

Fall 2014, Vol. 14, NO. 1

respect

A NEWSLETTER ABOUT LAW AND DIVERSITY

Fighting for the Right to Cast a Ballot

Cheryl Baisden

Voters in several states around the country will face new, more restrictive requirements when they attempt to cast their ballots in the upcoming elections. The changes are the result of a June 2013 decision by the U.S. Supreme Court in the case of *Shelby County v. Holder*, where the Court ruled 5-4 that Section 5 of the Voting Rights Act (VRA) was unenforceable because the formula used to renew the requirement was outdated.

"The Voting Rights Act of 1965 included a provision that certain states, where there historically had been violations that kept minority voters from being able to vote, needed pre-clearance from the federal government if they wanted to change voter registration requirements," says former New Jersey Supreme Court Justice Gary Stein, who served as counsel to the New Jersey Election Law Revision Commission and now practices in Hackensack and teaches election law at Rutgers School of Law–Newark. "Over the years, this requirement has been renewed several times, but in 2013 the Court determined that the formula Congress based its most recent renewal on was old and outdated. The Court majority said it was wrong for states to be required to obtain pre-clearance based on conditions that existed years before, while the minority on the Court argued that racial discrimination still exists in those states. In the end, what it comes down to is that the law may still be needed but the formula used to apply it needs to be updated in order to be enforceable."

Following the U.S. Supreme Court's 2013 decision, states that were under Section 5 restrictions and were suddenly out from under federal regulation began enacting new voting laws, many of them focusing on the paperwork voters must present in order to be able to cast a ballot and restricting voters' opportunities for casting ballots outside of the normal Election Day polling hours. Other states not specifically under VRA restrictions have also passed new voting laws since the Court's decision in *Shelby*. In all, according to a study released in June by [Pew Research Center](#), *>continued on page 6*

Is It Who You Are on the Inside That Counts?

by Phyllis Raybin Emert

There's a common saying that a self-assured person is "comfortable in his or her own skin." Unfortunately, not everyone achieves that level of comfort. In fact, some people are uncomfortable with their own gender.

There are those who feel that their biological sex at birth does not match the gender they identify with inside. This condition is known as gender dysphoria or Gender Identity Disorder (GID) and those who experience it are transgender. In contrast, a cisgender male or female identifies with the biological sex he or she was born with and experiences no distress at being identified as such.

Grasping what it is to be transgender

Livingston attorney Robyn B. Gigl, who chairs the New Jersey State Bar Association's Lesbian, Gay, Bisexual and Transgender Rights Section, acknowledges that it is hard for people to understand that a person's gender is not always decided by the **genitalia** he or she was born with.

>continued on page 4

This publication was made possible through funding from the IOLTA Fund of the Bar of New Jersey.

Jodi L. Miller
Editor

Editorial Advisory Board

Gwendolyn Yvonne Alexis, Esq.
Chair

Engy Abdelkader, Esq.
Mary M. Ace, LCSW

Lisa H. James-Beavers, Esq.
Maha M. Kabbash, Esq.

Ronald G. Lieberman, Esq.

Louis H. Miron, Esq.

Anna P. Pereira, Esq.

Margaret Leggett Tarver, Esq.
Dr. Paul Winkler

New Jersey State Bar Foundation Board of Trustees

Louis H. Miron, Esq.
President

Steven M. Richman, Esq.
First Vice President

Lynn Fontaine Newsome, Esq.
Second Vice President

Susan A. Feeney, Esq.
Treasurer

Vacant
Secretary

Angela C. Schack
Executive Director

Trustees

Paulette Brown, Esq.

Paris P. Eliades, Esq.

Eli L. Eytan, Esq.

Kathleen N. Fennelly, Esq.

Norberto A. Garcia, Esq.

Hon. C. Judson Hamlin

Robert B. Hille, Esq.

John E. Keefe Jr., Esq.

William A. Kraus, Esq.

Ralph J. Lamparello, Esq.

Jeffrey J. McWeeney, Esq.

Evelyn Padin, Esq.

Anna P. Pereira, Esq.

Thomas H. Prol, Esq.

Robert J. Stickles, Esq.

Charles Stoia, Esq.

Miles S. Winder III, Esq.

Honoring Native Americans with a Racial Slur?

by Barbara Sheehan

In today's consumer market branding is everything. But, should a team brand or trademark reflect what many feel is a racial slur?

The United States Patent and Trademark Office (USPTO) governs trademarks in the United States. Laws are in place to protect both consumers and companies, such as the Lanham Act, which states a trademark registration can be refused if it "may **disparage** persons...or bring them into contempt, or disrepute." This basic trademark protection has come into question with regard to the team name of the National Football League's (NFL) Washington Redskins, which many people maintain is **derogatory** to Native Americans.

In 2006, five Native Americans challenged the NFL football team's name in a case known as *Blackhorse v. Pro Football, Inc.* With a 2-1 vote in June 2014, the Patent Office's Trademark Trial Appeal Board (TTAB) agreed with the plaintiffs, concluding that at least 30 percent of Native Americans—or a "substantial composite" as required by law—found the name "Redskins" disparaging from 1967 to 1990. The tribunal authorized the cancellation of six team-held trademarks, (different uses of the term "Redskins") issued from 1967 to 1990.

The team maintains that its name was never meant to be offensive. In an October 2013 letter to fans, team owner Dan Snyder described the history and intent of the name in this way:

"As some of you may know, our team began 81 years ago—in 1932—with the name 'Boston Braves.' The following year, the franchise name was changed to the 'Boston Redskins.' On that inaugural Redskins team, four players and our Head Coach were Native Americans. The name was never a label. It was, and continues to be, a badge of honor." The letter went on to say that the team's name "is a symbol of everything we stand for: strength, courage, pride, and respect—the same values we know

guide Native Americans and which are embedded throughout their rich history as the original Americans."

Origin of the word debated

A September 2013 National Public Radio (NPR) article examined the history of the word "redskin" and the different meanings it has had throughout history. According to that article, one early reference to "redskins" dates back to a Beothuk tribe, whose members painted their bodies with red ochre, "leading white settlers to refer to them as 'red men.'" The article noted that starting in the late 1800s to early 1900s the word "went from being an identifying term to a derogatory slur."

In an article for *Esquire* magazine, sportswriter Baxter Holmes, who is Native American, cited an item that appeared in *The Daily Republican* newspaper on September 24, 1863, which read: "The State reward for dead Indians has been increased to \$200 for every red-skin sent to Purgatory." In his article, Holmes also wrote, "Redskins is not just a twisted compliment, like 'Savages,' 'Warriors,' 'Braves' or 'Red Men.' It represents a trophy of war—the bloody scalp of a murdered Native American, slaughtered for money, the amount dependent on whether it was a man, woman or child."

In a CBS Sports Radio interview, Holmes said, "I don't expect people who are non-natives to fully grasp what the term redskins means to Native Americans. But it's long been associated with scalps being collected for government bounty like animal pelts...It was just part of the systematic extermination of Native Americans when people were moving into the country."

A study conducted by Ives Goddard, senior linguist with the Smithsonian Institution, contended, "the actual origin of the word is entirely **benign** and reflects more positive aspects of relations between Indians and whites."

Kevin Gover, a member of the Pawnee Nation of Oklahoma and director of the Smithsonian's National



Museum of the American Indian, however, sees it differently, claiming it is “the equivalent of the N-word,” according to the NPR article. Gover was also quoted in the *Esquire* magazine article saying, “I’m really not interested in where the word comes from. I know how it was used. And it’s been used in a disparaging way for at least a couple of centuries. Up to and including the time I was growing up in Oklahoma.”

Pressure to change

Despite the intentions of the team, public pressure to change the name seems to be mounting. The Oneida Indian Nation in upstate New York and the National Congress of American Indians (NCAI) have campaigned against the name. The Oneida Tribe made a proposal to FedEx Corp., asking them to sever its ties with the sports team by withdrawing its sponsorship of the team’s stadium. In September 2014, FedEx rejected the tribe’s proposal.

Some, however, are taking a stand against the team name. Several publications, including *Mother Jones* and *The New Republic*, as well as the website Slate, have vowed not to use the team’s nickname in print. Certain sportswriters for *Sports Illustrated*, *USA Today* and ESPN have made the same vow. In addition, many representatives from the U.S. Congress have also weighed in, with 50 senators writing to NFL Commissioner Roger Goodell urging him to officially call on the Washington franchise to change its team name. The letter states: “The National Football League is on the wrong side of history. It is not appropriate for this multibillion-dollar...tax-exempt organization to perpetuate and profit from the continued degradation of tribes and Indian people.” Referencing the NBA’s recent racial controversy, the senators asked, “What message does it send to punish slurs against African Americans while endorsing slurs about Native Americans?”

President Barack Obama also weighed in on the controversy, saying, “If I were the owner of the team and I knew that there was a name of my team — even if it had a storied history — that was offending a

sizeable group of people, I’d think about changing it.”

Opposition not unanimous

While many Native Americans have spoken out against the team name, objections are reportedly not unanimous. Those who would like to keep the name point to a 2004 National Annenberg Election Survey that asked 768 people who identified themselves as Native American whether they found the name offensive. Almost 90 percent said it did not bother them. A more recent Public Policy Polling survey, published in January 2014, revealed that 71 percent of Americans (not necessarily Native Americans) don’t want the name changed. Still, a June 2014 survey, conducted by the Center for Indigenous People Studies at California State University, revealed that 67 percent of Native Americans find the team’s name offensive. The same study showed that 60 percent of white Americans believe the term ‘redskins’ is racist.

The TTAB addressed the argument that some Native Americans don’t find the word offensive in its decision. “While this may reveal differing opinions within the community, it does not negate the opinions of those who find it disparaging,” the tribunal’s decision stated. “The ultimate decision is based on whether the evidence shows that a substantial composite of the Native American population found the term ‘Redskins’ to be disparaging when the respective registrations [were] issued.”

What’s in a trademark?

A big factor in the Washington Redskins name debate concerns money. Trademarks provide important financial protections for their owners. For instance, if a company wants to create Redskins team merchandise with trademarked material, they must pay the Redskins to use their mark. Additionally, trademarks play a big role in branding—which again can significantly impact an organization’s success and bottom line. Branding may have a more profound psychological effect than many people recognize, Red Bank

attorney Jeffrey Neu, chair of the New Jersey State Bar Association’s Intellectual Property Committee noted.

When it comes to branding of the Washington team’s name, there remains a big question about how a name change might affect fans. Dave Zirin, who has written extensively on this issue for *The Nation*, reported that Washington Redskins merchandise sales dropped by 35 percent in the last financial quarter. “In an NFL that pools its merchandizing money,” Zirin wrote, “this could mean pressure on Dan Snyder to change the name from the one group he’s always had in his corner: other owners.”

Timing is everything

This is not the first time the Redskins name has been challenged. Back in 1992, a similar case, *Harjo v. Pro Football, Inc.*, was brought by a group of American Indian rights activists. While the outcome of that case was the same (the Redskins trademarks were canceled), the plaintiffs lost on appeal. A federal district court overturned the TTAB’s 1999 decision on what has been described as a technicality. Essentially, the court in that case found that the plaintiffs waited too long after the trademarks in question were issued to bring their claims. The legal name of this defense is called the doctrine of laches. In the current case, the plaintiffs are younger than the prior plaintiffs. Still, it must be proven that the marks in question were disparaging at the time they were issued, from 1967 to 1990.

“We believe that the Trademark Trial and Appeal Board ignored both federal case law and the weight of the evidence, and we look forward to having a federal court review this obviously flawed decision,” Redskins lawyer Bob Raskopf said in a June 2014 press statement. In addition, the statement reported that the Redskins will question whether revoking their trademarks penalizes their right to free speech and deprives them of “valuable and long-held intellectual property rights.”

>continued on page 8

On the Inside *continued from page 1*

"A person's gender is governed by a person's internal sense of who they are. For over 99 percent of the population, their internal sense of gender identity matches the gender they were assigned at birth. They are considered cisgender," Gigl explained. "In a person who is transgender, their internal sense of self does not match the gender that a doctor assigned them at birth. For about one-half of one percent of the population, the person's gender identity, their internal sense of who they are, does not match the physical body parts the doctor saw when they were born...Unfortunately, in our society...many people assume that the person is either making it up or is mentally ill."

Gigl noted that reputable medical organizations, such as the American Medical Association and the American Psychiatric Association, agree that GID is not a psychological or mental disorder. According to the Williams Institute, a think tank housed at UCLA that conducts research on gender identity, there are approximately 700,000 transgender people living in the United States. The National Health Service stated that the number of people being diagnosed with GID is increasing due to growing public awareness.

California passes landmark legislation

Ashton Lee, a 16-year-old transgender boy from California, was born a girl but has always identified with being a boy in appearance and dress and would like to play for his high school football team. Last year, Ashton told CNN, "I just want to be treated the same as all the other boys, but my school forces me to take P.E. in a class of all girls and live as someone I'm not. I can't learn and succeed when every day in that class leaves me feeling isolated and alone."

To address the concerns of Ashton and others like him, California legislators passed

the School Success and Opportunity Act, otherwise known as Assembly Bill No. 1266. Governor Jerry Brown signed AB 1266 into law in August 2013 and it took effect on January 1, 2014. In simplest terms, the law lets transgender students in grades K-12 choose which restrooms they prefer to use, and which school teams they want to join based on their gender identity and expression, regardless of their birth sex. Although individual school districts around the nation, such as Los

voters can decide if a law should stand or be rejected.

A group called Privacy For All Students (PFAS), a coalition of religious conservatives that include parents, students and faith groups, collected 619,387 signatures on a petition to **repeal** AB 1266. The group needed 504,760 signatures in order to get the referendum on the November 2014 ballot; however the state determined that only 487,484 of the signatures collected were valid. Frequently, when a petition goes through the verification process, it is discovered that signers are not registered to vote, have incorrect addresses, or listed inaccurate information. Those signatures are considered invalid and are disqualified. In January 2014, a Sacramento County Superior Court judge ordered the state to accept approximately 5,000 of the disputed signatures; but the organization still fell short of the signatures required. At press time, the measure was not scheduled to be on California's ballot in November.

On its website in a message to supporters, PFAS declared, "Across the country, activists are intent on sexually integrating our children's bathrooms and locker rooms. We are told that this is necessary to relieve the discomfort of a few that are uncomfortable in traditional sex separate facilities. But the much greater number that would have their privacy and safety compromised by this radical change are regarded as irrational or irrelevant. And those that are fighting to keep bathrooms separate are labeled as hateful. We are told that gender identity is more important than gender reality. We are told that feelings trump anatomy."

Gigl said, "most of the arguments against the [California] law are based on the premise that a person who was assigned male at birth is a boy and a person assigned female at birth is female... Society as a whole does not accept that



Angeles and San Francisco, and the states of Connecticut and Massachusetts, have put similar policies into effect, this is the first time a state has enacted a law. While New Jersey does not have a law similar to California's, the state protects transgender students through the New Jersey Law Against Discrimination (LAD), which specifically states that it is illegal to treat people differently because of their "gender identity or expression."

Opposition to California law

Many in California opposed the new law. A **referendum** process in the state allows Californians to place **statutes** on the ballot at the next general election, so

a transgender person really is the gender they identify with...It is up to us to educate people that transgender people are the same as cisgender people, and they just want to be treated equally according to their gender identity."

Gigl also revealed another flaw with the opposition to California's law. "The opponents frame the issue in terms of members of the 'opposite sex' using bathroom facilities, locker rooms or participating in athletic programs....A transgender person does not want to use the bathroom facility for the 'opposite sex.' They want to use the bathroom facility of their own sex."

For example, Gigl explained, "A 14-year-old transgender person who was assigned male at birth, but has a female gender identity is a female. That person's internal sense of who they are tells them they are a girl just as strong as any cisgender girl's sense of self tells her she's a girl. So for the 14-year-old transgender girl, telling her that she must use the boys' bathroom or the boys' locker room, is forcing her to use the facilities of the 'opposite sex'...To allow her to use the girls' room is consistent with her gender identity."

Other concerns about California's law

In a June 2014 article titled, "The Dangers of Overbroad Transgender Legislation, Case Law and Policy in Education: California's AB 1266 Dismisses Concerns About Student Safety and Privacy," published in Brigham Young University's *Education and Law Journal*, Tyler Brown, the publication's editor-in-chief, wrote, "Without any definition or standards associated with gender identity, a student could establish a gender identity with nothing more than an unverified statement. Administrators are not given any legal means to verify gender identity. Nothing in the [California] education code prevents cisgender students from lying about their gender identity to access whatever facilities and sports teams they want, for whatever reason they want.

Identifying as male or female becomes a menu choice for students..." Brown wrote of "the vagueness of this bill" and that "youthful predators" can go into the girls' locker room "with the assurance that if someone objects to his presence, he can assert a female gender identity." Brown calls these students "trans-imposters."

According to Gigl, "Most transgender children struggle with their gender identity. They do not go to bed one night comfortable with being a boy, and wake up the next morning thinking they are a girl. Many transgender individuals know from a very early age (as early as three or four years old) that they are uncomfortable with the gender they were assigned at birth... If you are a cisgender boy, no one has to tell you you're a boy, you just know you are. Even if for some reason people started treating you as a girl, you would still know you were a boy. For a transgender girl, even though everyone may treat her like a boy, inside she knows she is a girl."

Gigl distinguished between "how most transgender children act, as opposed to how some adults fear they will act." The safety concerns by parents deal with children who were born male, but have a female gender identity. Gigl noted that "this fear is based on the perception that they are boys using the girls' room...These transgender girls are girls and should be treated like any other girl...If you force a transgender girl to use the boys' room... there is a real threat she will be bullied or harassed by the boys in the bathroom... To the best of my knowledge, there is not one documented case of assault by a transgender person using the bathroom consistent with the gender they believe they are."

As to the fear of "trans-imposters," Gigl declared, "How many young cisgender boys do you think would have their parents go to the school principal and tell the school administration that their son really believes she is a girl and she wants to start coming to school dressed as a girl every day, and is going to be living full time as a girl, just so they could get the 'thrill' of

going into the girls' room [which has its own stalls that close and lock]? I think the answer is none. Likewise, I don't think any cisgender boy, who doesn't make the boys' soccer team, is going to decide to live full time as a girl just to play on the girls' team."

Important transgender legal decisions

The first ruling that allowed a transgender child to use the bathroom that matched gender identity, not birth sex, was the Colorado case of six-year-old Coy Mathis in June 2013. Born a boy, Coy always identified with being a female and dressed appropriately for her identity. Coy was allowed to use the girls' restroom in kindergarten, but in first grade, the school administrators wanted her to use the boys' room or a bathroom for the adult staff. Coy's parents filed a complaint with the state civil rights division, which ruled that Coy was discriminated against because she was "denied access to her restroom of choice in a way that cisgender students were not."

In Maine, Nicole Maines, a transgender girl, was forced to use a staff restroom from the time she was a fifth-grader. After a five-year legal battle, in January 2014, the Maine Supreme Judicial Court ruled in a 5-to-1 decision that the school district violated the state's Human Rights Act, which bans discrimination based on sexual orientation and gender identity. The decision **reversed** a lower court's decision from 2012, which ruled in favor of the school. The court's opinion stated, "it has been clearly established that a student's psychological well-being and educational success depends upon being permitted to use the communal bathroom consistent with her gender identity."

In a *Harvard Law Review* issue dedicated to the topic of sexual orientation and gender identity, one article that focused on transgender youth stated, "the inclusion of transgender students in traditionally gendered spaces and deference to these students' conceptions to their own gender identities can help

Ballot *continued from page 1*

the Brennan Center for Justice at New York University, 22 states, mostly in the South and Midwest, have passed restrictive voting laws that were slated to go into effect after the *Shelby* ruling.

"The basic argument for and against these voter ID laws falls along [political] party lines at this point," says Stein. "The Republicans say that showing proper ID is no big deal and that voter fraud is rampant so these laws will ensure only qualified people vote. The Democrats say the idea of rampant fraud is nonsense and that voter ID laws unfairly target minorities, the poor and the elderly. In fact, all of these people do historically vote Democrat, so the laws as they are written tilt the scales in favor of Republican voters and against Democrats."

Requiring ID in Wisconsin

Several of the voter ID laws slated to be implemented since the *Shelby* decision have been challenged in court on the grounds that they are unconstitutional, with plaintiffs arguing they unfairly restrict the voting rights of minorities. While some of the laws have been struck down by the courts, others, like voter ID laws passed in Tennessee, Kansas and Arizona, have been allowed to stand by judges who believe the restrictions are not overly burdensome. A third option, known as an injunction, has been granted by some courts to delay enforcement of the laws until the matters can be decided in court.

"Basically, an injunction is a court action that stops something from taking place," says Stein. "For example, let's say a state wants to build a bridge, but the citizens don't want the bridge built. The citizens argue that the state doesn't have title to the property where the bridge would be built, and asks for a temporary injunction until the matter can be resolved in court."

Attorneys in Wisconsin originally won a temporary injunction while fighting against the state's proposed voter ID law. Following a trial in April, a federal judge blocked the law, which would have required voters show government-issued identification, such as a driver's license or passport.

The plaintiff in the case, 84-year-old Ruthelle Frank, lives on a fixed income. An active voter since 1948, she lacked the documentation needed under the proposed law to obtain a state ID card. Her maiden name was spelled wrong on her birth record. Having it corrected would have cost \$200. She would then have had to pay an additional \$20 for a copy of the new birth certificate in order to get a valid state ID.

The judge found that 300,000 registered voters, equal to about nine percent of the state's voters, lacked the ID required under the proposed law.

"To put this number in context, in 2010 the race for governor in Wisconsin was decided by 124,638 votes, and the race for United States Senator was decided by 105,041 votes. Thus, the number of registered voters who lack a qualifying ID is large enough to change the outcome of Wisconsin elections," wrote Judge Lynn Adelman in his decision.



He noted the proposed law "is traceable to the effects of discrimination in areas such as education, employment and housing. It is absolutely clear that the law will prevent more legitimate votes from being cast than fraudulent votes." And added "Blacks and Latinos in Wisconsin are disproportionately likely to live in poverty...The reason Blacks and Latinos are disproportionately

likely to live in poverty, and therefore to lack a qualifying ID, is because they have suffered from, and continue to suffer from, the effects of discrimination."

In September 2014, the U.S. Court of Appeals for the Seventh Circuit **overturned** the Wisconsin district court's decision and **upheld** that state's voter ID law. Writing for the majority of the court, Judge Frank Easterbrook stated, "Requiring would-be voters to spend time to obtain photographic identification does not violate the Constitution."

Voting early

The U.S. Justice Department lent its support to plaintiffs in the Wisconsin case, as well as lawsuits filed in Ohio, North Carolina and Texas, with mixed results.

In September, a federal judge issued an injunction blocking cuts Ohio lawmakers had made in early voting days and same-day voting. The judge cited a 2008 study in one county showing that African-American voters were the most likely to utilize the early voting option. Vigorous early voting campaigns were instituted in Ohio after the elections of 2004 when some people waited in line more than seven hours to cast a ballot. While the Sixth U.S. Court of Appeals upheld the injunction, Ohio's secretary of state appealed to the U.S. Supreme Court. One day before early voting was to begin, the Court sided with Ohio, setting aside the lower court rulings. As a result, early voting in Ohio was cut from 35 days to 28 days. This cut effectively eliminated the week of same-day voting Ohio citizens previously enjoyed when they could register to vote and then cast a ballot the same day.

In North Carolina in August, a federal judge denied an injunction to block the state's voting law pending a trial in July 2015. The law would reduce the number of early voting days, eliminate same-day registration during the early voting period, end pre-registration for high school students and eliminate Citizen Awareness Month. The law's voter ID requirement is not set to go into effect until 2016, well after the court is expected to rule on the case, so the court did not address it as part of the injunction request. In October 2014, the U.S. Court of Appeals for the Fourth Circuit ordered North Carolina to re-instate same-day voter registration, as well as the right to cast a ballot even if they are in the wrong precinct. Several days later, the U.S. Supreme Court barred those provisions, allowing the state's original law to stand.

Long-term effects

A Texas case, involving a voter identification law that had been blocked by the federal government under Section 5 but was pushed through as soon as the *Shelby* ruling was issued, was argued in September 2014. At press time, a ruling has not yet been made on the law, which controversially accepts a gun permit as a valid proof of identity but not a student ID card.

"A lack to judicial action on any of the pending lawsuits will not create problems with elections going forward this year," says Stein. "Any voter laws that have been passed but not addressed through an injunction or court ruling will simply be effective for the coming elections. Voters will have to follow whatever law is in place at that time."

But in the long-term, these voting laws can have a significant impact on elections and the lawmakers selected to represent citizens well beyond the single election in question.

For example, following *Shelby* Texas announced that state-proposed redistricting maps like ones rejected by the federal government in 2012 could move forward. The redistricting maps, notes Stein, employed a technique known as "gerrymandering."

Gerrymandering—where legislators redraw voting district boundaries (known as redistricting) for political gain—is one of the ways minorities have had their voting rights restricted over the years. The process earned its odd name in 1812, when Massachusetts Governor Eldridge Gerry approved a redistricting plan that created a salamander-shaped voting district to benefit his party.

Under the U.S. Constitution, states are required to redraw voting district lines every 10 years, based on the U.S. Census

figures. The intent is to ensure each congressional district has roughly an equal number of constituents, but the Constitution doesn't provide guidelines on how those districts are to be drawn, so state lawmakers can divvy up voters any way they want to, including matching larger numbers of voters who support the political party in power with a small number of those in the opposite party. The result creates partisan districts. For example, the redistricting plan proposed by Texas in 2012, which was battled over in the courts, managed to manipulate voter population in a way that a largely Hispanic and black population, which traditionally voted as Democrats, was divvied up to shift the voting power to Republicans.

"Gerrymandering basically makes a voting block ineffective by stacking and packing certain voters in a few areas so their candidates win those few districts but can't win majorities in the other, more significant, districts," says Stein. "The party in power at the time of the redistricting controls the map. As a result, until there is another redistricting the incumbents will win unless someone from the incumbent's party challenges that person and wins. In effect, gerrymandering generally keeps in office the lawmakers who represent the extremes of both parties. Moderates can't break in because the deck is stacked against them."

The U.S. Supreme Court is set to hear two cases from Alabama this fall, where Democrats charge Republicans used gerrymandering to protect Republican-held legislative seats.

Future of voter ID laws

Proponents of voter ID laws often cite the U.S. Supreme Court's 2007 decision in *Crawford v. Marion County Election Board*, where the Court upheld Indiana's voter ID law. In a 2013 *Wall Street Journal* interview, retired U.S. Supreme Court Justice John Paul Stevens, who wrote the Court's majority opinion in *Crawford*, stated he isn't "a fan of voter ID." While he felt his opinion was correct at the time given the evidence presented, he said, "My opinion should not be taken as authority that voter-ID

laws are always OK. The decision in the case is state-specific and record-specific."

Judge Richard Posner, who wrote the majority opinion in the case that the U.S. Supreme Court upheld, went a step further in his book, *Reflections on Judging*. Judge Posner wrote, "I plead guilty to having written the majority opinion upholding Indiana's requirement that prospective voters prove their identity with a photo ID—a type of law now widely regarded as a means of voter suppression rather than of fraud protection." Judge Posner currently sits on the U.S. Court of Appeals for the Seventh Circuit and voted against Wisconsin's voter ID law. ■



Racial Slur *continued from page 3*

Game changer?

Neu declined to speculate about what might happen in the case; but noted that the outcome may impact a number of other teams with Native American names as well, including the Kansas City Chiefs, whose NFL team name has also come under scrutiny.

Amanda Blackhorse, the lead plaintiff in the most recent case against the Redskins, doesn't think it is appropriate for any sports team to have a Native American mascot. "There is a culture in sports where people go to games and have fun, but also to make fun of or yell at mascots, because they're not human," Blackhorse told *The Daily Beast*. "If you have Native Americans in that position, you're opening up our culture to ridicule...Whether your intent is to harm people with a name or not, you have no control over what happens during those games."

Legally, it will be up to the courts to decide if the trademarks in question are permissible under the law. In the meantime, the Washington team is free to use the team name and still retain trademark protection until the appeals process is finished, which could take years. Even if Washington ultimately loses its battle, the decision wouldn't force them to change the name. The team would, however, lose the ability to protect themselves financially from the unauthorized use of their name and logo, potentially costing the team and the NFL millions of dollars. ■



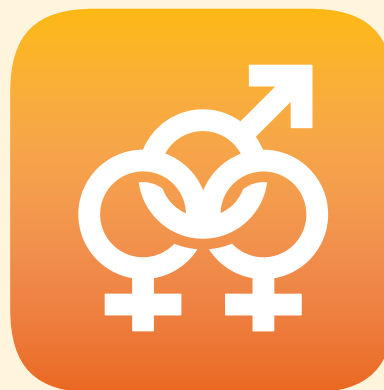
On the Inside *continued from page 5*

schools further their academic missions by improving scholastic outcomes and sending messages to the wider student body about diversity and community."

Specifically citing California's AB 1266, the *Harvard Law Review* article declared, "by making restroom access for transgender students explicit in state law, AB 1266 avoids the problems arising from the... *Mathis and Maines* cases...Rather than wading into the morass of differing legal approaches to sex and gender, AB 1266...speaks with clarity; only gender is relevant to the determination of transgender students' access to bathrooms." The article suggested that schools should respond to these situations by educating cisgender students and not excluding them. The inclusion of transgender athletes to play on sports teams that match their gender identities sends a positive message to all students, emphasizing "participation... teamwork...and community."

The article concluded, "A school system premised on transforming children into citizens betrays its core principles of diversity, community, and academic achievement if it does not seek to maximize transgender inclusion. The benefits of this inclusion accrue to cisgender and transgender students alike..."

Unfortunately, people tend to fear what they don't understand. "If you understand what it means to be transgender, it is not an assault on anyone's rights," Gigl said. "It is simply a question of recognizing that legally there is no difference between cisgender boys and girls and transgender boys and girls—there are just boys and girls." ■



Glossary

benign — non-threatening. **derogatory** — insulting. **disparage** — ridicule. **genitalia** — the organs of the male or female reproductive system. **overtaken** — to void a prior legal precedent. **referendum** — popular vote on a measure submitted by a legislative body. **repeal** — revoke. A law that is repealed has been withdrawn or canceled and is no longer a law. **reversed** — to void or change a decision by a lower court. **statute** — a particular law established by a legislative branch of government. **upheld** — supported; kept the same.