depression, substance abuse, school truancy, lower academic achievement and high school graduation rates than their peers. These disparities stem from stereotypes, bias, and discrimination.

We are opposed to AB297 because this legislation fails to address the harm that we know race-based mascots cause to all children. Research has clearly shown that exposure specifically to a Native American sports mascot increases the tendency of people to endorse stereotypes about a different group. The research has found that cognitively speaking, lumping a community of people into a box based on a stereotype causes our mind to further categorize people. The stereotyping that is promoted through the use of race-based mascots can actually teach people – children and adults – to further stereotype other groups, including LGBT people. These stereotypes hurt all of us.

Another issue of critical importance to us in this issue is that of tribal sovereignty. The 11 federally recognized nations in Wisconsin have all resolved that the use of race-based mascots, logos, and nicknames by Wisconsin Public Schools needs to end immediately. In accordance with federal law, we also believe that the sovereignty of Wisconsin's First Nations needs to be respected and we urge the legislature to respect their sovereignty.

Lastly, I want to speak as a parent. I do not want my child to grow up in a school where he is taught to stereotype and discriminate again Native American people and others. It pains me to think that the legislature wants to force my child to learn stereotypes, bias, and racism. Civil rights issues should not be left to a vote of the population. If the majority of people in a school district vote that racism is ok, does that make it ok? No. As a legislature, you are tasked with acting in the best interests of all Wisconsinites. Please do not force my child to learn stereotypes, bias, and racism. The use of race-based mascots hurts my child and I am asking you to protect him.

Sincerely,

Kristen Petroshius, Co-Director
(608) 661-4141
Kristen@gsafewi.org