

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF GRAND FORKS

NORTHEAST CENTRAL JUDICIAL DISTRICT

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STATE OF NORTH DAKOTA, BY AND )  
 THROUGH THE NORTH DAKOTA STATE )  
 BOARD OF HIGHER EDUCATION, AND THE )  
 UNIVERSITY OF NORTH DAKOTA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 NATIONAL COLLEGIATE ATHLETIC )  
 ASSOCIATION )  
 )  
 Defendant. )

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Civil Action No. 18-06-C-01333

**NOTICE OF APPEARANCE**

The National Congress of American Indians (“NCAI”), a non-profit organization organized under the laws of the District of Columbia, represented by North Dakota counsel, Thomas M. Disselhorst, of Bismarck, North Dakota, also representing United Tribes of North Dakota, an unincorporated association of the federally recognized Indian tribes in North Dakota, and John Dossett, of counsel; along with the Sisseton Wahpeton Oyaté (a federally recognized Indian tribe), the Standing Rock Sioux Tribe, (a federally recognized Indian tribe), represented by Steve Emery, of counsel; and the Santee Sioux Tribe, (a federally recognized Indian tribe) note their appearance as *amici curiae* in the above entitled case.

Dated this 6<sup>th</sup> day of November, 2006.

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STATE OF NORTH DAKOTA

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Civil Action No. 18-06-C-01333

**BRIEF OF THE NATIONAL CONGRESS OF AMERICAN INDIANS, SISSETON WAHPETON OYATE, STANDING ROCK SIOUX TRIBE, SANTEE SIOUX TRIBE AND UNITED TRIBES OF NORTH DAKOTA AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT**

**INTEREST OF *AMICI CURIAE***

The National Congress of American Indians (“NCAI”) was established in 1944 and is the oldest and largest national organization of American Indians that includes as members a large majority of American Indian tribes and nations. In recent years, every Dakota, Lakota, and Nakota Tribe (people commonly referred to as “Sioux”),<sup>1</sup> has been an NCAI member.<sup>2</sup>

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<sup>1</sup> Some believe that the name “Sioux” derives from a French word that is pejorative in nature. *See* United Tribes of North Dakota Intertribal Summit Resolution No. 05-06, UND Ex. 3. These tribes generally prefer to use their native language names, though the Sisseton-Wahpeton Oyate and the Spirit Lake Tribe have elected to remove the “Sioux” reference all together.

The NCAI, on behalf of a broad cross-section of Native Americans, has a history of involvement in educational, cultural and policy issues affecting the Native American community. It is the major national tribal government organization, and is dedicated to protecting the rights and improving the welfare of Native Americans. As a result, the NCAI can speak authoritatively about the negative impact that racially-based Indian names and imagery have on Native Americans. Specifically in this case, the NCAI is especially qualified to address the public interest at stake in the application of the National Collegiate Athletic Association's 2005 policy regarding the use of hostile and abusive, ethnic or national origin mascots, names or imagery in postseason NCAA activities to the University of North Dakota's ("UND") "Fighting Sioux" nickname and logo.

The NCAI has campaigned to discontinue the use of Native American sports nicknames and imagery since 1968, and numerous colleges across this country once using such nicknames and imagery have since then successfully terminated their use.<sup>3</sup> In recent years, the NCAI, with the unanimous support of its member tribes, has adopted three resolutions calling for an end to the remaining use of disparaging Native American nicknames and imagery by a handful of prominent sports teams, specifically calling on UND to end this use, and specifically supporting the NCAA's 2005 policy.<sup>4</sup>

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<sup>2</sup> From 2001 to 2006, the following Great Plains Sioux Tribes have been members of NCAI: (1) Cheyenne River Sioux Tribe; (2) Crow Creek Sioux Tribe; (3) Flandreau Santee Sioux Tribe; (4) Lower Brule Sioux Tribe; (5), Oglala Sioux Tribe; (6) Rosebud Sioux Tribe; (7) Santee Sioux Tribe; (8) Sisseton-Wahpeton Oyate; (9) Spirit Lake Tribe; (10) Standing Rock Sioux Tribe; and (11) Yankton Sioux Tribe. Various Sioux Tribes within the Bureau of Indian Affairs Rocky Mountain and Great Lakes regions also held membership.

<sup>3</sup> See NCAI, *American Indians And Sports Team Mascots: A Timeline Of Change*, available at <http://www.ncai.org/nci/resource/documents/governance/mastimeline.htm>.

<sup>4</sup> NCAI resolutions are one of the policy mechanisms used to express the NCAI's position on policies that affect Indian Nations and Native American people. Resolutions are vetted and discussed by both a

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**Resolution to Prevent Negative Use of Native American Mascots, Logos and Symbols**

**in Sports.** In June 1998, the NCAI expressed its consensus view that the use of “Indian” mascots, logos and symbols in athletics is hurtful to American Indians and should stop. NCAI Resolution No. GRB-98-034 (June 14-17, 1998) (attached hereto as Exhibit A). Through this resolution, the NCAI’s member tribes explained the harm such images cause: “[T]he 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 5600 Indian Tribes in the United States and perpetuate cultural and racial stereotypes[.]” *Id.* at p. 1. The resolution further identifies the insidious manner in which the use of these names and images affect even how Native Americans see themselves: “sports teams with ‘Indian’ logos influence the images we see, the clothing we wear, and the standards we set, thereby encouraging us to tolerate racism.” *Id.* at p. 2. When it adopted this resolution, the NCAI joined the increasing chorus of voices from Native American Tribes condemning the use of such names and images. *Id.* at p. 1.

**Resolution Opposing UND’s “Fighting Sioux” Name and Logo.** In November 2001, the NCAI specifically resolved that the imagery employed by UND, whether intended or not, is “demeaning by its very nature” to the Native American people. NCAI Resolution #SPO-01-046 (Nov. 25-30, 2001) (attached hereto as Exhibit B). The resolution urged that the “Fighting Sioux” name and logo are “stereotypical symbols [that] create an environment in which degrading acts become more acceptable and promote practices that trivialize and demean Native

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committee and a subcommittee, and are adopted by a General Assembly following *Robert’s Rules of Order*. During the resolutions process, any member of NCAI has three opportunities to raise objections or make a motion to table or amend a resolution.

American culture, traditions and spirituality[.]” *Id.* at p. 1. The resolution further expressed concern for Native Americans attending UND, where pervasive use of such name and logo creates a hostile educational environment that “limits the ability of all Native students to learn and take part in campus and community activities.” *Id.* at p. 1.

This NCAI resolution spoke for all NCAI members across the country, and in particular reflects a concurrence of the North Dakota and South Dakota Sioux Indian Tribes. Seven of the eight major Lakota and Dakota tribes in North and South Dakota have adopted standing resolutions opposing the “Fighting Sioux” name and imagery, including: the Yankton Sioux Tribe, Oglala Sioux Tribe, Cheyenne River Sioux Tribe, Standing Rock Sioux Tribe, Rosebud Sioux Tribe, Sisseton-Wahpeton Oyate, and Crow Creek Sioux Tribe. Only the Spirit Lake Tribe passed a resolution that did not outright oppose use of the “Fighting Sioux” nickname. *See* Spirit Lake Tribe Council Resolution No. A05-01-041 (Dec. 13, 2000) (“[T]he Spirit Lake Tribe feels that as long as something positive comes from this controversy, they are not opposed to keeping the “Fighting Sioux” name and the present Logo at UND[.]”). UND Ex. R. These Sioux tribes have themselves described the “Fighting Sioux” name and logo as:

- “racially insensitive” (Standing Rock and Oglala Sioux Tribes);<sup>5</sup>
- “showing complete disrespect” (Rosebud Sioux Tribe);<sup>6</sup>
- “demeaning and derogatory” (Cheyenne River Sioux Tribe);<sup>7</sup>

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<sup>5</sup> Standing Rock Sioux Tribe Council Resolution No. 356-92 (Dec. 3, 1992) (asking for UND to discontinue the use of the “Fighting Sioux” nickname); Oglala Sioux Tribes Resolution of the Executive Committee No. 99-07XB (Feb. 3, 1992) (same) UND Ex. R. *See also* Standing Rock Sioux Tribe Council Resolution No. 438-05 (Sept. 15, 2005) (reaffirming Standing Rock Sioux Tribe’s official opposition to the “Fighting Sioux” name and logo).

<sup>6</sup> Letter from Rosebud Sioux Tribe President to UND President Dr. Kendall Baker dated Feb. 16, 1999, UND Ex. R.

<sup>7</sup> Cheyenne River Sioux Tribe Council Resolution No. 287-97-CR (Oct. 8, 1997) (requesting that UND discontinue the use of the “Fighting Sioux” name), UND Ex. R.

- “degrad[ing]” (Yankton Sioux Tribe);<sup>8</sup>
- “totally unacceptable and only leads to dehumanizing ” (Sisseton-Wahpeton Oyate);<sup>9</sup> and
- “most offensive” (Crow Creek Sioux Tribe).<sup>10</sup>

The NCAI resolution further cites for support the North Dakota Indian Education Association and the Minnesota Indian Education Association, which both passed resolutions opposing the continuation of the “Fighting Sioux” mascot. NCAI Resolution #SPO-01-046 at p. 2. As a result, the NCAI supported this resolution in response to “ending the use of outdated and politically incorrect American Indian stereotypes” at UND. *Id.* at p. 1.

**Resolution Supporting the 2005 NCAA Policy.** In November 2005, the NCAI adopted a resolution “strongly support[ing]” the NCAA policy on hostile or abusive mascots in postseason NCAA activities. NCAI Resolution No. TUL-05-087 (Nov. 4, 2005) (attached hereto as Exhibit C). This resolution is consistent with previous NCAI resolutions *and* mirrored the September 2005 resolution of the United Tribes of North Dakota (comprised of NCAI members and including the Spirit Lake Tribe), in support of the NCAA policy.<sup>11</sup> The November 2005 NCAI

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<sup>8</sup> Letter from Tribal Chairman to UND President Dr. Kendall Baker dated Feb. 19, 1999, UND Ex. R.

<sup>9</sup> Letter from Sisseton-Wahpeton Sioux Tribe Council to UND President Dr. Kendall Baker dated Feb. 19, 1999; *See also* Sisseton-Wahpeton Sioux Tribe Council Resolution No. SWST-99-015 (Feb. 12, 1999) (requesting that UND ban the use of the “Fighting Sioux” nickname), UND Ex. R.

<sup>10</sup> Letter from Crow Creek Sioux Tribe Chairman to UND President Dr. Kendall Baker dated Feb. 18, 1999, UND Ex. R.

<sup>11</sup> *See* United Tribes of North Dakota Intertribal Summit Resolution No. 05-06 (Sept. 8, 2005), UND Ex. R, No. 3. The United Tribes of North Dakota is an association of the five federally recognized tribes in North Dakota: (1) Spirit Lake Tribe; (2) Sisseton-Wahpeton Oyate; (3) Standing Rock Sioux Tribe; (4) Turtle Mountain Band of Chippewa, and (5) Three Affiliated Tribes. The resolution urges that UND change its “Sioux” nickname “as quickly as possible out of simple respect and sensitivity to the concerns and desires of the Native Americans everywhere . . . to be free from negative images and stereotypes” and points to the allowance of an atmosphere of hostility at UND that has resulted in “numerous ugly incidents, including beatings, vandalism, death threats and other incidents directed towards Native American students and others who have advocated for a change in nickname.” *Id.* at p. 2.

Resolution reiterated that the use of Native American sports mascots, logos, or symbols perpetuates stereotypes of American Indians that are very harmful. “The ‘warrior savage’ myth has plagued this country’s relationships with the Indian people, as it reinforces the racist view that Indians are uncivilized and uneducated and it has been used to justify policies of forced assimilation and destruction of the Indian culture.” *Id.* at 1. Further, the NCAI stated that such stereotypes foster ongoing discrimination against Native Americans, including employment in fields that require education and sophistication. *Id.*

The NCAI has hoped that Native American tribes could work collaboratively with universities and athletic programs in a manner that is respectful of tribal culture and the right of each tribe and tribal community to decide for itself how to best protect and celebrate its heritage. *Id.* at p. 2.

Amicus Sisseton Wahpeton Oyaté is a federally recognized Indian Tribe. Treaty with the Sioux – Sisseton and Wahpeton Bands, Feb. 19, 1867 (15 Stat. 505), ratified April 15, 1867, proclaimed May 2, 1867. II Kappler (Indian Affairs), Treaties, p. 955. Its principle headquarters are located within the Lake Traverse Reservation in Agency Village, South Dakota. Sisseton Wahpeton Oyate has lands and members in both North Dakota and South Dakota within the exterior reservation boundaries. Among other powers, the tribal council is empowered to “represent the tribe in all negotiations with Federal, State and local governments” and “to promote public health, education, charity, and such other services as may contribute to the social advancement of the members.” Constitution and By-Laws of the Sisseton Wahpeton, Article VII.

Amicus Standing Rock Sioux Tribe is a federally recognized Indian Tribe. Fort Laramie Treaty, April 29, 1868, ratified February 16, 1869, proclaimed, February 24,



1869 (15 Stat. 635), II Kappler (Indian Affairs), Treaties, p. 998. Its principle headquarters are located at Standing Rock Sioux Tribal headquarters within the exterior boundaries of the Standing Rock Indian Reservation in the City of Fort Yates, North Dakota. Standing Rock Sioux Tribe also has tribal members residing in South Dakota within the exterior reservation boundaries. Standing Rock Sioux Tribe is vested with the authority to “safeguard and promote the peace, safety, morals, physical and general welfare of members of the Tribe. Standing Rock Sioux Tribe Constitution, Art. IV, § 1(o).

Amicus Santee Sioux Tribe is a federally recognized Indian Tribe. Fort Laramie Treaty, April 29, 1868, ratified February 16, 1869, proclaimed, February 24, 1869 (15 Stat. 635), II Kappler (Indian Affairs), Treaties, p. 998. Its principle headquarters are located within the Santee reservation in Santee, Nebraska. The Santee Sioux Tribe is vested with the authority to “safeguard and promote the peace, safety, morals, and general welfare of the tribe.” Constitution of the Santee Sioux Tribe, Art. IV.

Amicus United Tribes of North Dakota is an unincorporated association of the five federally recognized Indian Tribes with a presence in North Dakota, established in 1969. It has a 10 member board of directors composed of the Chairperson and one representative from each of its five member Tribes, which include the Sisseton Wahpeton Oyaté, the Standing Rock Sioux Tribe, the Spirit Lake Tribe, the Three Affiliated Tribes and the Turtle Mountain Band of Chippewa. It meets periodically to discuss issues of mutual importance to the five tribes. For the past 10 years, United Tribes of North Dakota has met annually at an InterTribal Summit. At the 9<sup>th</sup> Annual North Dakota InterTribal Summit in 2005, United Tribes of North Dakota passed Resolution No. 05-06 supporting the NCAA policy regarding the UND logo and mascot.

## ARGUMENT

UND invokes this Court's equitable jurisdiction to enjoin the policy of the organized voice of college athletics in the United States, because UND insists on calling its sports teams the "Fighting Sioux," a name which NCAI and other representatives of Native Americans have consistently said is racially discriminatory. UND has made an extraordinary request.

UND seeks an injunction to *perpetuate* racial discrimination; a request that if granted would turn the public interest inquiry on its head. In deciding whether to issue preliminary injunctive relief, a court considers four factors: (1) substantial probability of succeeding on the merits; (2) irreparable injury; (3) harm to other interested parties; and (4) effect on the public interest. *See, e.g., Eberts v. Billings County Bd. of Comm'rs*, 2005 ND 85, 695 N.W.2d 691, 693 (N.D. 2005). Federal courts across this country have granted preliminary injunctions because it is in the public interest to *stop* racial and other discrimination. *See, e.g., Cousins v. Bray*, 297 F.Supp.2d 1027, 1042 (S.D. Ohio 2003) (granting preliminary injunction where "there is a strong public interest in preventing race discrimination in housing").<sup>12</sup> This Court should find that the public interest clearly lies with the consensus of the NCAI and the NCAA -- representing the vast majority of Indian Tribes and institutions of higher learning in this country -- that the

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<sup>12</sup> *See also Adams By and Through Adams v. Baker*, 919 F. Supp. 1496, 1505 (D. Kan. 1996) (granting preliminary injunction to student in gender discrimination case against school district where the "public interest would best be served by enjoining the defendants from infringing on the plaintiff's right to equal protection"); *Heather K. by Anita K. v. City of Mallard, Iowa*, 887 F. Supp. 1249, 1266 (N.D. Iowa 1995) (granting TRO to child in disability discrimination case against city where "the public interest is served by enforcement of anti-discrimination provisions of Title II of the Americans With Disabilities Act"); *Murillo v. Musegades*, 809 F.Supp. 487, 498 (W.D. Tex. 1992) (granting preliminary injunction to citizens of Hispanic descent in border patrol challenge where "the public interest is served when students and their teachers are free from undue interference from law enforcement officers. Education is of 'supreme importance' and the 'most vital civic institution for the preservation of a democratic system of government.'") (citation omitted).

“Fighting Sioux” name and symbol, cherished as they might be to many UND sports fans, are hurtful to others. Contrary to UND’s request, *upholding* the NCAA policy and discontinuing the use of the “Fighting Sioux” name and logo in postseason games will *serve* the public interest.

**I. THE “FIGHTING SIOUX” NAME AND LOGO PERPETUATE RACIAL STEREOTYPES AND ARE CONTRARY TO THE PUBLIC INTEREST.**

The public interest here involves names and symbols. Names and symbols often convey special meanings and elicit strong feelings. Names and symbols may represent positive attributes such as honor, justice, and respect, and might equally induce feelings of fear, shame, or ridicule. Indeed, the same names and symbols may well induce different feelings in different people at the same time. As our society has evolved, names and symbols that were once acceptable in popular discourse have become no longer acceptable. Specifically, certain words and images for particular minority groups, once widely used without a second thought, are now recognized as hurtful and by popular consensus are deemed unacceptable in civil discourse in recognition of painful chapters in our Nation’s history. It is now clear in our society that the use of American Indians as sport logos and mascots perpetuates a harmful stereotype and caricature of Indian people as uncivilized warlike savages. The stereotype has its origin in the need to justify the genocidal policies toward American Indians in the early part of American history,<sup>13</sup> and continues to harm the efforts of native people to advance their conditions through education and employment. UND asserts that it has used the “Fighting Sioux” nickname for seventy years.

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<sup>13</sup> The popular attitude of the time can be seen in editorial commentary written in 1891 by L. Frank Baum, the author of *The Wonderful Wizard of Oz*: “The Pioneer has before declared that our only safety depends upon the total extermination of the Indians. Having wronged them for centuries, we had better, in order to protect our civilization, follow it up by one more wrong and wipe these untamed and untamable creatures from the face of the earth. In this lies future safety for our settlers and the soldiers who are under incompetent commands. Otherwise, we may expect future years to be as full of trouble with the redskins as those have been in the past.” L. Frank Baum, *The Wounded Knee Editorial*, *Aberdeen Saturday Pioneer*, Jan. 3, 1891 (available at <http://www.northern.edu/hastingw/baumedts.htm>).

Indeed, the University adopted that nickname during the lifetimes of participants in the massacre in 1890 of Sioux at Wounded Knee, for which numerous United States soldiers then received the Medal of Honor. Juxtaposing UND's "Fighting Sioux" name and logo against the truth of the history, culture and aspirations of the Sioux people now living in North and South Dakota, it is clear that the name and logo now do far more harm than good.

**A. There Is A National Policy Prohibiting Racially Discriminatory Stereotypes, Especially In The Education Context.**

Numerous Supreme Court decisions and myriad Acts of Congress and Executive Orders attest to a firm national policy to prohibit racial discrimination, and in particular discrimination in the education context. As the Supreme Court has explained:

An unbroken line of cases following *Brown v. Board of Education*[, 347 U.S. 483 (1954),] establishes beyond doubt this Court's view that racial discrimination in education violates a most fundamental national public policy, as well as rights of individuals. ... Congress, in Titles IV and VI of the Civil Rights Act of 1964 ... clearly expressed its agreement that racial discrimination in education violates a fundamental public policy. Other sections of that Act, and numerous enactments since then, testify to the public policy against racial discrimination.

*Bob Jones University v. United States*, 461 U.S. 574, 593-94 (1983) (citations omitted) (emphasis added) (upholding I.R.S. ruling because government's interest in eradicating racial discrimination outweighed any burden that denial of tax exempt status imposed on private university practicing racial discrimination).

It is against this backdrop that the U.S. Commission on Civil Rights ("USCCR"), which has been at the forefront of efforts by the Federal Government and state governments to protect the civil rights of people within the United States,<sup>14</sup> called for an end to the use of Native

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<sup>14</sup> The USCCR is an independent, bipartisan agency established by Congress in 1957 to serve as a national clearinghouse for information with respect to discrimination or denial of equal protection of the

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American images and nicknames as sports symbols by non-Native schools because of its power to perpetuate discriminatory racial stereotypes. See U.S. Comm'n on Civil Rights, *Commission Statement on The Use of Native American Images And Nicknames As Sports Symbols* (Apr. 13, 2001) (“USCCR Statement”), UND Ex. R, No. 13. The USCCR’s findings are supported by the American Psychological Association (“APA”)<sup>15</sup> and the American Anthropological Association (“AAA”),<sup>16</sup> leading professional associations in disciplines dedicated to understanding the impact of such conduct on our people and our society. See, e.g., *APA Resolution* Press Release dated Oct. 18, 2005, UND Ex. R, No. 15 (“This resolution makes a clear statement that racism toward, and disrespect of, all people in our country and in the larger global context, will not be tolerated[.]”) (quoting psychologist and APA Committee on Ethnic and Minority Affairs member).

The NCAA, the association of athletic programs of our Nation’s institutions of higher learning, acted in accordance with the USCCR’s conclusions, and in the service of the public interest. In contrast, the ongoing use of the “Fighting Sioux” name and logo by UND violates

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laws. because of race, color, religion, sex, age, disability, or national origin. See USCCR Mission Statement at <http://www.usccr.gov/about/mission.htm>. The USCCR does not make laws, but submits reports, findings, and recommendations to the President and Congress and issues public service announcements to discourage discrimination or denial of equal protection of the laws. *Id.*

<sup>15</sup> See *APA Resolution Recommending The Immediate Retirement Of American Indian Mascots, Symbols, Images, and Personalities By Schools, Colleges, Universities, Athletic Teams, And Organizations* (“APA Resolution”) (Oct. 2005), UND Ex. R, No. 15 (determining that “the continued use of American Indian mascots, symbols, images, and personalities presents stereotypical images of American Indian communities, that may be a violation of the civil rights of the American Indian people”). The American Psychological Association ([www.apa.org](http://www.apa.org)) is a scientific and professional organization that represents psychology in the United States, and is the largest association of psychologists worldwide.

<sup>16</sup> See *American Anthropological Association Anti-Mascot Resolution* (“AAA Anti-Mascot Resolution”) (Nov. 20, 1999) (calling upon all educators and school administrators to stop promoting the stereotypical representation of American Indian people through the use of sport mascots) (available at <http://www.nativeculturelinks.com/mascots.html>). The American Anthropological Association (<http://www.aaanet.org/>) is the major professional organization for anthropologists and archaeologists working with Native Americans.

our national policy against discrimination by perpetuating discriminatory, racial stereotypes and by *teaching our children* that such stereotypes are acceptable. See, e.g., Society of Indian Psychologists, *Statement on American Indian Sports Mascots* (Jan. 27, 1999) (available at <http://www.geocities.com/indianpsych/mascots.html>) (“When stereotypical representations [of Indians] are taken as factual information, they contribute to the development of cultural biases and prejudices (clearly a contradiction to the educational mission of the University)”; *AAA Anti-Mascot Resolution* (“The persistence of such officially sanctioned, stereotypical presentations [as sports mascots] humiliates the American Indian people ... and seriously compromises efforts to promote diversity on school and college campuses.”) (emphasis added). Moreover, as the UND faculty have recognized, the controversy over the “Fighting Sioux” name and logo “has had a damaging effect on UND’s ... educational commitment to racial equity.” *Petition of UND Faculty* dated Feb. 6, 2006 at p. 1 (“*UND Faculty Petition*”), NCAA Ex. 5, No. 5 (signed by over 120 faculty members at UND).

**B. The “Fighting Sioux” Name And Logo Has Its Roots In Genocide And Continues To Oppress The Native American People.**

The hurt inflicted on Native Americans through use of the “Fighting Sioux” name and logo can only be perceived when one honestly acknowledges the history, current condition and aspirations of the Sioux Tribes. The UND “Fighting Sioux” name and logo elevate the myth of Native Americans as aggressor warriors -- a myth that has been used in our culture for generations to whitewash a history of oppression on a scale that today we find difficult to comprehend. Such oppression is on par with the oppressions we have condemned in recent years and even sent our military abroad to suppress. As one observer of the Native American nicknames issue has explained, the warrior myth of Native Americans is particularly offensive because it “involves the notion that the white settling of the American West was a time of glory

and adventure, rendering the holocaust and oppression of Native Americans invisible, justified or even glorious.” Laurel R. Davis, *Protest Against The Use of Native American Mascots: A Challenge to Traditional American Identity*, 17-1 J. of Sport & Social Issues 9, 12-13 (1993).

Our government has struggled to come to terms with this history, and it is not easy. Kevin Gover, former Assistant Secretary-Indian Affairs, captured the challenge in his remarks on the 175<sup>th</sup> Anniversary of the establishment of the Bureau of Indian Affairs (“BIA”) just six years ago. He acknowledged the difficulty in guiding in a new direction the institution that had been a primary force for destruction of Native American tribes and culture:

War necessarily begets tragedy; the war for the West was no exception. Yet in these more enlightened times, it must be acknowledged that the deliberate spread of disease, the decimation of bison herds, the use of alcohol to destroy mind and body, and the cowardly killing of women and children made for tragedy on a scale so ghastly that it cannot be dismissed as merely the inevitable consequence of the clash of competing ways of life. ... After the devastation of tribal economies ... this agency set out to destroy all things Indian. This agency forbade the speaking of Indian languages, prohibited the conduct of traditional religious activities, outlawed traditional government, and made Indian people ashamed of who they were.

Kevin Gover, Assistant Sec’y-Indian Affairs, Dep’t of the Interior, *Remarks At The Ceremony Acknowledging The 175<sup>th</sup> Anniversary Of The Establishment Of The Bureau Of Indian Affairs* (“Gover Remarks”), at p. 1 (Sept. 8, 2000) (attached hereto as Exhibit D).<sup>17</sup>

The legacy of this persecution remains with this country today. The indigenous people of this country now account for only 1.5 percent of the United States population<sup>18</sup> and battle with

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<sup>17</sup> Gover, a member of the Pawnee Tribe of Oklahoma, served from 1996-2001 as Assistant Secretary of the Interior for Indian Affairs. Currently, he is a Professor of Law and Affiliate Professor of American Indian Studies at Arizona State University, Sandra Day O’Connor College of Law. See ASU Law Faculty Profile available at [http://www.law.asu.edu/Apps/Faculty/Faculty.aspx?individual\\_id=4941](http://www.law.asu.edu/Apps/Faculty/Faculty.aspx?individual_id=4941).

staggering poverty,<sup>19</sup> chronic unemployment,<sup>20</sup> and grave health issues.<sup>21</sup> As former Assistant Secretary Gover explained:

The trauma of shame, fear and anger has passed from one generation to the next, and manifests itself in the rampant alcoholism, drug abuse, and domestic violence that plague Indian country. Many of our people live lives of unrelenting tragedy as Indian families suffer the ruin of lives by alcoholism, suicides made of shame and despair, and violent death at the hands of one another.

*Id.*

Racially insensitive and demeaning use of Native American imagery has been shown to contribute to the societal problems and health risks Native Americans face. *See, e.g.,* Kim Chandler Johnson and John Terrence Eck, *Eliminating Indian Stereotypes From American Society: Causes and Legal and Societal Solutions*, 20 *Am. Indian. L. Rev.* 65, 71-74 (1996) (detailing the effect of Indian stereotypes). These factors led former Assistant Secretary Gover to pledge that “[n]ever again will we allow unflattering and stereotypical images of Indian people

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<sup>18</sup> U.S. Census Bureau, *We The People: American Indians and Alaska Natives in the United States*, Census Special Reports at p. 2 (available at <http://factfinder.census.gov/home/aian/index.html>).

<sup>19</sup> Native American counties have some of the highest poverty rates in the nation. *See, e.g.,* Calvin L. Beale, U.S. Dep’t of Agric., *Anatomy of Nonmetro High-Poverty Areas: Common in Plight, Distinctive in Nature*, Amber Waves (Feb. 2004) (available at <http://www.ers.usda.gov/AmberWaves/February04/Features/Anatomy.htm>) (“Poverty has proven much more intractable in the Northern Plains Native American counties than in high-poverty areas elsewhere.”).

<sup>20</sup> *Id.* (“Native American high-poverty counties have both the lowest share of people employed and the lowest share of men employed in full-time, year-round work compared with other high-poverty counties. In 2000, Native American counties had only 35 employed persons for every 100 persons of all ages (excluding those in institutions), compared with 47 workers per 100 persons in nonmetro counties without high poverty. Only 36 percent of males age 16 and over had full-time, year-round work in high-poverty Native American counties, versus 47.5 percent in counties without high poverty.”).

<sup>21</sup> American Indians and Alaska Natives suffer health disparities for many diseases at a higher percentage than other U.S. populations. *See, e.g.,* Press Release, U.S. Dep’t of Health & Human Serv.s, *HHS Awards \$1.2 Million To Address Methamphetamine Abuse In Native American Communities* (dated Oct. 4, 2006) (available at <http://www.omhrc.gov/templates/content.aspx?ID=4627&lvl=2&lvIID=40>).



to deface the halls of government or lead the American people to shallow and ignorant beliefs about Indians.” *Gover Remarks* at p. 2.

It is with a recognition of this history, and the challenge that remains to improve upon it, that this Court must consider where the public interest lies in the ongoing use of denigrating names and images for Native Americans, including nicknames and logos for sports teams. Academics and researchers have related this history to Native American sports mascots: “Through [the] historical process of colonization, boarding schools, disempowerment, and relocation, the U.S. government has sought to devalue, dehumanize and assimilate American Indian nations, cultures, and contributions. The legacy of the detrimental effects of these historical processes continues today through the devaluing and dehumanization inherent in the public use of American Indian symbols, mascots, images and personalities.” Justification Statement, *APA Resolution* (citations omitted), UND Ex. R, No. 15.

Native Americans are proud of their strength and many have served and serve today with distinction in the U.S. Armed Forces. The narrow “warrior” stereotype, however, overshadows the diversity and richness of Native American culture. Use of nicknames such as the “Fighting Sioux” continues to suppress the contributions of Native Americans to this Nation’s culture, and Native Americans’ aspirations, through education at institutions such as UND to share this culture and participate even more fully in our collective society.<sup>22</sup>

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<sup>22</sup> The NCAA’s exclusion from its policy of certain nicknames such as the “Fighting Irish” of Notre Dame (Complaint at ¶27, Plaintiff’s Memorandum In Support of Motion for Preliminary Injunction p. p. 24, ¶ 94), was not arbitrary because such situations are simply not comparable to that of UND’s. NCAI does not believe that Americans of Irish decent view Notre Dame’s nickname, the “Fighting Irish,” as an instrument of oppression. Many Americans of Irish descent are and have been in positions of power at Notre Dame, something that cannot be said of the Lakota and Dakota at UND.

## **II. USE OF THE “FIGHTING SIOUX” NAME AND LOGO HARMS UND STUDENTS, PARTICULARLY NATIVE AMERICAN ONES, AND IS CONTRARY TO THE PUBLIC INTEREST.**

Granting a preliminary injunction here would serve only to perpetuate harm to the students who attend UND. The negative effects of racial stereotypes on Native American students are well-documented, and include lowered self-esteem and lowered academic achievement through the creation of a hostile learning environment. *Eliminating Indian Stereotypes From American Society* at 77-78; *APA Resolution* (concluding that Native American imagery in school athletics is a form of racial stereotyping that negatively impacts Native Americans’ self image, mental health and overall psychological health). *See also Brown*, 347 U.S. at 494-95, n. 11 (1954) (recognizing that racial discrimination in schools can cause lasting psychological damage). As the USCCR has explained:

The use of stereotypical images of Native Americans by educational institutions has the potential to create a racially hostile educational environment that may be intimidating to Indian students. American Indians have the lowest high school graduation rates in the nation and even lower college attendance and graduation rates. The perpetuation of harmful stereotypes may exacerbate these problems.

*USCCR Statement* at p.1. At UND, Native American students’ educational and social experiences have been harmed by the use of the “Fighting Sioux” name and logo, and some Native American students have been subjected to verbal and physical attacks related to this controversy. *See Amicus Brief of B.R.I.D.G.E.S. in Support of Def.* (describing in depth how the “Fighting Sioux” name and logo has fostered and encouraged a hostile and abusive environment towards Native American students at UND).

Moreover, as explained by the APA in announcement of its own resolution on the use of American Indian mascots as symbols in school and university athletic programs: “Schools and universities are places of learning. These mascots are teaching stereotypical, misleading and, too

often, insulting images of American Indians. And these negative lessons are not just affecting American Indian students; they are sending the wrong message to *all* students.” *APA Resolution* Press Release, Statement of the APA President, Ronald F. Levant EdD (Oct. 18, 2005) (emphasis added); UND Ex. R, No. 15. *See also APA Resolution* (“[T]he continued use of American Indian mascots, symbols, images, and personalities undermines the educational experiences of members of all communities -- especially those who have had little or no contact with Indigenous people.”). Numerous faculty members at UND agree, and have urged for the university to discontinue the use of “Fighting Sioux” name and logo because such imagery “has serious and negative impacts on learning” at UND. *See UND Faculty Petition* at p. 2.

In particular, the Faculty Executive Committee of the University of North Dakota School of Law has strongly encouraged UND to cease the use of its “Sioux” nickname and logo because it “creates a discriminatory environment which promotes racist stereotypes and dehumanizes and disrespects Native peoples and cultures.” UND School of Law, Faculty Executive Committee Resolution adopted Mar. 2002 (attached hereto as Exhibit E). Further, the UND Law School Faculty explained that the “Sioux” name and logo discourages intellectual inquiry by UND students beyond the misconceptions of Native Americans that currently are promoted and fosters divisiveness both inside and outside the classrooms. *Id.* This resolution carries great weight because it reflects the views of professionals who interact with students every day and who can see for themselves how racially insensitive stereotypes infect UND and its students. Moreover, the resolution originates with a group of professors who, as lawyers, are sensitive to the rule of law and the need to protect both the integrity of the school and the rights of all individuals who wish to participate in campus life. These professors rightly have concluded that the use by UND

of the “Fighting Sioux” nickname and logo harms Native Americans and is contrary to the public interest because it hurts the very students UND should protect. So should this Court.

### **III. UND HAS NO BASIS FOR ITS ARGUMENT THAT AN INJUNCTION SERVES THE PUBLIC INTEREST.**

It is incongruous and astonishing for UND to assert that it serves the public interest by providing “superior academic and athletic programs to students, and sporting events to the consuming public at large, where it “proudly displays the ‘Fighting Sioux’ name and logo.” UND Mem. in Support of Mot. For Prel. Injunction at p. 81. As detailed in the previous sections and as the Sioux tribes themselves have clearly stated, the UND name and logo are racially offensive to the very group whose name is being used, and its use is contrary to basic principles of civility. The public interest is not served just because the UND administration thinks it uses Native American imagery with “consummate respect.” *Id.* at p. 82. Numerous institutions have retired American Indian imagery where “the clear intentions to honor Native people were inconsistent with the expressed concerns of American Indians[.]” NCAA Minority and Interests Committee Report on The Use of American Indian Mascots in Intercollegiate Sports in Oct. 2002, UND Ex. E.<sup>23</sup> These institutions continue to have vibrant and successful athletic programs with active participation of alumni, students and the wider community without a legacy of discrimination every time one of their athletic teams takes to the ice, court or field. The success of the UND sports teams in the NCAA tournament this season “by any other name would smell

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<sup>23</sup> For instance, Quinnipiac University in Connecticut recently retired its Native American sports team name, recognizing that: “Although fond of the tradition we’ve had for 50 years, the university community clearly recognized the difficulties of using a name that has the potential to misrepresent and denigrate an entire group of people. And, despite our clear intention to honor and remember the Native Americans once known as the Quinnipiaks, to do so only through athletics was found to be no longer appropriate.” Press Release, *Quinnipiac University Board of Trustees Votes To Discontinue Use of ‘The Braves’ Nickname* (Dec. 3, 2001) (available at <http://quinnipiacbobcats.cstv.com/genrel/120301aaa.html>).

as sweet.”<sup>24</sup> In the end, it is the people -- the athletes, the coaches, the fans and all of their talent and dedication -- that have created a great sports tradition at UND. Because of these people, UND’s sports tradition will continue just as strongly, or even more so, without the racially offensive nickname of the “Fighting Sioux.”

### CONCLUSION

“[T]he use of the imagery and traditions, no matter how popular, should end when they are offensive.” *USCCR Statement* at p. 2. This is a difficult and sensitive issue and the NCAI acknowledges the significance of athletics for the public, and the attachment (both emotionally and financially) of universities to their names and logos. Sports play an important role in our society as a peaceful outlet for expression of a strong community spirit. The NCAA’s policy is dedicated to channeling the competitive spirit of collegiate athletics positively, without hurting individuals and groups within our communities. The NCAI is sure this can be accomplished successfully, as it has at many other schools, so that North Dakotans and their Native American communities can join together in cheering for UND teams.

For the foregoing reasons, this Court should deny UND’s motion for a preliminary injunction.

---

<sup>24</sup> William Shakespeare, *Romeo and Juliet*, Act II, Scene 2.

Dated November 6, 2006

Respectfully Submitted,

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Steven C. Emery  
Standing Rock Sioux Tribe  
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Ft. Yates, ND 58538

*Counsel for Amicus Curiae Standing Rock Sioux  
Tribe*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 7, 2006, I filed the foregoing Amicus Curiae brief and the attached Notice of Appearance with the Clerk of Court by sending via Federal Express a true and correct and copy, and further, that I served a true and correct copy on the following by serving the brief personally on the following individual or on an authorized individual at the place of business of, and by delivering a copy electronically to:

Wayne Stenehjem  
Attorney General  
Office of the Attorney General  
600 East Boulevard Ave.  
Bismarck, ND 58505-0040

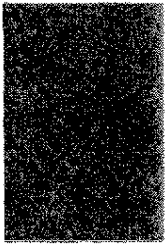
and further, I hereby certify that on November 7, 2006, I served the foregoing Amicus Curiae brief and the attached Notice of Appearance on the following individual by sending via Federal Express and electronically to:

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National  
Congress of  
American  
Indians

Executive Committee

President  
W. Ron Allen  
*Jamestown S'Klallam Tribe*

First Vice President  
Ernie Stevens, Jr.  
*Oneida Nation of Wisconsin*

Recording Secretary  
Leia Kaskalia  
*Nanhe Pueblo*

Treasurer  
Russell (Bud) Mason  
*Three Affiliated Tribes*

Area Vice Presidents

Aberdeen Area  
Gerald M. Clifford  
*Ojibwa Sioux*

Albuquerque Area  
Joe A. Garcia  
*Ohkay Owingeh  
San Juan Pueblo*

Anadarko Area  
Cory McAdams  
*Wicapa & Affiliated Tribes*

Billings Area  
Earl Old Person  
*Blackfeet Tribe*

Juneau Area  
Steve Utanis  
*Native Village of Fort Yukon*

Minneapolis Area  
Bernida Churchill  
*Mille Lacs Band of Ojibwe*

Muskogee Area  
S. Diane Kelley  
*Cherokee Nation*

Northeast Area  
Michael W. Schindler  
*Seneca Nation of Indians*

Phoenix Area  
Ivan Makil  
*Salt River Pima-Maricopa*

Portland Area  
Henry Cagey  
*Lummi Nation*

Sacramento Area  
Cheryl A. Seidner  
*Table Bluff Reservation-Wiyot*

Southeast Area  
A. Bruce Jones  
*Lumbee Tribe*

Executive Director  
JoAnn K. Chase  
*Mandan, Hidatsa & Arikara*

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RESOLUTION #GRB-98-034

**Title: USE OF NATIVE AMERICAN MASCOTS, LOGOS, OR SYMBOLS**

**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) is the oldest and largest national organization established in 1944 and comprised of representatives of and advocates for national, regional, and local tribal concerns; and

**WHEREAS**, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of NCAI; and

**WHEREAS**, the use of Native American mascots, logos, or 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 5600 Indian Tribes in the United States and perpetuate cultural and racial stereotypes; and

**WHEREAS**, the National Congress of American Indians is aware of the increasing number of Native American Tribes and organizations who have voiced their condemnation of such images by adopting similar resolutions; and

**WHEREAS**, appropriate means of honoring Native American people already exist by teaching our history accurately, by having Native American students feel welcome in their schools, and by removing "Indian" mascots and logos; and

**WHEREAS**, schools with "Indian" logos are teaching hands-on courses in racism by teaching students how to stereotype a group of people on the basis on race, religion, ancestry, and cultural ethnicity; and



**WHEREAS**, it is unconscionable that our nation's schools teach our children to maintain and promote racism; and

**WHEREAS**, sports teams with "Indian" logos influence the images we see, the clothing we wear, and the standards we set, thereby encouraging us to tolerate racism; and

**WHEREAS**, people can change. We do not have to enter the year 2000 depicting Native American as archaic stereotypes, when Native Americans are contributors to and members of contemporary society.

**NOW, THEREFORE, BE IT RESOLVED**, that the National Congress of American Indians, alone and in concert with other organizations, will work to eliminate the use of Native American symbols, logos, and team names.

**CERTIFICATION**

The foregoing resolution was adopted at the 1998 Mid-Year Session of the National Congress of American Indians, held at the Regency Suites Convention Center in Green Bay, Wisconsin on June 14-17, 1998 with a quorum established.

**ATTEST:**

  
\_\_\_\_\_  
Lela Kaskalla, Recording Secretary

  
\_\_\_\_\_  
W. Ron Allen, President

Adopted by the General Assembly during the 1998 Mid-Year Session held at the Regency Suites Convention Center, Green Bay, Wisconsin on June 14-17, 1998.



# NATIONAL CONGRESS OF AMERICAN INDIANS

## THE NATIONAL CONGRESS OF AMERICAN INDIANS

### RESOLUTION #SPO-01-046

#### EXECUTIVE COMMITTEE

##### PRESIDENT

Tex C. Hall  
*Mandan, Hidatsa, Arikara Nation*

##### FIRST VICE-PRESIDENT

Joe A. Garcia  
*Oikay Owingeh  
(Pueblo of San Juan)*

##### RECORDING SECRETARY

Colleen F. Cawston  
*Colville Confederated Tribes*

##### TREASURER

Alma Ransom  
*St. Regis Mohawk Tribe*

#### Title: **Opposition to the University of North Dakota's Use of the Fighting Sioux Name and Logo**

**WHEREAS**, we, the members of the National Congress of American Indians in our own distinct territories, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, the use of an American Indian stereotype is demeaning by its very nature, whether intended as such or not; and

**WHEREAS**, these stereotypical symbols create an environment in which degrading acts become more acceptable and promote practices that trivialize and demean Native American culture, traditions and spirituality; and

**WHEREAS**, the United States Commission on Civil Rights calls for an end to the use of Native American images and team names by non-Native schools acknowledging that such names and logos when promoted by public educational institutions, teach all students that stereotyping of minority groups is acceptable; and

**WHEREAS**, this is an issue of human rights because the use of such a name and symbol at the University of North Dakota limits the ability of all Native students to learn and take part in campus and community activities; and

EXECUTIVE DIRECTOR  
Jacqueline L. Johnson  
*Tlingit*

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202.466.7797 fax  
[www.ncai.org](http://www.ncai.org)

**WHEREAS**, the President of St.Cloud University, Roy Saigo, has expressed his full support for this work and will make a presentation to the National Collegiate Athletic Association (NCAA) and the Minnesota State College and University Board (MSCUB) on how the mascot violates student rights and creates a hostile environment; and

**WHEREAS**, the Minnesota Indian Education Association and the North Dakota Indian Education Association have both passed resolutions opposing the continuation of the "Fighting Sioux" mascot.

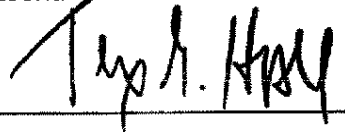
**NOW THEREFORE BE IT RESOLVED**, that the NCAI does hereby support this resolution in response to ending the use of outdated and politically incorrect American Indian stereotypes at the University of North Dakota and all across America that demean the history and culture of Indian nations; and

**BE IT FURTHER RESOLVED**, that NCAI supports the aforementioned request to end the University of North Dakota's use of the "Fighting Sioux" name and its accompanying "Indian-head" symbol; and

**BE IT FINALLY RESOLVED**, that NCAI does hereby support this resolution in response to end the national use of stereotypical images that demean, rather than honor American Indian nations.

**CERTIFICATION**

The foregoing resolution was adopted at the 58<sup>th</sup> Annual Session of the National Congress of American Indians, held at the Spokane Convention Center, in Spokane, Washington on November 25-30, 2001 with a quorum present.



Tex Hall, President

ATTEST:



Colleen F. Cawston, Recording Secretary

Adopted by the General Assembly during the 58<sup>th</sup> Annual Session of the National Congress of American Indians, held at the Spokane Convention Center, in Spokane, Washington on November 25-30, 2001.



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #TUL-05-087

### TITLE: Support for NCAA Ban on "Indian" Mascots

**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, the use of "Native American" sports mascots, logos, or symbols perpetuates stereotypes of American Indians that are very harmful. The "warrior savage" myth has plagued this country's relationships with the Indian people, as it reinforces the racist view that Indians are uncivilized and uneducated and it has been used to justify policies of forced assimilation and destruction of Indian culture; and

**WHEREAS**, sports teams with "Indian" logos represent Native Americans as archaic stereotypes when Native Americans are members of and contributors to contemporary society, and two-thirds or over 2,000 of such "Indian" references in sports have been eliminated during the past 35 years. The stereotypes of uneducated warrior savages cause employers to discriminate against American Indians who are seeking jobs in fields that require education and sophistication; and

**WHEREAS**, NCAI also understands that Indian tribes, universities and sports teams can work together in ways that are respectful of tribal culture and ensure that Indian imagery is utilized in an honorable manner and NCAI respects the right of tribal councils to make their own decisions regarding their relationships with school district and university sports teams; and

**WHEREAS**, some tribes enjoy a positive relationship with local universities, having experienced many years of fruitful endeavors meant to bring about progress for tribal members, with universities who demonstrate their commitment to serve the Indian community through scholarships, grants, academic curriculums, etc., and seek out cooperation with the tribes.

#### EXECUTIVE COMMITTEE

##### PRESIDENT

Joe A. Garcia  
*Ohkay Owingeh  
(Pueblo of San Juan)*

##### FIRST VICE-PRESIDENT

Jefferson Keel  
*Chickasaw Nation*

##### RECORDING SECRETARY

Juana Mejia  
*Pauma-Yuma Band of Mission  
Indians*

##### TREASURER

W. Ron Allen  
*Jamestown S'Klallam Tribe*

#### REGIONAL VICE- PRESIDENTS

##### ALASKA

Mike Williams  
*Yup'ik*

##### EASTERN OKLAHOMA

Joe Grayson, Jr.  
*Cherokee Nation*

##### GREAT PLAINS

Mark Allen  
*Plandreau Sisseton Sioux*

##### MIDWEST

Robert Chicks  
*Stockbridge-Munsee*

##### NORTHEAST

Randy Noka  
*Narragansett*

##### NORTHWEST

Ernie Stansgar  
*Coeur d'Alene Tribe*

##### PACIFIC

Cheryl Seidner  
*Wiyot*

##### ROCKY MOUNTAIN

Raymond Parker  
*Chippawa-Cree Business  
Committee*

##### SOUTHEAST

Leon Jacobs  
*Lumbee Tribe*

##### SOUTHERN PLAINS

Steve Johnson  
*Absentee Shawnee*

##### SOUTHWEST

Manuel Heart  
*Ute Mountain Ute Tribe*

##### WESTERN

Kathleen Kitcheyan  
*Seri Carlos Apache*

#### EXECUTIVE DIRECTOR

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**NOW THEREFORE BE IT RESOLVED**, that NCAI does hereby oppose the use of racist and demeaning "Indian" sports mascots and strongly supports the National Collegiate Athletic Association ban on "hostile or offensive" mascots in postseason NCAA activities. NCAI supports a complete ban on the use of offensive and derogatory "Indian" mascots in all sports arenas; and

**BE IT FURTHER RESOLVED**, that the NCAI acknowledges that tribes, schools and sports teams can work together in ways that are respectful of tribal culture and respects the right of each tribe and tribal community to decide for itself how best to protect and celebrate its heritage and make their own decisions regarding their relationships with school and university sports teams; and


**BE IT FURTHER RESOLVED**, that absent specific approval or consent from the relevant tribal council(s), that the NCAI will continue to oppose the use of any "Indian" sports mascot; and

**BE IT FURTHER RESOLVED**, that the NCAI reiterates its support of and commitment to the Native position in the ongoing litigation, Harjo et al v. Pro Football, Inc., and reiterates its support of and commitment to all prior NCAI resolutions on the subject of "Native" references in sports; and

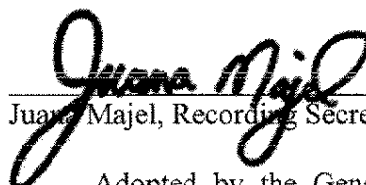
**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

#### CERTIFICATION

The foregoing resolution was adopted at the 2005 Annual Session of the National Congress of American Indians, held at the 62<sup>nd</sup> Annual Convention in Tulsa, Oklahoma on November 4, 2005 with a quorum present.

  
\_\_\_\_\_  
Joe Garcia, President

ATTEST:

  
\_\_\_\_\_  
Juana Majel, Recording Secretary

Adopted by the General Assembly during the 2005 Annual Session of the National Congress of American Indians held from October 30, 2005 to November 4, 2005 at the Convention Center in Tulsa, Oklahoma.

UNIVERSITY OF NORTH DAKOTA SCHOOL OF LAW  
Faculty Executive Committee Resolution

***Whereas*** the University of North Dakota School of Law is committed to promoting cultural diversity and nondiscriminatory practices; and

***Whereas*** misuse of Native American mascots and imagery creates a discriminatory environment which promotes racist stereotypes and dehumanizes and disrespects Native peoples and cultures; and

***Whereas*** numerous American Indian groups and organizations, educational institutions, civil rights organizations (including the United States Commission on Civil Rights), and other groups across the nation have formally declared opposition to the use of Native American people as mascots, nicknames, and logos by public institutions; and

***Whereas*** tribal councils of all major Sioux tribes in North Dakota, along with tribes in South Dakota – including the Yankton Sioux Tribe, Oglala Sioux Tribe, Cheyenne River Sioux Tribe, Standing Rock Sioux Tribe, Rosebud Sioux Tribe, Sisseton-Wahpeton Sioux Tribe, and Crow Creek Sioux Tribe – have formally resolved that the use of the “Sioux” name and logo by the University of North Dakota is offensive and distorts the positive cultural and spiritual traditions of their people, and have demanded an end to such use; and

***Whereas*** several other tribal entities in the region – including the Turtle Mountain Band of Chippewa, Three Affiliated Tribes, and those to which the Spirit Lake Tribe is a member – have either formally or informally resolved that the use of the “Sioux” name and logo by the University of North Dakota is offensive and distorts the positive cultural and spiritual traditions of Native American people; and

***Whereas*** the continued use of the “Sioux” name and logo promotes stereotypes and misconceptions about Native Americans, thereby discouraging intellectual inquiry by our students beyond those misconceptions, and fostering divisiveness both inside and outside of our classrooms; be it

***Resolved*** that we, the Faculty Executive Committee of the University of North Dakota School of Law, oppose the use of Native American sports mascots, team names, and logos by non-Native organizations; and be it further

***Resolved*** that we, the Faculty Executive Committee of the University of North Dakota School of Law, strongly encourage the University of North Dakota administration to cease the use of the “Sioux” nickname and logo, and publicly denounce the use of Native American sports mascots, team names, and logos by non-Native organizations; and be it further

***Resolved*** that we, the Faculty Executive Committee of the University of North Dakota School of Law, strongly encourage the University of North Dakota campus media to discontinue the use of all Native American sports mascots, team names, and logos by non-Native organizations.

Adopted March 1, 2002

**THOMAS M. DISSELHORST  
ATTORNEY AT LAW**

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PRINCIPAL WORK TEL. No.  
701-255-3285 EXT. 1238  
CELLULAR: 701-421-1646**

November 6, 2006

Clerk of District Court  
County of Grand Forks  
124 Fourth St. South  
Grand Forks, ND 58201

Re: State of North Dakota ex rel. University of North  
Dakota v. National Collegiate Athletic Association  
Civil No. 1806-C-01333

To the Clerk:

Enclosed please find for filing and to bring to the attention of the Judge assigned to this matter the Brief of Amici Curiae National Congress of American Indians, Sisseton Wahpeton Oyate, Standing Rock Sioux Tribe, Santee Sioux Tribe, and United Tribes of North Dakota, (with exhibits) along with a Notice of Appearance and Certificate of Service of the above.

These documents are also being sent electronically on the evening of November 6, 2006. We recognize that this means the documents will be viewed as being filed on November 7, 2006. I also note that there is a fee to file electronically, this fee will be delivered on Thursday, November 9, 2006.

Should there be any questions about this matter, please call the undersigned at 701-421-1646 (mobile number).

Sincerely yours,

/s/

Thomas M. Disselhorst  
Attorney at Law

Bar No. 3294

cc: Wayne Stenehjem  
Wickham Corwin