IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

JOHN DOE, a minor; JANE DOE, a minor; DEMETRIUS MAREZ; CHASE AUBREY ROUBIDEAUX; DONALD WAYNE SMITH, JR.; and the NATIVE AMERICAN GUARDIAN'S ASSOCIATION,

Plaintiffs,

v.

JARED POLIS, Colorado Governor; DAVE YOUNG, Colorado State Treasurer; KATY ANTHES, Commissioner of Education for the Colorado Department of Education; PHIL WEISER, Colorado Attorney General; KATHRYN REDHORSE, Executive Director of the Colorado Commission of Indian Affairs; and GEORGINA OWEN, Title VII State Coordinator for the Colorado Department of Education, in their official capacities,

Defendants.

Case No.: 1:21-cv-02941-NYW

EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND REQUEST FOR EXPEDITED HEARING

On or around November 1, 2021, Defendant Kathryn Redhorse communicated to certain Colorado school districts to remind them of the deadline to change Native American icons and imagery covered by SB 21-116 by June 1, 2022. *See* Jefferson Decl. (Exhibit 1 at Exhibit A, p. 6). However, the communication also apprised school districts that if they planned to seek grant funding for the changing of a name, a notice of intent must be submitted by November 30, 2021:

> To assist your public schools in making this change, SB 21-116 includes the Building Excellent Schools Today (BEST) grant program as a potential source of funding to "accomplish any structural changes that might be necessary" to remove American Indian mascots. Applications for the Fiscal Year 2023 grant round are due in February 2022. *All districts and charter schools must notify BEST of their intent to apply by November 30, 2021*.

Exhibit 1, at 6 (emphasis added). Given the imminent deadline of November 30, Plaintiffs file this emergency motion for preliminary injunction pursuant to Fed. R. Civ. P. 65(a). Plaintiffs request that the Court issue a preliminary injunction barring Defendants from taking any actions to enforce Colo. Rev. Stat. § 22-1-133 and/or Colo. Rev. Stat. § 22-1-137 (together, "SB 21-116" or the "Act").

More broadly, interim relief is needed because even if a school has no plan to apply for grant funds, they must nevertheless engage in a long process to erase their Native American names, images, and iconography before June 1, 2022. Indeed, as Ms. Redhorse represents in her letter, the true deadline for schools is actually May 2022:

> At a publicly noticed Quarterly Meeting, CCIA will vote on whether the changes made by the schools/school districts are sufficient to be removed from the list of non-compliant schools. *CCIA's Fourth Quarterly Meeting in May 2022 will be the last opportunity for schools/school districts to demonstrate compliance with the bill's requirements before the June 1, 2022 deadline*.

Exhibit 1, at 6 (emphasis added).

The Act imposes a $25,000 fine for each month that an affected school is deemed out of compliance with the Act. And because changing a school's name and letterhead involves significant time and expense, affected schools are already being forced to pursue compliance. *See* Marez Decl. (Exhibit 2), at ¶ 10.

If schools are forced to make further significant investment in changing their names and materials to comply with the unconstitutional Act, they are highly unlikely to invest at least as

much time and effort in returning to current names and materials after permanent relief is granted. *See* Draplin, *Native American group sues to stop Colorado's mascot ban*, The Center Square (Nov. 4, 2021) ("The mascot changes could cost the Montrose County School District between $500,000 to $750,000, Superintendent Carrie Stephenson previously said, according to the Montrose Mirror.").[1] Moreover, the Act imposes an ongoing violation of Plaintiffs' constitutional rights, which itself constitutes ongoing irreparable injury which cannot be compensated through money damages.

CONFERRAL

Under Colorado Local Rule 7.1, parties must confer prior to the filing of a motion. And the Attorney General's office is aware of this lawsuit. *See* Davison, *Colorado students, graduates, non-profit organization file lawsuit over ban on Native American school mascots* (Nov. 4, 2021) ("The Attorney General's Office stated they will defend the law, but will not comment any further.").[2] Counsel for Plaintiffs reached out the Attorney General's office by phone on November 5, and had a collegial phone call. However, given that there are several Defendants, the Attorney General's office has not been able to convey all of their positions to Plaintiffs. The Attorney General and the Treasurer do oppose this motion, as will officials from the Department of Education, and for the purpose of this motion for preliminary injunction, the Court is likely safe to assume that the other Defendants oppose as well.

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[1] *See* https://www.thecentersquare.com/colorado/native-american-group-sues-to-stop-colorado-s-mascot-ban/article_26122ffa-3da4-11ec-8e67-07dd84a7718f.html (last visited November 5, 2021).

[2] *See* https://www.koaa.com/news/covering-colorado/colorado-students-graduates-non-profit-organization-file-lawsuit-over-ban-on-native-american-school-mascots (last visited November 5, 2021).

FACTUAL BACKGROUND

1. SB 21-116 is titled "Prohibition on use of American Indian Mascots."

2. The Act became effective on June 28, 2021.

3. The Act provides that "[O]n or after June 1, 2022, a public school in the state is prohibited from using an American Indian mascot." Colo. Rev. Stat. § 22-1-133(2).

4. The Act generally prohibits any "use" of American Indian "mascots" by public schools, including charter schools and public institutions of higher education (public schools) as of June 1, 2022.

5. The Act imposes a fine of $25,000 per month for each month that a public school continues to use a "mascot" (as defined in SB 21-116) after June 1, 2022, payable to the state education fund.

6. The Act defines public schools to mean:

   a. An elementary, middle, junior high, high school, or district charter school of a school district that serves any of grades kindergarten through twelve; and

   b. An institute charter school that serves any of grades kindergarten through twelve.

Colo. Rev. Stat. § 22-1-133(1)(D)(I-II).

7. This lawsuit challenges the following provision of SB 21-116, which is exceedingly broadly worded, and provides that the term "American Indian Mascot" means:

> a name, symbol, or image that depicts or refers to an American Indian tribe, individual, custom, or tradition that is used as a mascot, nickname, logo, letterhead, or team name for the school.

8. The Act clearly contemplates that it applies to every "use" of even the name of an American Indian individual, because it carves out a narrow exception for letterhead: "[A] public school that is named after an American Indian tribe or American Indian individual may use the tribe's or individual's name, but not an image or symbol, on the public school's letterhead."

9. The Act's terms prevent a public school from using even the name of an American Indian individual's name on any material besides letterhead, which presumably includes uniforms, school signs, murals, and school walls. Further, the Act's terms prevent any use of an image or symbol of an American Indian individual, whether on letterhead, school banners, or materials in the school hallways.

10. The Colorado Commission of Indian Affairs (CCIA) has purported to identify approximately 28 schools that it considers implicated by the new law. *See* Legislation, Schools with American Indian Mascots and/or Imagery, at https://ccia.colorado.gov/legislation (last visited November 5, 2021).

11. As is apparent from the list issued by the CCIA, the CCIA has focused on school mascots as they are colloquially defined, rather than as broadly defined by the statute.

12. However, the Colorado Commission of Indian Affairs is incorrect, and the number of affected schools covered by the Act is likely much larger, given the breadth of the statute's language. For instance, the following schools, among many others, may be in violation of Colo. Rev. Stat. § 22-1-133:

a. Cherokee Trail High School (Aurora)

b. Cheyenne Mountain High School (Colorado Springs)[3]

c. Cheyenne Wells High School (Cheyenne Wells)

d. Kiowa High School (Kiowa)[4]

[3] Although Cheyenne Mountain High School no longer uses the name "Indians" in its athletic team names, the name of the school continues to include the name of the Cheyenne people.

[4] Kiowa High School currently uses the name "Indians" in its athletics. And it is identified by the CCIA as a school on its list of illegal names. But removal of merely the name "Indians" would be insufficient to comply with SB 21-116, so long as the word "Kiowa" remained in the school's logo or other imagery.

e. Yampa Valley High School (Steamboat Springs)

f. Schools in Pagosa Springs, Colorado that use the term "Pagosa" in their name, which is the Ute word for healing or boiling water.

g. Schools in Niwot, Colorado, that use the term "Niwot" in their name. Arapahoe Chief Niwot was a tribal leader in the Boulder, Colorado area.

13. Each of these schools potentially uses a "name, symbol, or image that depicts or refers to an American Indian tribe, individual, custom, or tradition that is used as a mascot, nickname, logo, letterhead, or team name for the school." Colo. Rev. Stat. § 22-1-133(1)(b).

14. As one example, it will cost the Arickaree School District around $50,000 to shift away from names or images referencing Native Americans. Jefferson Decl. (Exhibit 1), at ¶¶ 6-7.

15. Plaintiffs are American Indians who oppose the use of American Indian mascot performers and caricatures that mock Native American heritage—such as Lamar High School's former mascot *Chief Ugh-Lee* or the Atlanta Braves' former Native American caricature *Chief Noc-A-Homa*—in sports and other public venues.

16. Plaintiffs believe, however, that culturally appropriate Native American names, logos, and imagery serve to honor Native Americans, and to help public schools neutralize offensive and stereotypical Native American caricatures and iconography, while teaching students and the general public about American Indian history.

17. SB 21-116 sweeps derisive, neutral, and honorific uses of Native American names and imagery together into the universal term "American Indian mascot." *See, e.g.*, Colo. Rev. Stat. § 22-1-133(1)(a) ("'American Indian mascot' means a name, symbol, or image that depicts or refers to an American Indian tribe, individual, custom, or tradition that is used as a mascot, nickname, logo, letterhead, or team name for the school.").

18. Erasing Native American names and images from the public square and from public discussions echoes a maneuver that Plaintiffs have previously seen used by the eradicators of Native American heritage. Colorado repeats the same mistake in its paternalistic assumption that it must protect Native Americans by erasing cultural references to them and to their heritage.

19. Because the eradication of Native American names, iconography and images poses serious harm to the cultural identities and heritage of Native Americans, Plaintiffs regularly engage in efforts of "reappropriation," so as to render emotionally charged Native American names, logos, and imagery nondisparaging, and to educate others as to what it means to be a Native American in American culture.[5] Marez Decl. (Exhibit 2), at ¶¶ 13-15.

20. Plaintiff John Doe, a minor, resides in Yuma, in the District of Colorado. He is of Cherokee and Chippewa heritage. He currently attends Yuma High School in Yuma, Colorado, which maintains imagery referring the "Yuma Indians." He participates in many school activities, as well as football and wrestling. He wants his school to continue to honor his culture and heritage, and would suffer a hostile environment if his culture were erased from his school. John Doe Decl. (Exhibit 3), at ¶¶ 3; 12-18.

21. Plaintiff Jane Doe, a minor, resides in Yuma, in the District of Colorado. She is of Cherokee heritage. She currently attends Yuma High School in Yuma, Colorado, which is known as the "Yuma Indians." She too wants her school to continue to honor her culture and heritage,

[5] Plaintiffs choose to use self-referential Native American names, logos, and imagery for purposes of Reappropriation. Depending on the context and the speaker, however, Native American names and images can be either an act of self-identification (coupled with a claim of pride in group membership) or a slur intended to mock, heckle, or silence the actor or the speaker. *See* Marez Decl. (Exhibit 2), at ¶ 18. As such, because Plaintiffs are Native Americans, it is critical for them to reappropriate Native American culture for political and social expression—in particular what it means to them to be a Native American in American culture.

and would suffer a hostile environment if her culture were erased from her school. Jane Doe Decl. (Exhibit 4), at ¶¶ 11-13.

22. Plaintiff Demetrius Marez resides in Lakewood, in the District of Colorado. He is 39% Diné (pronounced "de-NEH"). He served this country as a U.S. Marine and graduated from Lamar High School in 1993. Mr. Marez has urged Lamar High School to keep its current team name, the Savages, or in the alternative, petitioned the school to rename itself to Lamar High School Black Kettle. Neither would be legal under SB 21-116 on the same terms as names referencing members of other racial demographics. Marez Decl. (Exhibit 2), at ¶¶ 6-9.

23. Plaintiff Chase Aubrey Roubideaux resides in Denver, in the District of Colorado. He is an enrolled Rosebud tribal member, with a blood degree of about 25%. He graduated from Yuma High School in 2010. Mr. Roubideaux has petitioned the Yuma School Board to keep the name of the Yuma Indians, or in the alternative, to rename the YHS Indians to the "Tall Bulls." Neither would be legal under SB 21-116 on the same terms as names referencing members of other racial demographics. Roubideaux Decl. (Exhibit 5), at ¶¶ 6-9.

24. Plaintiff Donald Wayne Smith, Jr. resides in Yuma, in the District of Colorado. He is the pastor of Yuma Christian Church and is of Cherokee heritage. Pastor Smith has previously taught in Colorado public schools, including in Yuma, which uses the term "Indian" in its imagery and iconography. Because of SB 21-116, he can no longer accept future teaching positions without being subject to a hostile environment. Smith Decl. (Exhibit 6), at ¶ 3; 13.

25. Plaintiff the Native American Guardian's Association ("NAGA") is a section 501(c)(3) non-profit organization organized under the laws of the State of Virginia that focuses on increased education about Native Americans, especially in public educational institutions. NAGA seeks greater recognition of Native American heritage through sports and other high-profile public

venues. NAGA has been partnering with public schools across the country to help those schools (a) eliminate stereotypical "mascot" caricatures and iconography, chants and cheers, and (b) develop respectful and culturally appropriate Native American names, logos, iconography and imagery. NAGA maintains standing through associational standing, by and through its members. Davidson Decl. (Exhibit 7), at ¶¶ 15-18.

STANDARD OF REVIEW

To obtain a preliminary injunction, a party must show (1) "a substantial likelihood" that it will "prevail on the merits"; (2) irreparable injury absent an injunction; (3) "proof that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party"; and (4) "that the injunction . . . would not be adverse to the public interest." *Lundgrin v. Clayton*, 619 F.2d 61, 63 (10th Cir. 1980) (citations omitted).

When, as here, the defendant is the government, elements (3) and (4)—the balance of harms and the public interest—merge into one inquiry. *Essien v. Barr*, 457 F.Supp.3d 1008, 1020 (D. Colo. 2020) (citing *Nken v. Holder*, 556 U.S. 418 (2009)). Additionally, where, as here, factors (2)-(4) are strongly in the moving party's favor, that party may satisfy the first factor merely by showing "a fair ground for litigation." *Seneca-Cayuga Tribe v. Oklahoma ex rel. Thompson*, 874 F.2d 709, 716 (10th Cir. 1989) (citation omitted). In other words, a moving party favored by the irreparable injury and balance of harms inquires must show merely "that questions going to the merits are so serious, substantial, difficult, and doubtful as to make the issue ripe for litigation and deserving of more deliberate investigation." *Fed. Lands Legal Consortium v. United States*, 195 F.3d 1190, 1195 (10th Cir. 1999) (citation omitted).

ARGUMENT

a. Plaintiffs are Likely to Succeed on the Merits of their Claims.

"[T]o show a likelihood of success, the plaintiff must present a prima facie case, but need not prove he is entitled to summary judgment." *Daniels Health Scis., LLC v. Vascular Health Scis. LLC*, 710 F.3d 579, 582 (5th Cir. 2013); *accord Cont'l Oil Co. v. Frontier Ref. Co.*, 338 F.2d 780, 781 (10th Cir. 1964) (per curiam).

1. Equal Protection: Direct Discrimination.

The Act singles out Native Americans for differential treatment, as (1) tribal entities; (2) as a demographic group; and even (3) as individuals. It does not even define "individual" to cover only members of federally recognized tribe. It bars literally any school from using an American Indian individual's name—other than the narrow exception of letterhead—on school materials, including signs, uniforms, logos, and other imagery. The obvious consequence is that, if the law is enforced on its terms, no school in Colorado will ever be connected to a Native American tribe or individual.

"Classifications of citizens solely on the basis of race are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. They threaten to stigmatize individuals by reason of their membership in a racial group and to incite racial hostility." *Shaw v. Reno*, 509 U.S. 630, 643 (1993). As such, any government policy that classifies people by race are presumptively invalid and "inherently suspect." *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995) ("These ideas have long been central to this Court's understanding of equal protection, and holding 'benign' state and federal racial classifications to different standards does not square with them."). Moreover, "[d]istinctions between citizens solely because of their ancestry are by their very nature odious to a free people, and therefore are contrary to our traditions

and hence constitutionally suspect." *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411, 2419 (2013) (*Fisher I*). Thus, "any official action that treats a person differently on account of race or ethnic origin is inherently suspect." *Id*.

Colorado therefore has the burden of establishing that the Act satisfies strict scrutiny. *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 741 (2007) ("Our cases clearly reject the argument that motives affect the strict scrutiny analysis."). In order to do so, Colorado must establish that it possesses a compelling state interest in implementing the Act, and that the Act is narrowly tailored toward achieving that goal. *Fisher*, 570 U.S. at 307-08 ("Any racial classification must meet strict scrutiny, for when government decisions touch upon an individual's race or ethnic background, he is entitled to a judicial determination that the burden he is asked to bear on that basis is precisely tailored to serve a compelling governmental interest."). Here, Colorado can do neither.

First, Colorado's purported interest in opposing racial discrimination cannot itself satisfy strict scrutiny, because an act of discrimination, without more, does not further a compelling interest. *Id.* at 748 ("The way to stop discrimination on the basis of race is to stop discriminating on the basis of race."); *see also Regents of University of California v. Bakke*, 438 U.S. 265, 307 (1978) (Opinion of Powell, J.) ("Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids."); *cf. Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719, 1733 (2017) (Kagan, J., concurring) ("As the Court states, a principled rationale for the difference in treatment *cannot* be based on the government's own assessment of offensiveness.") (emphasis added).

In the same vein, it is hardly obvious that the government's opinion on how to respond to purportedly offensive viewpoints is the correct one. In other contexts, groups have reappropriated

negative concepts in order to achieve empowerment and deprive a word of its offensive meaning. *See Cf. Matal v. Tam*, 137 S. Ct. 1744, 1766 (2017) (Kennedy, J. concurring, with Ginsburg, J., Sotomayor, J., and Kagan, J.) ("[R]espondent endeavors to use The Slants to supplant a racial epithet, using new insights, musical talents, and wry humor to make it a badge of pride. Respondent's application was denied not because the Government thought his object was to demean or offend but because the Government thought his trademark would have that effect on at least some Asian–Americans."); *id.* at 1767 ("[T]he dissonance between the trademark's potential to teach and the Government's insistence on its own, opposite, and negative interpretation confirms the constitutional vice of the statute."); *Walter v. Oregon Board of Education*, 301 Or. App. 516, 531 (Or. 2019) ("[T]he legislative record also includes testimony … that the use of positive and respectful Native American imagery in schools would combat racial stereotypes and discrimination against Native American students.").

Second, even if the government could establish a compelling interest, the Act is nowhere near narrowly tailored. The Act does not merely cover caricatures. It does not merely cover sports team names, or even what it purports to cover—"mascots." Instead, it applies to all images, names, logos, and nearly all uses of letterhead. And of course, it does not cover all racial demographics. It leaves in place the ability of Colorado schools to even use offensive caricatures of Caucasians, African Americans, or Hispanics. It solely targets Native Americans. Such a feeble effort at tailoring should not be embraced by the Court.

2. Equal Protection: Political Process.

"It is beyond dispute, of course, that given racial or ethnic groups may not be . . . precluded from entering into the political process in a reliable and meaningful manner." *Washington v. Seattle School Dist. No. 1*, 458 U.S. 457, 467 (1982). As Colorado's Supreme Court has

recognized, the Fourteenth Amendment reaches political structures that distort governmental processes in such a way as to place special burdens on the ability of minority groups to achieve beneficial legislation. *Evans v. Romer*, 854 P.2d 1270, 1280 (Colo. 1993), *aff'd sub nom on other grounds*, *Romer v. Evans*, 517 U.S. 620 (1996).

The U.S. Supreme Court appropriately narrowed *Seattle* in *Schuette v. Coalition to Defend Affirmative Action*, 572 U.S. 291, 305 (2014), noting that in some ways, its holding was far too broad. *Id.* at 307 ("[A]ccording to the broad reading of *Seattle*, any state action with a 'racial focus' that makes it 'more difficult for certain racial minorities than for other groups' to 'achieve legislation that is in their interest' is subject to strict scrutiny. … [T]hat reading must be rejected.").

Nevertheless, the *Schuette* Court preserved *Seattle*'s core rationale, which applies to the instant case even more clearly than it applied to the action at issue in *Seattle*: "*Seattle* is best understood as a case in which the state action in question (the bar on busing enacted by the State's voters) had the serious risk, if not purpose, of causing specific injuries on account of race, just as had been the case in *Mulkey* and *Hunter*." *See id.* at 314 ("Those cases [like *Seattle*] were ones in which the political restriction in question was designed to be used, or was likely to be used, to encourage infliction of injury by reason of race.").

Legislation like the Act which targets specific races is inherently suspect, without regard to discriminatory intent. 458 U.S. at 485 ("We have not insisted on a particularized inquiry into motivation in all equal protection cases: 'A racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification.' And legislation of the kind challenged in *Hunter* similarly falls into an inherently suspect category."); *see also Colorado Christian University v. Weaver*, 534 F.3d 1245, 1260 (10th Cir. 2008) ("Even in the context of race, where the nondiscrimination norm is most vigilantly enforced,

the Court has never required proof of discriminatory animus, hatred, or bigotry. The 'intent to discriminate' forbidden under the Equal Protection Clause is merely the intent to treat differently.")

Here, a member of any other racial demographic besides a Native American individual or tribe can request that a school use imagery or a name on its logo or letterhead. Individuals who are Scandinavian may directly lobby schools to refer to Vikings in their logos and images. Individuals who are Irish or have other European ancestry may similarly directly lobby for schools to refer to Celtics in their images. But the Act reserves for Native Americans alone the indistinct privilege of forcing them to seek an exemption from SB 21-116—at the Colorado State Legislature, and then with the Colorado Governor—before they are able to adequately advocate with public schools in the state. This is inappropriate. *See Seattle*, 458 U.S. at 470 ("[T]he political majority may generally restructure the political process to place obstacles in the path of everyone seeking to secure the benefits of governmental action. But a different analysis is required when the State allocates governmental power nonneutrally, by explicitly using the *racial* nature of a decision to determine the decisionmaking process.")

Additionally, a distinction in the political process must be subject to strict scrutiny. *Id.* at 485 n.28 ("The State does not suggest that Initiative 350 furthers the kind of compelling interest necessary to overcome the strict scrutiny applied to explicit racial classifications."); *Evans*, 854 P.2d at 1282 ("[A]ny legislation or state constitutional amendment which infringes on this right by 'fencing out' an independently identifiable class of persons must be subject to strict judicial scrutiny.") For the reasons stated above, Colorado cannot satisfy an injury into either strict scrutiny factor.

3. First Amendment: Right to Petition

"The right to petition allows citizens to express their ideas, hopes, and concerns to their government and their elected representatives. To further this goal, the right to petition extends to all departments of the Government." *Santa Fe Alliance for Public Health and Safety v. City of Santa Fe, New Mexico*, 993 F.3d 802, 819 (10th Cir. 2021) (internal quotation marks, citations, and ellipses omitted).

Two Plaintiffs have already sought to petition public schools not to change their name, or at least to adopt a different name that honors Native Americans. Both have been rejected out of concern by the respective schools that the replacement names would still violate the Act. In these cases, the name Lamar High School Black Kettle and the Tall Bulls have been rejected, based on assumptions by school officials that both would violate the Act.

The Act creates significant ambiguity over its coverage:

- Notably, the Colorado Commission on Indian Affairs is instructed by the Act in the following manner: "No later than thirty days after June 28, 2021, the commission shall identify each public school in the state that is using an American Indian mascot and that does not meet the criteria for an exemption as outlined in subsection (2)(b) of this section." Colo. Rev. Stats. § 22-1-133(4)(a). But there are numerous Colorado schools named after, for instance, geographic locations that reference Native American names or tribes, which are not on the list.

- The Act does not define a Native American individual to mean someone who is an enrolled member of a federally recognized tribe. It seems to apply to literally any school name which refers to an individual who is part Native American. It is highly unlikely that the CCIA has poured over the genealogy records of every individual who has a school named after them in Colorado.

- Even the CCIA is sending mixed messages. It states that it will allow the "Reds" to continue as a school team name, once certain imagery is dropped. But it also identifies several schools using a "Warrior" name, despite the fact that a Warrior, standing alone, does not refer to a Native American tribe or individual.

By failing to adequately announce the true scope its coverage, the law undermines the right to petition in two ways: (1) it fails to apprise Plaintiffs of their ability to persuade public schools

to adopt names honoring themselves, their relatives, or their tribes; and (2) it fails to apprise public schools of whether, if they are indeed persuaded by Plaintiffs, they can act accordingly, consistent with the Act.[6]

Of course, it is true that the First Amendment does not guarantee the right of citizens to *succeed* at petitioning their government. *CSMN Investments, LLC v. Cordillera Metropolitan District*, 956 F.3d 1276, 1285 (10th Cir. 2020) ("The text of the First Amendment does not speak in terms of successful petitioning—it speaks simply of 'the right of the people to petition the Government for a redress of grievances.") (internal quotation marks and ellipses omitted). But the Constitution guarantee the fair ability to at least try by engaging in "personal expression" related to "seeking a redress of grievances." *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 388 (2011); *cf. We the People Foundation, Inc. v. U.S.*, 485 F.3d 140, 147 (D.C. Cir. 2007) (Brown, J., concurring) ("Based on the historical background of the Petition Clause, most scholars agree that the right to petition includes a right to some sort of *considered* response.") (emphasis added). Here, the Act fully undermines that ability. Even government entities don't truly understand the full scope of prohibited conduct under the Act.

4. Title VI: Equal Protection and Hostile Environment Discrimination

Title VI of the Civil Rights Act of 1964 provides that no person "shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. Colorado is a recipient of federal funds, as are all public schools in the State

[6] This absence of a clear standard creates a serious risk that the policy will be enforced in an arbitrary manner or will be used to target conduct based on the viewpoint of individual members of the CCIA. *Accord Coates v. City of Cincinnati*, 402 U.S. 611, 614-15 (1971).

of Colorado.[7] First, Title VI provides a private right of action for individuals who suffer direct race discrimination at the hands of a recipient of federal funds, applying the same standards as the Equal Protection Clause, analyzed above. *See Regents of the University of California Davis v. Bakke*, 438 U.S. 265, 287 (1978) (Title VI prohibits the same conduct that the equal protection clause prohibits); *see also* Dear Colleague Letter, *Joint DOJ/OCR Guidance on Segregated Proms* (Sept. 20, 2004) (identifying the following school policies as Title VI violations: racially separate proms and dances, racially separate Homecoming Queens and Kings, racially separate awards for Most Popular Student or Most Friendly student).[8]

Additionally, Title VI covers hostile environment claims. *See Bryant v. Independent School Dist. No. I-38*, 334 F.3d 928, 932 (10th Cir. 2003). Here, the State of Colorado, and all public schools forced to change their name or refrain from adopting an honorific name related to Native Americans, (1) have knowledge of their conduct, and (2) are deliberately indifferent to their own harassing conduct. Additionally, erasure of Native American culture is (3) harassment that is so severe, pervasive and objectively offensive that it (4) deprives the Plaintiffs who are students or teachers of equal access to the educational benefits or opportunities provided by the school. *See Monteiro v. Tempe Union High School Dist.*, 158 F.3d 1022, 1033 (9th Cir. 1998) ("According to the Department of Education, a school district violates Title VI when (1) there is a racially hostile environment; (2) the district had notice of the problem; and (3) it failed to respond adequately to redress the racially hostile environment.").

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[7] *See* https://www.ed.gov/news/press-releases/department-education-announces-american-rescue-plan-funds-all-50-states-puerto-rico-and-district-columbia-help-schools-reopen (last visited November 5, 2021).

[8] *See* https://www2.ed.gov/about/offices/list/ocr/letters/segprom-2004.html (last visited November 5, 2021).

Policies themselves can create a hostile environment. *Bryant*, 334 F.3d at 933 ("[W]e hold that Appellants have set forth facts which, if believed, would support a cause of action for intentional discrimination for facilitating and maintaining a racially hostile educational environment."); *see also Monteiro*, 158 F.3d at 1032 ("Nor do we preclude the prosecution of actions alleging that schools have pursued policies that serve to promote racist attitudes among their students, or have sought to indoctrinate their young charges with racist concepts."). In the same way that a blanket policy against students studying the lives of prominent African Americans, or depicting honorific images of Hispanic Americans, could establish a hostile environment for other racial groups, so too does SB 21-116.

In the same vein, SB 21-116 also prevents Native American students and teachers, alone, from reappropriating or reclaiming even purportedly offensive names. *Cf. Matal v. Tam*, 137 S. Ct. 1744, 1751 (2017) ("'Slants' is a derogatory term for persons of Asian descent, and members of the band are Asian–Americans. But the band members believe that by taking that slur as the name of their group, they will help to "reclaim" the term and drain its denigrating force."); *see also* Mark Conrad, *Matal v. Tam—A Victory for the Slants, A Touchdown for the Redskins, But an Ambiguous Journey for the First Amendment and Trademark Law*, 36 CARDOZO ARTS & ENT. L.J. 83, 94 n. 55 (2017) (describing the numerous positive reclaimings of once-offensive words for women, gays, and racial groups). Plaintiffs alone are uniquely disadvantaged from engaging in appropriation by using their school's images, as amongst all racial demographics.

In this context, the State of Colorado has embarked on a sweeping mission to eradicate Native American imagery—broadly defined as "mascots," but incorporating all logos, images, and nearly all letterhead—from public schools. Students and teachers in public schools, like the Plaintiffs in this case, will be forced to watch as schools rip down all materials related to Native

Americans or Native American culture. This will have a concrete, negative effect on Plaintiffs who are forced to witness the elimination of their culture occur before their eyes. Colorado and its officials obviously have notice of their own conduct, and have failed to respond by altering or reversing the Act in response to the knowledge that it intends to create a racially hostile environment. *Cf. Arce v. Douglas*, 793 F.3d 968 (9th Cir. 2015) (reversing a district court's grant of summary judgment in favor of the State of Arizona, and noting that policies eliminating Mexican American Studies programs were subject to equal protection claims, due to potential race-based motivations).

b. Plaintiffs Will Suffer Irreparable Injury Absent Preliminary Relief.

When a "deprivation of a constitutional right is involved … most courts hold that no further showing of irreparable injury is necessary." Wright & Miller, 11A Fed. Prac. & Proc. §2948.1 (3d Ed.); *see, e.g., Mills v. D.C.*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) ("It has long been established that the loss of constitutional freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." (citation omitted). The Supreme Court has long recognized that "a racial classification causes 'fundamental injury' to the 'individual rights of a person.'" *Shaw v. Hunt*, 517 U.S. 899, 908 (1996) (citation omitted). "[I]n an equal protection case of this variety," where "the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group," the injury at issue "is the denial of equal treatment" itself. *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville, Fla.*, 508 U.S. 565, 666 (1993).

Additionally, all evidence points to the fact that a transition to a new school name or logo is expensive, and that it will be next to impossible to return to such a name even if relief is granted after June 1, 2022. Moreover, given the letter from Ms. Redhorse establishing November 30, 2021,

as the final date for giving notice regarding an application for grant funds, irreparable injury is imminent for Plaintiffs.

c. The Balance of Harms and the Public Interest Strongly Favor Plaintiffs.

"[I]t is always in the public interest to prevent the violation of a party's constitutional rights." *Awad v. Ziriax*, 670 F.3d 1111, 1132 (10th Cir. 2012) (quotation marks and citations omitted). Here, "issuance of a preliminary injunction would serve the public's interest in maintaining a system of laws free of unconstitutional racial classifications." *O'Donnell Const. Co. v. District of Columbia*, 963 F.2d 420, 429 (D.C. Cir. 1992). By contrast, Defendants will suffer no cognizable injury should they be barred from taking further unconstitutional action. Indeed, it is possible that Defendants will agree to a case scheduling order that largely resolves the issues in the case prior to June 1, 2022.

CONCLUSION

Once SB 21-116 is implemented, Plaintiffs will suffer irreparable and immeasurable harm which cannot be compensated through money damages. If its enforcement is not enjoined by this Court, SB 21-116 will strip Plaintiffs, as Native American, of their essential constitutional and civil rights by eradicating positive Native American names, logos, and imagery from Colorado public schools. Its implementation will also uniquely disadvantage Plaintiffs' ability to debate with others about the importance of respectful and culturally appropriate Native American logos, iconography and imagery, thereby further consigning Native Americans to historical oblivion. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Plaintiffs meet the standards for issuing a preliminary injunction, against Defendants.

For the reasons stated above, Plaintiffs respectfully request the entry of a preliminary injunction, pending resolution of this case.

Dated: November 5, 2021

/s/ *William E. Trachman*
William E. Trachman, CO Bar #45684
Joseph A. Bingham*
Mountain States Legal Foundation
2596 S. Lewis Way
Lakewood, Colorado 80227
Telephone: (303) 292-2021
Facsimile: (303) 292-1980
Email: wtrachman@mslegal.org
* *Admission Papers to Be Filed*

— and —

Scott D. Cousins*
Scott D. Jones*
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Brandywine Plaza West
1521 Concord Pike, Suite 301
Wilmington, Delaware 19803
Telephone: (302) 824-7081
Facsimile: (302) 292-1980
Email: scott.cousins@cousins-law.com
* *Admission Papers to Be Filed*

EXHIBIT 1

(Declaration of Harold Jefferson)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

(42

JOHN DOE, a minor; Jane DOE, a minor; DEMETRIUS MAREZ; CHASE AUBREY ROUBIDEAUX; DONALD WAYNE SMITH, JR.; and the NATIVE AMERICAN GUARDIAN'S ASSOICATION, Plaintiffs, v. JARED POLIS, Colorado Governor; DAVE YOUNG, Colorado State Treasurer; KATY ANTES, Commissioner of Education for the Colorado Department of Education; and PHIL WEISER, Colorado Attorney General; KATHRYN REDHORSE, Executive Director of the Colorado Commission of Indian Affairs; and GEORGINA OWEN, Title VII State Coordinator for the Colorado Department of Education, in their official capacities, Defendants.	Case No. 1:21-cv-02941-NYW

DECLARATION OF HAROLD JEFFERSON

I, Harold Jefferson, hereby declare, under penalty of perjury, as follows:

MY BACKGROUND

1. I am over the age of the 21 and have personal knowledge about the matters set forth below. I submit this Declaration in support of the above-captioned Complaint for Declaratory and Injunctive Relief (the "**Complaint**").

2. I am the Arickaree School District R-2 Board President.

3. Arickaree School District is located in Anton, Colorado in Washington County.

4. For over 60 years, Arickaree High School has used the name Indian with a Native American logo for its team name, logos, and imagery.

HOW SB 21-116 IMPACTS THE ARICKAREE SCHOOL DISTRICT

5. As of the date of this Declaration, it is my understanding that there are currently 25 public schools in Colorado which have team names, logos, and imagery that are directly impacted by SB 21-116.[1] It is also my understanding that none of these impacted schools have a Native American "mascot" related to their respective public schools.

6. The Arickaree School District has received an estimate by our sports apparel supplier of approximately $20,500 to replace the Indian name, logos, and imagery on the Arickaree High School uniforms.

7. In addition, by my estimate, it will cost approximately $30,000 for the Arickaree School District to come into compliance with SB 21-116 by June 1, 2022. Those compliance costs include the costs associated with removing and replacing the Indian name, logos, and imagery on the Arickaree High School gymnasium, front entrance, school buses and throughout the school.

COLORADO PUBLIC ARE RECIPIENTS OF FEDERAL FUNDS

8. Colorado public schools are recipients of federal funds.

9. It is my understanding, as recipients of federal funds, Colorado is subject to Title IV of the Higher Education Act of 1965.

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[1] *See* Sue McMillin, "25 Colorado schools still had Native American mascots. This week one finally decided to make a change," The Colorado Sun (March 17, 2021), https://coloradosun.com/2021/03/17/cheyenne-mountain-mascot-native-american-controversy/ (last visited October 26, 2021).

THERE ARE NO "MASCOTS" IN THE ARICKAREE SCHOOL DISTRICT

10. No school within the Arickaree School District has a Native American "mascot." Rather, the Arickaree High School is currently using a Native American name and related logo, and imagery, but not a "mascot."

LETTER FROM COLORADO COMMISSION OF INDIAN AFFAIRS

11. Recently Arickaree School District R-2 received a letter from the Colorado Commission of Indian Affairs (the "**CCIA Letter**"). Notwithstanding the deadlines for compliance set forth in SB 21-116, the CCIA Letter demanded that "All districts and charter schools must notify BEST of their intent to apply by *November 30, 2021*." (Emphasis added). A true and correct copy of the CCIA Letter is attached hereto as Exhibit A.

CONCLUSION

12. Accordingly, I respectfully request that the Court grant Plaintiffs' request for the issuance of a temporary restraining order.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 5, 2021
Anton, Colorado

/s/ Harold Jefferson
Harold Jefferson

Exhibit A

(Letter from Colorado Commission of Indian Affairs)

COLORADO COMMISSION OF INDIAN AFFAIRS

COLORADO
Department of Education

Colorado Commission of Indian Affairs
136 Capitol Drive
Denver, CO 80203

Colorado Department of Education
201 E Colfax Ave,
Denver, CO 80203

Arickaree School District R-2
12155 Co Rd NN
Anton, CO 80801

Dear Lisa Weigel,

On June 28, 2021, Governor Jared Polis signed into law Senate Bill 21-116 (SB 21-116), "Concerning the Prohibition of American Indian Mascots in Colorado." Beginning on and after June 1, 2022, the bill prohibits the use of American Indian mascots by public schools, which includes an elementary, middle, junior high, high school, district charter school of a school district, and institute charter school that serves any of grades kindergarten through twelve. The prohibition does not apply to:

- Any public school that has an agreement with a federally recognized Indian Tribe that complies with SB21-116; or
- Any public school that is operated by or with the approval of a federally recognized Indian Tribe and existing within the boundaries of such Tribe's reservation.

If a public school continues to use a prohibited American Indian mascot on or after June 1, 2022, SB 21-116 imposes a $25,000 monthly fine on the school district of the public school, or the State Charter School Institute in the case of an institute charter school, or public institution of higher education, of the public school. The fine is payable to the State Treasurer and will be credited to the state education fund.

According to our records, Arickaree School District RE-2 has 2 public schools that are out of compliance with SB 21-116, which are listed as follows:

Arickaree Undivided High School
Indians
1255 County Road Nn

Anton, CO 80801
(970) 383-2205

Arickaree Elementary School
Indians
12155 County Road Nn
(970) 383-2205

Schools looking to come into compliance with SB21-116 will need to submit supporting documentation to Colorado Commission of Indian Affairs (CCIA) staff indicating that the local school board will remove American Indian mascots, and share if a new mascot has been determined. Documentation should include, but is not limited to: a timeline from initiation to completion of changes, contractor receipts, school board meeting minutes, and any additional pertinent documentation. At a publicly noticed Quarterly Meeting, CCIA will vote on whether the changes made by the schools/school districts are sufficient to be removed from the list of non-compliant schools. CCIA's Fourth Quarterly Meeting in May 2022 will be the last opportunity for schools/school districts to demonstrate compliance with the bill's requirements before the June 1, 2022 deadline. Should compliance with SB 21-116 not be achieved by June 1, 2022, CCIA, in partnership with the Colorado Department of Education (CDE), will notify you of any remaining noncompliant public schools and the required monthly fine.

To assist your public schools in making this change, SB 21-116 includes the Building Excellent Schools Today (BEST) grant program as a potential source of funding to "accomplish any structural changes that might be necessary" to remove American Indian mascots. Applications for the Fiscal Year 2023 grant round are due in February 2022. All districts and charter schools must notify BEST of their intent to apply by November 30, 2021. Please visit the BEST website regularly for updated information or contact your Regional Program Manager for assistance with applying for a BEST grant.

Please reach out to Kathryn Redhorse, Colorado Commission of Indian Affairs, at kathryn.redhorse@state.co.us if you have any questions regarding a school's noncompliant status. Questions concerning the Department of Education can be directed to Georgina Owen, Colorado Department of Education, at owen_g@cde.state.co.us.

Sincerely,

Kathryn Redhorse
Executive Director, Colorado Commission of Indian Affairs
200 E. Colfax Ave.
Denver, CO 80203

Georgina Owen
ELD Specialist and Title VII State Coordinator Colorado Department of Education
201 E Colfax Ave,
Denver, CO 80203

EXHIBIT 2

(Declaration of Demetrius Marez)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

JOHN DOE, a minor; Jane DOE, a minor; DEMETRIUS MAREZ; CHASE AUBREY ROUBIDEAUX; DONALD WAYNE SMITH, JR.; and the NATIVE AMERICAN GUARDIAN'S ASSOICATION, Plaintiffs, v. JARED POLIS, Colorado Governor; DAVE YOUNG, Colorado State Treasurer; KATY ANTES, Commissioner of Education for the Colorado Department of Education; and PHIL WEISER, Colorado Attorney General; KATHRYN REDHORSE, Executive Director of the Colorado Commission of Indian Affairs; and GEORGINA OWEN, Title VII State Coordinator for the Colorado Department of Education, in their official capacities, Defendants.	Case No. 1:21-cv-02941-NYW

DECLARATION OF DEMETRIUS MAREZ

I, Demetrius Marez, hereby declare, under penalty of perjury, as follows:

MY BACKGROUND

1. I am over the age of the 18 and have personal knowledge about the matters set forth below. I submit this Declaration in support of the above-captioned Complaint for Declaratory and Injunctive Relief (the "Complaint").

2. I am one of the Plaintiffs in this matter.

3. I am a Colorado native and a Marine Veteran.

4. I am a resident of Lakewood, Colorado. I own a local handyman business and manage a condominium complex in Lakewood.

MY HERITAGE

5. I am 39% Diné (the Navajo People, or "The People of the Earth"). The Diné (pronounced "de-NEH") are included on the Department of the Interior's list of recognized Indian tribes, and have been included on every version of this list since approximately 1985. Most recently, the Tribe was included in the February 1, 2019, list published at 84 Fed. Reg. 1200 (Feb. 1, 2019).[1]

THE LAMAR "SAVAGE"

6. I graduated from Lamar High School in 1993.

7. My strong personal belief is that the Lamar High School name "Savage" is not offensive, dishonorable, derogatory or demeaning. In fact, it is quite the opposite. The Savage presents himself as a proud warrior with strength and integrity.

8. On September 7, 2021, I sent an email to letter to the Lamar School District School Board members (the "School Board Email"). I implored them to not change the name, logos, and imagery associated with the Lamar High School Savages. Alternatively, I requested that, if they were compelled to change the name and iconography related to the LHS Savages as a result of SB 21-116, the Board rename the LHS Savages to the LHS "Black Kettle." Black Kettle was a

[1] The Federally Recognized Indian Tribe List Act of 1994 (the "List Act") requires the Secretary of the Interior to publish an annual list of "all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* 25 U.S.C. §§ 5130, 5131.

prominent Chief of the Southern Cheyenne during the Colorado War and Sand Creek Massacre. A true and correct copy of the School Board Email is attached hereto as Exhibit 1 to this Declaration.

9. The next day, September 8, 2021, School Board member Lanie Mireles responded to my School Board Email (the "School Board Response"), writing:

> Key language taken from the bill includes: "American Indian Mascot means a name, symbol, or image that depicts or refers to an American Indian tribe, individual, custom, or tradition that is used as a mascot, nickname, logo, letterhead, or team name of the school." *I believe your suggestion would fit within this definition thereby making the school subject to the fines/fees if we adopted this suggestion*. Other board members can chime in with their thoughts.

(emphasis added). A true and correct copy of the School Board Response is attached as Exhibit 2 to this Declaration.

10. About July 23, 2021, the Lamar School District School Board has announced that if SB 21-116 is not "overturned by January 15, 2022, the Board of Education will appoint a committee of stakeholders, alumni, and students to solicit recommendations for a mascot change" in order to "allow sufficient time to implement the changes by the June 1, 2022 deadline."[2] A true and correct copy of the School Board press release is attached as Exhibit 3 to this Declaration.

REAPPROPRIATION

11. I was a Lamar High School Savage letterman in both wrestling and track. I wore my colors, and represented our school with pride and integrity like so many others.

[2] The press release is also assessable here: https://sites.google.com/lamarschools.org/district/home/sb21-116 (last visited November 5, 2021).

12. Representing our school outside of Lamar, I never heard a derogatory comment about our Savage name or Native Americans in general. Being Diné, I would have been sensitive to any derogatory remarks or gestures.

13. Because the eradication of Native American names, iconography and images poses serious and irreparable harm to the cultural identities and heritage of Native Americans, I regularly engage in efforts of "reappropriation" as a form of expressive speech in order to communicate political, cultural and social messages so as to render emotionally charged words and images nondisparaging, to mitigate the stigma of racism and discrimination that I have faced as a member of an underrepresented minority group and a member of a protected group, and to educate others as to what it means to be a Native American in American culture.

14. Reappropriation allows me to self-identify to non-Native American allies in order to help them associate their identities with the messages that I seek to convey in order to persuade others to join me in my cause.

15. I view my efforts of Reappropriation as an important form of speech. It allows me to communicate political, cultural, and social messages so as to render emotionally charged words and images nondisparaging, to mitigate the stigma of racism and discrimination that I have faced as a member of an underrepresented minority group and a member of a protected group, and to educate others as to what it means to be a Native American in American culture.

16. In addition, Reappropriation allows me to self-identify with the messages that I seek to convey to allies and to the groups that might associate with my efforts in order to persuade others to join the cause of Plaintiffs.

17. I know that some claim that Native American names, logos, and imagery invite racist conduct during sporting events. Instead of "blaming the victim," I view such situations as

opportunities for Reappropriation where students and fans to learn more about Native American heritage, not as an opportunity to eradicate appropriated symbols in public schools in order to avoid *the potential* of non-Native American fans behaving poorly at a public-school sporting events.

18. Through Reappropriation, I use these slurs and images in a positive manner in order to marginalize the racism that fellow Native Americans and our ancestors have faced and continue to face. I seek to fight bigotry by seizing the bigots' own names, symbols, or images that are banned by SB 21-116.

SB 21-116

19. SB 21-116 would ban the name, symbol and imagery of the Lamar High School Savages in Lamar, Colorado while leaving non-Native American names, symbols, and imagery in other public schools unchanged.

20. Outside of Colorado, there are many team names that honor Native Americans: Braves, Indians, Warriors, Blackhawks, Chiefs, Chippewas, Seminoles, Utes, and Fighting Sioux.

21. While some seek to characterize this battle as a fight over "race-based mascots," SB 21-116 only bans "American Indian mascots in Colorado," thereby leaving as unregulated the imagery and names such as "Fighting Irish" or "Boston Celtics" with a leprechaun mascot, or the "Vikings" with a Norseman's head. Recently, Notre Dame defended its "Fight Irish" leprechaun image and turned the nickname around:

> Because Notre Dame was largely populated by ethnic Catholics – mostly Irish, but also Germans, Italians and Poles – the university was a natural target for ethnic slurs, it said. At one football game in 1899, Northwestern students chanted "Kill the fighting Irish," Notre Dame said. . . . "Soon, Notre Dame supporters took it up,

turning what once was an epithet into an 'in-your-face' expression of triumph," the university said.[3]

22. SB 21-116 discriminates against Native Americans under the pretext of "helping" them as underrepresented minorities and beneficiaries of racial preferences, while protecting non-Native American bystanders (clearly not a protected group) who are offended by Native American names, logos, and imagery.

HOW SB 21-116 IMPACTS ME

23. SB 21-116 discriminates against me based on my Native American race, color, or national origin.

24. By banning names and images that Colorado deems disparaging, SB 21-116 denies Native Americans the opportunity to engage in the most fundamental act of human dignity—to honor their heritage by provoking conversations and engaging with others about racial identity and racial stereotypes within and without the Native American community.

CONCLUSION

25. I am participating in this Complaint for the reasons set forth above.

26. Accordingly, I respectfully request that the Court grant Plaintiffs' request for the issuance of a temporary preliminary injunction.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 5, 2021
Lakewood, Colorado

/s/ Demetrius Marez
Demetrius Marez

[3] *See* Dana Hunsinger Benbow, Notre Dame defends leprechaun mascot, ranked college football's 4th-most offensive in study, Indianapolis Star (August 26, 2021), https://www.indystar.com/story/sports/college/2021/08/23/notre-dame-defends-fighting-irish-leprechaun-mascot-ranked-offensive/8249420002/ last visited November 5, 2021).

EXHIBIT A

(September 7, 2021 Email to Lamar School Board)

From: Demetrius Marez <demetriusmarez@yahoo.com>
To: lanie.mireles@lamarschools.org <lanie.mireles@lamarschools.org>; nancy.winsor@lamarschools.org <nancy.winsor@lamarschools.org>; conniejacobsen@lamarschools.org <conniejacobsen@lamarschools.org>; chris.wilkinson@lamarschools.org <chris.wilkinson@lamarschools.org>; roddunn@lamarschools.org <roddunn@lamarschools.org>; shannon.obryan@lamarschools.org <shannon.obryan@lamarschools.org>; jake.chamberlain@lamarschools.org <jake.chamberlain@lamarschools.org>
Sent: Tuesday, September 7, 2021, 07:50:18 PM MDT
Subject: Lamar High School Savage Name and Iconography

September 7th, 2021

Lamar School District Board of Education

Ms. Lanie Meyers-Mireles, President
lanie.mireles@lamarschools.org

Ms. Nancy Winsor, Vise President
Nancy.winsor@lamarschools.org

Ms. Connie Jacobson, Secretary
connie.jacobsen@lamarschools.org

Mr. Chris Wilkinson, Treasure
Chris.wilkinson@lamarschools.org

Mr. Rod Dunn, Director
rod.dunn@lamarschools.org

Mr. Shannon O'Bryan, Director
Shannon.obryan@lamarschools.org

Mr. Jake Chamberlain, Director
jake.chamberlain@lamarschools.org

Re: Lamar High School Savage Name and Iconography

Dear Board Members

My name is Demetrius Marez. I am an interested former community resident of the Lamar School District, which includes Lamar High School ("LHS"). I am of Indian heritage, 39% Dine ("the Navajo People of the Earth"). I graduated from Lamar High School in 1993. I am a small business owner and a taxpayer in Colorado.

Considering your press release from July 23, 2021, I understand that the Lamar School District Board of Education (the" Board") is considering changing the name and iconography related to the LHS "Savage" in light of the enactment of SB 21-116, the "Prohibit American Indian Mascots" Act. As you know, the Act prohibits the "use of American Indian mascots by public schools, "including LHS as of June 1, 2022. I am also aware of the consequences of $25,000 per month fine for not changing. I do understand that it will cost the school board $250,000 to $500,000 to change everything as well.

The Lamar High School name "SAVAGES" is not offensive, dishonorable, derogatory or demeaning to me. In fact, it is quite the opposite. The Savage presents himself as a proud warrior with strength and integrity. Accordingly, to correlate the word "SAVAGE" Just as a Native term or word is ridiculous, and I request that the Board not change the name and iconography related to the LHS Savage. To the extent, however, that the Board feels compelled to change the name and iconography related to the LHS Savage, I request that the Board consider renaming the LHS Savages to "Lamar High School Black Kettle." Black Kettle was a prominent Chief/leader of the Southern Cheyenne during the Colorado War and the Sand Creek Massacre.

I look forward to your reply at your earliest convenience.

Sincerely,

Demetrius Marez

10115 W. 25th Ave. #5

Lakewood CO, 80215

Demetriusmarez@yahoo.com

EXHIBIT B

(September 8, 2021 Lamar School Board Response)

From: "Lanie Mireles" <lanie.mireles@lamarschools.org>
To: "Demetrius Marez" <demetriusmarez@yahoo.com>
Cc: "nancy.winsor@lamarschools.org" <nancy.winsor@lamarschools.org>, "conniejacobsen@lamarschools.org" <conniejacobsen@lamarschools.org>, "chris.wilkinson@lamarschools.org" <chris.wilkinson@lamarschools.org>, "roddunn@lamarschools.org" <roddunn@lamarschools.org>, "shannon.obryan@lamarschools.org" <shannon.obryan@lamarschools.org>, "jake.chamberlain@lamarschools.org" <jake.chamberlain@lamarschools.org>
Sent: Wed, Sep 8, 2021 at 8:00 AM
Subject: Re: Lamar High School Savage Name and Iconography

Demetrius,
Thank you for your email and suggestion. We appreciate hearing from invested stakeholders. We are all very aware of your advocacy on this issue through written correspondence, testimony, etc. Again, thank you for all of your work.

Key language taken from the bill includes:
"American Indian Mascot means a name, symbol, or image that depicts or refers to an American Indian tribe, individual, custom, or tradition that is used as a mascot, nickname, logo, letterhead, or team name of the school." I believe your suggestion would fit within this definition thereby making the school subject to the fines/fees if we adopted this suggestion. Other board members can chime in with their thoughts.

Thank you again for your ongoing advocacy and support. The district continues to evaluate options and seek consultation and guidance on this topic. Please don't hesitate to maintain contact with us and continue to share additional thoughts and suggestions.

Warm regards,
Lanie

On Tue, Sep 7, 2021 at 7:50 PM Demetrius Marez <demetriusmarez@yahoo.com> wrote:

EXHIBIT C

(Lamar School Board Press Release)

The Lamar School District Board of Education held a community forum on July 15th to provide information related to SB21-116 which prohibits the use of Native American mascots by Colorado schools beginning June 1, 2022.

The Board of Education notified the public of the following:

- The Board never voted to change or replace the mascot. SB21-116 was introduced as legislation on February 23, 2021 by Representative McLauchlan and was subsequently approved in the House and Senate. Governor Polis signed the bill into law on June 28, 2021.
- The Board does not believe the Lamar High School, nor the community of Lamar, represents or uses the mascot in a negative or derogatory manner.
- This bill will impose a fine of $25,000 per month for districts failing to comply with the law beginning June 1, 2022.
- The high school will maintain the current mascot/logo and associated imagery through May 31, 2022.
- The Board recognizes that NAGA and Noble Savages are raising funds to file an injunction and lawsuit in an effort to overturn the law.
- The Board does not believe it would be financially prudent to contribute any district funds towards covering legal fees associated with filing an injunction or a lawsuit, as there is no guarantee of the timeframe or costs associated with reaching a settlement or court decision. District funds must be prioritized for the education of the students, as well as recruitment and retention of quality staff.
- Should the law NOT be overturned by January 15, 2022, the Board of Education will appoint a committee of stakeholders, alumni, and students to solicit recommendations for a mascot change. A new mascot will be selected by March 1, 2022. It is necessary for the Board to begin taking these steps in early 2022 to allow sufficient time to implement the changes by the June 1, 2022 deadline.
- If the law is overturned prior to May 31, 2022, Lamar High School will remain the “Lamar Savages” with no changes to the logo.

Approximately 125 community members attended the forum, with approximately two dozen people speaking offering feedback. Following the public comment period, a poll was taken asking the community members to choose one of the following:

- Keep the “Savages” name and adopt a new logo that does not include any Native American imagery.
- Change both the name and logo for the high school.

Ninety-three individuals voted to maintain “Savages” and adopt a new logo; 6 voted to replace both; and 26 individuals provided a written-in response of “keep both”. It has been widely discussed that the Board should have included an option to “keep both”, however if the law is overturned, Lamar High School will experience no changes to the current mascot. If the law remains in place or a lawsuit has not been settled, the district will have no choice but to make the necessary changes to avoid substantial

fines, or the risk of substantial fines. Again, it is the duty of the Board of Education to remember always that the greatest concern must be the educational welfare of the students attending the school and to be fiscally responsible and make decisions that leave the district in a sound financial position.

In an effort to be proactive, the Board is seeking feedback from the Colorado Commission of Indian Affairs to ensure that the district will be in compliance with the law, should "Savages" be maintained without the Native American imagery. The Board of Education will continue to work through this process and as new information becomes available, it will be shared with the community. The Board recognizes this to be a passionate topic for the community and wants to provide ample information and opportunity for the community to be engaged in this process.

EXHIBIT 3

(Declaration of John Doe, a Minor)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

JOHN DOE, a minor; Jane DOE, a minor; DEMETRIUS MAREZ; CHASE AUBREY ROUBIDEAUX; DONALD WAYNE SMITH, JR.; and the NATIVE AMERICAN GUARDIAN'S ASSOICATION, Plaintiffs, v. JARED POLIS, Colorado Governor; DAVE YOUNG, Colorado State Treasurer; KATY ANTES, Commissioner of Education for the Colorado Department of Education; and PHIL WEISER, Colorado Attorney General; KATHRYN REDHORSE, Executive Director of the Colorado Commission of Indian Affairs; and GEORGINA OWEN, Title VII State Coordinator for the Colorado Department of Education, in their official capacities, Defendants.	Case No. 1:21-cv-02941-NYW

DECLARATION OF JOHN DOE, A MINOR

I, John Doe, a minor, hereby declare, under penalty of perjury, as follows:

MY BACKGROUND

1. I am under the age of the 18 and have personal knowledge about all of the matters set forth below. I submit this Declaration in support of the above-captioned Complaint for Declaratory and Injunctive Relief (the "Complaint").

2. I am one of the Plaintiffs in this matter. Because I am a minor, I am using the pseudonym "John Doe" for my name in this declaration.

3. I live in Yuma, Colorado. I am a student at Yuma High School in Yuma, Colorado, which is known as the "Yuma Indians," and where I participate in many school activities, as well as football and wrestling. I am proud to wear our Native jerseys.

MY HERITAGE

4. I have always known I was part Indian, and I believe I inherited those roots from both parents, as my mom and my dad both had Indian ancestors. Although my grandmother had been adopted, nearly a decade ago she discovered her Native roots and went to Oklahoma to meet her biological family, which is both Cherokee and Chippewa.

5. My father always knew he also had Indian ancestors, and I always was proud of that fact.

6. My mother grew up near an Oregon reservation and attended high school with the children from the reservation. Her school had a "white buffalo" mascot.

7. When I entered fifth grade, my family moved into a new school district where I attended a Native themed school. Because of my Native heritage, I realized I took more pride in my school. I was happy to share my heritage with everyone who would listen. I thought it was cool that my family was Indian, and my school was Indian!

8. My coaches have taught me and my teammates to be proud of our Native team and to always show respect to our opponents, to their team, their town, their field. We would never hurt their property. I have never heard any ridicule about our Native team or about my Native heritage. In fact, other students are also proud of my roots. At school, we like to do Native chants together.

9. My community is proud of its Native history, from thousands of years ago to today; from the Yuma Points and Yuma the Indian; from Native students attending our school; we have very strong school spirit, and strong community support.

10. While we have Cherokee and Chippewa roots, my family does not have any tribal affiliation, but we feel our town and our school are what "tribe pride" are all about.

11. I am proud to be an Indian, Redskin, Native American, Warrior, or whatever. None of these titles are demeaning to me. I am pleased when anyone calls me by any of those titles. My Native identity has strengthened my self-esteem, just as my Native school has added to my identity.

HOW SB 21-116 IMPACTS ME

12. SB 21-116 discriminates against me based on my Native American race, color, or national origin.

13. I participate in many school activities, as well as football and wrestling. These activities often honor my culture and heritage.

14. Because I was afraid that Yuma High School's current name and logo would be banned on school athletic wear as a result of SB 21-116, on October 6, 202,1 my mother purchased "DSG Men's Cold Weather Compression Tights" for $41.26 to replace my Yuma Indian compression shorts that I wear while playing football for Yuma High School.

15. I want our lawmakers to know I am just as proud of my personal heritage as I am my school's Native name and local history. I am proud to share that history with all of Colorado and tell of our "Yuma Spear Points" and the grave of our namesake, "Yuma The Indian."

16. This law attacks something which has been in place 86 years, and which everyone in our town respects and is proud of, whether Indian or not. If our Indian history and culture is erased, this will not only hurt our students, teachers, and school, but it will also hurt our town. We will feel like we have let down "Yuma the Indian" who is buried here. We would have let down

the farmers (later an esteemed paleontologist, Dr. Harold V. Andersen, a Yuma graduate) who found the famous, ancient spear points in our county, spoke at our school, and led to the change from Cornhuskers to Indians in 1935. This law has made everyone very upset and sad. No one who I know believes our proud theme should be erased by people who do not even live here and may possibly have never even been here!

17. I object to SB 21-116's regulation and suppression, which treats me differently solely based on my race and the race of my ancestors.

18. Because of SB 21-116, I cannot reappropriate my heritage through my use of positive Native American names, logos, and imagery, as anyone from any other race is free to do.

CONCLUSION

19. As a teenager living in Colorado, I am fighting this un-American law, in order to protect my Native family, my Native school, my Native-themed town, and my Native-themed county. Our identity is positive and honorable and should never be erased. I believe my opinion should be heard, and my legal rights should be properly protected.

20. Accordingly, I respectfully request that the Court grant Plaintiffs' request for the issuance of a temporary restraining order.

DECLARATION OF MINOR

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 5, 2021
Yuma, Colorado

/s/ John Doe
John Doe, a minor

DECLARATION OF PARENT

Pursuant to 28 U.S.C. § 1746(2), I, Lyndsey Blach, hereby declare under penalty of perjury that:

1. I am over the age of 18 and competent to testify.

2. I am the mother of John Doe, the minor Plaintiff identified in the foregoing declaration of John Doe, a Minor (the "**John Doe Declaration**").

3. The factual allegations and statements set forth in the John Doe Declaration are true and correct.

Executed on November 5, 2021
Yuma, Colorado

/s/ Lyndsey Blach
Lyndsey Blach

EXHIBIT A

(Dick's Sporting Goods Receipt)

Order Summary

Contact Info, Billing Address, Items Details

Contact Info

Billing Address

yuma, CO 80759

Shipping

Ships to:

Yuma, CO 80759

DSG Men's Cold Weather Compression Tights $31.97 ea.

Qty: 1 | Pure White, M

Est. Delivery: Mon 10/11 - Wed 10/13

Standard Shipping

Order Subtotal	$31.97
Estimated Shipping	$6.99
Estimated Tax	$2.30
Estimated Order Total	**$41.26**

EXHIBIT 4

(Declaration of Jane Doe, a Minor)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

JOHN DOE, a minor; Jane DOE, a minor; DEMETRIUS MAREZ; CHASE AUBREY ROUBIDEAUX; DONALD WAYNE SMITH, JR.; and the NATIVE AMERICAN GUARDIAN'S ASSOICATION, Plaintiffs, v. JARED POLIS, Colorado Governor; DAVE YOUNG, Colorado State Treasurer; KATY ANTES, Commissioner of Education for the Colorado Department of Education; and PHIL WEISER, Colorado Attorney General; KATHRYN REDHORSE, Executive Director of the Colorado Commission of Indian Affairs; and GEORGINA OWEN, Title VII State Coordinator for the Colorado Department of Education, in their official capacities, Defendants.	Case No. 1:21-cv-02941-NYW

DECLARATION OF JANE DOE I, A MINOR

I, Jane Doe, a minor, hereby declare, under penalty of perjury, as follows:

MY BACKGROUND

1. I am under the age of the 18 and have personal knowledge about all of the matters set forth below. I submit this Declaration in support of the above-captioned Complaint for Declaratory and Injunctive Relief (the "Complaint").

2. I am one of the Plaintiffs in this matter. Because I am a minor, I am using the pseudonym "Jane Doe" for my name in this declaration.

3. I am a student at Yuma High School in Yuma, Colorado, which is known as the "Yuma Indians."

4. I was born and raised in Colorado. My parents and I moved to Yuma when I was a toddler. My schooling began at Little Indians Preschool in Yuma. I was only four years old, but I remember the black sign out front says, "Little Indians." I also remember when we all sat in a circle on a Little Indians carpet for story time and singing.

5. Tribe Pride is important to me. It is seen everywhere at YHS and in Yuma, ever since we became the Yuma Indians in 1935. On my cell phone I put a photo from my student handbook, to help me remember the school song. This photo includes three "YHS MOTTO-VALUES: Tribe Pride. Tradition. Excellence." A triangle around our school's icon lists four kinds of Tribe Pride, which are "self, others, learning, and property." I would say that our school strongly focuses on learning respect.

6. My girlfriends and I all cried together when we first heard about Colorado's plan to take away the Indian theme from our schools. We even agreed that we would chain ourselves to a school fence, if we could stop anyone from erasing our Indians from our school!

MY HERITAGE

7. Today, as a Yuma Indian with Indian blood, I am part of my culture, and my culture is part of me!

8. My parents told me of my Indian heritage, which comes from both my parents, but from different tribes. I don't have a tribal enrollment, but I am a mixture of both my parents, who

are Indian, White, and Hispanic. My mother calls me her "Indian Princess" because of my strong Native features, dark skin, and long, black hair.

9. My mother told me she gave me Cherokee blood and my father also has Native blood, but I am okay with being Indian, Redskin, Native or whatever. In our town everyone is proud to be Native of any type. I have never seen anyone discriminate someone for being a Yuma Indian or any other type of Indian. This is what we look up to!

10. Besides jerseys, I also wear my Yuma Indians shirts to represent my "tribe pride." I am proud to be part of our school tribe, just as I'm proud to be part Indian from both my parents. In Yuma, both adults and students wear Yuma Indians shirts. My mother wears Yuma Indian shirts; my father and my uncle wear Yuma Indian hats. An Indian is never a bad symbol or a bad thing!

HOW SB 21-116 IMPACTS ME

11. SB 21-116 discriminates against me based on my Native American race, color, or national origin.

12. With the enactment of SB 21-116, I will lose opportunities to mentor non-Native Americans about my Native American ethnic heritage.

13. By banning Yuma Indians in our school, this law impairs my ability to celebrate my personal Native heritage, from honoring my parents who are from two different tribes, from honoring my town's history, from honoring Yuma (the Indian who is buried here in 1860's), from honoring tribes who lived and traveled here a century or more ago, from honoring the history of the paleo Indians who were here thousands of years ago, from wearing my Yuma Indians jersey, and from raising my future children to continue the "tribe pride" which I have enjoyed almost all my life, while in our Little Indians Preschool, Morris Elementary, Yuma Middle School, and Yuma

High School. In my view SB 21-116 treats me differently from every other racial demographic in the State of Colorado.

CONCLUSION

14. I am participating in this Complaint for the reasons set forth above.

15. Accordingly, I respectfully request that the Court grant Plaintiffs' request for the issuance of a preliminary injunction.

DECLARATION OF MINOR

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 5, 2021
Yuma, Colorado

/s/ Jane Doe
Jane Doe, a minor

DECLARATION OF PARENT

Pursuant to 28 U.S.C. § 1746(2), I, Michelle Serrano, hereby declare under penalty of perjury that:

1. I am over the age of 18 and competent to testify.

2. I am the mother of Jane Doe, the minor Plaintiff identified in the foregoing declaration of Jane Doe, a Minor (the "**Jane Doe Declaration**").

3. The factual allegations and statements set forth in the Jane Doe Declaration are true and correct.

Executed on November 5, 2021
Yuma, Colorado

/s/ Michelle Serrano
Michelle Serrano

EXHIBIT 5

(Declaration of Chase Aubrey Roubideaux)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

JOHN DOE, a minor; Jane DOE, a minor; DEMETRIUS MAREZ; CHASE AUBREY ROUBIDEAUX; DONALD WAYNE SMITH, JR.; and the NATIVE AMERICAN GUARDIAN'S ASSOICATION, Plaintiffs, v. JARED POLIS, Colorado Governor; DAVE YOUNG, Colorado State Treasurer; KATY ANTES, Commissioner of Education for the Colorado Department of Education; and PHIL WEISER, Colorado Attorney General; KATHRYN REDHORSE, Executive Director of the Colorado Commission of Indian Affairs; and GEORGINA OWEN, Title VII State Coordinator for the Colorado Department of Education, in their official capacities, Defendants.	Case No. 1:21-cv-02941-NYW

DECLARATION OF CHASE AUBREY ROUBIDEAUX

I, Chase Aubrey Roubideaux, hereby declare, under penalty of perjury, as follows:

MY BACKGROUND

1. I am over the age of the 21 and have personal knowledge about the matters set forth below. I submit this Declaration in support of the above-captioned Complaint for Declaratory and Injunctive Relief (the "Complaint").

2. I am one of the Plaintiffs in this matter.

3. I graduated from Yuma High School, Yuma, Colorado in 2010.

4. Yuma High School has been known as the Yuma Indians since 1935. In fact, from 1993 to 2010, I lived across the street from the campus, in direct view of the sign above the stadium press box on the football field. In 2002, I helped my father paint and hang the school's first sign.

5. As a Yuma student in grade school. I won a national PBS Contest called "Dear Mr. President." I wrote a letter to the U.S. President about the Native diabetes problem, which is so prevalent. My Native father and I went to the Oval Office to visit the President, together with seven other winners; the President told me of legislation and budgeting toward improving the Native health crisis. I gave gifts to the President, including a Yuma Indians baseball cap and a framed arrowhead, which my father found in Yuma County.

6. In high school, I continued to share my heritage. My best friend was new to Yuma, and believed he had Native heritage. We were both proud to be Yuma Indians. We enjoyed participating in all school functions, including all sports, Homecoming and Wigwam, where there were many foods to buy, and we had so much community support in raising activity funds.

7. As a Yuma Indian, I believed I was a part of a very long legacy: now 86 years!, and I wanted to leave my positive mark as well. My parents gave me an Indian name of Star Boy.

8. On September 5, 2021, I sent a letter to the Yuma School District-1 School Board (the "School Board") members and certain administrators (the "School Board Letter"). I implored them to not change the name, logos, and imagery associated with the Yuma High School Indians. Alternatively, I requested that, if they were compelled to change the name and iconography related to the YHS Indians as a result of SB 21-116, the Board rename the YHS Indians to the YHS "Tall Bulls." Tall Bull was a prominent Chief of the Southern Cheyenne during the Colorado War

following Sand Creek Massacre. He fought at the Battle of Beecher Island, where I have attended reenactments many times. Tall Bull is a Lakota ancestor of mine, but he and many in his band were massacred at Summit Springs, just about 45 miles northwest of Yuma. A true and correct copy of the School Board Letter is attached hereto as Exhibit 1.

9. While the School Board never responded to the School Board Letter, on or about September 23, 2021, *The Yuma Pioneer* published an article that reported that on September 20, 2021, at a regularly scheduled Board meeting, the School Board "eliminated" my suggestion of "Tall Bulls," "because it refers to a Native American chief killed in the 1880s."[1] A true and correct copy of *The Yuma Pioneer* article is attached hereto as Exhibit 2. *The Yuma Pioneer* also reported that Superintendent Diana Chrisman disclosed that the "cost to change the mascot is definitely nearing $400,000 to the district." *Id.*

MY HERITAGE

10. I received my Sioux heritage from my father, who is a member of Rosebud Sioux Tribe. My father grew up there in extreme poverty. I am also an enrolled Rosebud tribal member; my blood degree is about 25%.

11. The Rosebud Sioux Tribe of the Rosebud Indian Reservation is a federally recognized Indian Tribe. The Tribe is included on the Department of the Interior's list of recognized Indian tribes, and has been included on every version of this list since approximately 1985. Most recently, the Tribe was included in the February 1, 2019, list published at 84 Fed. Reg. 1200 (Feb. 1, 2019).[2]

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[1] *See* https://www.yumapioneer.com/yuma-mascot-list-trimmed-to-15/ (last visited November 5, 2021).

[2] The Federally Recognized Indian Tribe List Act of 1994 (the "**List Act**") requires the Secretary of the Interior to publish an annual list of "all Indian tribes which the Secretary

I AM "NOT YOUR MASCOT"

12. I agree with most Americans that no person or nation of people should be a "mascot."

13. That is why I personally opposed a decade's old and long deceased practice of using American Indian mascot performers, caricatures and cartoonish minstrels (and related racial stereotypes, names and slurs) to mock and ridicule Native Americans and their heritage—such as Lamar High School's former mascot *Chief Ugh-Lee* or the Atlanta Braves' former Native American caricature *Chief Noc-A-Homa*—in sports and other public venues. Indeed, these Native American impersonators were removed long ago because of their negative impact on Native Americans.

14. Instead, I believe that culturally appropriate Native American names, logos, and imagery are important to honor Native Americans, and to help public schools neutralize offensive and stereotypical Native American caricatures and iconography while teaching students and the general public about American Indian history.

15. As of the date of this Declaration, it is my understanding that there are currently numerous public schools in Colorado which have team names, logos, and imagery that are directly impacted by SB 21-116.[3] At least four of these public schools are located in Yuma, including the "Little Indians Preschool," "Morris Elementary," "Yuma Middle School," and "Yuma High

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recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* 25 U.S.C. §§ 5130, 5131.

[3] *See* Sue McMillin, "25 Colorado schools still had Native American mascots. This week one finally decided to make a change," The Colorado Sun (March 17, 2021), https://coloradosun.com/2021/03/17/cheyenne-mountain-mascot-native-american-controversy/ (last visited November 5, 2021).

School." It is also my understanding that none of these impacted schools has a Native American "mascot" related to their respective public schools.

16. As such, by using the term "mascot," supporters of SB 21-116 have conflated the use of American Indian mascot performers (something that I oppose) with culturally appropriate Native American names, logos, and imagery (something that I seek to protect in order to honor my Native Americans heritage).

NATIVE AMERICANS ARE NOT OFFENDED BY TEAM NAMES

17. It is a demeaning stereotype to suggest that Native Americans are monolithic in their views on Native American names and imagery in public schools. Use of Native American names and imagery is one of personal opinion.

18. While many non-Native Americans claim to be standing up to the discrimination against Native Americans, they are, instead, "bystanders" who are not the target of SB 21-116, and whose only harm is one of being offended by Native American names, logos, and imagery

19. Until now, I have been afraid to state my opposition to SB 21-116 simply to avoid confrontation with others. Now, I have decided to take a stand.

HOW SB 21-116 IMPACTS ME

20. In my view, SB 21-116 restricts what I do or do not hold dear, namely my "tribe pride" for Yuma Indians. This law restricts what signs I can post on the Yuma High School football field.

21. It is my view that the goal of many of the proponents of SB 21-116 and similar laws across the country is the complete eradication of positive Native American names, logos, and imagery from mainstream American culture.

CONCLUSION

22. In writing this declaration, I am reminded of the wise words of Justice Clarence Thomas, who accurately states why I am involved in this fight against SB 21-116: "Government cannot make us equal; it can only recognize, respect, and protect us as equal before the law." *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 240 (1995) (Thomas, J. concurring in result). I am participating in this Complaint for the reasons set forth above.

23. Accordingly, I respectfully request that the Court grant Plaintiffs' request for the issuance of a temporary restraining order.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 5, 2021
Denver, Colorado

/s/ Chase Aubrey Roubideaux
Chase Aubrey Roubideaux

EXHIBIT A

(September 5, 2021 Letter to School Board)

September 5, 2021

VIA ELECTRONIC MAIL
TO: Yuma Board of Education
ysd1board@yumaschools.net
Dan Ross, Pres.
Duane Brown, VP
Kim Langley, Sec./Treas.
Lindsey Galles, Dir.
Thomas Holtorf, Dir.
ALSO: Dianna Chrisman, Supt.
Brady Nighswonger, YHS Principal

VIA HAND DELIVERY:
TO: YSD-1Office: 418 S. Main, Yuma, CO 80759

RE: YHS Name and Symbols

Dear Board Members and Administrators:

My name is Chase Aubrey Roubideaux, and I graduated from Yuma High School in 2010. I grew up next door to YHS almost all my life, and I am one hundred percent Yuma Indian. I am an enrolled member of Rosebud Sioux Tribe, and my blood degree is 17/64ths (about 27% Lakota). Last, I am also a Colorado taxpayer.

I understand that the Yuma Board of Education is considering changing the name and iconography related to the YHS "Indians" following the enactment of SB 21-116, the "Prohibit American Indian Mascots" Act, which I strongly opposed.

First, I petition the Board NEVER change the name and iconography related to the YHS Indians. It is our school and town name since 1935! Our Town and County themselves were named for "Yuma The Indian" in 1887 and 1889, respectively, both well over 130 years! Yuma The Indian is still buried here.

Alternatively, if the Board is compelled to change the name and iconography related to the YHS Indians, I request that the Board rename the YHS Indians to the **YHS "Tall Bulls."** Tall Bull was a prominent Chief of the Southern Cheyenne during the Colorado War following Sand Creek Massacre. He fought at the Battle of Beecher Island, where I have attended reenactments many times. Tall Bull is a Lakota ancestor of mine, but he and many in his band were massacred at Summit Springs, just about 45 miles northwest of Yuma.

I look forward to hearing back from you at your earliest convenience.

Sincerely,

Chase Aubrey Roubideaux
chase.roubideaux@gmail.com
1451 – 24th Street
Apt #158
Denver, CO 80205
PH: 970-597-0286

EXHIBIT B

(September 23, 2021 *Yuma Pioneer* article)

The Yuma Pioneer
Every Thursday Since 1886

Yuma mascot list trimmed to 15

By: yumapioneer / On: September 23, 2021 / In: Local News

There are now 15.

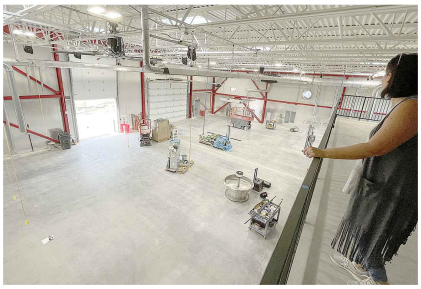
The Yuma School District-1 Board of Education trimmed the list of submissions for a new mascot during its regular monthly meeting, Monday night at the district office located on the southern edge of downtown Yuma.

Yuma-1 needs to eliminate “Indians” which has been around

NEWS

Yuma mascot list trimmed to 15

ON: SEPTEMBER 23, 2021 /
IN: LOCAL NEWS



Yuma-1 Board hears project update

ON: SEPTEMBER 23, 2021 /
IN: LOCAL NEWS

since the mid-1930s for a new mascot, and incorporate a new one during the current school year. That is because Senate Bill 21-116 was passed by the Colorado Legislature during this year's session, dictating that all public schools with Native American mascots must have them removed by June 1, 2022.

Four of the five board members participated in Monday's meeting, Dan Ross, Lindsey Galles, and Duane Brown in person, and Kim Langley remotely. Board member Thomas Holtorf was absent.

Yuma-1 has been accepting submissions for a new mascot for the past several weeks, leading up to the September board meeting. There were 36 community submissions, representing 22 options, by the September 15 deadline.

The board then narrowed down the possible new mascots Monday night to 15 — basically eliminating those that now way would be accepted for various reasons.

Following are the remaining 15:

• Pioneers.
• Tribe.
• Aggies.
• Lightning.
• Bison.
• Yetis.
• UFOs.
• Ring Necks.
• Renegades.
• Flyers.
• Thunder.
• Huntsmen.
• Railroaders.
• Phoenix.
• Balers.

Yuma-1 again will have submission forms available for the

public to comment on which choices they like the best. There was talk about having some kind of social media poll, or a Survey Monkey poll, but it was noted the explanations given behind each original submission was very thoughtful, and it would be preferable to have that again instead of just clicking on a poll.

October 8 is the deadline for community feedback on the remaining 15. The board will have a work session on October 11 to gain more input in person from the public. The board then will have more discussion on the topic at its October meeting.

The timeline calls for the board to select the new mascot at the November meeting. The district then will work with companies for a new logo, which will be selected in time for the fall sports uniforms to be ordered in a timely fashion.

The Pioneers and the Tribe each had the most among the 36 public submissions, each receiving seven.

"What I appreciated is they provided the rationale," Superintendent Dianna Chrisman said of all the submissions. "I think all of them had a connection to Yuma or Yuma's history."

Several suggestions were eliminated Monday night, for various reasons. Yuma was the Cornhuskers for about 15 years before switching to Indians in the mid-1930s. Someone suggested returning to Cornhuskers, but there was concern about the University of Nebraska having copyright privileges. The suggestion of "Tall Bulls" was eliminated because it refers to a Native American chief killed in the 1880s. "Arrows" was thrown out because of its Native American connection. Others tossed out on the first cut included Red Renegades, Thunderbirds, Hawks, and Red Hawks.

Board member Duane Brown expressed concerns about Tribe because of its connection to Native Americans. Ross said the term goes back to Biblical times and is used all over the world, so he felt it would be acceptable. Galles said there is a lot of ways to define Tribe. Brown said he agreed, but had concerns it would not be accepted.

Board members did talk about how those behind the state

legislation, with passions running high, creates a wide-ranging gray area that they could find unacceptable. Some suggestions were eliminated because board members noted they did not want Yuma's new mascot to be one that is used by several different schools.

It also was discussed how imagery was more important than the mascot word itself. It was brought up that Lamar still was going to keep "Savages" but would eliminate its imagery, and that Eaton has stuck with "Reds" but just got rid of its Native American caricature imagery.

Chrisman said during the discussion that the cost to change the mascot is definitely nearing $400,000 to the district, so the community needs to be committed to the mascot change, whichever one is chosen.

The state legislation dictates school districts such as Yuma must make the change, and eliminate all imagery by June 1.

Ross asked Chrisman how likely the district will be able to meet that deadline, and if it would have to pay the monthly fine of $25,000 if it did not.

Chrisman said the district probably can get most of it done by June 1, but the gym floors probably would not be done until summer vacation. She said Yuma-1 is working with other impacted districts and the Rural School Alliance to be allowed some leeway. She said the public would not be in the gyms during the summer anyway and they could not be done until then unless they are taken away as classroom space.

"I think as long as we have the good-faith effort…I think we'll be okay," Chrisman said, adding that at this point there is no guarantee.

Previous Post: **Yuma-1 Board hears project update**

LINKS

Community

CAPA
Old Threshers
ReadyNortheast
Yuma Chamber of Commerce
Yuma County Economic Development

Government

City of Yuma
Food Inspections
NECO Health Dept
Republican River Water Cons. Dist.
Yuma County Government
Yuma County Office of Emergency Management

News

Pioneer Historical Archives
Yuma County History Website

Schools

Arickaree School District
Liberty School
Lone Star School District
Otis School District
Yuma School District

Sports

CHSAANow
Colorado Preps
CSU Rams
CU Buffs Athletics
Max Preps

EXHIBIT 6

(Declaration of Donald Wayne Smith, Jr.)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

JOHN DOE, a minor; Jane DOE, a minor; DEMETRIUS MAREZ; CHASE AUBREY ROUBIDEAUX; DONALD WAYNE SMITH, JR.; and the NATIVE AMERICAN GUARDIAN'S ASSOICATION, Plaintiffs, v. JARED POLIS, Colorado Governor; DAVE YOUNG, Colorado State Treasurer; KATY ANTES, Commissioner of Education for the Colorado Department of Education; and PHIL WEISER, Colorado Attorney General; KATHRYN REDHORSE, Executive Director of the Colorado Commission of Indian Affairs; and GEORGINA OWEN, Title VII State Coordinator for the Colorado Department of Education, in their official capacities, Defendants.	Case No. 1:21-cv-02941-NYW

DECLARATION OF DONALD WAYNE SMITH, JR.

I, Donald Wayne Smith, Jr. hereby declare, under penalty of perjury, as follows:

MY BACKGROUND

1. I am over the age of the 21 and have personal knowledge about the matters set forth below. I submit this Declaration in support of the above-captioned Complaint for Declaratory and Injunctive Relief (the "Complaint").

2. I am one of the Plaintiffs in this matter. In 2005, I moved my family to Yuma, Colorado, where I became pastor of Yuma Christian Church aka Yuma Church of Christ in Yuma. We own our home and pay taxes in Yuma County.

3. In addition to being a pastor, I offer pastoral counseling to those in crisis in our community, including children. I have substitute taught for Yuma public schools. I have also taught courses at Morgan Community College.

4. To the best of my knowledge and belief, my grandmother was a full blood Cherokee. I am proud of my Cherokee heritage. I have presented Native programs at Yuma Public Schools, adult meetings, and many other venues. I often play my Native flute and tell Native American folk tales. The purpose of the stories, especially for students, is to teach a positive message, such as kindness, communication, and good listening skills.

5. In Yuma, many adult citizens consider themselves to be "Yuma Indians" as well as the students. I have attended many local sports and other events in Yuma Schools, where over half of students are minorities, and I have witnessed "tribe pride" and never seen a derogatory incident, either by locals or opposing teams. It seems to me that most citizens know of the history of "Yuma the Indian," the man for whom the schools, town, and county are named, as well as the "Yuma Points" the ancient spear points that were discovered here.

MY HERITAGE

6. As a Native American, I seek to maintain the rich cultural history and traditions of Native America in the public. In fact, I am thankful to bring Native programs into Yuma culture and in Yuma classrooms. This should include all public schools, which I believe should be "centers of excellence" in teaching and sharing the quickly disappearing history of Native Americans.

7. I received my Cherokee heritage from my grandmother, a member of Cherokee.

8. My heritage is often the subject of conversation, particularly since moving to Yuma. The school students where I presented programs are impressed by that. When I discuss my ancestry, I am proud to say I am Cherokee from my grandmother, my Mom's Mom. My opinion is that my heritage is enriched by living here with a town of Yuma Indians; it is a positive experience for me and the other Natives I know.

HOW SB 21-116 IMPACTS ME

9. SB 21-116 discriminates against Native Americans under the pretext of "helping" them as underrepresented minorities and beneficiaries of racial preferences while protecting non-Native American bystanders who are offended by Native American names, logos, and imagery.

10. While SB 21-116 seeks to protect against an "unsafe learning environment" caused by "a name, symbol, or image that depicts or refers to an American Indian Tribe, individual, custom, or tradition that is used as a mascot, nickname, logo, letterhead, or team name for the school," what better State institution could there be for teaching non-Native American students about the proud history of Native Americans than Colorado's public school system? To be sure, what better place to teach students about the harmful stereotyping of Native Americans, and other underrepresented minorities and members of a protected group than in the educational environment of a Colorado public school?

11. Conversely, there could be no worse forum for suppressing the proud history of Native Americans than in Colorado's public schools, institutions of education and learning.

12. With the enactment of SB 21-116, I will lose opportunities to mentor non-Native Americans about Native American ethnic heritage.

13. Additionally, to substitute teach again, I would have to be willing to endure a hostile environment that erases my Native American heritage and culture.

14. By banning names and images that Colorado deems disparaging, SB 21-116 denies Native Americans the opportunity to engage in the most fundamental act of human dignity—to honor their heritage by provoking conversations and engaging with others about racial identity and racial stereotypes within and without the Native American community.

CONCLUSION

15. In writing this declaration, I am reminded of President Biden's words on October 8, 2021, in his "A Proclamation on Indigenous Peoples' Day, 2021," where he wrote:

> Our country was conceived on *a promise of equality and opportunity for all people* — a promise that, despite the extraordinary progress we have made through the years, we have never fully lived up to. That is especially true when it comes to upholding the rights and dignity of the Indigenous people who were here long before colonization of the Americas began."

(Emphasis added).

16. I am participating in this Complaint for the reasons set forth above.

17. Accordingly, I respectfully request that the Court grant Plaintiffs' request for the issuance of a preliminary injunction.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 5, 2021
Yuma, Colorado

/s/ Donald Wayne Smith, Jr.
Donald Wayne Smith, Jr.

EXHIBIT 7

(Declaration of Eunice Davidson of NAGA)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

JOHN DOE, a minor; Jane DOE, a minor; DEMETRIUS MAREZ; CHASE AUBREY ROUBIDEAUX; DONALD WAYNE SMITH, JR.; and the NATIVE AMERICAN GUARDIAN'S ASSOICATION, Plaintiffs, v. JARED POLIS, Colorado Governor; DAVE YOUNG, Colorado State Treasurer; KATY ANTES, Commissioner of Education for the Colorado Department of Education; and PHIL WEISER, Colorado Attorney General; KATHRYN REDHORSE, Executive Director of the Colorado Commission of Indian Affairs; and GEORGINA OWEN, Title VII State Coordinator for the Colorado Department of Education, in their official capacities, Defendants.	Case No. 1:21-cv-02941-NYW

DECLARATION OF EUNICE DAVIDSON

I, Eunice Davidson, hereby declare, under penalty of perjury, as follows:

MY BACKGROUND

1. I am over the age of the 21 and have personal knowledge about the matters set forth below. I submit this Declaration in support of the above-captioned Complaint for Declaratory and Injunctive Relief (the "Complaint").

2. As the age of six, I, along with my four brothers, were placed in a foster home on the Spirit Lake Reservation with an Indian family on their small farm.

3. I was part of the last classes taught at the old Fort Totten Indian Boarding School in 1959, which began in the 1890s when the military left. I graduated in 2014 from Cankdeska Cikana Community College on the Spirit Lake Reservation with a Degree in Liberal Arts, and Dakota Studies. I attended Black Hills State University in Spearfish, South Dakota and received my Bachelor of Arts in General Studies with an emphasis in Education, Humanities, and Social Science.

4. I attended IAP Career College where I received my certification as a genealogist.

5. I currently live in North Dakota.

6. I am a founding member, past President, and current Vice President of Native American Guardian's Association ("NAGA"). The Board of Directors of NAGA are all American Indians from the Four Corners of the United States with an advisory committee containing some non-Indians with knowledge related to local issues.

7. NAGA is a section 501(c)(3) non-profit organization organized under the laws of the State of Virginia that focuses on increased education about Native Americans, especially in public educational institutions. NAGA's motto is "educate not eradicate."

8. I am authorized to make this Declaration on behalf of NAGA.

MY HERITAGE

9. I am enrolled with the Spirit Lake Tribe in Fort Totten, ND. I am a full-blood Dakota Sioux. I reside in Devils Lake, North Dakota along with my husband David Davidson of 53 years.

10. The Spirit Lake Tribe is included on the Department of the Interior's list of Federally recognized Indian tribes and has been included on every version of this list since approximately 1985. Most recently, the Tribe was included in the February 1, 2019, list published at 84 Fed. Reg. 1200 (Feb. 1, 2019).[1]

11. Other racial demographics, such as African Americans and Latinos, benefit from multiple platforms to keep their culture and identity visible and relevant in mainstream American society.

12. But for the American Indian, we are fighting for our very survival. If left to fulfil their desire, the American Indian will vanish from the face of the earth never to be remembered or acknowledged.

WHY I FIGHT

13. In 1968, along with four other women from my Reservation and the Tribal Chairman Lewis Goodhouse, my grandmother Alvina Alberts helped bring awareness to the forced removal of Indian children from their families.

14. While many non-American Indians claim to be standing up to the discrimination against American Indians, they are, instead, "bystanders" who are not the target of SB 21-116 and whose only harm is one of being offended by American Indian names, logos, and imagery. As I have found in my daily life, eradication favors the views of non-American Indian bystanders.

[1] The Federally Recognized Indian Tribe List Act of 1994 (the "List Act") requires the Secretary of the Interior to publish an annual list of "all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* 25 U.S.C. §§ 5130, 5131.

HOW SB 21-116 IMPACTS NAGA

15. NAGA maintains hundreds of members, including Coloradans, who are affected by the passage of SB 21-116. These members are having their own equal protection rights violated, in addition to their First Amendment right to petition, and their Title VI rights.

16. NAGA members from Colorado individually will suffer due to SB 21-116.

17. Over the last eleven months, I and other NAGA representatives have been involved in communications with administrators of Lamar High School in Lamar and Lamar School District School Board members about NAGA's Partner School Program, similar to the program we have completed for other schools across the country. Those communications ceased following the enactment of SB 21-116, in my view as a result of the anticipated implementation of SB 21-116.

18. It is my view that if SB 21-116 is not enjoined from becoming effective, NAGA's efforts to educate Colorado's public-school students about Native American culture will come to a complete halt.

HOW SB 21-116 IMPACTS ME

19. On May 20, 2021, I testified before the Colorado House Education Committee against the enactment of SB 21-116.

20. SB 21-116 discriminates against me based on my American Indian race, color, or national origin.

21. I object to SB 21-116's regulation and suppression, which denies me an equal right to reappropriate my heritage through my use of positive American Indian names, logos, and imagery.

CONCLUSION

22. I am not ashamed for my ancestors or myself. I will fight to my dying day to stop this attempted removal and genocide of my people.

23. Accordingly, I respectfully request that the Court grant Plaintiffs' request for the issuance of a preliminary injunction.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 5, 2021
Devils Lake, North Dakota

/s/ Eunice Davidson