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The Washington Football Team Can Legally Keep Its Racist Name. But It Shouldn't

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Kevin Gover | [Smithsonian.com](https://www.smithsonian.com) | July 12, 2017

The United States has long enjoyed global leadership through its broad freedoms—freedom of assembly, freedom of religion and freedom of speech.

Those rights, among others, are central to the exchange of beliefs and ideas underpinning America's great experiment in democracy over the past 241 years. These rights have been ardently, and rightly, defended since the country's founding.

But freedoms come with responsibilities, and, on occasion, some judicious self-restraint.

As director of the Smithsonian's National Museum of the American Indian and a citizen of the Pawnee Nation, I bring this up because of a [recent](#) U.S. Supreme Court ruling that has exposed the ugly side of the liberty we are fortunate to have.

The decision concerns the National Football League franchise for Washington, D.C.: the Washington Redskins. The team is a business and sporting institution that, through decades of legal [battles](#) over the use of their name and logos, has [claimed and litigated](#) for the freedom to continue using that racially disparaging term. But now, thanks to this decision, the Court has implicitly [confirmed](#) that freedom and more.

According to the Court, trademarks, as regulated by the U.S. Patent and Trademark Office (USPTO), [are protected](#) free speech, even when they disparage a race of people. The decision came in a matter wholly unconnected to the football franchise, one involving an Oregon-based, Asian-American band that calls itself [The Slants](#). The band had been denied a federally protected trademark for their chosen moniker because it was considered demeaning to Asian-Americans under the [1946 Lanham Act](#), which [forbids](#) the registration of trademarks that “may disparage” other peoples or their cultures

The band's lawyers [argued](#) that, without a trademark on their name and the band's logo, their money-making abilities in sales of merchandise would be reduced. They further argued that the band's intended use of the name was to reclaim the racial slur through the open-minded, high-energy fun the band promoted with their music. The high court decided in favor of The Slants; they could receive their trademark, but that left the football team able to keep theirs too.

The team's current owner, Daniel Snyder, [was](#) “thrilled.” The Native American groups fighting the NFL franchise withdrew their case days later; the decades-long legal struggle was over.

But for many in Native American communities around this country, the word “redskin” has long been, and remains, derogatory.

Here are a few observations about the team's name and its mascot and logos:

- In most every English-language dictionary, the word “redskin” [is labeled](#) as “pejorative” or “offensive;”
- No other racial slur could be used by a professional sports team for its mascot and name and logo without a devastating public outcry.
- Dozens of sporting mascots and teams using the name “Redskins” or Indian mascots at high school and college levels have already re-named their teams. They have taken a leadership role that the NFL franchise will not.
- And, finally, just because any American has the right to use the word doesn't mean they should. As I said at the outset, freedoms come attached to corresponding civil responsibilities.

A look into the history of the Washington Redskins should lead one to wonder if their backstory is something Washingtonians, football fans and Americans should be proud of.

In 1932, a Washington, D.C.-based commercial-laundry magnate named [George Preston Marshall](#) bought the Boston Braves football team. Wanting to rebrand it, he changed their name to the more dramatic “Redskins.” By 1937, he had moved the team to D.C. An avowed segregationist, Marshall once [said](#) he would sign blacks to the team only if the Harlem Globetrotters would sign whites.

Of course, his dramatic mix of pro-Confederate beliefs and sub-terra racism [had been](#) on display for some time by then. He [proposed](#) to his wife, for example, after hiring a chorus of black performers to sing “Carry Me Back to Ol' Virginny” as he asked for her betrothal, a song which includes such lines as “Massa and Missus have long since gone before me. . . .”

But racism inside the team runs much deeper than that. Marshall was a supporter of, and perhaps the instigator of a ban on African-American athletes in the NFL. Despite the ban being lifted in the late 1940s, Marshall's team held firm.

The Secretary of the Interior, Stewart Udall, famously [warned](#) the team that its 30-year lease on the year-old D.C. Stadium (eventually rechristened Robert F. Kennedy Stadium) would be revoked unless Marshall put black players on his team. The stadium had been built with federal money, and was on land owned by the District, providing Udall with the leverage to make that demand.

Marshall complied, and in 1962, the Redskins drafted All-American running back Ernie Davis and fullback Ron Hatcher. Allegedly, Davis wouldn't play for Marshall, calling him an “SOB;” he was traded to Cleveland, leaving Hatcher to be [the first](#) African-American player to sign with the team. But the dam had finally been breached, and more racial integration would follow.

Still, to cement his status as a racist, when Marshall died in 1969, he [directed](#) much of his estate to set up a foundation, bearing his name. One of the stipulations was that no money was to be spent toward “any purpose, which supports or employs the principle of racial integration in any form.”

After Marshall had gone, a series of other, more open-minded owners controlled the team, and the overt racism toward African-Americans faded.

In 1972, a delegation of Native Americans [met](#) with the team's president, Edward Bennett Williams, to lobby not only for a name change, but also to register objections to some of the team's other racist Native American representations. Among other things, they asked that lyrics in the team's fight be changed and that the cheerleading squad stop wearing black braided wigs.

Williams [changed](#) the team lyrics—"They had some good points against the lyrics of our fight song," he said. "The swamp 'ems, scalp 'ems and heap 'ems is a mocking of dialect. We won't use those lyrics anymore." But while the cheerleader headgear was abandoned, the team's name and logos survived.

Twenty years later, seven native Americans—led by Suzan Shown Harjo and Vine Deloria, Jr., both founding trustees of the National Museum of the American Indian—petitioned the USPTO to revoke six of the team's most-egregiously racist trademark registrations. Seven years after that, in 1999, the federal agency ruled in Harjo's favor. This decision was later reversed on procedural grounds.

That was the same year the team came under new ownership, with Snyder taking over. There would be more court cases, striking away the trademark to the team name, but the owner remained steadfast.

He went so far, in 2013, as to [tell](#) *USA Today* that he would keep the name "Redskins" at every cost, chaining himself to Marshall's racist anchor with an oath to uphold the team's name, never changing it.

"It's that simple," Snyder said of the notion to change the Redskins' name. "NEVER—and you can put that in all caps."

The sports team tried mightily to convince federal agencies and judges that the word "Redskins" is not a disparaging racial slur. The franchise failed time and again in this endeavor. Even if the Indian challengers had succeeded in cancelling the trademark, the team could have, and probably would have, continued to be the "Redskins."

As an American and an American Indian, I believe in the United States and its freedoms and rights.

In the case of the Washington football team and the newly Supreme-Court-approved commercial protection of its racist name, please be advised, Mr. Snyder: your backdoor-victory doesn't mean the battle is over. The law says the word "redskin" remains, without question, a derogatory and racist term. The law also says you have the right to use it. But you should not. And many people, Indian and otherwise, will continue to fight until your team name sits in the rubbish heap where it belongs.



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