

No. 15-1874

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

---

PRO-FOOTBALL, INC.,  
*Plaintiff and Appellant,*

v.

AMANDA BLACKHORSE, MARCUS BRIGGS-CLOUD; PHILLIP GOVER;  
JILLIAN PAPPAN; COURTNEY TSOTIGH  
*Defendants and Appellees*

UNITED STATES OF AMERICA,  
*Intervenor-Appellee.*

---

On Appeal from the United States District Court for the  
Eastern District of Virginia at Alexandria,  
No. 1:14-cv-01043-GBL-IDD

---

**BRIEF OF *AMICI CURIAE*  
NATIVE AMERICAN ORGANIZATIONS  
IN SUPPORT OF APPELLEES**

Larry S. Gondelman  
Brandi A. Taylor  
POWERS PYLES SUTTER &  
VERVILLE PC  
1501 M Street NW, Seventh Floor  
Washington, DC 20005  
*COUNSEL FOR AMICI CURIAE  
NATIVE AMERICAN  
ORGANIZATIONS*

Richard A. Guest  
NATIVE AMERICAN RIGHTS FUND  
1514 P Street NW, Suite D  
Washington, DC 20005  
*COUNSEL FOR AMICI CURIAE  
NATIVE AMERICAN  
ORGANIZATIONS*

**STATEMENT REGARDING CONSENT TO FILE**

The parties have consented to the filing of briefs *amicus curiae*.

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Local Rule 26.1(b)(1), *amici* American Indian Council; American Indian Science and Engineering Society at the University of Minnesota; American Indian Student Alliance at California State University San Marcos; American Indian Student Cultural Center at the University of Minnesota; American Indian Studies Association; American Indians in Film & Television; Americans for Indian Opportunity; Association of Native Americans at Yale University; Association of Tribal Archives, Libraries, and Museums; Association on American Indian Affairs; Blue Feather Drum Group; California Indian Culture and Sovereignty Center at California State University San Marcos; California Indian Museum and Cultural Center; Capitol Area Indian Resources, Inc.; Center for Indigenous Peoples Studies, College of Social and Behavioral Sciences, California State University, San Bernardino; Change the Mascot Campaign; Council of Fire Native American Leadership and Debate Society; First Nations at the University of Washington; Gamma Delta Pi; “Indian” Mascot and Logo Taskforce; Indigenize OU; Indigenous and American Indian Studies Club at Haskell Indian Nations University; Indigenous Law and Policy Center at the Michigan State University College of Law; International Indian Treaty Council; Midwest Alliance of Sovereign Tribes; National Indian Education Association; National Indian Youth

Council; National Congress of American Indians; National Native American Law Students Association; Native American Contractors Association; Native American Journalists Association; Native American Law Students Association at the University of Washington School of Law; Scholars of Stereotypes of Native Americans in Sport; Society of American Indian Government Employees; Society of Indian Psychologists; Southern California Tribal Chairmen's Association; The Morning Star Institute; United South & Eastern Tribes; UNLV Native American Community; and Wisconsin Network for Peace and Justice each states that it is not a publicly-held corporation, does not issue stock, and does not have a parent corporation.

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	vii
INTEREST OF <i>AMICI CURIAE</i> .....	1
SUMMARY OF ARGUMENT .....	15
ARGUMENT .....	15
I. The District Court Correctly Held That the REDSK*NS Marks Must Be Cancelled Because They Consist of Matter That (1) May Disparage a Substantial Composite of Native Americans During the Relevant Time Period, 1967-1990, and (2) Bring Native Americans into ‘Contempt or Disrepute.’ .....	15
A. <i>Amici</i> Represent a Substantial Composite of Native Americans.....	17
B. Leaders of the Native American Community Have Historically Opposed the REDSK*NS Marks Because They Disparage Native Americans.....	19
C. The Personal Experiences of Native Americans Plainly Demonstrate That the Use of “Redsk*ns” as a Sports Mascot Exposes Native Americans to Contempt, Ridicule, and Disrepute. ....	25
D. The Use of “Redsk*ns” as a Sports Mascot Harms Native Americans and Misinforms the Public about Contemporary Native Americans.....	28
II. The <i>Amicus</i> Brief Filed by Native and Non-Native Americans on Behalf of Pro-Football Is Unpersuasive.....	311
A. <i>Amici</i> in Support of Pro-Football Do Not Represent a Substantial Composite of Native Americans.....	31
B. <i>Amici’s</i> Description of the First Use of “Redsk*ns” in the 1700s and 1800s Is Irrelevant. ....	31

C. The Use of “Redsk\*ns” Mascots Has Significantly Decreased Over the Past  
Forty Years. ....32

CONCLUSION.....33

## TABLE OF AUTHORITIES

### Cases

*In re Boulevard Ent., Inc.*, 334 F.3d 1336 (Fed. Cir. 2003). .....16

### Trademark Trial and Appeal Board Decisions

*Blackhorse, et al. v. Pro-Football, Inc.*, 111 U.S.P.Q.2d 1080, 2014 WL 2757516 (T.T.A.B. 2014).....17

*Harjo v. Pro-Football, Inc.*, 50 U.S.P.Q.2d 1705, 1999 WL 375907 (T.T.A.B. 1999).....28

*In re Heeb Media, LLC*, 89 U.S.P.Q.2d 1071, 2008 WL 5065114 (T.T.A.B. 2008) ..... 16, 17

*In re Squaw Valley Dev. Co.*, 80 U.S.P.Q.2d 1264, 2006 WL 1546500 (T.T.A.B. 2006)..... 16, 17

### Statutes

15 U.S.C. § 1052(a) .....15

*California Racial Mascots Act*, A.B. 30, 2015 Leg. (Cal. 2015) .....32

### Other Authorities

*Of Warrior Chiefs and Indian Princesses: The Psychological Consequences of American Indian Mascots*, BASIC AND APPLIED SOCIAL PSYCHOLOGY, 30: 208-18 (2008) .....30

Linda M. Waggoner, *The Washington R\*dskins' Wily Mascot: Coach William "Lone Star" Dietz*, MONTANA THE MAGAZINE OF WESTERN HISTORY (Spring 2013), <http://nmai.si.edu/sites/1/files/pdf/seminars-symposia/WaggonerWEBSpr2013.pdf> .....19

### INTEREST OF *AMICI CURIAE*<sup>1</sup>

In its Opening Brief, Appellant Pro-Football, Inc., attempts to relegate the voices of prominent leaders of Native American organizations over the past five decades to a minority “heckler’s veto.” (PFI Br. 48.) What Pro-Football cannot dismiss is the content of the January 18, 1972 letter to then-President of the Washington football team, Edward Bennett Williams, which clearly expressed the strongly held view – both then and now – that the team’s name is a “derogatory racial epithet”:

Born at a time in our history when the national policy was to seize Indian land and resources, and hunt down Indian people who stood in the way, the term “Redsk[\*]n” has been perpetuated through such media as western movies and television. Most often the term is coupled with other derogatory adjectives, as “dirty Redsk[\*]n” or “pesky Redsk[\*]n” which is used interchangeably with the word “savage” to portray a misleading and denigrating image of the Native American.

(D.E.73-25at1.)

Pro-Football also cannot deny that, in March 1972, it met with a delegation of Native American leaders who demanded that the team change its name. This delegation represented the interests of *Amicus* National Congress of American Indians, *Amicus* National Indian Youth Council, and *Amicus* Americans for Indian

---

<sup>1</sup> No party’s counsel authored the brief in any part, and no person other than *amici* and their counsel contributed money for the preparation or submission of this brief.



Opportunity, along with the American Indian Press Association, the American Indian Movement, the Indian Legal Information Development Service, and the Bureau of Indian Affairs.

In similar fashion, the Native American organizations participating in this brief represent a broad cross-section, and form a substantial composite of, Native Americans who collectively support the affirmance of the District Court's decision that the REDSK\*NS marks are disparaging to Native Americans (and were so at the time of registration) and must be cancelled.

*Amici* have a long history of involvement in cultural, economic, educational health, policy, and social justice issues affecting the Native American nations and tribes, and their citizenry. As a result, they speak authoritatively about the harm caused by racially based "Indian" names and their belief that the REDSK\*NS marks are disparaging to all Native Americans, subjecting them to ridicule, contempt, and disrepute.

*Amicus* **American Indian Council** is a non-profit American Indian organization, incorporated in the state of Missouri which provides supplemental services that support employment and training activities for American Indians who are enrolled members of federally-recognized tribes.

*Amicus* **American Indian Science and Engineering Society at the University of Minnesota** has a mission to nurture the building of community by

bridging science and technology with traditional Native values. Its goal is to be a catalyst for advancement of American Indians as they grow to become self-reliant and self-determined members of society.

*Amicus* **American Indian Student Alliance at California State University**

**San Marcos** is comprised of American Indian students with a strong focus on cultural preservation, education, health, and wellness, who seek to promote a positive learning environment for both Native American and non-Native American students.

*Amicus* **American Indian Student Cultural Center at the University of**

**Minnesota** promotes cultural diversity and seeks to develop leadership in American Indian students and to build understanding of American Indian people, issues, history, and culture.

*Amicus* **American Indian Studies Association** is comprised of scholars and students from throughout the United States and is committed to pursuing accurate and truthful information about Indian peoples and nations.

*Amicus* **American Indians in Film & Television**, established in 1979, has evolved into a civil and social rights organization with a solid record of 37 years of opening employment doors in the industry, both inside and outside of Hollywood. It has fought to protect the true image of Native peoples, to eliminate racial

stereotypes, and to educate about the negative impacts of stereotyping Indian peoples and the cultural appropriation of “Native” names, images and behaviors.

*Amicus* **Americans for Indian Opportunity** is a national non-profit established in 1970 to advance, from an Indigenous worldview, the cultural, political and economic rights of Indigenous peoples in the United States and around the world. It is governed by a board of international Indigenous leaders and that draws upon traditional Indigenous philosophies to foster value-based leadership, inspire stakeholder-driven solutions, and convene visionary leaders to probe contemporary issues and address the challenges of the new century. AIO historically has opposed the use of a racially disparaging term as a mascot since before it met with the Washington team President in 1972 and continues to stand in opposition to the term today.

*Amicus* **Association of Native Americans at Yale University** is a student-run cultural organization designed to celebrate, educate, and appreciate Native American culture and history. It works towards Indigenous cultural awareness in the Yale Community with a Native perspective through panels, speaker programs, and other events throughout the year.

*Amicus* **Association of Tribal Archives, Libraries, and Museums** is a Native-led non-profit organization consisting of cultural practitioners, legal scholars, and community activists that works internationally to sponsor educational

programs, conduct needs assessment studies, and develop national implementation strategies in an effort to advance Indigenous cultures, preserve Native languages, improve digital inclusion opportunities for Native peoples, advance literacy rates, and encourage Science, Technology, Engineering and Math (“STEM”) learning in Native communities.

*Amicus* **Association on American Indian Affairs** is a 93-year-old Indian advocacy organization that actively promotes the health, education, and welfare of Indian children and youth by documenting rampant and widespread foster care and adoptive placements of Indian children, and working to reform juvenile justice systems – tribal, federal, state, and county – to promote alternatives to incarceration and to eliminate the disproportionate treatment of Indian youth.

*Amicus* **Blue Feather Drum Group** is Yale University's premier powwow drum group, showcasing both traditional and contemporary drum music, often accompanied by competition style powwow and social dances. Blue Feather works to exhibit the strength of the intertribal Native community at Yale and the presence and immediacy of Native culture on campus.

*Amicus* **California Indian Culture and Sovereignty Center at California State University San Marcos** is a unique research, cultural, and community hub, with a mission that fosters collaborative research and community service relationships between the faculty, staff, and students and members of Tribal

communities for the purpose of developing and conducting research projects that support the maintenance of sovereignty and culture within those communities.

*Amicus California Indian Museum and Cultural Center*, founded in 1991 at the Presidio of San Francisco, is a non-profit organization which serves as a statewide, issues-based museum that gives California Indians a voice in the telling of their histories, and offers the public an opportunity to learn about tribal perspectives.

*Amicus Capitol Area Indian Resources, Inc.*, a non-profit organization established in 1985, encourages the development of all aspects of education for the American Indian community in the Sacramento region, while affirming and preserving Native cultural and traditional values in today's society. It was a key partner in the passage of California bill A.B. 30 in 2015, the *California Racial Mascots Act*, which terminated the use of the racial slur, the Redsk\*ns, as a team name for all public schools in California.

*Amicus Center for Indigenous Peoples Studies, College of Social and Behavioral Sciences, California State University, San Bernardino* is the primary site for innovative programs for the study of American Indians and local, national and international Indigenous Peoples. The Center conducts research, facilitates curricular and instructional programs, and coordinates academic

activities, contributing to the development of knowledge and advancement of related social issues.

*Amicus* **Change the Mascot Campaign** works on behalf of Oneida Indian Nation and the National Congress of American Indians and was launched in 2013 by the federally recognized Oneida Nation in Central New York. The Oneida Nation has approximately 1,000 enrolled members. It is a national grassroots campaign that helps frame the debate surrounding the Washington team's name, with support from a diverse coalition of prominent advocates including elected officials from both parties, Native American tribes, sports icons, leading journalists and news publications, civil and human rights organizations, and religious leaders.

*Amicus* **Council of Fire Native American Leadership and Debate Society** is a group of committed University of Oklahoma Indigenous students who meet to discuss and deconstruct difficult topics in Indian Country, and who are dedicated to augmenting the well-being of Indigenous peoples.

*Amicus* **First Nations at the University of Washington** is the largest Native student organization on the campus, with members identifying as Native American, Canadian First Nations, and Alaskan Natives. It works toward promoting Native American/Alaskan Native culture and education through programming, events, and activism, as well as promoting solidarity among Indigenous peoples.

*Amicus* **Gamma Delta Pi** is a Native sorority at the University of Oklahoma which provides a forum for the exchange of information, concerns, ideas, experiences, resources, support, and questions relating to the broad spectrum of Native American culture. Its members are actively involved in civic, educational, and cultural programs that enhance both the Native American communities and the image of the represented higher education institution.

*Amicus* **“Indian” Mascot and Logo Taskforce** was created in 1997 by the Wisconsin Indian Education Association to provide educational advocacy to eliminate all “Indian” logos, mascots, and team names from Wisconsin public schools. To date, more than thirty Wisconsin School Districts have retired such names and mascots.

*Amicus* **Indigenize OU** is a Native advocacy organization at the University of Oklahoma. The group of Native students seeks to promote the well-being of Indigenous peoples.

*Amicus* **Indigenous and American Indian Studies Club at Haskell Indian Nations University** promotes the profession of Indigenous and American Indian Studies to enhance the education of all students and to educate the world on American Indian Studies.

*Amicus* **Indigenous Law and Policy Center at the Michigan State University College of Law** is committed to the education of Native law students

and the training of lawyers prepared to work on behalf of tribes around the country, whether for tribal governments, private law firms, or non-profit organizations. The Center has two goals: to train law students to work with Indian Country and to provide services to institutional clients, such as Indian tribes, tribal courts, and other tribal organizations, on a wide variety of legal and policy questions.

*Amicus* **International Indian Treaty Council**, established in 1974, is an organization of Indigenous Peoples from North, Central, and South America, the Pacific, the Arctic, and the Caribbean, with a mission to work for sovereignty and self-determination for Indigenous Peoples and for the recognition and protection of their human rights, treaties, traditional cultures, and sacred lands. In 1977, the Council received formal recognition from the United Nations Economic and Social Council as a Non-Governmental Organization with Consultative Status and in 2011 was recommended for an upgrade to “General Consultative Status.” The Council focuses its work internationally, primarily before various UN human rights forums.

*Amicus* **Midwest Alliance of Sovereign Tribes**, established in 1997, is an intertribal organization which represents 34 tribes from Michigan, Wisconsin, and Minnesota, whose mission is to advance, protect, preserve, and enhance the mutual interests, treaty rights, sovereignty, and cultural way of life of the sovereign nations of the Midwest.



*Amicus National Indian Education Association* is the largest and oldest membership-based Indian education organization in the United States, representing scores of Native schools and educational institutions, as well as numerous Native educators and students. NIEA began its organized work in 1969 and was incorporated in 1970.

*Amicus National Indian Youth Council*, founded in 1961 in Gallup, New Mexico, is the second oldest national American Indian organization and is Indian conceived, Indian controlled, and Indian operated. It has advocated diligently and continuously to ensure that every American Indian has equitable access to educational opportunities, health and social services, employment, and human and civil rights. The Council's mission is to improve the economic, educational and social welfare of American Indians. NIYC has historically opposed the use of a racially disparaging term as a mascot since its founding a decade before it met with the Washington team President in 1972. NIYC continues to stand in opposition to the term today.

*Amicus National Congress of American Indians* was established in 1944 and is the oldest, largest, and most representative national intertribal organization. It represents over 250 tribes, nations, pueblos, and Alaska Native villages with a combined enrollment of over 1.2 million. NCAI promotes the enhanced quality of life of Native people and strives to educate the general public regarding Native

people and their rights. NCAI represents its individual and tribal members on a variety of political, cultural, and social policy issues. NCAI has historically opposed the use of a racially disparaging term as a mascot since before it met with the Washington team President in 1972 and continues to stand in opposition to the term today.

*Amicus* **National Native American Law Students Association** was founded in 1970 to promote the study and development of Federal Indian Law, Tribal Law, and traditional forms of governance. It supports Native Americans in law school, both in their own personal academic and life achievements, and in their efforts to educate their peers and communities about Indian law issues.

*Amicus* **Native American Contractors Association** is a non-profit association of over forty Native community-owned corporations representing nearly 1,000,000 Native Americans throughout the United States who conduct business in all 50 states and internationally. Its mission is to increase self-determination through preservation and enhancement of government contracting participation based on the unique relationship between Native Americans and the Federal Government.

*Amicus* **Native American Journalists Association** represents more than 500 members working as independent freelancers as well as in national and tribal media outlets, associations, academic institutions, and other organizations. It

assists journalists by providing resources to Native and non-Native media, and promotes accurate media coverage of Indian Country.

*Amicus* **Native American Law Students Association at the University of Washington School of Law** is a community of Native law students and their peers interested in the study of Indian law, providing networking, educational, and practice opportunities. It works to encourage and support Native undergraduate and high school students in pursuing a career at law.

*Amicus* **Scholars of Stereotypes of Native Americans in Sport** is composed of Native and non-Native scholars who have studied stereotyping of Native Americans in sport team names and imagery. Its members have degrees in a variety of disciplines, including sociology, anthropology, psychology, counseling psychology, cultural studies, English, education, management, and sport studies, and most members are professors at colleges and universities in United States.

*Amicus* **Society of American Indian Government Employees** is a national organization of federal employees who are Native American. Its mission is to promote the recruitment, retention, development, and advancement of government employees who are Native American.

*Amicus* **Society of Indian Psychologists** is an organization of Native psychologists who advocate for the mental well-being of Native peoples by increasing the knowledge and awareness of issues impacting Native mental health.

*Amicus* **Southern California Tribal Chairmen's Association** is a multi-service non-profit corporation established in 1972 as a consortium of 19 federally-recognized Indian tribes in Southern California. Its primary mission is to serve the health, welfare, safety, education, cultural, economic, and employment needs of its tribal members and descendants in the San Diego County urban areas. Its board of directors is comprised of tribal chairpersons from each of its member Tribes.

*Amicus* **The Morning Star Institute**, founded in 1984, is a national, non-profit Indigenous rights organization based in Washington, D.C. and devoted to traditional and cultural advocacy, arts promotion, and research. It is governed by a national Board of Directors who are tribal, traditional, cultural rights, and arts leaders. It leads in the areas of Native Peoples' religious freedom and repatriation, protection of sacred lands and cultural property rights, and in campaigns to eliminate stereotyping of Native Peoples in popular culture. Through its *Just Good Sports* project, Morning Star assists schools, students, and families who are addressing race-based names and imagery in their local athletic programs. It was the organizational sponsor for the first seven years of *Harjo et al v. Pro Football, Inc.*

*Amicus* **United South & Eastern Tribes** is an intertribal organization comprised of 26 federally recognized Indian Tribes in the southern and eastern United States. USET is dedicated to enhancing the development of federally

recognized Indian Tribes, improving the capabilities of Tribal governments, and assisting USET Members and their governments in dealing effectively with public policy issues and serving the broad needs of Indian people.

*Amicus* **UNLV Native American Community** is comprised of Native American students, alumni, and faculty at the University of Nevada at Las Vegas (UNLV) that serves to reinforce the diversity of American Indian student autonomy at UNLV.

*Amicus* **Wisconsin Network for Peace and Justice** is a state-wide non-profit organization which represents a coalition of activist groups working towards a world free from violence and injustice with an emphasis on racial justice and equity.

## SUMMARY OF ARGUMENT

Pro-Football's use of a racially disparaging term as a mascot for the football team in our Nation's capital has resulted in real harm to Native Americans. The REDSK\*NS marks should never have been granted federal registration. The first REDSK\*NS mark was disparaging when it was registered in 1967 and it and the five subsequently registered REDSK\*NS marks have continued to subject Native Americans to contempt and ridicule since.

## ARGUMENT

I. **The District Court Correctly Held That the REDSK\*NS Marks Must Be Cancelled Because They Consist of Matter That (1) May Disparage a Substantial Composite of Native Americans During the Relevant Time Period, 1967-1990, and (2) Bring Native Americans into 'Contempt or Disrepute.'**

The basis for the District Court's findings that the REDSK\*NS marks may disparage a substantial composite of Native Americans and bring Native Americans into contempt or disrepute is extensively documented in the Record and the District Court's decision should be affirmed by this Court.

Section 2(a) of the Lanham Act provides that registration should be denied to any mark that "[c]onsists of . . . matter which may disparage . . . persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute . . . ." 15 U.S.C. § 1052(a). Section 2(a) protects underrepresented groups from being subjected to contempt and ridicule, particularly in commercial

advertising, as the central purpose of a trademark is to identify goods or services sold to consumers.

To be subject to cancellation, the mark must consist of matter that may be disparaging to a substantial composite of the “referenced group.” A substantial composite is not necessarily a majority. *In re Boulevard Ent., Inc.*, 334 F.3d 1336, 1340 (Fed. Cir. 2003). In addition, in “may disparage” actions, the inquiry focuses on the registration dates of the marks at issue (here 1967, 1974, 1978, and 1990).

*Id.*

The Trademark Trial and Appeal Board (“TTAB”) looks to the views of Native Americans when determining whether a mark may be disparaging. One category of evidence that is used to determine whether a term “may disparage” is statements of individuals or group leaders of the referenced group (here Native Americans) regarding the term. *In re Heeb Media, LLC*, 89 U.S.P.Q.2d 1071, 2008 WL 5065114, at \*5 (T.T.A.B. 2008); *In re Squaw Valley Dev. Co.*, 80 U.S.P.Q.2d 1264, 2006 WL 1546500, at \*10-\*14 (T.T.A.B. 2006). In addition, as the District Court explained, whether a word is disparaging to a group referenced in the underlying term may also be inferred through usage labels, such as dictionary definitions. (Op. 37, 42-46); *see also Heeb Media*, 2008 WL 5065114, at \*1 (looking to dictionary definitions to support a finding that a substantial composite of the referenced group found the word disparaging). Intent to

disparage by the holder of the mark is not required to deny or cancel a registration. (PFI Br. 50); *see also Blackhorse, et al. v. Pro-Football, Inc.*, 111 U.S.P.Q.2d 1080, 2014 WL 2757516, at \*9 -\*10 (T.T.A.B. 2014) (citing *Heeb Media*, 2008 WL 5065114, at \*8; *Squaw Valley*, 2006 WL 1546500).

**A. *Amici* Represent a Substantial Composite of Native Americans.**

It has been the consistent and strong opinion of *amici* that Pro-Football's REDSK\*NS marks were disparaging to Native Americans in 1967 and remain so today.

*Amicus* National Congress of American Indians ("NCAI") was founded in 1944 and is the oldest, largest, and most representative Native American organization serving the broad interests of tribal governments and communities. (D.E.73-20at6;71-3¶5;71-2¶¶7,12;71-5¶11.) In 1967, NCAI represented 156 tribal members. (D.E.73-20at6;71-3¶6.) By 1984, NCAI represented over 300 tribal members. (D.E.71-5¶13.) Today, NCAI represents over 250 tribes, nations, pueblos, and Alaska Native villages with a combined enrollment of over 1.2 million. "Through its tribal memberships, NCAI represents the majority of Native Americans in federally recognized Native American tribes. If one wanted to know the consensus position of Native Americans on a given issue, NCAI would be the best organization to consult." (D.E.71-2¶12.)



In addition to *Amicus* NCAI, the other forty Native American organizations included under the Interest of *Amici Curiae* above represent a broad cross-section of Native peoples and their interests. The understanding and position of each of these organizations is that the term “Redsk\*n” is disparaging. This list represents a substantial composite of Native Americans, yet it is still not exhaustive of the Native Americans who find Pro-Football’s trademarks disparaging. As former Executive Director of NCAI, Suzan Harjo, observed, “the overwhelming majority of Native American people and organizations with whom I have discussed the subject have agreed with my viewpoint that “redsk[\*]n(s)” is a racial epithet and that the Washington NFL team’s name is abominable.” (D.E.71-5¶14.)

As is plainly demonstrated by the descriptions of the Native American organizations participating in this brief, the Native Americans who find the term “Redsk\*ns” disparaging are not a “small group of radicals,” nor is the Native American community “deeply divided” on the issue. (Bettelyoun *Amicus* Br. 13, 15.) To the contrary, the vast majority of Native Americans find the term “Redsk\*ns,” when used as a sports mascot as well as in other contexts, to be deeply offensive and disparaging.

**B. Leaders of the Native American Community Have Historically Opposed the REDSK\*NS Marks Because They Disparage Native Americans.**

*Amici* NCAI , National Indian Youth Council (“NIYC”), and Americans for Indian Opportunity (“AIO”) as well as other leaders of the Native American community have actively opposed the use of “Redsk\*ns” as the mascot for the Washington team for nearly five decades.

Pro-Football states that “the Team adopted the name [“Redsk\*ns”] to associate itself with and honor Native Americans, including its four Native American players and Native American head coach.” (PFI Br. 59.) Pro-Football’s statement is directly contradicted by the statements of founding team owner, George Preston Marshall, who selected the name “Redsk\*ns” in 1933. Marshall denied selecting the name to honor Native Americans. Instead, the reason the team chose the racial epithet was that “so much confusion has been caused by our football team wearing the same name as the Boston National League baseball club [Boston Braves] . . . that a change appeared to be absolutely necessary. *The fact that we have in our head coach, Lone Star Dietz, an Indian,*<sup>2</sup> *together with several*

---

<sup>2</sup> Additionally, many have questioned the veracity of Lone Star Dietz’s claim that he was born a Native American. *See, e.g.,* Linda M. Waggoner, *The Washington R\*dskins’ Wily Mascot: Coach William “Lone Star” Dietz*, MONTANA THE MAGAZINE OF WESTERN HISTORY (Spring 2013), <http://nmai.si.edu/sites/1/files/pdf/seminars-symposia/WaggonerWEBSpr2013.pdf>.

*Indian players has not, as may be suspected, inspired me to select the name Redsk[\*]ns.” (D.E.72-4.)*

Many of the most publicized events surrounding the Native American community’s opposition to the racial slur occurred in the early 70s, just a few years after Pro-Football first registered a REDSK\*NS mark. It is hard to understand how Pro-Football can claim that it received no notice that the mark may be disparaging to Native Americans. (PFI Br. 34-39.) During an NCAI Executive Council meeting in January 1972, *Amicus* NCAI and representatives from *Amicus* NIYC, *Amicus* AIO, and the American Indian Movement “agreed that the Washington football team’s name was bigoted, discriminatory, and offensive to Native Americans” and that “opposing the Washington football team’s name, and seeking a change in that name would be the first issue on which we could unite in a common effort.” (D.E.71-3¶¶9-10.) Agreement was reached on this common cause despite the significantly different goals and priorities of each of these Native American organizations at the time. (D.E.71-3¶10.) The Native American organizations agreed that the “next step would be to contact the Washington football team directly to begin a dialogue aimed at changing the team’s name . . . .” (*Id.*)

Shortly thereafter, Harold Gross, Director of the Indian Legal Information Development Services (“ILIDS”) and attorney for NCAI, wrote to the Washington

football team's President explaining why the team should change its name. He stated that "Native American" sports imagery "perpetuates stereotypes in which American Indians are seen as participating in scalp taking, war-whooping, and expressing themselves in ungrammatical grunts, ughs and other tontoisms" and "many of the 25 million Americans who watch televised professional football know nothing more about American Indians . . . ." (D.E.73-25at2.)

As a result of these efforts, a meeting was held in March 1972 between leaders of the Native American community and Washington team President Williams. (D.E.71-3¶11.) NCAI Present, Leon Cook, attended the meeting on behalf of NCAI. Also in attendance were LaDonna Harris, the President of AIO; Ron Aguila, the District Representative for NIYC; Dennis Banks, the District Representative for the American Indian Movement; Hanay Geigomah, the Director of Youth Programs for the Bureau of Indian Affairs; Richard LaCourse, the Washington Bureau Chief for the American Indian Press Association; and Laura Wittstock, the Editor of the ILIDS Legislative Review among others. (*Id.*) As President Cook recalled, "[a]t the meeting, each of the leaders of the various [Native American] organizations took turns explaining our united reason as to why the Washington football team's name should be changed, namely that we believe the name to be discriminatory, demeaning, and offensive to Native Americans." (*Id.*)

The next day Williams wrote to NFL Commissioner Pete Rozelle about the meeting stating that the “delegation of American Indian **leaders** . . . are vigorously objecting to the continued use of the name Redsk\*ns.” (D.E.73-3No.73 (emphasis added).) Following the meeting, the Washington team changed the cheerleaders’ costumes to remove the fake Cherokee hair extensions and revised the fight song to remove certain admittedly offensive language such as “Scalp 'em, swamp 'em — we will take 'em big score / Read 'em, weep 'em, touchdown! — we want heap more!”. (D.E.72-3Nos.75,76,82;73-14.)

While these actions in 1972 signaled Pro-Football’s acknowledgment of the offensiveness of the Washington team’s representations of Native Americans, Pro-Football continued to use the racial slur “Redsk\*ns” as its team name. In response, at NCAI’s annual convention in 1973, Reuben Snake, the Winnebago Tribal Chairman, won unanimous support for a resolution demanding that the Washington team change its name, citing the name as a prime example of name-calling. Many Native Americans living today personally witnessed this event and Pro-Football’s implication that these individuals are lying has no support in the Record. (PFI Br. 45,55-56,57; D.E.71-3¶14;71-5¶15.)

The Native American community’s public opposition to the Washington team’s mascot continued throughout the 70s, 80s, and 90s. Executive Director of NCAI, Suzan Harjo, “carried out the position of NCAI to oppose the name of the

Washington NFL team and to call for its elimination” during her tenure from 1984 to 1989. (71-5¶13.) In addition, each of the NCAI Presidents she served with “opposed the dreadful name of the Washington NFL team and called for its elimination.” (*Id.*) NCAI demonstrated its opposition through “statements, speeches, telephone calls, interviews, educational outreach, and coalition building meetings, as well as in . . . failed attempts to contact the Washington NFL team’s owner.” (*Id.*) The Washington football team’s owner at the time “only acknowledged [NCAI’s] position through the media, to a UPI reporter, answering it by saying there was ‘not a chance in hell’ that the name would be changed.” (D.E.71-5¶16.) In 1984, *Amicus* The Morning Star Institute’s Board voted unanimously to establish a project called *Just Good Sports* to oppose the Washington football team’s name. (D.E.71-5¶18.) In 1988, Fans Against Indian Racism sponsored a banner flown above the Washington team’s stadium during Pro-Football’s 1988 championship game demanding: “MAKE WASHINGTON AMERICA’S TEAM. CHANGE THE NAME.” (D.E.73-2;73-3;73-44.) In 1991, a group of Native Americans protested the “Redsk\*ns” team name at the Washington team’s Stadium. (A1282.) In 1992, the Super Bowl prompted four days of actions by approximately 3,000 Native Americans and their allies. (D.E.73-42;73-58;73:59;A1284-A1285.) *Amicus* Association on American Indian Affairs resolved to join “with those who object to . . . the use of the ‘Redsk[\*]ns’

nickname . . . an outright pejorative of the type that no other ethnic or racial group would be subjected to in 1992. Yet, once again, Indians are supposed to be different – somehow.” (A1318.) In March 1992, *Amicus* National Indian Education Association sent a letter to the Council of the District of Columbia explaining that the insult of the “Redsk[\*]ns” mascot went beyond the name itself to “fans in the stadium . . . acting out the worst possible Indian stereotypes.” (A1304.)

In 1993, NCAI adopted two resolutions to stop the use of the racial slur “Redsk\*ns” as a team name. The adoption of these resolutions by representatives of NCAI’s tribal members is well-supported by the Record. The first resolution was adopted by the Executive Council during its meeting of January 18-19 and stated in part:

[T]he term REDSK[\*]NS 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 . . . and continues to be . . . damaging to Native Americans.

(D.E.73-68.) The Executive Council consists of delegates from each of NCAI’s member tribes and a quorum of those tribal delegates must be present for the consideration of any resolution. (D.E.73-43at54:11-54:19.) At Executive Council meetings, resolutions come directly from the floor, are typically read out loud, and are debated by NCAI membership. (D.E.73-43at57:16-57:18;62:8-62:13.) All

resolutions considered at an Executive Council meeting must be of national significance and urgent in nature. (D.E.73-43at58:3-58:5;58:15-59:1.)

The second resolution adopted on December 3rd by the General Assembly at the Annual Convention referenced a Senate Bill called “the RFK Stadium Bill” that stated “(no building) until the team changes the name.” (D.E.73-69;73-61.)

At an Annual Convention resolutions are considered and debated among the general membership and are typically voted on by a voice vote of the delegates, who generally attend the Convention to conduct business on behalf of their tribes. (D.E.73-43at42:1-42:16.)

These are just a few of the many examples of wide-spread opposition to the use of “Redsk\*ns” as a team name. All of these opponents of the name understand what social science research has proven: the marketing and promotion of this racial slur has destructive consequences for Native Americans.

**C. The Personal Experiences of Native Americans Plainly Demonstrate That the Use of “Redsk\*ns” as a Sports Mascot Exposes Native Americans to Contempt, Ridicule, and Disrepute.**

Many Native Americans have personally experienced being called a “Redsk\*n” as racial slur. For example, Raymond Apodaca, who grew up in New Mexico in the 60s and 70s and who is an enrolled member of the Ysleta Del Sur Pueblo, recalled the following experience:



I have heard the term “redsk[\*]n” or “redsk[\*]ns” used on many occasions to refer to Native Americans in a disparaging way. In one very memorable occasion, when I was in high school, I was at a bus stop in Lubbock, Texas, which had racially segregated lunch counters. At that time, I was told that I was “a redsk[\*]n” and that I would need to eat my lunch outside the bus stop, and leave through the door marked “Black” as opposed to sitting at the “White,” “Mexican,” or “Other” counter.

(D.E.71-2¶14,15.) Mr. Apodaca has “served in a number of leadership roles for NCAI, including as Chairman of the NCAI Commission on Human Rights and Religious and Cultural concerns, from 1986-1999, and as Albuquerque Area Vice President . . . from 1990-1993.” (D.E.71-2¶7.)

Suzan Harjo, who grew up in Oklahoma in the 50s and 60s and who is an enrolled member of the Cheyenne and Arapaho tribes of Oklahoma recalled:

Growing up in El Reno, I heard the term “redsk[\*]n” used often as a slur. Many times, my friends, family members and I would be called the epithet “redsk[\*]ns” or, more frequently, a “lazy redsk[\*]n” or a “dirty redsk[\*]n.” In the 1950s, my brothers, cousins, and Cheyenne friends were often called “redsk[\*]ns by white children at school (an El Reno public school) and sometimes by their parents. On one especially upsetting and painful occasion, an elementary school teacher argued with me about my family history and the Battle of Little Big Horn, and he angrily called me names, including “redsk[\*]n.”

(D.E.71-5¶5.) Ms. Harjo served as Executive Director of NCAI from 1984 to 1989, has served as President of The Morning Star Institute since 1984, and in 2014 was awarded a Presidential Medal of Freedom by President Obama for her work on behalf of Native Americans. (D.E.71-5¶¶13,18,20.) In 1962, Ms. Harjo

was selected by the Business Committee of Cheyenne and Arapaho Tribes of Oklahoma to be part of a delegation to Washington, D.C. While there, the tribal delegation noticed many signs promoting the Washington NFL team. She recalled saying at the time “No wonder such bad Indian policy comes out of D.C.; look what bad things they call us.” (D.E.71-5¶10.)

Kevin Gover, who grew up in the 60s and 70s and who is a citizen of the Pawnee Indian Nation recalled:

[W]hen I played for my junior high school football team, members of opposing teams sometimes would call me a “redsk[\*]n” as a form of bullying and “trash taking” on the field.

(D.E.71-4¶5.) Mr. Gover was nominated by President Clinton to serve as Assistant Secretary of the Interior for Indian Affairs, where he oversaw the Bureau of Indian Affairs. (D.E.71-4¶7.) He is currently a Professor of Law at the Sandra Day O’Connor College of Law at Arizona State University and the Director of the Smithsonian Institution’s National Museum of the American Indian. (D.E.71-4¶¶8,9.)

Leon Cook, former NCAI president, stated:

I have traveled extensively throughout Indian country, met with Native American leaders on dozens of reservations, and talked with Native Americans from all walks of life. I have only rarely encountered a Native American who has expressed disagreement with my understanding that the Washington football team’s name is disparaging, discriminatory, and offensive to Native Americans.

(D.E.71-3¶¶16.) Mr. Cook served as President of NCAI from 1971 to 1973.

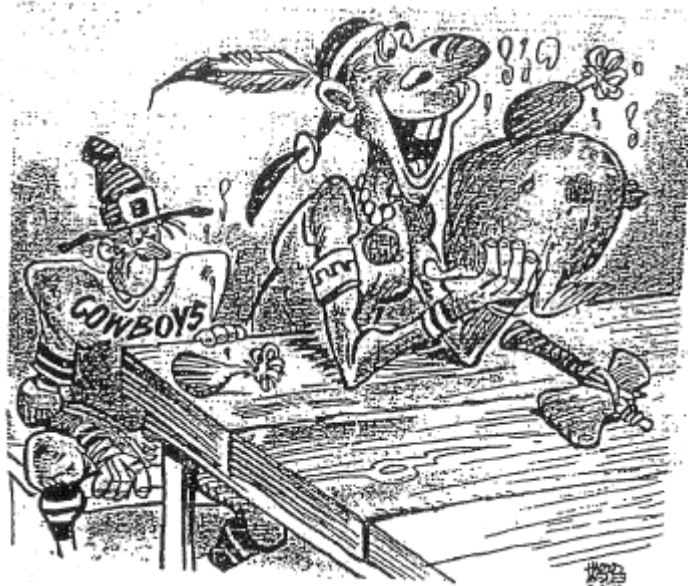
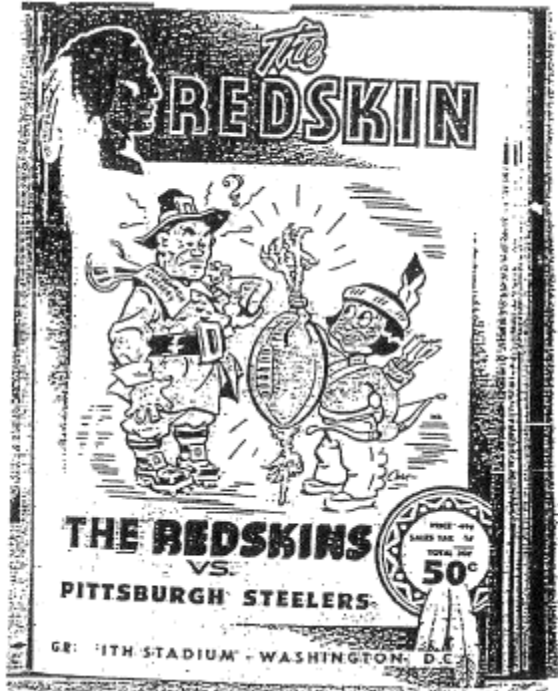
(D.E.71-3¶¶6,15.)

As one Native American, Fred Veilleux (Ojibway), explained: “There is nothing more disrespectful or demeaning than to call an Indian a redsk[\*]n. It would be like calling a black man a n[\*]gger.” (D.E.72-37.)

**D. The Use of “Redsk\*ns” as a Sports Mascot Harms Native Americans and Misinforms the Public about Contemporary Native Americans.**

Native Americans are underrepresented in nearly every aspect of American society. Thus what most people learn and believe about contemporary Native Americans are the images and stereotypes provided via the media, particularly the immensely popular and widely-viewed games of the NFL.

Contemporary Native Americans are bombarded by Pro-Football’s negative and inaccurate stereotypes that portray Native Americans “as either aggressive savages or buffoons [with, for example] many headlines refer[ring] to the ‘Redsk[\*]ns’ team, players or managers ‘scalping’ opponents, seeking ‘revenge,’ ‘on the warpath,’ and holding ‘pow wows;’ or us[ing] pidgin English, such as ‘Big Chief Choo Choo – He Ponder.’” *Harjo v. Pro-Football, Inc.*, 50 U.S.P.Q.2d 1705, 1999 WL 375907, at \*46 (T.T.A.B. 1999). Below are just a few examples of the images of Native Americans that are dispersed throughout the country solely as a result of Pro-Football’s use of the REDSK\*NS marks.



The Indian Girl cheers on the Redskins during their opening game.



Chief Fan

Chief Zee is the undisputed leader of the Washington Redskins cheering section. Garbed in American Indian attire and filled with Redskin zeal, Chief Zee visited Great Times last week, spreading his enthusiasm and shedding some light on the 'Skins' biggest fan.

(D.E.74-8at15;75-18;74-95;A1048.) Pro-Football's argument that the term "Redsk\*ns" may be disparaging in some contexts but is not disparaging in the context of football is deeply flawed. (PFI Br. 52.) An empirical study conducted in 2008 concluded that "American Indian mascots have harmful psychological consequences for the group that is caricatured by the mascots." *Of Warrior Chiefs and Indian Princesses: The Psychological Consequences of American Indian Mascots*, BASIC AND APPLIED SOCIAL PSYCHOLOGY, 30: 208-18 (2008). Stereotypes of American Indians are particularly powerful because most Americans have no direct personal experience with Native people. As a result, "the views of most Americans about American Indians are formed and fostered by *indirectly* acquired information (e.g. media representations of American Indians)." The study suggests that "American Indian mascots are harmful because they remind American Indians of the limited ways others see them and, in this way, constrain how they can see themselves." Frustration with the apparent social acceptance of the harm caused by the "Redsk\*ns" team name has been expressed for decades by the Native community: "There is this feeling that this is a new issue with us. It's nothing new. It's just that no one was listening." (D.E.73-42.)



## **II. The *Amicus* Brief Filed by Native and Non-Native Americans on Behalf of Pro-Football Is Unpersuasive.**

### **A. *Amici* in Support of Pro-Football Do Not Represent a Substantial Composite of Native Americans.**

*Amici* for Pro-Football represent an incredibly small minority of Native Americans: three individuals (notably, the Native American organizations of which these individuals are members did not participate in its brief); one Native American tribe; and a group of Native and non-Native Americans that calls itself the Native American Guardians Association. As discussed in Section I.A above, *amici* in support of Blackhorse Defendants and Appellees represent a substantial composite of Native Americans who find the “Redsk\*ns” slur disparaging to Native Americans.

### **B. *Amici*’s Description of the First Use of “Redsk\*ns” in the 1700s and 1800s Is Irrelevant.**

*Amici* for Pro-Football’s description of the first use of the word “Redsk\*n” in the 1700s and continued used in the 1800s is irrelevant as the period in question here is from 1967 to 1990. (Bettelyoun *Amicus* Br. 5-7.) Even assuming, *arguendo*, that Native Americans were the first to use the word, the first page of the article relied upon by *amici* for Pro-Football to make its point about origin also states that the origin of the word does not control whether its later use is objectionable. (Bettelyoun *Amicus* Br. 5.) Moreover, Appellees’ expert linguist, Geoffrey Nunberg, explained the disparaging connotation of “redskin” throughout

the twentieth century. (D.E.72-16.) As early as 1898, a dictionary usage label stated that “redskin” was an “often contemptuous” term. (D.E.72-6.)

In addition, it is illogical to conclude that because there may be some positive symbolism associated with the color red by some Native American tribes, the term “Redsk\*n” must be honorific. (Bettelyoun *Amicus* Br. 7-9.) It is not the color red with which a substantial composite of Native Americans take issue. Rather, Native Americans take issue with the racial slur “Redsk\*n.” The color red simply bears no relationship to the many reasons Native Americans oppose “Redsk\*ns” as a sports mascot.

### **C. The Use of “Redsk\*ns” Mascots Has Significantly Decreased Over the Past Forty Years.**

*Amici* for Pro-Football’s suggestion that the use of “Redsk\*ns” mascots throughout the country has not decreased significantly is inaccurate. (Bettelyoun *Amicus* Br. 13.) In 1972, the University of Utah chose to stop using the racial slur “Redsk\*n” to identify its sports teams because it was offensive to Native people. (D.E.73-36,73-37.) Following the University of Utah’s lead, at least twenty-one high schools and colleges have since decided to stop using the slur “Redsk\*ns” as a team name. (D.E.73-20at20.) At least five newspapers have adopted policies forbidding the use of “Redsk\*ns” to identify sports teams. Most recently, in 2015, California banned the use of the term “Redsk\*n” in public schools state-wide. *California Racial Mascots Act*, A.B. 30, 2015 Leg. (Cal. 2015). All of these

changes were the result of a widespread recognition that the term “Redsk\*ns” is racially disparaging and should not be used to identify sports teams in the United States.

## CONCLUSION

For the foregoing reasons, the District Court’s decision that the REDSK\*NS marks may disparage a substantial composite of Native Americans and bring Native Americans into contempt or disrepute should be affirmed.

Dated: February 11, 2016

By: /s/ Larry S. Gondelman

Larry S. Gondelman

Brandi A. Taylor

**POWERS PYLES SUTTER &  
VERVILLE PC**

1501 M Street NW, Seventh Floor

Washington, DC 20005

*COUNSEL FOR AMICI CURIAE*

Richard A. Guest

**NATIVE AMERICAN RIGHTS FUND**

1712 N Street, NW

Washington, DC 20036

*COUNSEL FOR AMICI CURIAE*



### CERTIFICATE OF COMPLIANCE

I certify, pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), that the attached Brief of *Amici Curiae* contains 6,795 words and complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word 2010, in 14-point Times New Roman font.

Dated: February 11, 2016

By: /s/ Larry S. Gondelman  
Larry S. Gondelman

**CERTIFICATE OF SERVICE**

I hereby certify that on February 11, 2016, I electronically filed the foregoing document with the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: February 11, 2016

By: /s/ Larry S. Gondelman  
Larry S. Gondelman

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
APPEARANCE OF COUNSEL FORM

BAR ADMISSION & ECF REGISTRATION: If you have not been admitted to practice before the Fourth Circuit, you must complete and return an Application for Admission before filing this form. If you were admitted to practice under a different name than you are now using, you must include your former name when completing this form so that we can locate you on the attorney roll. Electronic filing by counsel is required in all Fourth Circuit cases. If you have not registered as a Fourth Circuit ECF Filer, please complete the required steps at Register for eFiling.

THE CLERK WILL ENTER MY APPEARANCE IN APPEAL NO. 15-1874 as

[X]Retained [ ]Court-appointed(CJA) [ ]Court-assigned(non-CJA) [ ]Federal Defender [ ]Pro Bono [ ]Government

COUNSEL FOR: Native American Organizations

as the (party name)

[ ]appellant(s) [ ]appellee(s) [ ]petitioner(s) [ ]respondent(s) [X]amicus curiae [ ]intervenor(s) [ ]movant(s)

/s/ Larry S. Gondelman (signature)

Larry S. Gondelman Name (printed or typed)

(202) 872-6723 Voice Phone

Powers Pyles Sutter & Verville, PC Firm Name (if applicable)

(202) 785-1756 Fax Number

1501 M Street, NW, 7th Floor

Washington, DC 20005 Address

larry.gondelman@ppsv.com E-mail address (print or type)

CERTIFICATE OF SERVICE

I certify that on February 11, 2016 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

[Empty box for address]

[Empty box for address]

/s/ Larry S. Gondelman Signature

February 11, 2016 Date