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# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

COPY

In re Registration No. 1,606,810 (REDSKINETTES)
Registered July 17, 1990
Registration No. 1,343,442 (SKINS)
Registered June 18, 1985,
Registration No. 1,085,092 (REDSKINS)
Registered February 7, 1978,
Registration No. 987,127 (THE REDSKINS & DESIGN)
Registered June 25, 1974,
Registration No. 986,668 (WASHINGTON REDSKINS & DESIGN)
Registered June 18, 1974,
Registration No. 978,824 (WASHINGTON REDSKINS)
Registered February 12, 1974,
and Registration No. 836,122 (THE REDSKINS-STYLIZED LETTERS)
Registered September 26, 1967

Suzan Shown Harjo,
Raymond D. Apodaca,
Vine Deloria, Jr.,
Norbert S. Hill, Jr.,
Mateo Romero,
Manley A. Begay, Jr., and
William A. Means,

Petitioners,

vs.

Pro-Football, Inc.,

Registrant.

Cancellation No. 21, 069

**BRIEF *AMICI CURIAE* OF THE NATIONAL CONGRESS OF AMERICAN INDIANS, NATIONAL INDIAN EDUCATION ASSOCIATION AND NATIONAL INDIAN YOUTH COUNCIL**

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## EXHIBITS

Exhibit A - Resolution No. EX DC-93-11 of the National Congress of American Indians

Exhibit B - Resolution No. JNU-97-106 of the National Congress of American Indians

Exhibit C - Resolution No. 94-18 of the National Indian Education Association

Exhibit D - President Clinton's Memorandum for Heads of Executive Departments and Agencies (April 29, 1994)

## INTEREST OF *AMICI CURIAE*

*Amici Curiae* are three national Native American organizations, the National Congress of American Indians ("NCAI"), National Indian Education Association ("NIEA") and the National Indian Youth Council ("NIYC").

*Amicus Curiae* NIYC is the oldest and largest national organization addressing the issues of concern to American Indian and Alaska Native youth. Founded in 1961, the NIYC has been in the forefront of issues involving discrimination against Native Americans at the voting place, in housing, in representation on school boards, in political and educational districting and in employment, and has championed and litigated in each of these areas. The NIYC has long been concerned about discrimination against Native Americans conducted under color of federal and state law. NIYC has long been concerned about racism and derogatory stereotypes in sports. For example, the NIYC Chapter at the University of Oklahoma was responsible for the 1970 removal of the racially offensive football mascot, "Little Red." NIYC is deeply concerned about the issues in this case as racism in sports adversely effects all Native Americans, including youth.

*Amicus Curiae* NIEA is the oldest and largest national Indian education organization founded in 1969 as an educational service organization to provide national advocacy and assistance for its membership on issues affecting the education of Native American youth. NIEA's present membership consists of 2,800 Native American students, educators, parents and representatives of tribal governments and school boards. NIEA also provides a national forum each year at its annual convention for its membership as the largest convocation on Indian education in the United States to focus on important issues in Indian education. On

behalf of its membership, NIEA is deeply concerned about racism in sports and the issues raised in this case. Racially derogatory terms, stereotypes and caricatures promoted to millions of Americans each year through professional sports can have negative impacts upon Native American school children and hold them up to public contempt or ridicule. In particular, NIEA is deeply concerned about the impacts which the negative images portrayed by Registrant's "redskins" trademarks have upon Native American school children.

*Amicus Curiae* NCAI is the Nation's oldest and largest national organization of American Indian and Alaskan tribal governments and individuals. More than two hundred (200) tribal governments are members of the NCAI. Indian tribal governments are the duly elected or appointed political entities of federally recognized Indian tribes that are legally responsible for protecting the well-being of their members. *See, e.g., United States v. Mazurie*, 419 U.S. 544, 557 (1975). Established in 1944, NCAI provides an organizational umbrella for America's Indian tribes to develop and advocate tribal positions on issues of fundamental importance to Indian tribes, communities and peoples across the country.

Over the past fifty years, NCAI has represented its members in protecting tribal political, property, cultural and human rights in fora of all three Branches of the Federal Government. NCAI has been deeply involved in much of the federal legislation affecting Indian tribes and Native Americans enacted by Congress over the past fifty years. NCAI has worked closely with the Executive Branch and its departments over the decades in developing and implementing federal Indian policy. In addition, NCAI routinely acts as friend of the court in cases involving significant Native issues because of the complexity of those issues

and the need to convey Native American perspectives which are often misunderstood by courts with limited exposure to Native American history, policy, or cultures.

In sum, NCAI, NIEA and NIYC have expertise on complex Native American issues and can convey to federal fora reliable consensus of over 200 Indian tribal governments on issues affecting the well-being of Indian tribes and their cultural survival in the United States, including but not limited to: health, education, civil and political rights, self-government and sovereignty rights, land and natural resources, environmental issues, treaty rights, cultural and religious freedoms, child welfare and human rights.

*Amici Curiae* all have raised concerns regarding race stereotyping in sports for many years, including in particular the racially derogatory name, logo and practices of the "Washington Redskins" professional football organization. Such concerns have been expressed through numerous communications, public statements, including meetings in 1972 with then Washington Redskins president Edward Bennett Williams, and through the leadership of all organizations, which include Petitioners Deloria, Harjo and Apodaca who were in the forefront of NCAI advocacy in the 1960s, 1970s and 1980s.

This case involves federal trademarks registered by a federal agency pursuant to federal law which affects all Indian tribes and people in the United States. This case concerns alleged racism against Native Americans conducted under color of federal law. Petitioners assert that the U.S. Patent and Trademark Office has registered trademarks that consist of racially derogatory and disparaging material which opens Native Americans to contempt and public ridicule in violation of Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a). As such, certain well-established federal Indian law principles, discussed in this brief, are applicable to

the resolution of this case. These principles add great strength to Petitioners' request for cancellation of the instant trademark registrations. NCAI, NIEA and NIYC are concerned that this Board properly apply such principles in this case.

*Amici Curiae* have another interest in this case. While there is enormous uplifting good in the human spirit, racism is the dark side of humanity that has caused much suffering among our diverse human family. Section 1052(a) wisely recognizes that one basic manifestation of prejudice, discrimination or racism is the use of racially derogatory names, caricatures or racial stereotypes that hold up a race of people and each individual of the race to ridicule; and this statute safeguards citizens against such activity through the registration of derogatory trademarks.

NCAI, NIEA and NIYC are deeply concerned about racism. Native Americans have been plagued by racism in one of the most shameful chapters in American history. Sadly, that history is replete with harmful prejudices, discrimination, double standards, racial stereotypes, disparaging terms, ethnocentricy and ignorance.[1] In our otherwise proud history, injurious prejudicial attitudes accompanied (and were even used to justify) federal actions to take Indian lands, conduct warfare against Native peoples, forcibly relocate entire Indian

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[1] *See, these history books, generally*, John R. Wunder, Retained by the People--A History of American Indians and the Bill of Rights (New York: Oxford U. Press, 1994); Christopher Vecsey (Ed.), "Handbook of American Indian Religious Freedom (New York: Crossroad, 1991); Patricia Lemerick, The Legacy of Conquest (New York: W.W. Norton & Co., 1987); Robert E. Bieder, Science Encounters the Indian, 1820-1880: The Early Years of American Ethnology (OU Press, 1986), pp. 55-103; Roger Echo-Hawk and Walter Echo-Hawk, Battlefields and Burial Grounds: The Indian Struggle to Protect Ancestral Graves in the United States (Lerner Pub. Co., 1994). *See, also*, Senator Daniel K. Inouye, Discrimination and Native American Religious Rights, 23 U. West L.A. L.Rev. 3 (1992); Jack F. Trope and Walter R. Echo-Hawk, The Native American Graves Protection and Repatriation Act: Background and Legislative History, 24 Ariz. St. L.J. 35 (1992).

tribes, and stamp out Indian cultures and religions as a part of the United States' efforts to "civilize" and assimilate Native Americans into "mainstream" society.[2] America's discrimination against its Native peoples has been marked by the official use of sweeping derogatory racial stereotypes by agencies, courts, and Congress branding Indian people and tribes as "barbarous,"[3] "savage,"[4] "nomadic,"[5] "inferior,"[6] "unambitious,"[7] "lawless,"[8]

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[2] These actions, which have caused immeasurable harm to America's indigenous tribes and peoples, were typically accompanied by racially derogatory terms and stereotypes for Native Americans, which, for example, abound in judicial cases affecting Native rights and freedoms. *See generally*, *Johnson v. McIntosh*, 21 U.S. 543, 590 (1823) (Indians are "fierce savages whose occupation is war"); *Coleman v. United States Bureau of Indian Affairs*, 715 F.2d 1156, 1157, (1983) (citing the Declaration of Independence ". . . the merciless Indian savages, whose known Rule of Warfare, is an undistinguished Destruction, of all Ages, Sexes and Conditions"); *United States v. Sandoval*, 231 U.S. 28, 47 (1913) (Indian customs are "primitive"); *Winters v. United States*, 207 U.S. 564, 575 (1908) (Indians are an "uncivilized people"); *Montoya v. United States*, 180 U.S. 261, 265 (1901) (Indians are "naturally infirmate, possess fiery tempers and lack mental training").

[3] *Worcester v. Georgia*, 31 U.S. 515, 545 (1832).

[4] *See*, *Johnson v. McIntosh*, 21 U.S. at 591; *Cherokee Nation v. Georgia*, 30 U.S. 1, 43 (1831); *Ex Parte Crow Dog*, 109 U.S. 556, 570-71 (1883).

[5] *Montoya v. United States*, 180 U.S. 261, 265 (1901).

[6] *Ex Parte Crow Dog, Id.*; *Choctaw Nation v. United States*, 119 U.S. 1, 27-28 (1986).

[7] "Hearing, 'Emancipated Citizenship for Indians,'" 12, House Committee on Indian Affairs, 71st Congress, 3rd Sess. (1931) p.3.

[8] In *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1975), the court held that a modern day Indian tribal government had no jurisdiction over non-Indians who commit crimes on the reservation, noting a history of lawlessness among the tribes:

> Until the middle of this century, few Indian tribes maintained any semblance of a formal court system. Offenses by one Indian against another were usually handled by social and religious pressure and not by formal judicial processes . . . In 1834 the Commissioner of Indian Affairs described the then status of Indian criminal systems: "With the exception of two or three tribes, who have within a few years past attempted to establish some few laws and regulations

and"heathens."[9]

Racism harms real people, families, communities and nations. *See, generally*, Thomas F. Pettigrew (Ed.), Racial Discrimination in the United States (Harper & Row, 1975); Ashley Montagu, Statement on Race: An Annotated Elaboration and Exposition of the Four Statements on Race Issued by the United Nations Educational, Scientific, and Cultural Organization (London: Oxford U. Press, 1972) (3rd. Ed.). Prejudice and discrimination hurt feelings and lower self-esteem. *Id.* Racism causes deep psychological scars for young people and engenders feelings of shame and alienation. *Id.* Similarly, racism is self-defeating for racists because it arrests development of those who harbor prejudice, creates a false sense of superiority,[10] and narrows their vision. *Id.* Racism serves as justification for discrimination against unpopular minorities -- and sometimes genocide as witnessed in this Century in Nazi Germany.[11] Racism causes hatred, drives communities apart, divides nations, and sometimes threatens world peace. *Id.*

To the victims, it is immaterial whether racism is intentionally invidious, inadvertent, or simply based upon local custom, "the times," or simple ignorance. Similarly, to the victims, it does not matter whether racism is manifested by private parties or official

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among themselves, the Indian tribes are without laws, and the chiefs without much authority to exercise much restraint." H.R.Rep.No. 474, 23rd Cong., 1st Sess. at 91 (1834).

[9] *See, Johnson v. McIntosh*, 21 U.S. at 590.

[10] *See, e.g.*, Stephen Jay Gould, The Mismeasurement of Man (New York: W.W. Norton, 1981); Thomas F. Gossett, Race: The History of an Idea in America (New York: Schocken, 1965).

[11] *See, e.g.*, Robert Jay Lifton, The Nazi Doctors: Medical Killing and the Psychology of Genocide (New York: Basic Books, Inc. 1986).

governmental action carried out in schools, public places, literature, movies, or national sporting events. The harmful, self-demeaning, and self-defeating impacts are the same; and in this regard, the feelings and sensitivities of Native Americans are no different from other citizens. Thus, racism directly affects the well-being of the almost two million Native Americans who live in communities on Indian reservations and off-reservation cities across the country.

*Amici Curiae* are vitally concerned that racism not be conducted under color of federal law. In that regard, *Amici* have a strong interest in Registrant's activities, because they affect the attitudes and perceptions of millions of Americans each year about Native citizens and culture. While it is difficult to quantify Registrant's influence on the public mind through the use of its federally registered trademarks, it is common knowledge that Registrant promotes and markets its trademarks (and accompanying caricatures and racial stereotypes) to millions of Americans each year across the country -- potentially impacting all citizens regardless of race, including all two million Native American citizens. NCAI, NIEA and NIYC are deeply concerned that most of the millions of non-Natives have never met a real living Native American person and may be more familiar with this federal trademark and accompanying caricatures than they are with real living Native peoples.

For the above reasons, *Amici Curiae* are vitally concerned about the issues raised in this case. Each living Native American and all surviving Indian tribes are directly affected by Registrant's trademark activities and the outcome of this case. As friends of the court, NCAI, NIEA and NIYC believe they can assist the Trademark Trial and Appeal Board by:

1) supplying the perspectives of over two hundred tribal governments and thousands of Native youth and other individuals on the question of whether use

and registration of trademarks containing the term "Redskins" is disparaging to Native American citizens and Indian tribes; and

2) providing a backdrop of federal Indian law as a relevant guide for the Board's decision in this case.

Because the membership and constituents of NCAI, NIEA and NIYC find that the term "redskin" and its plural "redskins" (which on their face are race-based terms) have always been and continue to be racially derogatory, disparaging, and damaging to Native Americans, this brief is respectfully submitted in support of the cancellation proceeding brought by Petitioners, seeking cancellation of all of Registrant's trademarks which contain the term "redskin" or any of its derivatives. *See*, NCAI Resolution No. Ex DC-93-11 (January 18-19, 1993) (Petitioners Exhibit 3; Petitioner Raymond Apodoca Deposition Exs. 102 and 144) (Exhibit "A" hereto); NCAI Resolution No. JNU-97-106 (June 8-11, 1997) which just six weeks ago reaffirmed NCAI's 1993 Resolution on the same subject (Exhibit "B" hereto); NIEA Resolution 94-18 (January 22, 1994) (Exhibit "C" hereto).

## SUMMARY OF ARGUMENT

The term "redskins" is racially disparaging within the meaning of 15 U.S.C. § 1052(a). On its face, the term is expressly, inherently and blatantly based solely on race, which places the word in a highly suspect classification making it subject to close scrutiny. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 16 (1973); *Graham v. Richardson*, 403 U.S. 365, 371, 375 (1971); *Loving v. Virginia*, 388 U.S. 1, 11 (1967); *Toyosaburo Korematsu v. United States*, 323 U.S. 214, 216 (1944); *United States v. Caroline Products, Co.*, 304 U.S. 144, 152 n.4 (1938). It is self-evident on its face that the term is racially disparaging. Although this issue should be decided based upon the face of the term as a matter of common

sense, the record in this case overwhelmingly supports a finding that the term disparages and ridicules Native Americans as a race of people. This finding is not only supported by the individual Native American petitioners, who have been personally harmed, and the voluminous evidence they have adduced. Rather, Petitioners' view is shared by hundreds of thousands of Native American citizens across the country represented by the two hundred tribal governments, school boards and individuals served by NCAI, NIEA and NIYC. The membership of NCAI, NIEA, and NIYC is firmly on record as viewing the term "redskins" as used by Registrant (including the associated racial stereotypes, logos and caricatures) as a racially disparaging term that holds all Native Americans up to public ridicule. *See*, Exhibits A-C, *supra*. *See also*, Harold Gross Transcript (including Petitioners' Exhibits 18 and 31).

In a democracy committed to the vigilant protection of the human rights of all its citizens, it is important for this Board to emphatically hold that it will not tolerate registration of trademarks consisting of racially pejorative material. There is little room for debate on this fact. Registrant's racial epithet is not open to self-serving or subjective interpretation by its perpetrator. Instead, views of racial groups depicted by racial terms should be entitled to high probative value and great, if not determinative, weight. Otherwise, the rights of minorities risk being seriously undermined in cases where a finder of fact places more weight on opinions of those who perpetrate racism than upon the victims' views.

Moreover, any doubts or ambiguities regarding this issue should be resolved in favor of Indian tribes and Native American peoples to whom this Board owes a fiduciary federal trust responsibility in applying federal law. Because the federal action complained of in this case affects the well-being of federally recognized Indian tribes and their enrolled members,

resolution of the case can and should be guided by applicable principles of federal Indian law. Under those principles, the federal government owes fiduciary duties to Indians and Indian tribes that arise under the trust relationship between it and Indian tribes. That trust relationship extends to the U.S. Patent and Trademark Office; and it creates fiduciary obligations to: (a) strictly enforce the provisions of 15 U.S.C. § 1052(a) to protect Native American people, tribes and cultures from racism, stereotyping and public ridicule done under color of federal law; (b) place great -- if not determinative -- weight upon the views of Indians on the issue whether Indians consider race-based terms aimed at Indians to be disparaging; and (c) resolve any ambiguities on the question of disparagement in favor of Indians and Indian tribes.

## ARGUMENT

### I. THE CONTESTED REGISTERED TRADEMARKS CONSIST OF MATTER WHICH DISPARAGES ALL NATIVE AMERICAN PERSONS AND CONTAINS SCANDALOUS MATTER IN VIOLATION OF SECTION 2(a) OF THE LANHAM ACT, 15 U.S.C. § 1052(a)

#### a. The "Redskins" Trademarks are Morally Shocking and Offensive to Native Americans as a Race of People

NCAI, NIEA and NIYC fully agree with Petitioners that the registration and use of the trademarked term "redskins" and its variations by Pro-Football, Inc. violates 15 U.S.C. § 1052(a). *See*, Exhibits A-C, *supra*. That section prohibits registration of trademarks consisting of immoral, deceptive, scandalous matter, or matter that "may" disparage a group of persons.[12] The record in this case, as shown in Petitioners' brief, fully establishes and

[12] 15 U.S.C. § 1052(a) (1995) provides that, "No trade-mark . . . shall be refused registration on account of its nature unless it (a) [c]onsists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a

supports this finding and will not be repeated here. *Amici* wish only to emphasize that the opinions and viewpoints expressed by Petitioners' evidence on whether the term "redskins" is disparaging to Native Americans are opinions that are fully shared by NIYC, NIEA and NCAI, as evidenced by Exhibits A, B and C. These are views long held by NCAI's members. *See*, Deposition of Petitioner Harjo, Vol. I, pp. 8-44. For example, shortly after the 1967 registration and before the 1974 registrations, NCAI President Leon F. Cook met with the President of the "Redskins Football" Organization in 1972 to express concern over the trademark and to demand withdrawal of the team name. NIYC Washington Chapter President Ron Aguilar and other national Indian leaders joined in that meeting which was widely reported in the press. *See*, Petitioners' NR1 Ex. 18, 32. *See also generally*, Harold Gross transcript.

At bottom, the various "redskins" trademarks violate Section 1052(a) because they classify Native Americans as a people and as individuals solely by their skin color, they enable Registrant to disparage America's proud indigenous cultures, and they perpetuate degrading racial stereotypes of the type which have seriously damaged Native peoples throughout the history of this nation. Notwithstanding the fact that some of the marks were registered more than a generation ago, *Amici* continue to view them as one of America's clearest and most blatant vestiges of racism against Native people. Cancellation of these overt vestiges of racism is long overdue.

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connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into disrepute."

Just as racism has been rejected in recent years as repugnant to federal law in most other spheres of American life within our rich and diverse society, there is no room for racism in sports. Whatever federally-protected rights Registrant may assert that are pertinent to this case, such rights do not include the right to disparage a race of people. Moreover, to be commercially successful, there is no need for Registrant to disparage a race of people and hold a substantial segment of the American population up to public contempt and ridicule.

Living people with real feelings are hurt by racism. As the Supreme Court has recognized, disparate treatment based solely on race generates a feeling of inferiority that affects one's heart and mind in a way unlikely to ever be undone. *Brown v. Board of Education of Topeka*, 347 U.S. 492, 494 (1953). In *Brown*, the Supreme Court acknowledged that discrimination can have devastating impacts upon people, resulting in deep psychological scars. Whether discrimination is effected through segregation or ridicule in major sporting events, the impact on its victims is the same: shame, deep psychological damage and alienation. In enacting Section 2(a) of the Lanham Act, Congress expressed its clear intent to withhold economic benefits from trademarks containing matter that may disparage persons, including Native Americans.

## II. THE TRUST RELATIONSHIP BETWEEN THE FEDERAL GOVERNMENT AND NATIVE AMERICANS APPLIES TO THE DEPARTMENT OF COMMERCE'S U.S. PATENT AND TRADEMARK OFFICE AND TRADEMARK TRIAL AND APPEAL BOARD AND PROVIDES STANDARDS FOR THE DISPOSITION OF THIS CASE.

There are additional legal reasons why this Board must accord great weight to Petitioners' evidence and *Amici Curiae's* views on the issue of whether the term "redskins" and its derivatives are disparaging to Native Americans. This case involves federal trademark registrations granted by a federal agency pursuant to federal law which affects all Indian tribes. As discussed below, federal actions of this nature are subject to the special relationship that exists between the Federal Government and Indian tribes. That special relationship -- described by the courts -- applies to all Executive Branch Departments, including the Commence Department and its U.S. Patent and Trademark Office ("PTO") and this Trademark Trial and Appeal Board ("TTAB"). As a result, this case is properly viewed in the light of the special relationship that exists between the United States and Indian tribes and their members.

Principles of federal Indian law, as discussed below, provide that: 1) a trust relationship exists between the PTO and Indian tribes and people; 2) one trust duty owed by the PTO and the TTAB to federally-recognized Indian tribes -- recently reaffirmed by President Clinton's Memorandum for the Heads of Executive Departments and Agencies of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments), 59 Fed. Reg. 22,951-22,952 (1997) (Exhibit D hereto) -- is a duty to carefully consult with Indian tribes regarding any agency actions which may adversely affect tribal interests, which in this case requires that great weight be placed upon tribal views about race-

based terms; 3) another fiduciary duty imposed upon the PTO and TTAB is to strictly enforce the provisions of 15 U.S.C. § 1052(a) to safeguard Indian tribes and people from racially and culturally disparaging commercial trademarks, which requires the PTO and TTAB to liberally construe that statute in favor of Indians and resolve any ambiguities in favor of Indians.

Because *Amici Curiae* are unaware of any prior federal Indian law case or issue brought before the Board, the balance of this brief discusses the background of this body of federal law, how it applies to the Department of Commence and this Board, and how it guides the disposition of this case.

**a. The Origin and Nature of Federal Indian Law**

The United States exercises enormous and pervasive control over the lives, property and well-being of Indian peoples in ways that are unprecedented for any other segment of the American population; this power, the courts have held, gives rise to a federal trust obligation to Indians and Indian tribes. Federal Indian law is that body of law which governs the actions of the United States government and all of its agencies in matters that affect Indian tribes and their enrolled tribal members. "Federal Indian law" is defined in Felix Cohen's definitive Handbook of Federal Indian Law (1982 Ed.) (hereafter "Cohen's") at 1 as:

> that body of jurisprudence created by treaties, statutes, executive orders, court decisions, and administrative action defining and implementing the relationship among the United States, Indian tribes and individuals and the states.

Indian tribes are recognized under federal law, as described in *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 559 (1832), as "distinct political communities retaining their natural rights." Since *Worcester*, federal law has singled out Indian tribes and their individual members for *sui generis* legal treatment. This jurisprudence has also established a political and trust

relationship with the United States government that is not shared by any other segment of American society. As stated in Cohen's at 207:

> The federal-tribal relationship is premised upon broad but not unlimited federal constitutional power over Indian affairs, often described as "plenary." The relationship is also distinguished by special trust obligations requiring the United States to adhere strictly to fiduciary standards in its dealings with the Indians. The inherent tension between broad federal authority and special federal trust obligations has produced a unique body of law.

The federal-tribal relationship is political and is designed by the United States to allow Congress and the Executive Branch to single out Indian tribes and Native Americans for specialized legislative and administrative treatment, much of which appears in Title 25 of the United States Code. *Morton v. Mancari*, 417 U.S. 535 (1974). In *Morton*, the Supreme Court held that such specialized treatment is essential to the trust relationship. In so holding, *Morton*, at 531-35, described the origin and nature of federal Indian law as follows:

> The plenary power of Congress to deal with the special problems of Indians is drawn both explicitly and implicitly from the Constitution itself. Article I, Sec. 8, cl 2, provides Congress with the power to "regulate Commerce . . . with the Indian Tribes," and thus, to this extent, singles Indians out as a proper subject for separate legislation. Article II, Sec. 2, cl 2, gives the President the power, with the advice of and consent of the Senate, to make treaties. This has often been the source of the Government's power to deal with Indian tribes. The Court described the origin and nature of this special relationship:
>
> > "In the exercise of the war and treaty powers, the United States overcame the Indians and took possession of their lands, sometimes by force, leaving them an uneducated, helpless and dependent people needing protection against the selfishness of others and their own improvidence. Of necessity, the United States assumed the duty of furnishing that protection, and with it the authority to do all that was required to perform that obligation and to prepare the Indians to take their place as independent, qualified members of the modern body politic . . ." (*citing Board of County Commissioners of Creek County v. Seber*, 318 U.S. 705, 715 (1943)).

An important element of the federal-tribal relationship described in *Morton* is the federal Indian trust doctrine. *See, e.g.*, Cohen's at 220-28. The trust or "guardian-ward" relationship noted in *Morton* was described in *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942), as a "distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people . . ." which involves "moral obligations of the highest responsibility and trust." Federal trusteeship duties may be founded on treaties, statutes, regulations, and executive orders (*See*, Cohen's at 220-28), or may otherwise arise from a general assumption of the trust relationship, regardless of actual treaty, statute, legislative or executive act.[13]

Under this special relationship, the United States has entered into more than 800 treaties with Indian tribes and enacted thousands of executive orders, statutes and regulations dealing with all aspects of Indian life, including, but not limited to: health, education, religion, economic development, children, employment, criminal laws, graves protection, environmental protection, gaming, self-government, language, and federal land-use policies. This particularized treatment has been upheld by the Supreme Court and various Courts of Appeals as constitutional because it is "rationally related" to the fulfillment of the United States'

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[13] The court in *United States v. Mitchell*, 463 U.S. 206, 224-26 (1982) recognized the "undisputed existence of a general trust relationship between the United States and the Indian People." *See also, Seminole Nation v. United States*, 316 U.S. 286 (1942) (a trust duty exits to pay interest from tribal trust fund to proper parties); *United States v. Creek Nation*, 295 U.S. 103 (1935) (a federal trust duty exists for proper management of Indian lands); *Navajo Tribe of Indians v. United States*, 364 F.2d 320 (Ct. Cl. 1966) (Bureau of Mines has a fiduciary duty to disclose to tribe the discovery of helium on tribal land subject to an assigned lease). The federal government in its totality is guided in its dealings with Indians by fiduciary obligations.

unique obligations to Indians.[14] Moreover, the United States has also enacted regulations, laws and executive orders under the trust doctrine dealing with the protection of Indian religion and culture.[15]

In short, the United States' deep, abiding, and pervasive intervention in, and control over, the lives and property of Indian people creates a fiduciary obligation on the part of the government to act in the best interests of Native peoples generally. In the absence of such fiduciary duties Indian people would be starkly vulnerable to the barest exploitation by the dominant society.

The fiduciary duty and high standard of conduct required of federal agencies in their dealings with Indians which arise from the federal trust relationship are very similar to that imposed upon private trustees by the law of trusts[16] and also include additional

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[14] *See, e.g., Washington v. Washington State Commercial Passenger Fishing Vessel Associate,* 443 U.S. 658, 672-73, 673 n.20 (1979); *United States v. Antelope*, 430 U.S. 641 (1977); *Moe v. Confederated Salish & Kootenai Tribes of Flathead Reservation*, 425 U.S. 463, 479-81 (1976); *Morton v. Mancari*, 417 U.S. at 555 ; *Alaska Ch., Associated General Contr. of America, Inc. v. Pierce*, 694 F.2d 1162, 1166-70 (9th Cir. 1982).

[15] *See, e.g.*, American Indian Religious Freedom Act Amendments of 1994, 42 U.S.C. § 1996a; Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 *et. seq.* (1997 Supp.); *Rupert v. Director, U.S. Fish & Wildlife Service*, 957 F.2d 32 (1st Cir. 1992) (Interior Department regulations allow Indians to obtain eagle feathers for religious purposes); *Peyote Way Church of God v. Thornburgh*, 922 F.2d 1210, 1216-17 (5th Cir. 1991) (DEA regulations allow Indians to possess peyote for religious purposes). *See also*, Executive Order No. 13,007 (Indian Sacred Sites), 61 Fed. Reg. 26,771 (1996); Attorney General Reno's Department of Justice Policy on Indian Sovereignty and Government-to-Government Relations With Indian Tribes, (June 1, 1995) at 4-5 (Unique legal and political relationship with Indian tribes stemming from the federal trust responsibility will "guide the Department in litigation, enforcement, policymaking and proposals for legislation affecting Indian country." Section F encompasses a Justice Department duty to protect tribal religion and culture.)

[16] In addition to cases cited in footnote 13, *supra, see, Little Earth of United Tribes v. United States Department of Housing and Urban Development*, 675 F. Supp. 497 (D. Minn.

presumptions, rules and canons of construction that are pertinent to resolving the instant case. These rules are discussed more detail below.

**b. The federal/Indian trust relationship applies to the Department of Commerce and all of its agencies including the Trademark Trial and Appeal Board**

The United States fiduciary obligation to Indians and Indian tribes extends to all federal agencies, including the PTO and this Board, in their dealings with Indian tribes and Native people. *Seminole Nation v. United States,* 316 U.S. 286, 297 (1942); *Pyramid Lake Paiute Tribe v. U.S. Department of Navy,* 898 F.2d 1410, 1420 (9th Cir. 1990); *Nance v. Environmental Protection Agency,* 645 F.2d 701, 711 (9th Cir. 1981). *See also*, Cohen's at 225-28:

> Since the trust obligations are binding on the United States, these standards would seem to govern all executive departments that may deal with Indians, not just those such as the Bureau of Indian Affairs which have special statutory responsibilities for Indian affairs.

*Id.* at 225.

President Clinton has made it very clear that federal Indian trust obligations extend to all executive departments in his Memorandum for Heads of Executive Departments and

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1987) (regarding HUD's foreclosure on Indian-owned property). *See also, Seminole Nation v. United States*, 316 U.S. 286; *United States v. Creek Nation*, 295 U.S. 103; *Navajo Tribe of Indians v. United States*, 364 F.2d 320. Moreover, other federal assistance programs for Native people have been held subject to a trust obligation owed by various federal agencies. *See, Morton v. Ruiz*, 415 U.S. 199 (1974) (finding that the BIA owed a duty to provide benefits under its general assistance program to Indians living both on and off the reservation); *McNabb v. Bowen*, 829 F.2d 787 (9th Cir. 1987) (holding that Indian Health Services, while not exclusively responsible for meeting the health care needs of indigent Indians, is primarily responsible for those needs based on Congress' recognition of federal responsibility for Indian health care); *White v. Califano*, 437 F. Supp. 543 (D. S.D. 1977) (finding that Indian Health Service officials had a fiduciary duty to care for a mentally ill member of an Indian tribe).

Agencies of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments), 59 Fed. Reg. 22,951-22952 (1994) (attached hereto as Exhibit D). The Memorandum provides in pertinent part that:

> The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments.

*Id.* at 22,951. Sections (b) and (c) of the President's memorandum direct each executive department and agency to "consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments" and to "assess the impact of Federal Government . . . activities on tribal trust resources and assets and assure that tribal government rights and concerns are considered during the development of such . . . programs and activities." *Id.*

At minimum, these directives mandate that this Board carefully assess the impact of the "redskins" trademark registrations upon Indian tribes and peoples, in consultation with them, in enforcing the provisions of 15 U.S.C. § 1052(a). Hence, as discussed below, the federal Indian trust doctrine, as expressed through Sections (b) and (c) of the President's Memorandum, requires that this Board place great weight upon the evidence and opinions of Petitioners and *Amici Curiae* as to whether the "redskins" trademarks are disparaging to Native Americans.

### c. Indian Law Trust Principles Require Cancellation of The "Redskins" Trademarks Under 15 U.S.C. § 1052(a)

Two basic rules which arise from the federal trust relationship provide helpful guides to the Board in resolving this case. First, because of the trust relationship owed to Indian tribes and people by the Department of Commence, it is incumbent upon the Board to strictly enforce the provisions of 15 U.S.C. § 1052(a) in order to safeguard Indian tribes and citizens from racially or culturally disparaging federal trademarks. A trustee is held to a high standard of conduct to act in the best interests of its wards. *See*, Cohen's at 220-221. The Lanham Act is subject to the rule requiring that "[s]tatutes, agreements, and executive orders dealing with Indian affairs [be] . . . liberally construed in favor of establishing Indian rights." *Id.* at 224. Hence, Section 2(a) of the Lanham Act must be construed in light of this trust responsibility and "read as protecting Indian rights and in a manner favorable to Indians." Cohen's at 221.

Second, in determining whether the term "redskins" may disparage Native Americans under Section 2(a), this Board must accord Petitioners' evidence and views (including *Amici's* views) great, if not determinative, weight. *See*, President's Memorandum for Heads of Executive Departments and Agencies, *supra*, (Exhibit D) [requiring agency consultation with Indian tribes when agency activities affect tribal interests]. Such weight is especially mandated where, as here, protective legislation is intended to safeguard the public, including Native Americans. In such an instance, ambiguous terms must be construed in the manner as understood by the Indians. *See*, Cohen's at 222-224.

The above rules of federal Indian law are applicable to this case and require that the "redskins" trademarks be canceled. Such an outcome is in furtherance of the United States'

trust obligations to Indian people and tribes. As discussed above, in the area of cultural protection, Congress and the Executive Branch have assumed a trust obligation toward Indian tribes and Native people that is expressed in statutes, executive orders and administrative regulations. Hence, federal action protecting Indian culture from derogatory commercial racial stereotyping, as requested by Petitioners, is required to further the United States' unique obligations to Indian tribes and is rationally related to protecting culture which is a fundamental component of the United States' trust relationship with Indian tribes. *Peyote Way Church of God*, 922 F.2d at 1216.

## CONCLUSION

This Board is required by law to assess the issues in this case in light of its federal-Indian trust relationship and associated fiduciary duties to protect Indians and Indian culture from degrading federal trademark registrations. That trust relationship encompasses an affirmative duty on behalf of the Department of Commerce and this Board to protect tribal culture and safeguard Native Americans from racism in sports conducted under color of federal law.

The contested registered trademarks consist of matter which not only "may" disparage, but in fact does disparage Native Americans in violation of 15 U.S.C. § 1052(a). Therefore, the contested trademarks belonging to Pro-Football, Inc. should be canceled.

RESPECTFULLY SUBMITTED this 4th day of August, 1997.

Walter R. Echo-Hawk
**NATIVE AMERICAN RIGHTS FUND**
1506 Broadway
Boulder, Colorado 80302
(303) 447-8760

Counsel for *Amici Curiae*
National Congress of American Indians,
National Indian Education Association and
National Indian Youth Council

EXHIBIT A

# National Congress of American Indians

Est. 1944

EXECUTIVE COMMITTEE

President
Gaiashkibos
*Chippewa*

First Vice President
Joseph T. Goombi
*Kiowa*

Recording Secretary
Rachel Joseph
*Shoshone-Paiute-Mono*

Treasurer
W. Ron Allen
*Jamestown S'Klallam*

AREA VICE PRESIDENTS

Aberdeen Area
Terry Fiddler
*Cheyenne River Sioux*

Albuquerque Area
Raymond D. Apodaca
*Ysleta Del Sur Pueblo*

Anadarko Area
Elmer Manatowa
*Sac & Fox*

Billings Area
Earl Old Person
*Blackfeet*

Juneau Area
Edward K. Thomas
*Tlingit-Haida*

Minneapolis Area
James Crawford
*Forest County Potawatomi*

Muskogee Area
S. Diane Kelley
*Cherokee*

Northeastern Area
J.C. Seneca
*Seneca*

Phoenix Area
Mary Ann Antone
*Tohono O'Odham*

Portland Area
Bruce Wynne
*Spokane*

Sacramento Area
Susan Masten
*Yurok*

Southeastern Area
A. Bruce Jones
*Lumbee*

EXECUTIVE DIRECTOR
Michael J. Anderson
*Creek*

## RESOLUTION NO. EX DC-93-11

### RESOLUTION IN SUPPORT OF THE PETITION FOR CANCELLATION OF THE REGISTERED SERVICES MARKS OF THE WASHINGTON REDSKINS AKA PRO-FOOTBALL INC.

WHEREAS, the American Indian and Alaska Tribal Governments and people have gathered in Crystal City, Virginia, of the Washington, D.C. area, for the 1993 Executive Council Meeting of the National Congress of American Indians (NCAI) in order to promote the common interests and welfare of American Indian and Alaska Native peoples; and

WHEREAS, NCAI is the oldest and largest intertribal organization nationwide representative of and advocate for national, regional, and local tribal concerns; and

WHEREAS, NCAI has read and understands the Cancellation Petition Filed on September 10, 1992, before the Trademark Trial and Appeal Board--attached as Exhibit A; and

WHEREAS, NCAI is familiar with the 'Registered Service Marks of the Washington Redskins and the context in which those marks are used by the Washington Redskins football organization--attached as Exhibit B; and

WHEREAS, the term REDSKINS is not and has never been one of honor or respect, but instead, it has always been and continues to be a pejorative, derogatory, denigrating, offensive, scandalous, contemptuous, disreputable, disparaging and racist designation for Native American's and

WHEREAS, the use of the registered service marks identified in Exhibit B to this resolution by the Washington Redskins football organization, has always been and continues to be offensive, disparaging, scandalous, and damaging to Native Americans.

**NOW THEREFORE BE IT RESOLVED**, that the NCAI hereby issues its support of the cancellation petition attached as Exhibit A to this resolution, filed on September 10, 1992, by petitioners Suzan Shown Harjo (Cheyenne and Arapaho Tribes of Oklahoma), Vine Deloria, Jr., (Standing Rock Sioux), Raymond D. Apodaca (Ysleta del Sur Pueblo), Norbert S. Hill, Jr. (Oneida Tribe of Wisconsin), Manley A. Begay, Jr. (Navajo Nation), William A. Means (Oglala Sioux Tribe of

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Pine Ridge), and Mateo Romero (Cochiti Pueblo), against the registered marks identified in Exhibit B to this resolution.

## CERTIFICATION

Rachel A. Joseph, Recording Secretary

Adopted by the Executive Council during the Executive Council Meeting, January 18-19, 1993, Crystal City, Virginia.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration No. 1,606,810 (REDSKINETTES)
Registered July 17, 1990,
Registration No. 1,343,442 (SKINS)
Registered June 18, 1985,
Registration No. 1,085,092 (REDSKINS)
Registered February 7, 1978,
Registration No. 987,127 (THE REDSKINS & DESIGN)
Registered June 25, 1974,
Registration No. 986,668 (WASHINGTON REDSKINS & DESIGN)
Registered June 18, 1974,
Registration No. 978,824 (WASHINGTON REDSKINS)
Registered February 12, 1974,
and Registration No. 836,122 (THE REDSKINS--STYLIZED LETTERS)
Registered September 26, 1967

Suzan Shown Harjo, )
Raymond D. Apodaca, )
Vine Deloria, Jr., )
Norbert S. Hill, Jr., )
Mateo Romero, )
William A. Means, and )
Manley A. Begay, Jr. )
)
Petitioners, ) Cancellation No.__________
v. )
)
Pro-Football, Inc. )
)
Registrant. )

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PETITION FOR CANCELLATION

Petitioners, SUZAN SHOWN HARJO, President and Executive Director of the Morning Star Foundation, National Coordinator for the 1992 Alliance, former Executive Director of the National Congress of American Indians (NCAI), an enrolled member of the Cheyenne-Arapaho Tribe of Oklahoma, a federally recognized Indian tribe, and a resident of the District of Columbia; RAYMOND D.

APODACA, Governor of the Pueblo of Ysleta del Sur, Albuquerque Area Vice President for NCAI, Chairman of the Human and Religious Rights Committee for NCAI, an enrolled member of the Ysleta del Sur Pueblo, a federally recognized Indian tribe, and a resident of the State of Texas; VINE DELORIA, JR., Author, Attorney, Professor of History at the University of Colorado, Former Executive Director of NCAI, an enrolled member of the Standing Rock Sioux, a federally recognized Indian tribe, and a resident of the State of Colorado; NORBERT S. HILL, JR., Executive Director of the American Indian Science & Engineering Society, Founding Board Member Trustee of the National Museum of the American Indian, an enrolled member of the Oneida Tribe of Wisconsin, a federally recognized Indian tribe, and a resident of the State of Colorado; MATEO ROMERO, an artist, graduate of Dartmouth College and Masters of Fine Arts candidate at the University of New Mexico, an enrolled member of the Cochiti Pueblo, a federally recognized Indian tribe, and a resident of the State of New Mexico; WILLIAM A. MEANS, Executive Director of the American Indian Opportunity Industrialization Center, President of the International Indian Treaty Council, former Executive Director of the Heart of the Earth Survival School (K-12), an enrolled member of the Oglala Sioux Tribe of Pine Ridge, a federally recognized Indian tribe, and a resident of the State of Minnesota; and MANLEY A. BEGAY, JR., Executive Director of the National Executive Education Program for Native American Leadership at Harvard University, Executive Director of the Harvard Project on American Indian Economic Development of the John F. Kennedy School of Government, an enrolled member of the Navajo Nation, a federally recognized Indian tribe, and a resident of

the State of Massachusetts, (hereinafter "Petitioners"), in their capacity as Native American persons and enrolled members of federally recognized Indian tribes, believe that they have been, are, and/or will be damaged by U.S. Registration Nos. 1606810, 1343442, 1085092, 987127, 986668, 978824, and 836122, registered in the name of Pro-Football, Inc. (hereinafter "Registrant"), a Maryland corporation, having a place of business at 13832 Redskin Drive, Redskin Park, P.O. Box 17247, Dulles, Washington, D. C. 20041, and hereby petition to cancel said registrations.

The grounds for cancellation are as follows:

1. The term "REDSKIN" or an abbreviation of that term appears in each of the above-identified registered marks. The term "REDSKIN" was and is a pejorative, derogatory, denigrating, offensive, scandalous, contemptuous, disreputable, disparaging and racist designation for a Native American person. The marks identified in U.S. Registration Nos. 986668 and 987127 also include additional matter that, in the context used by Registrant, is offensive, disparaging and scandalous. The Registrant's use of each mark identified in the seven above registrations offends Petitioners, and other Native Americans, causing them to be damaged by the continued registration of the marks.

2. Registrant's seven above-identified federally registered marks consist of or comprise matter which disparages Native American persons, and brings them into contempt, ridicule, and disrepute, in violation of Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a).

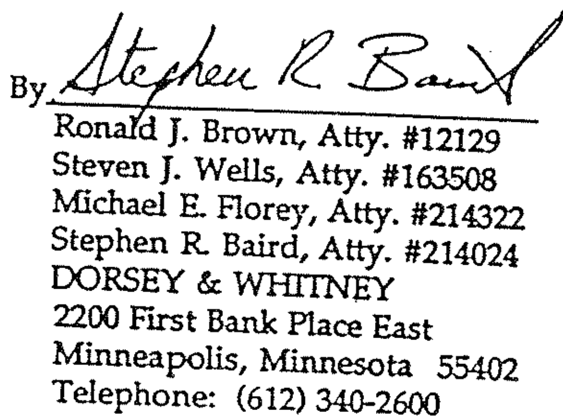
3. Registrant's seven above-identified federally registered marks consist of or comprise scandalous matter, in violation of section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a).

WHEREFORE, Petitioners believe that they have been, are, and/or will be damaged by said registrations and pray that each of them be cancelled.

Respectfully submitted,

Suzan Shown Harjo
Raymond D. Apodaca
Vine Deloria, Jr.
Norbert S. Hill, Jr.
Mateo Romero
William A. Means
Manley A. Begay, Jr.

Date: September 10, 1992



By ______________________
Ronald J. Brown, Atty. #12129
Steven J. Wells, Atty. #163508
Michael E. Florey, Atty. #214322
Stephen R. Baird, Atty. #214024
DORSEY & WHITNEY
2200 First Bank Place East
Minneapolis, Minnesota 55402
Telephone: (612) 340-2600

Below are reproductions of the seven service marks used by the Washington Redskins and being challenged by The Morning Star Foundation.

WASHINGTON REDSKINS

REDSKINETTES

REDSKINS

SKINS

*The Redskins*

WASHINGTON

REDSKINS

*The Redskins*

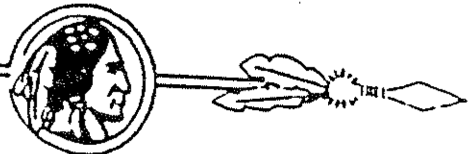


Exhibit B

EXHIBIT E

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration No. 1,606,810 (REDSKINETTES)
Registered July 17, 1990
Registration No. 1,343,442 (SKINS)
Registered June 18, 1985,
Registration No. 1,085,092 (REDSKINS)
Registered February 7, 1978,
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Registered June 25, 1974,
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Registered June 18, 1974,
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Registered February 12, 1974,
and Registration No. 836,122 (THE REDSKINS-STYLIZED LETTERS)
Registered September 26, 1967

| | |
|---|---|
| Suzan Shown Harjo,<br>Raymond D. Apodaca,<br>Vine Deloria, Jr.,<br>Norbert S. Hill, Jr.,<br>Mateo Romero,<br>William A. Means, and<br>Manley A. Begay, Jr.,<br><br>Petitioners,<br><br>vs.<br><br>Pro-Football, Inc.,<br><br>Registrant. | Cancellation No. 21, 069 |

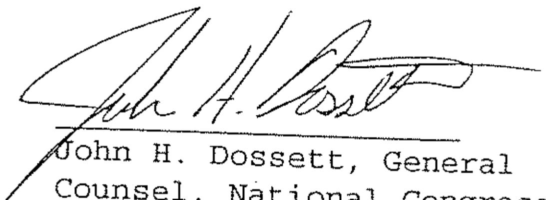
## AFFIDAVIT OF JOHN H. DOSSETT

I, John H. Dossett duly swear and depose:

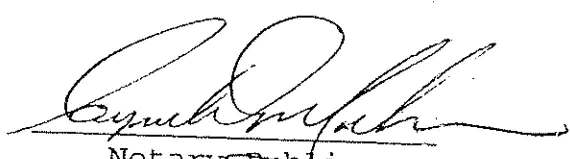
1. That I am the General Counsel for the National Congress of American Indians located at 2010 Massachusetts Avenue, NW, Washington D.C.

2. Attached hereto is a true and correct copy of Resolution No. JNU-97-106 duly adopted at the Mid-Year Conference of the National Congress of American Indians by the General Assembly pursuant to the By-Laws of the organization held June 8-11, 1997 with a quorum present.

Dated this 30th day of July, 1997



John H. Dossett, General Counsel, National Congress of American Indians



Notary Public

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
S. Diane Kelley
*Cherokee Nation*

Treasurer
Gerald (Gerry) E. Hope
*Ketchikan Indian Corporation*

Area Vice Presidents

Aberdeen Area
Russell (Bud) Mason
*Three Affiliated Tribes*

Albuquerque Area
Joe Garcia
*San Juan Pueblo*

Anadarko Area
Merle Boyd
*Sac & Fox Tribe*

Billings Area
John Sunchild, Sr.
*Chippewa Cree Tribe*

Juneau Area
Edward K. Thomas
*Tlingit-Haida Central Council*

Minneapolis Area
Marge Anderson
*Mille Lacs Band of Ojibwe*

Muskogee Area
Rena Duncan
*Chickasaw Nation*

Northeast Area
Ken Phillips
*Oneida Nation of New York*

Phoenix Area
Arlan D. Melendez
*Reno-Sparks Indian Colony*

Portland Area
Bruce Wynne
*Spokane Tribe*

Sacramento Area
Juana Majel
*Pauma Band of San Luiseno*

Southeast Area
James Hardin
*Lumbee Tribe*

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

2010 Massachusetts Ave., NW
Second Floor
Washington, DC 20036
202.466.7767
202.466.7797 *facsimile*

## Resolution # JNU-97-106

## Title: Condemn Use of 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 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,** NCAI is familiar with the Registered Service Marks of the Washington Redskins and the context in which those marks are used by the Washington Redskins football organization; and

**WHEREAS,** NCAI has read and understands the Cancellation Petition Filed on September 10, 1992 before the Trademark Trial and Appeal Board; and

**WHEREAS,** the term "Redskins" is not and has never been one of honor or respect, but instead, it has always been and continues to be a pejorative, derogatory, denigrating, offensive and racist designation for Native Americans; and

**WHEREAS,** the use of the registered service marks by the Washington Redskins football organization has always been and continues to be offensive and damaging to Native Americans.

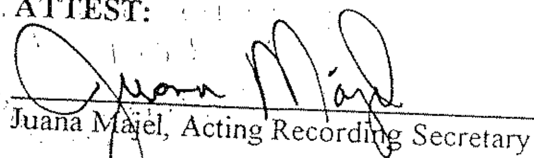
**NOW THEREFORE BE IT RESOLVED** that the National Congress of American Indians hereby reaffirms it support for Resolution EX-93-11, which condemns the use of Indian mascots and its support for the cancellation petition filed on September 10, 1992, by petitioners Suzan Shown Harjo (Cheyenne and Arapaho Tribes of Oklahoma), Vine Deloria, Jr. (Standing Rock Sioux), Raymond D. Apodaca (Ysleta del Sur Pueblo), Norbert S. Hill, Jr. (Oneida Tribe of Wisconsin), Manley A. Begay (Navajo Nation), Will A. Means (Oglala Sioux Tribe of Pine Ridge), and Mateo Romero (Cochiti Pueblo).

## CERTIFICATION

The foregoing resolution was adopted at the 1997 Mid-Year Conference of the National Congress of American Indians, held at the Centennial Hall Convention Center in Juneau, Alaska on June 8-11, 1997 with a quorum present.

W. Ron Allen, President

ATTEST:



Juana Majel, Acting Recording Secretary

Adopted by the General Assembly during the 1997 Mid-Year Conference held at the Centennial Hall Convention Center in Juneau, Alaska, on June 8-11, 1997.

EXHIBIT C

# NATIONAL INDIAN EDUCATION ASSOCIATION

1819 H STREET, N.W., SUITE 800
WASHINGTON, D.C. 20006
(202) 835-3001

Resolution: 94-18

**TITLE:** Resolution in Support of the Petition for Cancellation of the Registered Services Marks of the Washington Redskins AKA Pro-Football Inc.

**WHEREAS:** NIEA is familiar with the Cancellation Petition filed by a number of American Indian petitioners on September 10, 1992, before the Trademark Trial and Appeals Board against the Washington Redskins football organization; and

**WHEREAS:** NIEA is familiar with the Registered Service Marks of the Washington Redskins and the context in which those marks are used by the Washington Redskins football organization; and

**WHEREAS:** The term "Redskins" is not and has never been one of honor or respect, but instead has always been and continues to be a pejorative, derogatory, denigrating, offensive, scandalous, contemptuous, disreputable, disparaging and racist designation for Native Americans; and

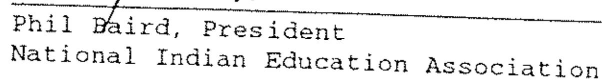
**WHEREAS:** Use of the Registered Service Marks by the Washington Redskins football organization has always been and continues to be offensive, disparaging, scandalous and damaging to Native Americans.

**NOW THEREFORE BE IT RESOLVED THAT THE NATIONAL INDIAN EDUCATION ASSOCIATION** hereby issues its support of the cancellation petition filed on September 10, 1992, by petitioners Raymond D. Apodaca (Ysleta del Sur Pueblo); Manley A. Begay, Jr. (Navajo Nation); Vine Deloria, Jr. (Standing Rock Sioux); Suzan Shown Harjo (Cheyenne and Arapaho Tribes of Oklahoma); Norbert S. Hill, Jr. (Oneida Tribe of Wisconsin); William A. Means (Oglala Sioux Tribe of Pine Ridge) and Mateo Romero (Cochiti Pueblo) against the registered marks of the Washington Redskins football organization.

SUBMITTED BY: Lorraine P. Edmo

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the NIEA Board of Directors at its regular Board meeting on January 22, 1994, at which a quorum was present, and that this resolution was approved.



Phil Baird, President
National Indian Education Association

EXHIBIT D

Federal Register
Vol. 59, No. 85
Wednesday, May 4, 1994

# Presidential Documents



Title 3—

The President

Memorandum of April 29, 1994

## Government-to-Government Relations With Native American Tribal Governments

Memorandum for the Heads of Executive Departments and Agencies

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

William J. Clinton

THE WHITE HOUSE,
*Washington, April 29, 1994.*

[FR Doc. 94-10877
Filed 5-2-94; 3:49 pm]
Billing code 3110-01-M

Editorial note: For the President's remarks to American Indian and Native Alaska tribal leaders, see the *Weekly Compilation of Presidential Documents* (vol. 30, issue 18)