UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NATIVE AMERICAN GUARDIAN'S ASSOCIATION, David Finkenbinder – Wanblee Ohitika (Brave Eagle) Plaintiffs, v. NEW YORK STATE BOARD OF REGENTS, LESTER W. YOUNG, JR., in his official capacity as Chancellor of the New York State Board of Regents, JOSEPHINE VICTORIA FINN, in her official capacity as Vice Chancellor of the New York State Board of Regents, ROGER TILLES, in his official capacity as a member of the New York State Board of Regents, CHRISTINE D. CEA, in her official capacity as a member of the New York State Board of Regents, WADE S. NORWOOD, in his official capacity as a member of the New York State Board of Regents, KATHLEEN M. CASHIN, in her official capacity as a member of the New York State Board of Regents, JAMES E. COTTRELL, in his official capacity as a member of the New York State Board of Regents, JUDITH CHIN, in her official capacity as a member of the New York State Board of Regents, CATHERINE COLLINS, in her official capacity as a member of the New York State Board of Regents, ELIZABETH S. HAKANSON, in her official capacity as a member of the New York State Board of Regents, LUIS O. REYES, in his official	Case No.:

capacity as a member of the New York State Board of Regents, SUSAN W. MITTLER, in her official capacity as a member of the New York State Board of Regents, FRANCES G. WILLS, in her official capacity as a member of the New York State Board of Regents, ARAMINA VEGA FERRER, in her official capacity as a member of the New York State Board of Regents, SHINO TANIKAWA, in her official capacity as a member of the New York State Board of Regents, ROGER P. CATANIA, in his official capacity as a member of the New York State Board of Regents, ADRIAN I. HALE, in his official capacity as a member of the New York State Board of Regents.

Defendants.

COMPLAINT

Plaintiffs, THE NATIVE AMERICAN GUARDIAN'S ASSOCIATION ("NAGA") and DAVID FINKENBINDER (collectively "Plaintiffs"), by counsel, bring this action under the United States Constitution, the New York State Constitution, and applicable federal civil rights laws against Defendants NEW YORK STATE BOARD OF REGENTS, LESTER W. YOUNG, JR., in his official capacity as Chancellor of the New York State Board of Regents, JOSEPHINE VICTORIA FINN, in her official capacity as Vice Chancellor of the New York State Board of Regents, ROGER TILLES, in his official capacity as a member of the New

York State Board of Regents, CHRISTINE D. CEA, in her official capacity as a member of the New York State Board of Regents, WADE S. NORWOOD, in his official capacity as a member of the New York State Board of Regents, KATHLEEN M. CASHIN, in her official capacity as a member of the New York State Board of Regents, JAMES E. COTTRELL, in his official capacity as a member of the New York State Board of Regents, JUDITH CHIN, in her official capacity as a member of the New York State Board of Regents, CATHERINE COLLINS, in her official capacity as a member of the New York State Board of Regents, ELIZABETH S. HAKANSON, in her official capacity as a member of the New York State Board of Regents, LUIS O. REYES, in his official capacity as a member of the New York State Board of Regents, SUSAN W. MITTLER, in her official capacity as a member of the New York State Board of Regents, FRANCES G. WILLS, in her official capacity as a member of the New York State Board of Regents, ARAMINA VEGA FERRER, in her official capacity as a member of the New York State Board of Regents, SHINO TANIKAWA, in her official capacity as a member of the New York State Board of Regents, ROGER P. CATANIA, in his official capacity as a member of the New York State Board of Regents, ADRIAN I. HALE, in his official capacity as a member of the New York State Board of Regents (collectively, "the Board of Regents" or "Defendants"):

PRELIMINARY STATEMENT

1. This is a declaratory judgment action seeking to annul *Part 123 of the Regulations of the Commissioner of Education Relating to Prohibiting the Use of Indigenous Names, Mascots, and Logos by Public Schools* (hereinafter "Part 123" or "the Native Name Ban") and enjoin its enforcement because (i) it discriminates based upon race and therefore is in plain violation of the Equal Protection Clause of the Fourteenth Amendment and (ii) it seeks to ban public speech based solely upon content and thus violates the First Amendment.

2. The declaratory judgment action presents a facial and as-applied challenge to the constitutionality of Part 123 under the First and Fourteenth Amendments to the United States Constitution; for violation of the Commerce Clause under Article I, Section 8 of the United States Constitution (both Dormant and Indian Commerce Clauses); for violations of the Article I of the New York State Constitution; for violations of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.*, and for violations of 42 U.S.C. § 1981.

3. Plaintiffs seek declaratory and injunctive relief on the grounds that Part 123 is unconstitutional and discriminatory; indeed, it is extraordinary that an American state government in 2025 would attempt to "ban" the use of certain team names and images based upon their affiliation with a recognized minority group, i.e. the original inhabitants of this nation.

4. Defendants should be enjoined from enforcing the Native Ban. They

should also be subject to civil relief and penalties for such a sustained and overt act in violation of the United States Constitution.

JURISDICTION

5. This Court has subject matter jurisdiction over the federal claims pursuant to 28 U.S.C. §§ 1331 and 1343, 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 3613.

VENUE

6. Venue is proper for this Court pursuant to 28 U.S.C. § 1391(b)

PARTIES

NATIVE AMERICAN GUARDIAN'S ASSOCIATION

7. Plaintiff, the Native American Guardian's Association ("NAGA"), is a non-profit organization currently registered with the Internal Revenue Service (IRS) as a 501(c)(3) corporation. Incorporated and headquartered in North Dakota, NAGA was founded in 2017 with a mission to increase the public awareness and education about Native American history and culture in public institutions, and to promote the respectful use of Native America names and imagery in public discourse. It has been formally recognized by the Bureau of Indian Affairs, U.S. Department of the Interior, as an advocacy group for Native American interests.

8. NAGA brings this action on behalf of itself and its members, who include Native American students, parents, educators, and community leaders directly impacted by the enforcement of Part 123 in the State of New York.

9. NAGA has associational standing because (a) its members have standing to sue in their own right; and (b) the interests it seeks to protect in this case – the preservation of Native American images and identity -- are germane to its mission and organizational purpose.

10. NAGA is a collective of enrolled members of American tribes, as well as other Americans of American Indian tribal descent, who are jointly committed to cultural integrity and community service. Its slogan is "Educate, Don't Eradicate," which references its opposition to misguided attempts by states like New York to ban Native images from public places, including public schools, where they represent the historic legacy of America's native Indian tribes.

11. The organization is committed to advancing cultural integrity, community service, and the protection of Native American heritage and identity in public life. NAGA's members – Native Americans and those members who are not of Native descent but share its goals – are suffering injury in fact from Defendants' discriminatory policy.

12. NAGA is governed by a board composed of Native leaders and is supported by a national network of members who are active in education, advocacy,

and community engagement. It sponsors educational engagement in various communities which respectfully use Native names and images.

13. On May 15, 2025, NAGA entered a memorandum of agreement ("the Agreement") with Massapequa School District ("MSD" or "the School District") on May 15, 2025, which is the plaintiff in a related case. *Massapequa Union Free School District v. New York State Board of Regents (2:23-cv-07052)*

14. The Agreement requires that the Massapequa School District continue to use its moniker "the Chiefs." In return, the leaders of NAGA are committed to providing instruction to students regarding the Native American history and culture, especially in the New York region.

15. The Agreement is predicated on the requirement that the School District continue to use its moniker "the Chiefs." In return, the leaders of NAGA are committed to providing instruction to students regarding the Native American history and culture, especially in the New York region.

16. As stated in the agreement, NAGA and MSD agreed to exchange the following considerations and things of value:

> So long as the District continues its current educational programming and instruction concerning Native American history and culture as outlined in the attached Exhibit A and the obligations outlined in this Agreement, NAGA and the Board of Directors of NAGA fully permit, consent to, support, and authorize the District in its continued use of the District's Indigenous NIL for all school-related purposes, including but not limited to educational uses, athletic uses, community uses, and in any new programs hereafter developed. The

> District shall meet with a NAGA representative, either in person or remotely, at least once per year to review and discuss the educational programming and instruction. In exchange for NAGA's and the Board of Directors' permission, consent, support, and authorization of the District's use of the Indigenous NIL, the District also commits that it will continue to use the "Chiefs" name and logo as the District's official name and logo for all school-related purposes, including but not limited to educational uses, athletic uses, community uses, and in any new programs hereafter developed. In the event that the District discontinues all the educational programing outlined in the attached Exhibit "A" or fails to continue using the "Chiefs" name, mascot, and logo, NAGA's and the Board of Directors' permission, consent, support, and authorization for the District's continued use of its Indigenous NIL rights will automatically be withdrawn by operation of this Agreement. In such an event, NAGA and the Board of Directors of NAGA will have no cause of action of any kind and nature to compel or require the District to provide any kind of educational programing or instruction.

17. Part 123, the Native Name Ban, does permit schools in New York State to continue using Native American names or imagery if they have a valid and current agreement with a federally recognized tribe. However, this exception applies only within New York State and is contingent on the school district submitting the agreement to the New York State Education Department for approval. Outside of these narrow conditions, compliance with Part 123 generally requires schools to discontinue the use of such imagery or risk penalties, including loss of state funding.

DAVID FINKENBINDER

18. Plaintiff, David Finkenbinder a/k/a Wanblee Ohitika (Brave Eagle), is a NAGA Board Member and an enrolled tribal member of the Crow Creek Sioux Tribe in South Dakota. He and his family have been residing in West Coxsackie of the State of New York since 2013.

19. As a citizen of New York, Mr. Finkenbinder is impacted by Part 123, the Native Name Ban, which specifically excludes him (and others sharing his heritage) from having their history and ancestry recognized through names, logos and images, such as those traditionally associated with public schools.

NEW YORK STATE BOARD OF REGENTS, et al.

20. The New York State Board of Regents ("the Board of Regents") sets education policy for the State of New York and oversees both the University of the State of New York and New York State Education Department (hereinafter "NYSED"), which oversees K-12 instruction.

21. Defendant Lester W. Young, Jr. ("Chancellor Young") is the duly appointed Chancellor of the Board of Regents. He is sued in his official capacity, the head of the Board of Regents, which is charged with recommending and setting the education policies for New York State, including those complained of herein.

22. Defendant Josephine Victoria Finn ("Vice Chancellor Finn") is the duly appointed Vice Chancellor of the Board of Regents. She is sued in her official

capacity and in that capacity sits on the Board of Regents which is charged with recommending and setting education policy for New York State, including those complained of herein.

23. Defendant Roger Tilles is a duly appointed member of the Board of Regents. He is sued in his official capacity and in that capacity sits on the Board of Regents which is charged with recommending and setting education policy for New York State, including those complained of herein.

24. Defendant Christine D. Cea is a duly appointed member of the Board of Regents. She is sued in her official capacity and in that capacity sits on the Board of Regents which is charged with recommending and setting education policy for New York State, including those complained of herein.

25. Defendant Wade S. Norwood is a duly appointed member of the Board of Regents. He is sued in his official capacity and in that capacity sits on the Board of Regents which is charged with recommending and setting education policy for New York State, including those complained of herein.

26. Defendant Kathleen M. Cashin is a duly appointed member of the Board of Regents. She is sued in her official capacity and in that capacity sits on the Board of Regents which is charged with recommending and setting education policy for New York State, including those complained of herein.

27. Defendant James E. Cottrell is a duly appointed member of the Board of Regents. He is sued in his official capacity and in that capacity sits on the Board of Regents which is charged with recommending and setting education policy for New York State, including those complained of herein.

28. Defendant Judith Chin is a duly appointed member of the Board of Regents. She is sued in her official capacity and in that capacity sits on the Board of Regents which is charged with recommending and setting education policy for New York State, including those complained of herein.

29. Defendant Catherine Collins is a duly appointed member of the Board of Regents. She is sued in her official capacity and in that capacity sits on the Board of Regents which is charged with recommending and setting education policy for New York State, including those complained of herein.

30. Defendant Elizabeth S. Hakanson is a duly appointed member of the Board of Regents. She is sued in her official capacity and in that capacity sits on the Board of Regents which is charged with recommending and setting education policy for New York State, including those complained of herein.

31. Defendant Luis O. Reyes is a duly appointed member of the Board of Regents. He is sued in his official capacity and in that capacity sits on the Board of Regents which is charged with recommending and setting education policy for New York State, including those complained of herein.

32. Defendant Susan W. Mittler is a duly appointed member of the Board of Regents. She is sued in her official capacity and in that capacity sits on the Board of Regents which is charged with recommending and setting education policy for New York State, including those complained of herein.

33. Defendant Frances G. Wills is a duly appointed member of the Board of Regents. She is sued in her official capacity and in that capacity sits on the Board of Regents which is charged with recommending and setting education policy for New York State, including those complained of herein.

34. Defendant Aramina Vega Ferrer is a duly appointed member of the Board of Regents. She is sued in her official capacity and in that capacity sits on the Board of Regents which is charged with recommending and setting education policy for New York State, including those complained of herein.

35. Defendant Shino Tanikawa is a duly appointed member of the Board of Regents. She is sued in her official capacity and in that capacity sits on the Board of Regents which is charged with recommending and setting education policy for New York State, including those complained of herein.

36. Defendant Roger P. Catania is a duly appointed member of the Board of Regents. He is sued in his official capacity and in that capacity sits on the Board of Regents which is charged with recommending and setting education policy for New York State, including those complained of herein.

37. Adrian I. Hale is a duly appointed member of the Board of Regents. He is sued in his official capacity and in that capacity sits on the Board of Regents which is charged with recommending and setting education policy for New York State, including those complained of herein.

LEGAL FRAMEWORK

38. This case presents a constitutional question of whether the Part 123 – a state regulation that categorically prohibits the use of Native American names, imagery, and symbols—violates the rights of individuals and communities by (i) drawing a race-based distinction regarding which historic groups can be recognized in the names, images and symbols affiliated with public schools and (ii) actively suppressing speech which is affiliated with Native American names and images.

39. Part 123, by its design and implementation, targets Native-associated expression and enforces a blanket prohibition that extends to names, traditions, and imagery that may reflect pride, history, and tribal affiliation. The regulation directly implicates the United States Constitution, including the First Amendment and Fourteen Amendment, and federal civil rights laws.

The Fourteenth Amendment's Equal Protection Clause

40. Under longstanding Equal Protection jurisprudence, the government must demonstrate that any law or regulation which relies on a racial classification (i) must serve a compelling governmental interest, (ii) mut be narrowly tailored to

achieve that interest, and (iii) must use the least restrictive means available. This standard is designed to ensure that racial classifications are used only in the most extraordinary circumstances, and only when no race-neutral alternatives will suffice.

41. This test ensures that racial classifications – which are heavily disfavored by American law -- are used only in the most extraordinary circumstances and only when no race-neutral alternatives can achieve the same goal. *See Students for Fair Admission v. Harvard College,* 600 U.S. 181, 143 S.Ct. 2141, 216 L.Ed. 857 (2023); *Parents Involved in Community Schools v. Seattle School District No. 1,* 551 U.S. 701 (2007); *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

42. Here, Part 123, the Native Name Ban, imposes a racial classification on its face by banning expression tied solely to Native American identity; no other ethnic group is named. As it relies on a race-based classification (the banning of names only affiliated with one ethnic group), the Native Name Ban is thus subject to "a daunting two-step examination known as 'strict scrutiny.' which asks first whether the racial classification is used to 'further compelling government interests,' and second whether the government's use of race is 'narrowly tailored,' i.e. 'necessary,' to achieve that interest." *Students for Fair Admission*, U.S. 181, 143 S.Ct. at 2141, 216 L.E.2d at 868.

43. As will be shown infra, the Board of Regents makes no plausible showing under any of these tests in justifying the Native Name Ban.

Title VI of the Civil Rights Act of 1964

44. Title VI of the Civil Rights of 1964 provides that "no person in the United States 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."

45. Public school districts in New York, which are subject to Part 123, receive Federal funding and are therefore bound by Title VI.

46. By targeting and prohibiting expression linked to only one racial or cultural group, while leaving other groups' symbolic expression unaffected, Part 123 directly discriminates against Native American students, educators, and communities, in violation of federal civil rights law.

The First Amendment's Protections for Free Speech and Free Association

47. The First Amendment provides all Americans with essential freedoms, including the freedom of speech and the right to assemble, which together create academic freedom. The First Amendment protects the freedom of expression of all Americans, no matter their point of view. The government may not censor, discriminate, or apply rules inconsistently based on content or viewpoint. The First

Amendment also protects freedom of speech and freedom of expression from laws that are so overbroad as to prohibit a substantial amount of protected speech.

48. Here, Part 123, the Native Name Ban, imposes a content-based prior restraint by banning expression of certain names and concepts – e.g. "Chiefs" or "Warriors" -- solely because of its cultural and racial association, even when the expression is respectful, affirming, or tribally supported.

49. As a state-sponsored blanket ban on a particular form of speech, it is presumptively unconstitutional – even assuming it supports a socially desirable goal. *See Texas v. Johnson*, 491 U.S. 397, 109 S. Ct. 2533, 105 L.E.2d 342 (1989) ("If there is a bedrock principle underlying the First Amendment, it is that Government may not prohibit the expression of an idea simply because society finds that idea itself offensive or disagreeable").

The Fourteenth Amendment's Due Process

50. The Constitution protects people from being deprived of their rights, liberty, or property interest without due process. This protection includes both substantive and procedural due process. Substantively, a law is unconstitutional if it is vague, arbitrary, or irrational, particularly when it burdens protected rights. Procedurally, a law must provide clear notice of what is prohibited, and adequate safeguards to prevent arbitrary enforcement.

51. Part 123, the Native Name Ban, violates both aspects: it fails to define key terms such as "Indigenous imagery" or "cultural references," and it delegates enforcement to hundreds of local school boards without clear guidance, uniform standards, or meaningful appeal procedures. As a result, school districts are left to guess at what conduct is prohibited, leading to inconsistent, discriminatory, and chilling effects on expression.

52. Most extraordinarily, Part 123 has mandated that all public school districts to comply by **June 30, 2025**. Failure to comply will result in the removal of school board members and/or withholding of state funding to school districts,[1]

53. The enforcement of Part 123, the Native Name Ban, thus raises an obvious and striking constitutional violation against all school children and citizens, not just those who are Native American. By denying children a right to a publicly-funded education because they attend a school that uses the moniker "Chiefs," the actions by the Board of Regents violate substantive due process under the Fourteenth Amendment of the United States Constitution. [2]

[1] New York State Education Department, *Indigenous Mascot Regulation: Background and FAQ* (Apr. 2023), available at https://www.nysed.gov/sites/default/files/programs/indigenous-education/indigenous-mascot-regulation-background-and-faq.pdf

[2] The Plaintiffs in this action – NAGA and Mr. Finkenbinder – hereby adopt the Statement of Facts used by the Massapequa School District in its underlying suit.

FACTS AND PROCEDURAL HISTORY UNDERLYING THIS PROCEEDING

A. The Names of Many Municipalities, Bodies of Water, and Other Cherished Landmarks Throughout the State of New York Derive From Native American Culture

54. Long Island's rich history originates from the Native American tribes who live and once lived in the area. These historical roots live on in the names of municipalities, school districts, public parks, bodies of water, and various historical landmarks, which are derived from the names of local tribes, famous Native Americans, and Algonquin phrases.

55. According to reports from early settlers, there were 13 tribes of the Algonquin Family, now known as the "13 Tribes of Long Island," at the time of European settlement. According to early accounts from European settlers, these tribes included the Canarsie, Rockaways, Merricks, Massapequas, Matinecocks, Nissaquogues, Setaukets, Corchaugs, Secatogues, Unkechaugs, Shinnecock, Montaukett, and Manhansets.

56. Several of these tribe names may look familiar as they inspired the names of municipalities throughout Long Island, including the Rockaways, Merrick, Massapequa, Setauket, Shinnecock, Montauk, Amagansett, and Manhasset.

57. Other examples of municipal names derived from Native American language and people include Wyandanch, Patchogue, Mattituck, Ronkonkoma,

Quogue, Yaphank, Cutchogue, Copiague, Commack, Nyack, Mecox, Noyac, Moriches, Sagaponack, Tuckahoe, Ponquogue, and others.

58. Even the name Manhattan is of Native American Lenape origin. It comes from the Lenape word "Manhatta," which has been translated to "the place where bows are from" or "hilly island."

59. These Native American historical roots extend far beyond Long Island. In fact, the names of counties all over the State of New York originate from Native American tribes, people, and phrases. For instance, Allegany County derives its name from a Lenape word. Cayuga County was named after the Cayuga tribe of Native Americans. Other examples of county names derived from Native American tribes or phrases include, but are not limited to, the Counties of Chautauqua, Chemung, Oneida, Onondaga, Oswego, Otsego, Saratoga, Seneca, and Tioga.

60. There are also various bodies of water named after Native American tribes or phrases including the Ashokan Reservoir, Seneca Lake, Cayuga Lake, and Lake Ronkonkoma.

B. The Name and Logo of Massapequa Derive from the Area's Rich Local Native American History

61. Massapequa is a hamlet of Nassau County located in the Town of Oyster Bay. Massapequa Park is an incorporated village located within the Town of Oyster Bay. Collectively, Massapequa and Massapequa Park are known as the Massapequas.

62. The Massapequas' name and history—like many other municipalities

throughout the State of New York—come from Native American roots. The name Massapequa is derived from the Native American term "Marspeag" or "Mashpeag," which translates to "great waterland."

63. The area now known as Massapequa was occupied by Native American tribes for thousands of years. Before the European settlement of Long Island, it was occupied by one of the 13 Tribes of Long Island, which was an Algonquin-speaking group called the Lenape.

64. The European settlement of Massapequa occurred in 1658 when a group of Quaker settlers, who had previously settled in America and formed a farming community in Oyster Bay, purchased the land from the local tribe, which at the time was led by their chief, Sachem Tackapausha. At the time, Sachem Tackapausha led one of the 13 tribes of Long Island known as the Massapequas.

65. Sachem Tackapausha was a Lenape, or Chief, who was instrumental in forming an alliance with sachems from other Native American tribes to represent the Algonquian-speaking people during negotiations with the Dutch settlers. He is known as one of the most powerful Algonquian leaders on Long Island, the other being Chief Wyandanch.

66. The Quaker settlers had friendly dealings with Sachem Tackapausha after purchasing the land. Every year, Sachem Tackapausha would return to Massapequa to accept a tribute, which was typically a new coat, among other goods.

When Sachem Tackapausha died, the settlers continued to pay tribute to his brother.

67. Although he was sachem of many areas of Long Island, no community has revered Sachem Tackapausha more than the Massapequas. To this day, the Massapequa community continues to pay homage to him. His memory has lived on, not just in the District's name and logo, but throughout the Village as a whole.

68. In 1925, the Massapequa Avenue School opened its doors with five classrooms, five teachers, and 100 students. This school served grades K-8 only and it was the first school built in Massapequa. The District, like the municipality it serves, uses the name "Massapequa" because of its Native American roots. The "Chiefs" mascot logo was created around this time and could be found on students' gym apparel.

69. Massapequa High School opened its doors in September 1955 and has continued to use the "Chiefs" name and logo ever since.

70. Below is an image of the School District's logo and "Chiefs" name and mascot logo, which is an image depicting Sachem Tackapausha himself. The District's High School has no "mascot" but rather is focused on this logo (this is noteworthy – as Part 123 dishonestly and paternalistically uses the phrase "mascot" to describe any depiction of a Native American, while not using the same terminology for traditional Anglo images such as "Patriot" or "Yankee").

71. The Incorporated Village of Massapequa Park was founded in 1931. The Village seal (depicted below) also includes an image of Sachem Tackapausha, as well as his name:

72. This same image can be found on a sign welcoming visitors and residents to Massapequa Park, located in downtown Massapequa Park, as depicted below, as well as on a plaque located in front of Village Hall.

73. And just behind that Village welcome sign, is James AltaDonna Jr. Village Square, where you can find the Village seal displayed on a plaque, as well as in a clock tower, as depicted below:

74. Sachem Tackapausha's image can also be found on a sign placed by the local Chamber of Commerce welcoming visitors and residents to Massapequa, as depicted below.

75. Sachem Tackapausha's image is also displayed on the building of the Massapequa Fire Department, on every fire truck, and on the sleeve of every volunteer firefighter.

76. Images of Sachem Tackapausha are also displayed in murals and other street art located throughout the community.

77. People will see most people sporting "Chiefs" apparel, which is not only sold in the Massapequa High School Chiefs Apparel Store, but also in other privately-owned businesses around town. And the phrase "Once a Chief, always a Chief" can be heard throughout the schools and community at large.

78. A "Chief" is defined as the leader of a group or body of people. The name is used in various contexts and usually symbolizes a form of leadership. Examples include a Chief Judge, Chief of Police, Fire Chief, and even the United States of America's Commander-in-Chief. Within the context of American athletics, the name "Chiefs" – like "Braves" or "Warriors" - is a name which is associated with courage, bravery and teamwork[3]

[3] Noteworthy amongst the above examples of "Chiefs" are the National Football League team known as the "Kansas City Chiefs." This team has won multiple Super Bowls and enjoy a

79. Notably, the wall of the New York State Department of Motor Vehicles office in Massapequa displays a mural of Long Island designating Massapequa with a gold star and an image of a Native American man donning an Indian headdress, demonstrating that the State honors Massapequa's Native American history.

C. New York State's Dignity for All Students Act

80. In September 2010, the New York State Legislature enacted the Dignity for All Students Act (hereinafter "DASA") which took effect in July 2012. New York's Education Law was amended to create a new Article 2 entitled "Dignity for All Students."

81. DASA prohibits bullying, harassment, discrimination, and cyberbullying against students in school or at school functions based on their actual

universal recognition and acceptance amongst the American public. Football jerseys representing the Kansas City Chiefs (or the Atlanta Braves) can be purchased at a retail store anywhere in the State of New York and worn in public without comment.

or perceived membership in a protected class. *See* N.Y. Educ. Law § 12.

82. The legislation was designed to prevent incidents of discrimination or harassment, including bullying, taunting, or intimidation, through the institution of preventive, educational measures. *See* N.Y. Educ. Law § 10; *see also* New York Bill Jacket, 2010 A.B. 3661, Ch. 482.

83. Prior to the enactment of DASA, New York was one of only eight states without anti-bullying legislation.

84. As reflected in the legislative history of the act, the State Legislature felt it important to create state-wide anti-bullying legislation to combat bullying and harassment in schools. The Bill Jacket for DASA provides, "Although school yard bullies have long had a presence on public school grounds, this bill will help ensure that school administrators and educators have the tools and resources in place to afford all students – and particularly those who are targeted by such bullies – an educational environment in which they can thrive." *See* New York Bill Jacket, 2010 A.B. 3661, Ch. 482.

85. This sentiment was reiterated in a Senator's July 16, 2010 letter to then-Governor Paterson (which is also part of the Bill Jacket): "[t]he implementation of DASA will provide clear direction to school districts and reduce the incidents of harassment and discrimination which are now an epidemic in our schools." *Id.*

86. While the NYSED promulgated Part 123 as a regulatory enforcement

mechanism to DASA, neither DASA's text nor legislative intent expressly authorizes the NYSED to mandate ban on Indigenous names, logos, and mascots.

D. Part 123 of the Regulations of the Commissioner of Education

87. This lawsuit challenges the enactment and enforcement of that law formally known as: *Part 123 of the Regulations of the Commissioner of Education Relating to Prohibiting the Use of Indigenous Names, Mascots, and Logos by Public Schools*, 8 NYCRR 123.1 *et seq.*

88. Part 123, the Native Name Ban, prohibits public schools in the State of New York from utilizing or displaying any Indigenous name, logo, or "mascot"[4] other than for purposes of classroom instruction. (8 NYCRR 123.2.)

89. Part 123 defines "Indigenous name, logo, or mascot" as "a name, symbol, or image that depicts or refers to Indigenous persons, tribes, nations, individuals, customs, symbols, or traditions, including actual or stereotypical aspects of Indigenous cultures, used to represent a public school, including but not limited to such school sports teams." (8 NYCRR 123.1.) This definition excludes a public school, school building, or school district named after an Indigenous tribe. (*Id.*)

90. Part 123 provides for certain exceptions to this rule. First, a federally

[4] As stated infra, the phrase "mascot" is a dishonest attempt to stereotype any depiction of a Native American as being culturally abusive. (In point of fact, there are no "mascots" but rather representations of Native personages). This phrase is never used in tandem with other cultural archetypes – Yankees, Vikings, Saxons, Rancheros, Vandals, Knickerbockers -- who are used as symbols or logos for public schools.

recognized tribal nation within the State of New York or a New York State recognized tribal nation is not prohibited from choosing to use an Indigenous name, logo, or "mascot" for a sports team comprised of its tribal members, including a tribal school or intramural league. (8 NYCRR 123.4(a).)

91. Second, Part 123 does not apply where a written agreement exists between a federally recognized tribal nation within the State of New York or a New York State recognized tribal nation and a public school permitting the use of an Indigenous name, mascot, or logo that is culturally affiliated with such tribe. (8 NYCRR 123.4(b).)

92. Under this provision of Part 123, the NYSED only acknowledges written agreements submitted before May 3, 2023, and therefore rejects any written agreements submitted after that date. Part 123 does not provide for any extensions of this arbitrary deadline, which (like the underlying law) seeks to ban free speech based upon racially-drawn classifications.

93. Part 123 also requires public schools to prohibit school officers and employees from utilizing or promoting any Indigenous name, logo, or "mascot," while on school property or at a school function, except for school officers or employees who are members of a tribal nation and are utilizing or promoting an Indigenous name, logo, or mascot of such tribal nation. (8 NYCRR 123.5.)

94. Part 123 required boards of education to commit, via resolution, to

eliminating the use of all Indigenous names, logos, and "mascots" by the end of the 2022-2023 school year. (8 NYCRR 123.3(a).) And it required those resolutions to identify a plan to eliminate all use of the prohibited names, logos, or "mascots" by the end of the 2024-2025 school year. (*Id.*)

95. Part 123 does allow the commissioner to grant an extension of these timelines "[u]pon a showing of good cause." (8 NYCRR 123.3(b).)

96. Because the NYSED will not provide any funding to support its mandate, school districts are also forced to redistribute their own educational funds to finance this unfunded mandate of banning Native imagery.

97. Finally, as explained *infra*, the Board of Regents, in enforcing Part 123, the Native Name Ban, holds the ultimate penalty over a non-complaint school district, i.e. the suspension of academic funding or removal of non-compliant School Board members.[5]

E. History of Implementation of the Native Name Ban

98. In April 2001, then-Commissioner of Education Richard Mills released a memorandum to all public school districts in the State of New York outlining his position on public schools' use of Native American names, symbols, and "mascots" and asking boards of education to end the use of Native American names, symbols,

[5] New York State Education Department, *Indigenous Mascot Regulation: Background and FAQ* (Apr. 2023), available at https://www.nysed.gov/sites/default/files/programs/indigenous-education/indigenous-mascot-regulation-background-and-faq.pdf

and "mascots" as soon as possible.[6]

99. The NYSED did not issue any Commissioner's regulations or mandatory guidelines to this effect after the Commissioner of Education released his April 2001 memorandum.

100. While a bill seeking to amend the Education Law to prohibit public schools from using a Native name, logo, or "mascot" was presented to the State Assembly during its 2021-2022 Legislative Session, it was referred to the Assembly Committee on Education and remains there for review.[7] A similar bill was introduced in the 2023-2024 session.[8] Simply put, there were three separate bills introduced in two successive Legislative sessions without any successful enactments by either the Assembly or Senate. To this day, the State Legislature has never enacted a law banning Indigenous names, logos, or "mascots."

F. Notwithstanding Lack of Legislative Basis, Board of Regents Rushes to Enact "Native Ban"

101. Twenty-one years after the April 2001 memorandum was released, James Baldwin, the Senior Deputy Commissioner for Education Policy at the NYSED, released a memorandum on November 17, 2022 in which he unilaterally declared that public school districts were prohibited from using Native American

[6] New York State Education Department, *Public Schools' Use of Native American Names, Symbols and Mascots*, https://www.nysed.gov/sites/default/files/programs/indigenous-education/public-schools-use-of-native-american-names-symbols-and-mascots.pdf
[7] *See* Senate Bill No. 1549 and Assembly Bill No. 5443 in the 2021-22 session.
[8] *See* Senate Bill No. 4-52 introduced in the 2023-24session.

"mascots" and threatened removal of school officers and withholding of State aid if school districts did not affirmatively commit to replacing their Native American team name, logo, and/or imagery by the end of the 2022-2023 school year.

102. This November 17 memorandum[9] referenced forthcoming regulations from NYSED, describing them as intended to clarify school districts' obligations regarding the eradication of Native names and images.

103. Notably, Mr. Baldwin delivered this across-the-board directive to all public school districts **before Part 123 was even drafted**, much less subjected to a 60-day public comment period or actually promulgated in accordance with the State Administrative Procedure Act (hereinafter "SAPA").

104. The State of New York has a statutory scheme for administrative agencies to promulgate rules and regulations, and the November 17 memorandum from Mr. Baldwin was a blatant departure from those requirements.

105. Neither Mr. Baldwin, nor the Commissioner of Education herself, has the authority to adopt an across-the-board directive without first formally adopting a regulation or rule to that effect.

106. On December 1, 2022, the Board of Regents indicated they anticipated the proposed amendment, i.e. Part 123, would be presented for permanent adoption

[9] New York State Education Department, *Indigenous Native American Mascot Memo*, https://www.nysed.gov/sites/default/files/programs/main/indigenous-native-american-mascot-memo.pdf

at the April 2023 Regents meeting, and become effective as a permanent rule on May 3, 2023, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under SAPA.

107. Accordingly, even prior to the public comment period, the NYSED made it clear it planned to adopt Part 123, notwithstanding its blatant constitutional defects, **before the public comment period even occurred**.

108. Needless to say, the Board of Regents made no effort to document a "compelling public need" supporting the Native Name Ban, which on its face relies on a system of racial classification. Nor was any evidence taken of alternative methods to achieve the same goal without a Native Name Ban.

109. To make matters worse, the November 17th memorandum made it clear the NYSED planned to adopt Part 123 before it even finished preparing a draft of it. In other words, the NYSED's compliance with SAPA was mere window dressing, as the NYSED had already a pre-ordained conclusion: that it would ban Indian-themed names and symbols from New York schools.

110. This purpose is further evidenced in the NYSED's *Assessment of Public Comment*, which was released in April 2023. There, the NYSED acknowledged it provided school districts with advance notice of its intentions in Mr. Baldwin's November 17, 2022 memorandum. Again, the NYSED declared its intentions to enact a regulation that was still in the works and had not undergone the requisite "notice-

and-comment" requirements of SAPA.

111. On December 28, 2022, the NYSED released a draft of Part 123, the Native Name Ban, which triggered the 60-day public comment period.

112. After publishing the proposed amendment in the State Register, the NYSED received various comments during the 60-day public comment period; some were supportive of the proposed changes and others were strongly opposed to it.

113. After the public comment period, the NYSED made two revisions to the proposed amendment, which they characterized as non-substantial.

114. On April 18, 2023, the Board of Regents voted to adopt Part 123, the Native Name Ban, which took effect on May 3, 2023.

115. Part 123 initially set a June 30, 2023 deadline for boards of education to, first, self-determine if their names, logos, or "mascots" fall within the scope of Part 123 and, if so, to commit, via resolution to eliminate such names, logos, and mascots by the end of the 2022-2023 school year.

G. Action by the Massapequa School District Board of Education

116. In order to comply with the June 30, 2023 deadline, the Board of the Massapequa School District passed a resolution on June 22, 2023 with a plan to eliminate the use of prohibited Indigenous names and logos by the end of the 2023-2024 school year. The resolution makes clear, however, that the Board's compliance shall in no way serve as a waiver or be construed as a waiver of the District's right

to, among other things, challenge (a) whether the use of the "Chiefs" name does in fact constitute a prohibited "Indigenous name, logo or mascot" pursuant to Part 123, and (b) whether Part 123 was legal or constitutional.

H. Lawsuits Are Filed against Board of Regents

117. Following the adoption of Part 123 by the New York State Board of Regents, several public school districts filed lawsuits.

118. In particular, four Long Island school districts—Massapequa, Wantagh, Wyandanch, and Connetquot—filed a federal lawsuit in the Eastern District of New York. These districts alleged that Part 123 violated the First and Fourteenth Amendment rights by prohibiting the continued use of names and symbols that had long been part of their local traditions and community identity.

119. Despite these assertions, on March 27, 2025, Chief Judge Margo K. Brodie dismissed the consolidated action. The court held that the school districts lacked standing to assert constitutional claims on behalf of their students and communities. The dismissal was procedural in nature, focusing on capacity to sue, and did not address the merits of the constitutional claims.

I. NAGA Files Complaint with Office of Civil Rights, which Opens Investigation into the Board of Regents

120. While the lawsuits were occurring in 2023-2024, NAGA was alerted by members in the State of New York, including Mr. Finkenbinder, about the extraordinary actions of the Board of Regents in enacting the Native Name Ban.

121. In April 2025, NAGA filed a complaint with the U.S. Department of Education's Office for Civil Rights claiming that the actions by the Board of Regents in implementing Part 123, the Native Name Ban, constituted an unconstitutional action, as it solely targeted names and logos featuring American Indians – and left all other ethnic groups unaffected.

122. On April 25, 2025, the U.S. Department of Education's Office for Civil Rights (OCR) formally opened an investigation into the Board of Regents' enactment and enforcement of Part 123 and whether this conduct represents a violation of Title VI and other U.S. laws prohibiting discrimination in education.

123. That investigation is ongoing.

124. The harms complained of herein are ongoing. The harm to the Plaintiffs is irreparable. There is no adequate remedy at law.

CAUSES OF ACTION

COUNT I

VIOLATION OF 42 U.S.C. § 1983 – EQUAL PROTECTION UNDER THE FOURTEENTH AMENDMENT; DISCRIMINATION UNDER 42 U.S.C. § 1981; AND ARTICLE I, § 11 OF THE NEW YORK STATE CONSTITIUTION

125. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

126. The Fourteenth Amendment to the U.S. Constitution provides that "[n]o

State shall...deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. This Equal Protection Clause prohibits state governments from enacting or enforcing laws that treat individuals or groups differently on the basis of race, color, or national origin, unless the challenged classification serves a compelling governmental interest and is narrowly tailored to achieve that interest. *See Students for Fair Admission v. Harvard College*, 600 U.S. 181, 143 S.Ct. 2141, 216 L.Ed. 857 (2023).

127. This protection is specifically enforceable through 42 U.S.C. § 1983.

128. Article I, § 11 of the New York State Constitution also provides that "No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state."

129. Plaintiffs' beliefs, practices, rituals, actions, and conduct with respect to Native American names, logos, and imagery, including those images featured in New York public schools, are avenues through which they educate others about their Native American ethnic heritage, traditions, religious beliefs, exercise and practices. These beliefs are not only expressive but also affirmatively protected under both the Equal Protection and Free Exercise Clauses.

130. The enactment of Part 123, the Native Name Ban, constitutes a racial

classification that facially and explicitly targets only one racial and ethnic group—Native Americans—by prohibiting the display, use, or recognition of their cultural symbols, names, and imagery in public schools. At the same time, symbols and traditions linked to all other racial, ethnic, or cultural groups remain unaffected.[10]

131. The Native Name Ban lacks any rational basis whatsoever, much less a "compelling public interest" to overcome strict scrutiny.

132. By its very nature, the Native Name Ban imposes a facially race-based classification by prohibiting the use of Native American names, symbols, and imagery—restrictions that apply solely on the basis of racial identity. Under established Supreme Court precedent, such racial classifications by the government are presumptively unconstitutional and must satisfy "strict scrutiny," the most exacting standard of judicial review. To meet this high standard, the government bears the heavy burden of demonstrating that the regulation (1) serves a compelling governmental interest, and (2) is narrowly tailored to achieve that interest using the least restrictive means available. *See Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995) ("all racial classifications... must be analyzed by a reviewing court under strict scrutiny").

133. A compelling interest must be "pressing public necessity," not merely a

[10] Indeed, the City of New York contains three major sports franchises – the Yankees, the Rangers and the Knickerbokers – that utilize positive group archetypes.

policy preference or general societal goal. *See Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007). While the Board of Regents asserts that eliminating Indigenous names, logos, and "mascots" serves the objectives of the Dignity for All Students Act (DASA), this rationale lacks any quantitative analysis and is rooted in the ***sine qua non*** of viewpoint discrimination: *my opinion on this issue is superior to yours and therefore I will suppress your voice*.

134. Quite simply, there is no plausible evidence that the Native Ban accomplishes any actual social objectives, other than vague and undefined terms such as "inclusivity" and "equity."[11] As such, the state's actions fall short of the demanding standard required to justify race-conscious regulations.

135. The constitutional requirement of narrow tailoring demands that the government action must fit the compelling interest "so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype." *See Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989). The means chosen must be the least restrictive available, and race-neutral alternatives must be considered and shown inadequate.

136. Here, the Board of Regents implemented Part 123 as a categorical ban. This blanket approach, by definition, is not the least restrictive means to achieve the

[11] In *Students for Fair Admission*, the United States Supreme Court specifically noted that vague terms relating to social justice "cannot be subjected to meaningful judicial review." Therefore, they cannot serve as a basis for the "compelling public need" necessary to justify a race-based law or regulation. *See id.*, 143 S.Ct. at 2166, 216 L.Ed.2d at 885.

state's stated goal of preventing harm under DASA. The Native Name Ban sweeps too broadly and risks suppressing protected cultural expression and the overbreadth of the regulation undermines the legitimacy of the state's asserted motives and fails the narrow tailoring test.

137. *In Foundation Against Intolerance & Racism, Inc. v. City of New York, 22-CV-00528 (S.D.N.Y.)*, plaintiffs similarly alleged that race-based criteria in public programs constituted unconstitutional discrimination. There, as here, the plaintiffs challenged a state policy that imposed racially selective burdens on one group while extending differential treatment to others. That case underscores government action which differentially burdens a racial or ethnic identity, even under the guise of reform or equity, is subject to strict scrutiny and presumptively unconstitutional unless rigorously justified.

138. Thus, Part 123 cannot withstand strict scrutiny. It neither advances a compelling governmental interest nor is narrowly tailored to achieve its stated objectives. As a result, the regulation constitutes unconstitutional discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment and gives rise to a claim under 42 U.S.C. § 1983.

COUNT II

VIOLATION OF 42 U.S.C. § 1983 – FREE SPEECH CLAUSE UNDER THE FIRST AMENDMENT; ARTICLE I, § 8 OF THE NEW YORK STATE CONSTITUTION

139. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

140. Names, symbols, and imagery tied to Native American identity are not merely ornamental or historical references; they carry profound cultural, spiritual, and communal significance. When such imagery is used to express identity, pride, or solidarity, it constitutes symbolic speech—a form of expression protected by the First Amendment. *See Texas v. Johnson*, 491 U.S. 397, 404 (1989) ("[I]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.").

141. Courts have consistently held that expressive conduct—including the use of names, symbols, and imagery—receives First Amendment protection when it conveys a message likely to be understood by viewers. Content-based restrictions on speech—those that target speech based on its subject matter, idea, or message—are presumptively unconstitutional and subject to strict scrutiny. *See Reed v. Town of Gilbert*, 576 U.S. 155, 163–64 (2015). The government must demonstrate that such restrictions serve a compelling interest and are narrowly tailored to achieve that interest without unnecessarily burdening protected expression.

142. Article I, Section 8 of the New York State Constitution also guarantees

that "every citizen may freely speak, write and publish his or her sentiments on all subjects."

143. Part 123, the Native Name Ban, constitutes a content-based restriction on speech. It mandates that public school districts "eliminate the use of all Indigenous names, logos, or mascots" unless authorized through a narrow, conditional agreement with a state- or federally-recognized tribe. *See* 8 NYCRR § 123.2. This restriction is explicitly content-based because it prohibits expression based on its cultural or ethnic message—i.e., its association with Native American identity.

144. Part 123's selective suppression of cultural expression violates both content and viewpoint neutrality, which are fundamental requirements under the First Amendment. *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 391 (1992) (laws that discriminate based on viewpoint or subject matter, even in pursuit of noble ends like promoting tolerance, are unconstitutional). Part 123 silences a category of speech solely because of its association with Native American culture—regardless of whether the expression is respectful, historically grounded, or community-supported.

145. Moreover, Part 123 imposes a prior restraint on protected symbolic speech by prohibiting certain messages before they are expressed, not due to any demonstrated disruption, but because of the assumed racial or cultural identity they represent. This kind of anticipatory censorship is highly disfavored and must be narrowly confined to exceptional circumstances. *See Near v. Minnesota*, 283 U.S.

697, 713 (1931).

146. The government cannot satisfy strict scrutiny by asserting a generalized interest in preventing offense or promoting inclusivity. As the Supreme Court affirmed in *R.A.V.*, even well-intentioned goals cannot justify the selective suppression of particular content or identity-linked messages.

147. The speech regulated by Part 123 is not merely institutional—it implicates the expressive rights of students, teachers, alumni, and communities who engage with and support these symbols as a form of cultural identity and heritage. While public schools are limited public forums, they remain subject to constitutional protections. Students, teachers, and communities do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *See Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969).

148. In such forums, government regulations of speech, even within the classroom[12], must be reasonable in light of the forum's purpose and must not discriminate based on viewpoint or content. *See Rosenberger v. Rector & Visitors of University of Virginia*, 515 U.S. 819, 829 (1995); *Good News Club v. Milford Central*

[12] NAGA cites to *Tinker* and other "school-based" First Amendment cases to demonstrate how the Native Name Ban is violative of First Amendment cases relating to public school instruction. In actuality, the act of banning a name and symbol – such as the "Massapequa Chiefs" – has implications far beyond classroom instruction and is by no means part of the ordinary powers exercised by school districts so as to maintain order and facilitate academic instruction. *See Tinker*, 393 U.S. at 506 (School District sought to prevent wearing of black armbands in class on the grounds it was disrupting daily instruction). Rather it is a classic First Amendment ban which seeks to suppress speech in the greater community.

School, 533 U.S. 98, 106–07 (2001).

149. Part 123 violates these principles by targeting and eliminating only those expressions "connected to Indigenous peoples or cultures," while permitting other forms of cultural or symbolic expression to remain. This constitutes content-based discrimination. Because it selectively suppresses messages tied to Native American identity and heritage, it exceeds the permissible bounds of regulation within a limited public forum and infringes upon constitutionally protected speech.

150. As a content-based and identity-specific regulation of symbolic speech, the Native Name Ban is subject to strict scrutiny. The Board of Regents has neither identified a compelling interest of the kind required by precedent, nor shown that the regulation is narrowly tailored. As such, Part 123 cannot survive constitutional scrutiny and therefore is in violation of the First Amendment.

COUNT III

VIOLATION OF 42 U.S.C. § 1983 – DUE PROCESS CLAUSE UNDER THE FOURTEENTH AMENDMENT

151. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

152. The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides that no State shall "deprive any person of life, liberty, or property, without due process of law." This clause not only prohibits arbitrary government action, but also requires that laws be written with sufficient clarity and

precision to give fair notice of what conduct is prohibited and to prevent arbitrary, inconsistent, or discriminatory enforcement. *See Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

153. Part 123 violates the substantive component of due process because it imposes sweeping and punitive restrictions on expression related to Native American culture, i.e. the Native Ban, without clearly defining the conduct it prohibits. The regulation bans the use of names, mascots, logos, or imagery "that has a connection to Indigenous peoples or cultures," yet offers no definition of what qualifies as "Native American imagery," no standards for what constitutes a "connection," and no distinction between derogatory caricatures and accurate, respectful, or tribally endorsed references. This vagueness deprives schools and individuals of fair notice and invites arbitrary enforcement.

154. A law is unconstitutionally vague if it "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *Grayned*, 408 U.S. at 108–09; see also *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972). Part 123 fails both prongs of this test. It does not enable school districts to determine in advance what expression is permissible, and it leaves enforcement entirely to subjective interpretation, opening the door to inconsistent and unequal application across the state of New York.

155. Part 123 further violates the procedural component of the Due Process Clause by delegating broad interpretive and enforcement authority to local school boards without providing clear, objective, or uniform standards. Rather than offering meaningful guidance, definitions, or criteria, the regulation establishes a self-policing model, under which each board of education is expected to determine for itself what constitutes impermissible "Native American imagery" or a "connection to Indigenous cultures." Moreover, it is required to take steps to "self-enforce" the Native Name Ban, even if there is no negative association with the name or image in question.

156. Finally, Part 123 authorizes the Board of Regents to withhold funding to school districts that fail to comply with the Native Name Ban. On its face, this tool – which seeks to blackmail school districts into complying with an unconstitutional law – is violative of the Due Process Clause of the Fourteenth Amendment. Nobody can be "forced" to give up constitutional rights in order to enjoy a benefit – public education – which is broadly available to the general public.

157. By failing to provide clear standards, burdening expressive conduct and threatening to withhold necessary school funds, Part 123 ("the Native Ban") imposes an unjustifiable restriction on cultural identity and symbolic speech—both of which are protected liberty interests, as well as creating unconstitutional racial distinctions for aspects of public instruction. As such, it violates the substantive component of the Due Process Clause.

COUNT IV

VIOLATION OF ARTICLE I, § 8 CLAUSE 3 OF THE UNITED STATES CONSTITIUTION (THE DORMANT COMMERCE CLAUSE)

158. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

159. Article I, Section 8 of the U.S. Constitution grants the exclusive right of the United States Congress to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." The last part of this provision, "the Indian Commerce Clause," has been interpreted to mean that only the Federal government can regulate Indian tribes or their economic activities. *See Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759 (1985).

160. Under the Supremacy Clause, U.S. Const. Article VI, Clause 2, federal law preempts any state regulation that conflicts with or stands as an obstacle to the enforcement of the Dormant Commerce Clause.

161. The Dormant Commerce Clause is a constitutional prohibition. *National Pork Producers Council v. Ross*, 598 U.S. 356, 364 (2023) ("Assuredly, under this Court's dormant Commerce Clause decisions, no State may use its laws to discriminate purposefully against out of-state economic interests.").

162. The Dormant Commerce Clause embodies the "principle that one state in its dealings with another may not place itself in a position of economic isolation."

Entergy Nuclear Vt. Yankee, LLC v. Shumlin, 733 F.3d 393, 429 (2d Cir. 2013) (citation omitted).

163. Part 123, the Native Name Ban, violates this principle in the language of Part 123.4(b) which discriminates against out-of-state tribal entities by limiting valid cultural recognition agreements solely to (i) those entered into prior to May 3, 2023, and (ii) only with tribes recognized by or located within New York State. This condition draws a discriminatory line between New York's own tribes (allowed to contract) and every other federally recognized tribe.

164. As such, Part 123 favors privileges in-state tribe interests over out-of-state tribes, and thereby imposing an unjustified burden on interstate commerce.

165. As applied here, NAGA maintains an agreement with the School District. NAGA itself includes a consortium of representatives from Native tribes, groups, and individuals with some who are either based outside of New York or not formally recognized by New York as a tribe. Put simply, Part 123's favoritism for in-state tribes unlawfully discriminates against the NAGA and like organizations and conflicts with exclusive rights of the U.S. Congress.

166. The regulation further entrenches these discriminatory measures by invalidating all agreements executed after May 3, 2023—even those involving federally recognized tribes or nationally organized Indigenous groups not based in New York. As applied, Part 123 nullifies the existing NAGA–MSD Agreement.

167. Even if this Court were to strike only the "effective date" restriction in Part 123.4(b)—which lacks a severability clause—and allow the remainder of the regulation to stand, Part 123 would still operate in an unconstitutional manner, as it would permit school districts to maintain agreements with in-state tribal nations, while systematically denying the same recognition to agreements with out-of-state or nationally organized Indigenous groups. This unequal treatment imposes a substantial and unjustified burden on interstate commerce and violates the Dormant Commerce Clause by discriminating against out-of-state tribes.

168. Therefore, Part 123 violates the Dormant Commerce Clause and must be declared unconstitutional.

COUNT V

VIOLATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 (42. U.S.C. § 2000d)

169. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

170. Title VI of the Civil Rights Act of 1964 provides that: "no person in the United States 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.

171. The effect of Part 123, the Native Name Ban, is not merely symbolic. It

categorically bans expressions of Native American identity—such as school team names and imagery—while allowing similar expressions related to other ethnic groups (e.g., "Vikings" or "Fighting Irish").

172. All public schools and school districts subject to Part 123 are recipients of federal financial assistance and are therefore bound by Title VI's nondiscrimination mandates. The regulation thus triggers direct scrutiny under federal civil rights law whenever it results in disparate treatment or effects based on race or national origin.

173. Part 123 discourages Indigenous students from celebrating or expressing their heritage and sends a message that Indigenous identity is unwelcome in public schools. The stigmatizing impact and denial of expressive recognition contribute to unequal access to the full benefits of federally funded educational programs, in direct violation of Title VI.

174. Part 123 disproportionately burdens a protected class—Native Americans—by specifically targeting and prohibiting expressions of Indigenous cultural identity in public schools. Because the regulation affects racial identity and expression within federally funded educational programs, it triggers federal scrutiny and gives rise to a claim under Title VI of the Civil Rights Act of 1964.

PRAYER FOR RELIEF

175. WHEREFORE, Plaintiff prays for entry of judgment against the Defendants for all the relief requested herein and to which the Plaintiff may otherwise be entitled, specifically, but without limitation, as follows:

a. That Plaintiffs are granted:

(i) A declaratory judgment that Part 123 of Title 8 of the New York Codes, Rules, and Regulations is unconstitutional on its face and as applied, and Defendants' conduct violate Plaintiffs' Members' rights to equal protection under (1) the U.S. Constitution and (2) the Constitution of the State of New York;

(ii) A declaratory judgment that Part 123 of Title 8 of the New York Codes, Rules, and Regulations is unconstitutional on its face and as applied, and Defendants' conduct violate Plaintiffs' Members' rights under Title VI to be free of discrimination based on their race, color, or national origin;

(iii) A preliminary and permanent injunction prohibiting Defendants from: (1) Enforcing Part 123, the Native Name Ban; and (2) Compelling school districts to remove names, symbols, or imagery associated with Indigenous identity or culture.

(iv) An order restoring the rights of Plaintiffs and similarly situated individuals to freely use cultural, tribal, or symbolic expression in accordance with constitutional and statutory protections.

(v) Recovery of all costs of this action, including its reasonable attorneys' fees to the maximum extent permitted by the laws of the United States and New York; and

(vi) Awarding of such other further relief as the case may require and the Court may deem just and proper under the circumstances.

Dated: May 29, 2025
New York, New York

Respectfully submitted,

Falcon Rappaport & Berkman LLP

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