

WISCONSIN COURT OF APPEALS
DISTRICT II

Appeal No. 2011AP002917

JAMES R. SCHOOLCRAFT and CRAIG VERTZ,

Plaintiffs-Respondents,

THE MUKWONAGO AREA SCHOOL DISTRICT,

Involuntary Plaintiff,

v.

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

Defendants-Appellants.

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

MOTION FOR LEAVE TO FILE A NON-PARTY BRIEF

Great Lakes Inter-Tribal Council (“GLITC”) and the Wisconsin
Indian Education Association (“WIEA”), by their attorneys, Godfrey
& Kahn, S.C., request permission, pursuant to Wis. Stat. § (Rule)
809.19(7)(a), to file a non-party brief in support of the appeal of the

State Department of Public Instruction (“DPI”). In support of their request, the movants state:

1. GLITC is a 501(c)(3) nonprofit formed December 29, 1965. As set forth in its original articles of incorporation, its purposes are:

- a. To preserve rights of the Indians under Indian Treaties or agreements with the United States and with any political subdivision;
- b. To enlighten the public toward a better understanding of the Indian people; and
- c. To do all manner of things necessary to improve the education, economic status, living environment and general welfare of American Indians, and particularly Indians who reside in the State of Wisconsin.

2. GLITC is the only inter-tribal organization of its kind in Wisconsin. Originally composed of the eleven federally recognized Indian tribes in Wisconsin, GLITC later added the Lac Vieux Desert Tribe in the Upper Peninsula of Michigan. GLITC is governed by a

Board of Directors composed of the highest elected official of each of its twelve member tribes.

3. On January 5, 1999, GLITC enacted Resolution No. 99-01-05, including the following

- a. WHEREAS, "Indian" mascots and logos are offensive, disrespectful, and demeaning; "Indian" logos mock Indian people, cultures, and traditions; "Indian" logos contribute to a societal environment that is racist, oppressive, and harmful to harmonious relationships between people; and
- b. WHEREAS, all children in schools depicting "Indian" stereotypes are encouraged to tolerate, perpetrate, and maintain racist practices against a group of people, and
- c. WHEREAS, children in Wisconsin schools have been exposed to this form of racial, ethnic discrimination since the early 1920's, and continue to be exposed to such racism today, although other forms of stereotyping such

as blackface minstrel shows have long since disappeared from the American landscape, and

- d. WHEREAS, the presence of these symbols in state-supported schools, at the expense of Indian and non-Indian taxpaying constituents constitutes state-supported racism, and
- e. WHEREAS, appropriate means of recognizing Native American people exist through teaching Native American history accurately, by treating Native American students with the same respect afforded other students, and by removing "Indian" mascots and logos, and
- f. WHEREAS, Native American Indian Tribes and other organizations have voiced their condemnation of such images by adopting similar resolutions, providing education, and taking political action.
- g. NOW THEREFORE BE IT RESOLVED, the Great Lakes Inter-Tribal Council; condemns the use of "Indian" logos as offensive and will work alone and in concert

with other organizations to eliminate the use of depictions of and cultural references to American Indians as mascots, logos, and team nicknames in Wisconsin public schools.

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

4. On January 30, 2006, GLITC adopted Resolution 2006-01.03GLITC, citing the American Psychological Association's opposition to Indian mascots and the "growing body of knowledge indicating that these race-based school policies can harm all students, but particularly Native American students," and urging schools to eliminate Indian mascots.

5. WIEA was formed in 1985 "to promote education and educationally related opportunities for American Indian people in Wisconsin." (Mission Statement). WIEA is made up of enrolled tribal members and educators working in various capacities for tribes,

organizations; state K-12 programs, colleges and universities, and community programs. Two board members are selected to serve from seven regions throughout the State.

6. In 1997, WIEA formed the Indian Mascot and Logo Task Force (“Task Force”) to pursue “innovative legal, educational and political means to eliminate the use of ‘Indian’ mascots, logos and nicknames from all Wisconsin state supported educational facilities.” (Task Force Mission Statement).

7. The Task Force participated in the drafting of 1999 AB 433 and actively supported substantially identical bills introduced in the 2001, 2003, 2005, 2009 legislative sessions, including 2009 SB 25, which was enacted as 2009 Act 250, Wis. Stat. § 118.134, the law that the Plaintiff-Respondents challenge in this case (“Act 250”).

8. Task Force representatives, including Barbara Munson, its chairperson, appeared and testified at the hearing held January 13, 2010 by the Senate Education Committee on Act 250.

10. Ms. Munson served as the complainant's representative at the administrative hearing held to consider Mukwonago School District Nickname that is the subject of the lawsuit under appeal.

11. Plaintiff-Respondents have sought to make WIEA and Ms. Munson an issue in this case, contending that "interactions" between the DPI and Munson constitute evidence of "impermissible bias." Their brief names WIEA once and Ms. Munson 26 times.

12. The Court should allow GLITC and WIEA to file an amicus curiae brief because,

- a. as Native American organizations that have been deeply involved in Indian mascot issues generally and Act 250 specifically, they have unique insights into the associated factual and legal issues;
- b. Fairness dictates that the WIEA be permitted an opportunity to respond to Plaintiff-Respondents' highly contrived and utterly meritless argument that WIEA's exercise of its constitutional right of public participation somehow constitutes bias:

- c. While affirmance of Judge Hassin's decision will harm all Wisconsin public school children, Indian children will suffer most; protecting their interests and giving them a voice is the mission of GLITC and WIEA.

13. Granting this motion will not result in any delay in the disposition of the case or otherwise prejudice either party. Amici are prepared to serve and file their brief within ten days after the Court grants this motion or such other time as the Court may specify.

Dated this 30th day of May, 2012.

Respectfully Submitted,

GODFREY & KAHN, S.C.

By: 

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