

# Civil Rights and the Impact of Native American Names, Symbols, and Imagery in School Mascots



A Briefing Report of the  
Nebraska Advisory Committee to the  
U.S. Commission on Civil Rights

March 2021

## **Advisory Committees to the U.S. Commission on Civil Rights**

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. They are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

## **Acknowledgments**

The Nebraska Advisory Committee (Committee) thanks each of the speakers who presented to the Committee during their public meetings on the critically important and timely topic of the impact of Native American names, symbols, and imagery in school mascots. The Committee is also grateful to members of the public who spoke during the selected periods of public comment, and those who shared their testimony in writing.

**Nebraska Advisory Committee to the  
U.S. Commission on Civil Rights**

The Nebraska Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding the impact of the continued use of Native American names, symbols, and images as school mascots in Nebraska. The Committee submits this report as part of its responsibility to study and report on civil-rights issues in the state. The contents of this report are primarily based on testimony the Committee heard during public meetings held via videoconference on December 14, 2020, December 16, 2020, and January 7, 2021. The Committee also includes related testimony submitted in writing during the relevant period of public comment.

This report begins with a brief background of the issues to be considered by the Committee. It then presents an overview of the testimony received. Finally, it identifies primary findings as they emerged from this testimony, as well as recommendations for addressing areas of civil-rights concerns. This report is intended to focus on civil-rights concerns regarding the impact of Native American names, symbols, and images as school mascots in the state. Specifically, the Committee sought to examine the impact of such names, symbols, and imagery on school climate and the right Native students to have equal access to a culturally appropriate and inclusive education. While additional important topics may have surfaced throughout the Committee’s inquiry, those matters that are outside the scope of this specific civil-rights mandate are left for another discussion.

**Nebraska Advisory Committee to the  
U.S. Commission on Civil Rights**

Jonathan Benjamin-Alvarado, Chair, *Nebraska Advisory Committee*, Omaha

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## **Briefing Report**

**To:** The U.S. Commission on Civil Rights

**From:** The Nebraska Advisory Committee to the U.S. Commission on Civil Rights

**Date:** March 2021

**Subject:** Civil Rights and the Impact of Native American Names, Symbols, and Imagery in School Mascots

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On October 13, 2020, the Nebraska Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) adopted a proposal to undertake a study of the impact of Native American names, symbols, and imagery in school mascots. The focus of the Committee's inquiry was to examine the impact of the continued use of Native American names, symbols, and imagery in school mascots on Native students in particular and on Native communities more broadly. From a civil rights perspective, the Committee sought to consider the extent to which this use may perpetuate or exacerbate harassment, or a racially hostile learning environment for Native students in Nebraska.<sup>1</sup>

As part of this inquiry the Committee heard testimony via videoconferences held on December 14, 2020, December 16, 2020, and January 7, 2021.<sup>2</sup> The following report results from a review of testimony provided at these meetings, combined with written testimony submitted during this timeframe. It begins with a brief background of the issues to be considered by the Committee. It then identifies primary findings as they emerged from this testimony. Finally, it makes recommendations for addressing related civil rights concerns. This report focuses on the civil rights impact of the continued use of Native American themed mascots in Nebraska schools. While other important topics may have surfaced throughout the Committee's inquiry, matters that are outside the scope of this specific civil rights mandate are left for another discussion. This report and the recommendations included within it were adopted by a majority of the Committee on March 10, 2021.<sup>3</sup>

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<sup>1</sup> The Committee recognizes and encourages the practice of naming public schools and other public institutions after renowned and respected historical leaders, including Native American leaders. The Committee recognizes this naming practice as honoring important historical figures and identifies it as wholly distinct from establishing Native-themed mascots in schools.

<sup>2</sup> Meeting records and transcripts are available in Appendix.

Briefing before the Nebraska Advisory Committee to the U.S. Commission on Civil Rights, December 14, 2020 (web-based), Transcript (hereinafter cited as "Transcript I").

Briefing before the Nebraska Advisory Committee to the U.S. Commission on Civil Rights, December 16, 2020 (web-based), Transcript (hereinafter cited as "Transcript II").

Briefing before the Nebraska Advisory Committee to the U.S. Commission on Civil Rights, January 7, 2021 (web-based), Transcript (hereinafter cited as "Transcript III").

<sup>3</sup> See Appendix F for Committee Member Statements.

## **Background**

In 2001 the U.S. Commission on Civil Rights issued a statement calling for the end of the use of Native American images and team names by non-Native schools. The Commission wrote that these references may violate anti-discrimination laws, and “...are particularly inappropriate and insensitive in light of the long history of forced assimilation that American Indian people have endured in this country.”<sup>4</sup> In 2019, this Committee issued a statement supporting the Commission’s stance and expressing continued concern.<sup>5</sup>

A 2008 study published in the Psychology Press examines the consequences of the continued use of Native mascots, and concludes that such stereotypical images and names are harmful and constraining to the self-esteem, community worth, and achievement goals of American Indian students.<sup>6</sup> In May of 2019, the State of Maine became the first to ban all public schools from using Native American mascots.<sup>7</sup> At the same time, the Nebraska Senate State-Tribal Relations Committee introduced Nebraska Legislative Resolution 242, designating the Education Committee of the Legislature to conduct an interim study to examine the replacement of Native American mascots in Nebraska at nontribal schools.<sup>8</sup> In July of 2020, the Ponca Tribe of Nebraska issued a statement encouraging the retirement of Native mascots in non-Native schools, stating “using Native Americans as sports mascots and our deeply meaningful symbols, including headdresses, is inappropriate. Advancing troubling stereotype in popular culture and society via sports mascots diminishes our personhood.”<sup>9</sup>

Despite the growing chorus of concerns from Native and non-Native communities alike, many public schools in Nebraska continue to use Native American themed mascots.<sup>10</sup> In this context,

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<sup>4</sup> Statement of the U.S. Commission on Civil Rights on the Use of Native American Images and Nicknames as Sports Symbols, 2001, at: <https://www.usccr.gov/press/archives/2001/041601st.htm#:~:text=The%20U.S.%20Commission%20on%20Civil,na mes%20by%20non%2DNative%20schools.&text=These%20references%2C%20whether%20mascots%20and,are%20offended%20by%20such%20stereotyping>.

<sup>5</sup> Statement of the Nebraska Advisory Committee to the U.S. Commission on Civil Rights Regarding the Use of Native American Indian Mascots in Non-Native Public Schools, 2019, at: <https://www.usccr.gov/pubs/2019/07-10-Statement-of-the-NSAC-USCCR.pdf>.

<sup>6</sup> Fryberg, S. A., H. R. Markus, D. Oysterman, and J. M. Stone. 2008. “Of Warrior Chiefs and Indian Princesses: The Psychological Consequences of American Indian Mascots.” *Basic and Applied Social Psychology* 30 (3): 208–218, at: [http://www.indianmascots.com/fryberg--web-psychological\\_.pdf](http://www.indianmascots.com/fryberg--web-psychological_.pdf).

<sup>7</sup> Hauser, Christine, *Maine Just Banned Native American Mascots. It’s a Movement That’s Inching Forward*. *New York Times*, May 22, 2019, at: <https://www.nytimes.com/2019/05/22/us/native-american-sports-logos.html>; 20-A M.R.S.A. § 12 (Westlaw through 2019 2d Reg. Sess. of 129th Leg.).

<sup>8</sup> 2019 NE L.R. 242 (NS), 1<sup>st</sup> Sess. of 106<sup>th</sup> Cong., at: <https://nebraskalegislature.gov/FloorDocs/106/PDF/Intro/LR242.pdf>.

<sup>9</sup> 1011 Now, Ponca Tribe of Nebraska responds to use of Native American Mascots, July 13, 2020, at: <https://www.1011now.com/2020/07/13/ponca-tribe-of-nebraska-responds-to-use-of-native-american-mascots/>

<sup>10</sup> Schulte, Grant, *Nebraska schools could see new debate over Indian mascots*, *Associated Press*, July 14, 2019, at: <https://nebraska.tv/news/local/nebraska-schools-could-see-new-debate-over-indian-mascots>

the Committee submits this report to the Commission regarding the civil rights impact of the continued use of these mascots in Nebraska schools.

## **Findings**

In keeping with their duty to inform the Commission of (1) matters related to discrimination or a denial of equal protection of the laws; and (2) matters of mutual concern in the preparation of reports of the Commission to the President and the Congress,<sup>11</sup> the Nebraska Advisory Committee submits the following findings to the Commission regarding the continued use of Native-themed mascots in Nebraska schools. This report seeks to highlight the most salient civil-rights themes as they emerged from the Committee's inquiry. The Committee offers a general outline of themes, along with appropriate additional resources, as topics of reference for the Commission's consideration. The complete meetings transcripts are included in Appendix A for further reference.

The following findings result directly from the testimony and other information received.

**Finding I: Decades of social science research indicate that Native American themed mascots are psychologically, socially, and emotionally harmful to Native students. Yet, approximately 2,000 schools across the United States maintain Native-themed mascots today.**

In the Committee's hearing, Dr. Stephanie Fryberg, Professor of Psychology from the University of Michigan and one of the nation's leading researchers on the topic, testified that exposure to Native mascots increases stress and depression among Native students, and increases stereotyping and discrimination against them.<sup>12</sup> In one study, Fryberg found that images of mascots lowered the self-esteem and community worth of Native students even more than a set of negative stereotypes.<sup>13</sup> Fryberg's work also shows that the more connected Native people are to their culture and traditions, the more opposed they are to Native mascots.<sup>14</sup> Finally, Fryberg's work shows that the same stereotypes and images that lower the self-esteem of Native children serve to raise the self-esteem of non-Native children.<sup>15</sup>

This research has been accompanied by decades of advocacy work, mostly led by Native organizations, to raise awareness of these concerns and urge teams to retire their Native-themed mascots. A reflection of the resulting increase in public awareness, Ponca Chairman Larry

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<sup>11</sup> 45 C.F.R. § 703.2 (2018).

<sup>12</sup> Fryberg Testimony, Transcript III, p. 11 lines 34-41; *See also*: Wright Testimony, Transcript III, p. 3 lines 18-27; p 4 line 41 – p. 5 line 4; p. 5 lines 12-25; p. 5 line 40 – p. 6 line 9; Brumfield Testimony, Transcript II, p. 25 lines 22-29.

<sup>13</sup> Fryberg Testimony, Transcript III, p. 11 lines 21-33; *See also*: Fryberg, S. A., H. R. Markus, D. Oysterman, and J. M. Stone. 2008. "Of Warrior Chiefs and Indian Princesses: The Psychological Consequences of American Indian Mascots." *Basic and Applied Social Psychology* 30(3): 208-218.

<sup>14</sup> Fryberg Testimony, Transcript III, p. 12 lines 16-41.

<sup>15</sup> Fryberg Testimony, Transcript III, p. 11 line 34 – p. 12 line 15; *See also*: Harjo Testimony, Transcript I, p. 21 lines 28-38; Brumfield Testimony, Transcript I, p. 20 lines 27-36; Holstein Testimony, Transcript I, p. 21 lines 8-15.

Wright noted that since 1963 no professional teams have established *new* mascots that use racial stereotypes in their names and imagery.<sup>16</sup> Yet, many Native-themed mascots remain. In 1968 the National Congress of American Indians (NCAI) launched a campaign to address ongoing stereotypes of Native people in popular culture, media, and sports.<sup>17</sup> Despite much progress,<sup>18</sup> the NCAI reports that as of August 2020, across the country 1,940 schools in 1,042 districts still have Native mascots.<sup>19</sup>

In Nebraska at the high school level, Jay Bellar, Executive Director of the Nebraska School Activities Association,<sup>20</sup> reported that the Association currently has 304 member schools, across 6 districts.<sup>21</sup> Among the 304 member schools there are 22 member schools with Native mascots: 11 warriors, 7 Indians, one Chief, one Brave, and 2 Chieftains.<sup>22</sup> Mr. Bellar noted that four of these schools are on Indian reservations or primarily serving Indian students.<sup>23</sup>

**Finding II: The Committee heard considerable, detailed, and repeated testimony demonstrating that regardless of intent, Native mascots do not in fact honor the communities they represent.<sup>24</sup>**

The Committee acknowledges testimony indicating that many schools and communities may have initially adopted Native-themed mascots as a way to honor the Native history in their communities.<sup>25</sup> Regardless of such intentions, the Committee heard considerable testimony that

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<sup>16</sup> Wright Testimony, Transcript III, p. 4 lines 8-9; Maio Written Testimony, Appendix D; *See also*: “Ending the Legacy of Racism in Sports & the Era of Harmful “Indian” Sports Mascots,” *National Congress of American Indians*, October 2013, p. 2, at:

[https://www.ncai.org/attachments/PolicyPaper\\_mijApMoUWDbjqFtjAYzQWlqldrwZvsYfakBwTHpMATcOroYolpN\\_NCAI\\_Harmful\\_Mascots\\_Report\\_Ending\\_the\\_Legacy\\_of\\_Racism\\_10\\_2013.pdf](https://www.ncai.org/attachments/PolicyPaper_mijApMoUWDbjqFtjAYzQWlqldrwZvsYfakBwTHpMATcOroYolpN_NCAI_Harmful_Mascots_Report_Ending_the_Legacy_of_Racism_10_2013.pdf).

<sup>17</sup> Wright Testimony, Transcript III, p. 3 lines 9-17.

<sup>18</sup> Wright Testimony, Transcript III, p. 4 lines 8-21 & p. 22 line 32 – p. 23 line 18; Kitcheyan Testimony, Transcript I, p. 3 line 36 – p. 4 line 6; Harjo Testimony, Transcript I, p. 16 lines 1-10; *See also*: <https://www.ncai.org/proudtobe>; and <https://www.changethemascot.org/history-of-progress/>.

<sup>19</sup> Wright Testimony, Transcript III, p. 4 lines 32-40; p. 5 lines 30-39; *See also*: National Congress of American Indians (2020). National School Mascot Tracking Database: The Current Numbers. Washington DC, August 20, 2020.

<sup>20</sup> The Nebraska School Activities Association is a voluntary, state-wide organization of Nebraska High schools, both public and non-public, that seeks to organize and regulate an “interscholastic activity program which is equitable and will protect and promote the health and physical welfare of all participants.” *See*:

<https://nsaahome.org/about-us>; *See also*: Bellar Testimony, Transcript II, p. 11 lines 33-37. & p. 12 lines 1-4.

<sup>21</sup> Bellar Testimony, Transcript II, p. 11 lines 10-32.

<sup>22</sup> Bellar Testimony, Transcript II, p. 12 line 40 – p. 13 line 2. \*Note these numbers reflect high schools that are part of the NSAA. They do not include non-member schools or elementary schools in the state.

<sup>23</sup> Bellar Testimony, Transcript II, p. 15 lines 21-22.

<sup>24</sup> Wright Testimony, Transcript III, p. 6 lines 10-13; *See also*: Harjo Testimony, Transcript I, p. 10 lines 36-40; Hartman Bradley Testimony, Transcript I, p. 19 lines 3-8; Fryberg Testimony, Transcript III, p. 12 lines 12-15.

<sup>25</sup> Bellar Testimony, Transcript II, p. 12 lines 32-40 & p. 13 line 37 – p. 14 line 3; Rippe Testimony, Transcript II, p. 23 lines 1-41; Reiman Testimony, Transcript II, p. 25 lines 1-11; Lukasiewicz Testimony, Transcript I, p. 23 lines 9-35; *See also* Lukasiewicz written testimony, Appendix D. *For response and counter-perspective from Bellevue residents, see Hartman Bradley Testimony, Transcript I, p. 19 lines 17-25, Ventura Written Testimony, Appendix D, and Espinoza Written Testimony, Appendix D.*

in practice, images and icons used in school mascots and logos are often sacred, deeply meaningful religious or cultural symbols that are misrepresented by the teams that use them.<sup>26</sup> Some notable example's from the Committee's hearings include:

- Nancy Kile, a member of the Oglala Sioux Tribe of Nebraska, described her experience regularly watching Sioux County students, parents, and the public walk on Lakota facial images that look like her family, painted on the sidewalks throughout school property. The school board unanimously denied her request to have the images removed.<sup>27</sup> In reflecting on her own parent's insistence that she attend school elsewhere when she was a child, Ms. Kile concluded, "it seems to me that Sioux County school board wants an appropriated symbol more than they want a live Lakota student."<sup>28</sup>
- Charlene Teters, member of the Spokane Nation in Washington State, described her experience as a graduate student at the University of Illinois, as an environment that was "anything but honoring and respectful of Native people."<sup>29</sup> She recalled Chief Illiniwek images on welcome mats, wallpaper, whiskey bottles, and toilet paper.<sup>30</sup> She witnessed "sororities and fraternities playing with things central to our spiritual way of life."<sup>31</sup> She described a local bar called the "drunken Indian" where fraternity brothers would drink and act out their stereotypes of Native people.<sup>32</sup> When she and two other Native students critiqued this environment, they were met with fierce resistance, including public displays at athletic events such as banners threatening, "save the Chief, shoot the Indians," or "save the Chief, hang the Indians."<sup>33</sup> One of her colleagues left within a few weeks of being on campus. Ms. Teters recalled they could not go out to eat, buy groceries, get gas, go to the mall, or go to the movies without being told how unwelcome they had become.<sup>34</sup> Ms. Teters testified that she later learned her own children were close to suicide in this hostile environment.<sup>35</sup>
- Alexandria Flanders, President of the Intertribal Student Council at University of Nebraska, Omaha, and member of the Winnebago tribe of Nebraska, recounted her experience as a high school student walking into the gym of a neighboring school and finding an "Indian head" as the centerpiece on the gym floor.<sup>36</sup> She also recalled offensive and stereotypical remarks from commentators at school sporting events, and a

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<sup>26</sup> Baxter Testimony, Transcript I, p. 7 line 39 – p. 8 line 2; Harjo Testimony, Transcript I, p. 9 lines 28-33; King Testimony, Transcript III, p. 7 lines 3-6; Teters Testimony, Transcript III, p. 17 line 33 – p. 18 line 12; ACLU Written Testimony, Appendix D; Espinoza Written Testimony, Appendix D.

<sup>27</sup> Kile Testimony, Transcript III, p. 25 line 40 – p. 26 line 25; *See also*: Kile Written Testimony, Appendix D.

<sup>28</sup> Kile Testimony, Transcript III, p. 25 line 40 – p. 26 line 25.

<sup>29</sup> Teters Testimony, Transcript III, p. 16 lines 25-33.

<sup>30</sup> Teters Testimony, Transcript III, p. 16 lines 40-42.

<sup>31</sup> Teters Testimony, Transcript III, p. 16 lines 34-35.

<sup>32</sup> Teters Testimony, Transcript III, p. 16 lines 35-40.

<sup>33</sup> Teters Testimony, Transcript III, p. 17 lines 3-12.

<sup>34</sup> Teters Testimony, Transcript III, p. 17 lines 13-24.

<sup>35</sup> Teters Testimony, Transcript III, p. 17 lines 33-40.

<sup>36</sup> Flanders Testimony, Transcript I, p. 12 lines 36-42.



homecoming parade which included banners and floats declaring “scalp those Indians” and “kneel before your conqueror.”<sup>37</sup>

- Senator Anna Wishart noted that many Native mascots are images of honored military leaders; she recalled a conversation with other senators and Professor Edouardo Zendejas, in which the professor pointed out how inappropriate it would be if the faces of great U.S. military leaders were painted on gym floors and students were permitted to walk on their images and wear their uniforms at sporting events.<sup>38</sup>
- Professor C. Richard King of Columbia College of Chicago contrasted images of the Chicago Blackhawks logo with an actual image of Chief Blackhawk to demonstrate how often logos distort and misrepresent Native people.<sup>39</sup>

For these reasons, most speakers denounced the use of Native-themed mascots regardless of intent or other circumstance – including in schools on reservations, schools where a majority of students are Native American, or in schools that have “permission” from the referenced tribes to use the images.<sup>40</sup>

Even when schools make an effort to be culturally responsive and respectful, Native mascots open the school and/or sports team to culturally inappropriate, abusive, and hateful actions from visitors and opposing teams.<sup>41</sup> Panelist Suzan Shown Harjo, President of the Morning Star Institute, testified that “Neutral” mascots such as the “warriors” can be damaging when their logo is accompanied by feathers or other Native imagery. Native people still become targeted, beaten up after games, and face other harassment. Ms. Harjo concluded it is better to remove the associations completely; “it’s not a good idea to use human beings as mascots anytime, anywhere.”<sup>42</sup> Dr. Fryberg expressed that purporting to honor Native people with mascots is continuing the sense that “we can tell Native people better than they can tell us; that we know what’s good for you.” Chairman Larry Wright of the Ponca Tribe of Nebraska pointed out that no other race is “honored” by being turned into mascots; he described this disparity as an example of the dehumanization of Native Americans.<sup>43</sup>

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<sup>37</sup> Flanders Testimony, Transcript I, p. 13 line 34 – p. 14 line 16; *See also*: Kitcheyan Testimony, Transcript I, p. 3 lines 19-35.

<sup>38</sup> Wishart Testimony, Transcript II, p. 7 line 31 – p. 8 line 3.

<sup>39</sup> King Testimony, Transcript III, p. 7 lines 13-25; *see also* King presentation, slide 11.

<sup>40</sup> Zendejas Testimony, Transcript II, p. 19 line 31 – p. 20 line 11; Flanders Testimony, Transcript I, p. 13 line 34 – p. 14 line 2; Harjo Testimony, Transcript I, p. 10 lines 37-42; p. 17 lines 11-21.

<sup>41</sup> Kitcheyan Testimony, Transcript I, p. 3 lines 19-25; Hartman Bradley Testimony, Transcript I, p. 18 line 28 – p. 19 line 2; Zendejas Testimony, Transcript II, p. 24 lines 3-8; Flanders Testimony, Transcript I, p. 12 lines 24-30 & p. 14 lines 3-16.

<sup>42</sup> Harjo Testimony, Transcript I, p. 17 lines 5-21; *See also*: Kitcheyan Testimony, Transcript I, p. 5 lines 37-40; ACLU Written Testimony, Appendix D.

<sup>43</sup> Wright Testimony, Transcript III, p. 6 lines 10-13.

**Finding III: Native-themed mascots reflect, support, and perpetuate underlying stereotypes and beliefs that have a real impact on public policy, public attitudes, and behaviors.**

Several panelists presented testimony that stereotypes and derogatory language connected to culturally-offensive mascots lead to dehumanization, and at times may lead to actual physical violence against Native Americans.<sup>44</sup> Chairman Larry Wright of the Ponca Tribe of Nebraska cited U.S. Department of Justice data indicating Native people are more likely than other races to be the target of violence at the hands of someone from a different race.<sup>45</sup> Chairman Wright expressed particular concern regarding the impact of this violence on Native youth, who make up nearly half of the Native population.<sup>46</sup>

Professor C. Richard King of Columbia College of Chicago, a leading expert on the intersection of race relations and politics,<sup>47</sup> testified that mascots often evoke, erase, and romanticize violence, encouraging mainstream society to forget the genocide that was perpetuated against indigenous people,<sup>48</sup> and permitting its reenactment.<sup>49</sup> Dr. King presented examples of such reenactment including a large banner at a sporting event that reads, “Hey Indians, get ready to leave in a trail of tears, round two,”<sup>50</sup> and images of a Philadelphia Flyers fan who repeatedly shows up at various events holding a bloodied Indian head on a knife.<sup>51</sup>

Professor Edouardo Zendejas of the University of Nebraska Omaha further spoke of the direct impact such attitudes and beliefs can have on public policy.<sup>52</sup> Stereotyping and dehumanization of Native people is what has allowed for many historical wrongs, systemic racism, and legal discrimination, beginning with the Doctrine of Discovery<sup>53</sup> and continuing throughout much of U.S. History.<sup>54</sup> President Suzan Harjo of the Morning Star Institute similarly testified that

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<sup>44</sup> Harjo Testimony, Transcript I, p. 10 lines 29-33 & p. 17 lines 5-21; Flanders Testimony, Transcript I, p. 14, lines 17-24; Teters Testimony, Transcript III, p. 18 lines 10-12.; *See also*: Kitcheyan Testimony, Transcript I, p. 5 lines 37-40.

<sup>45</sup> Wright Testimony, Transcript III, p. 3 lines 31-34; *See also*: Brumfield Testimony, Transcript I, p. 20 lines 8-26; *See also*: *U.S. Dept. of Justice*, Bureau of Justice Statistics, *American Indians and Crime: A BJS Statistical Profile, 1992-2002*, at: [https://www.justice.gov/sites/default/files/otj/docs/american\\_indians\\_and\\_crime.pdf](https://www.justice.gov/sites/default/files/otj/docs/american_indians_and_crime.pdf).

<sup>46</sup> Wright Testimony, Transcript III, p. 3 lines 24-30.

<sup>47</sup> Profile at: <https://www.colum.edu/academics/faculty/detail/c-richard-king.html>

<sup>48</sup> King Testimony, Transcript III, p. 8 line 31 – p. 9 line 4; *See also*: Fryberg Testimony, Transcript III, p. 10 lines 19-32 & p. 21 lines 6-27.

<sup>49</sup> King Testimony, Transcript III, p. 8 lines 4- 16.

<sup>50</sup> King Testimony, Transcript III, p. 8 line 31 – p. 9 line 4; *See also*: King presentation, slide 18.

<sup>51</sup> King Testimony, Transcript III, p. 8 lines 24-29; *See also*: King presentation, slide 23.

<sup>52</sup> Zendejas Testimony, Transcript II, p. 4 lines 1-7; 16-24; p. 6 lines 3-7.

<sup>53</sup> Edwards Testimony, Transcript I, p. 22 lines 21-33; Zendejas Testimony, Transcript II, p. 4 line 37 – p. 5 line 16.

<sup>54</sup> *See* noted court cases for example, *Talton v. Mayes (1896)* and *Elk v. Wilkins (1884)*, Zendejas Testimony, Transcript II, p. 3 lines 15-26, p. 5 lines 27-40; *Johnson v. M’Intosh*, Zendejas Testimony, Transcript II, p. 4 line 37 – p. 5 line 16; *Standing Bear v. Crook*, Wright Testimony, Transcript III, p. 6 lines 14-17; Zendejas Testimony, Transcript II, p. 5 lines 17-26.

permitting this kind of behavior publicly is at the root of every other area of discrimination, including voting rights, treaty rights, and religious freedom.<sup>55</sup> Some examples include:

- The Indian Removal Act (1830), which led not just to the Trail of Tears of the Cherokee people; many other tribes were displaced as well including tribes in Nebraska.<sup>56</sup>
- Native people were denied U.S. citizenship until 1924, with the passage of the American Indian Citizenship Act.<sup>57</sup>
- The Dawes Act of 1887, under which the U.S. Government tried to “civilize” Indians and make them farmers. Most of the tribal land was lost because land that was not allotted for farming was opened to non-Indian settlement.<sup>58</sup>
- Boarding schools that resulted in the genocide of Native people.<sup>59</sup>
- From the 1930s Native people were subjected to “civilization regulations” that banned all religious ceremonies and many other cultural traditions such as long hair, painting, etc.<sup>60</sup>
- Trust Doctrine, removing Native land and putting it in control of the U.S. Government.<sup>61</sup>

#### **Finding IV: Educating students and the public about Native history and culture can help to break down damaging stereotypes.**

Panelists spoke of an urgent need to improve education about Native American history and contemporary culture,<sup>62</sup> including for the community at large, and not just students.<sup>63</sup> Professor Zendejas teaches an introductory course on Native American Studies at the University of Nebraska Omaha. He spoke of the profound lack of knowledge regarding Native American history and contemporary culture that many of his students arrive with, even at the University level.<sup>64</sup> Chairwoman Tori Kitcheyan of the Winnebago Tribe of Nebraska testified that this lack of knowledge and education creates a void that allows for stereotypes and derogatory language to continue.<sup>65</sup> Chairman Everett Baxter of the Omaha Tribe of Nebraska pointed out that names and

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<sup>55</sup> Harjo Testimony, Transcript I, p. 10 lines 1-8; *See also*: Hunt Testimony, Transcript III, p. 24 lines 10-17.

<sup>56</sup> Zendejas Testimony, Transcript II, p. 6 lines 7-12; Kitcheyan Testimony, Transcript I, p. 4 lines 19-41; *See also* <https://www.history.com/topics/native-american-history/trail-of-tears>.

<sup>57</sup> Zendejas Testimony, Transcript II p. 5 line 41 – p. 6 line 2; Pub.L. 68-175, 43 STAT 253.

<sup>58</sup> Zendejas Testimony, Transcript II, p. 6 lines 13-17; *See also*: The Dawes Act, Series: History & Culture in the Badlands, National Parks Service, at: [https://www.nps.gov/articles/000/dawes-act.htm#:~:text=The%20Dawes%20Act%20\(sometimes%20called,to%20break%20up%20tribal%20lands](https://www.nps.gov/articles/000/dawes-act.htm#:~:text=The%20Dawes%20Act%20(sometimes%20called,to%20break%20up%20tribal%20lands).

<sup>59</sup> Zendejas Testimony, Transcript II, p. 6 lines 18-24.

<sup>60</sup> Harjo Testimony, Transcript I, p. 9 lines 40-43.

<sup>61</sup> Zendejas Testimony, Transcript II, p. 6 lines 25-29. *See also* Janice Aitken, *The Trust Doctrine in Federal Indian Law: A Look at its Development and How Its Analysis Under Social Contract Theory Might Expand its Scope*, <https://commons.lib.niu.edu/bitstream/handle/10843/21890/18-1-115-Aitken-pdfA.pdf?sequence=1&isAllowed=y>

<sup>62</sup> Kitcheyan Testimony, Transcript I, p. 3 lines 8-11; Zendejas Testimony, Transcript II, p. 3 lines 1-14; 27-30 & p. 4 lines 1-7; 16-24; Blomstedt Testimony, Transcript II, p. 9 line 37 – p. 10 line 11; Wright Testimony, Transcript III, p. 3 lines 35-38.

<sup>63</sup> Bellar Testimony, Transcript II, p. 12 lines 14-16.

<sup>64</sup> Zendejas Testimony, Transcript II, p. 3 lines 1-14; 27-30 & p. 4 lines 1-7; 16-24.

<sup>65</sup> Kitcheyan Testimony, Transcript I, p. 3 lines 12-18 & p. 5 lines 37-40; 2018 study Reclaiming Native Truth: Changing the Narrative About Native Americans, a guide for allies, at <https://rnt.firstnations.org/>. *See also*:

slurs used by early colonists to dehumanize Native people are still used today.<sup>66</sup> Many curricula do not include contemporary Native culture and society at all.<sup>67</sup>

Schools that do teach about Native history often use curriculum that present misinformation or heavily “sanitized” versions of American history and Native American history.<sup>68</sup> The Committee heard testimony that these inaccurate or “romanticized” narratives are harmful to Native students and society.<sup>69</sup> By rewriting or ignoring the violence perpetrated against Native people, they create a narrative that is difficult and harmful for Native children to discern; Native children witness persistent social problems in their communities and think something is wrong with them, rather than recognizing the continuing impact of colonization and the erasure of their culture.<sup>70</sup> Stereotypes stemming from constrained versions of history also limit Native children’s vision of themselves and who they can become.<sup>71</sup> These romanticized narratives also allow the dominant culture to continue to ignore historical truths and their contemporary impact.<sup>72</sup> If mascots are not removed, Professor Zendejas suggested, “at least legislate a truthful and accurate Native history into our curriculums. Our students should have the right to know the truth.”<sup>73</sup>

The Committee heard from panelists who expressed hope that when people are exposed to Native history and culture, their viewpoint improves.<sup>74</sup> There is a current movement of Indigenous, Black, and other people of color to decolonize and reclaim their history, identity, and stories.<sup>75</sup> Native journalists, historians, filmmakers, authors, musicians, and curators can help reshape the image of Native people and undo stereotypes; Native people must tell their own stories.<sup>76</sup> By lifting up, rather than continuing to erase these examples and stories, Native children can find inspiration and encouragement for an expanded worldview and vision of who

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Hartman Bradley Testimony, Transcript I, p. 19 lines 3-8; Holstein Testimony, Transcript I, p. 21 lines 8-15; Flanders Testimony, Transcript I, p. 14 lines 13-16; King Testimony, Transcript III, p. 7 lines 7-12; Fryberg Testimony, Transcript III, p. 19 lines 1-18.

<sup>66</sup> Baxter Testimony, Transcript I, p. 6 lines 20-25; Edwards Testimony, Transcript I, p. 22 lines 21-33.

<sup>67</sup> Wright Testimony, Transcript III, p. 19 line 19 – p. 20 line 4; Fryberg Testimony, Transcript III, p. 13 lines 5-13.

<sup>68</sup> Zendejas Testimony, Transcript II, p. 4 lines 25-36; Yenyoy Testimony, Transcript III, p. 15 lines 27-40; King Testimony, Transcript III, p. 20 lines 9-22.

<sup>69</sup> Fryberg Testimony, Transcript III, p. 9 line 30 – p. 10 line 35; King Testimony, Transcript III, p. 8 line 31 – p. 9 line 4; Hartman Bradley Testimony, Transcript I, p. 19 lines 9-16; Teters Testimony, Transcript III, p. 18 lines 3-12.

<sup>70</sup> Fryberg Testimony, Transcript III, p. 10 line 31 – p. 11 line 14.

<sup>71</sup> Fryberg Testimony, Transcript III, p. 10 lines 33-36.

<sup>72</sup> Fryberg Testimony, Transcript III, p. 9 line 30 – p. 10 line 35; King Testimony, Transcript III, p. 8 line 31 – p. 9 line 4.

<sup>73</sup> Zendejas Testimony, Transcript II, p. 6 lines 35-38; p. 19 lines 17-34.

<sup>74</sup> Kitcheyan Testimony, Transcript I, p. 3 lines 30-35; p. 4 line 42 – p. 5 line 3; Baxter Testimony, Transcript I, p. 19 lines 27-38.

<sup>75</sup> Wright Testimony, Transcript III, p. 2 lines 36-41; p. 3 line 39 – p. 4 line 7; p. 5 lines 5-11.

<sup>76</sup> Zendejas Testimony, Transcript II, p. 4 lines 8-24; Teters Testimony, Transcript III, p. 21 line 34 – p. 22 line 15; Fryberg Testimony, Transcript III, p. 21 lines 6-27; Kitcheyan Testimony, Transcript I, p. 4 line 7 – p. 5 line 24.

they themselves can become. The public at large can also gain a richer and more nuanced understanding of and appreciation for historical and contemporary Native culture.<sup>77</sup>

**Finding V: As public institutions, schools have an obligation to ensure a learning environment that is inclusive and welcoming to all students.**

Throughout the Committee’s hearings, speakers highlighted the obligation of public institutions such as schools to consider the wellbeing of students and teachers, and to create an inclusive learning environment for all.<sup>78</sup> The Nebraska Department of Education requires schools to provide positive community culture where all students are respected and welcome,<sup>79</sup> and Commissioner Blomstedt testified that schools are reminded of this annually.<sup>80</sup>

The Committee heard ongoing concern that the use of Native mascots undermines this inclusive learning environment for all students.<sup>81</sup> Sixteen years ago, in 2005, the American Psychological Association (APA) called on schools and teams to stop using American-Indian mascots because of the harm to young (Native) people’s self-esteem, social identity, and development.<sup>82</sup> The APA’s statement includes declaration that in addition to being harmful to Native students, Native mascots undermine “the educational experiences of members of all communities-especially those who have had little or no contact with Indigenous peoples.”<sup>83</sup> The Committee heard concern specifically that in addition to the harm inflicted on Native children, Native mascots actively teach non-Native children that stereotyping and discrimination are acceptable.<sup>84</sup>

For these reasons, and considering the obligation of public institutions to ensure an inclusive environment, several panelists argued it is appropriate and necessary for the state (or federal) government to intervene when discrimination is taking place in schools.<sup>85</sup> Maine has set an

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<sup>77</sup> Kitcheyan Testimony p. 5 line 33 – p. 6 line 4; Teters Testimony, Transcript III, p. 21 line 34 – p. 22 line 15.

<sup>78</sup> Harjo Testimony, Transcript I, p. 9 lines 8-15; Ventura Testimony, Transcript I, p. 18 lines 8-12; Zendejas Testimony, Transcript II, p. 2 lines 38-41; Blomstedt Testimony, Transcript II, p. 10 line 4-5; Yenyo Testimony, Transcript III, p. 14 lines 26-30; Teters Testimony, Transcript III, p. 16 lines 25-28; Ventura Written Testimony, Appendix D.

<sup>79</sup> Curriculum and Standards, 92 Neb. Admin. Code, ch. 10, § 004.

<sup>80</sup> Blomstedt Testimony, Transcript II, p. 8 lines 5-15.

<sup>81</sup> See ACLU Written Testimony, Appendix D.

<sup>82</sup> APA Resolution Recommending the Immediate Retirement of American Indian Mascots, Symbols, Images, and Personalities by Schools, Colleges, Universities, Athletic Teams, and Organizations. Adopted by the APA Council of Representatives on August 21, 2005, at: <https://www.apa.org/pi/oema/resources/policy/indian-mascots.pdf>; Justification Statement available at: <https://www.apa.org/pi/oema/resources/policy/mascots-justif.pdf>; See also: Baxter Testimony, Transcript I, p. 7 lines 10-21; Hunt Testimony, Transcript III, p. 23 line 37 – p. 24 line 19; Yenyo Testimony, Transcript III, p. 15 lines 31-32.

<sup>83</sup> Ibid.

<sup>84</sup> Baxter Testimony, Transcript I, p. 7 lines 10-21; Hunt Testimony, Transcript III, p. 24 lines 19-21; Yenyo Testimony, Transcript III, p. 14 lines 26-30.

<sup>85</sup> Kitcheyan Testimony, Transcript I, p. 15 lines 13-22; Baxter Testimony, Transcript I, p. 15 lines 5-9; Harjo Testimony, Transcript I, p. 15 lines 24-32; p. 16 lines 11-15.

example of a state-wide ban on Native-themed mascots in schools.<sup>86</sup> Senator Wishart said that while state-wide intervention may be appropriate in this context,<sup>87</sup> it would be politically difficult in Nebraska, where many believe education policy should be determined at the local level.<sup>88</sup> Senator Wishart suggested that alternatively, the Legislature may be able to create incentives and provide funding for schools wishing to transition away from Native mascots.<sup>89</sup> Some panelists cautioned that incentives may create more positive change in the long term than could be achieved by a state-level mandate.<sup>90</sup>

**Finding VI: Despite financial, historical, and emotional ties, retiring Native-themed mascots is possible and reasonable to achieve.**

In 1970 the University of Oklahoma was the first to eliminate its Native mascot, Little Red.<sup>91</sup> The National Congress of American Indians reports that over the past 35 years, more than 2,000 Indian references in sports have been removed, though nearly 1,000 remain.<sup>92</sup> In 2005, the National Collegiate Athletic Association established an extensive policy to limit harmful Indian mascots.<sup>93</sup> In response to public pressure, in 2020, the Washington NFL football team and Cleveland MLB baseball team both changed their names and Native-themed mascots.<sup>94</sup> Mr. Philip Yenyo of the American Indian Movement of Ohio noted that when major leagues change their name, other teams, including local schools, often follow.<sup>95</sup>

Professor Fryberg presented research suggesting that people’s resistance to reexamining Native American stereotypes is often deeply rooted in feelings of nationalism and protecting their own American identity.<sup>96</sup> Panelists acknowledged that retiring school mascots also involves a financial commitment; it often require changing signs, logos, uniforms, and even related names of community centers, parks, and local businesses.<sup>97</sup> For these reasons, Jay Bellar of the Nebraska School Activities Association urged such change to be thoughtful and include public

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<sup>86</sup> Blomstedt Testimony, Transcript II, p. 21 lines 20-33; Wishart Testimony, Transcript II, p. 16 lines 16-19; p. 22 lines 6-9; 20-A M.R.S.A. § 12 (Westlaw through 2019 2d Reg. Sess. of 129th Leg.).

<sup>87</sup> Wishart Testimony, Transcript II, p. 16 lines 8-37.

<sup>88</sup> Wishart Testimony, Transcript II, p. 8 lines 15-28. *See also*: Bellar Testimony, Transcript II, p. 13 lines 17-36.

<sup>89</sup> Wishart Testimony, Transcript II, p. 16 lines 30-37; p. 20 line 34 – p. 21 line 12.

<sup>90</sup> Bellar Testimony, Transcript II, p. 16 line 38 – p. 17 line 6; Wishart Testimony, Transcript II, p. 22 lines 6-14.

<sup>91</sup> Harjo Testimony, Transcript I, p. 8 line 33 – p. 9 line 7.

<sup>92</sup> Wright Testimony, Transcript III, p. 4 lines 8-21 & p. 22 line 32 – p. 23 line 18; Kitcheyan Testimony, Transcript I, p. 3 line 36 – p. 4 line 6; Harjo Testimony, Transcript I, p. 16 lines 1-10; *See also*: National Congress of American Indians: Ending the Era of the Harmful “Indian” Mascots, at: <https://www.ncai.org/proudtobe>; and Change the Mascot: History of Progress, at: <https://www.changethemascot.org/history-of-progress/>.

<sup>93</sup> Wright Testimony, Transcript III, p. 4 lines 8-10; *See also* Zendejas Testimony, p. 19 lines 17-23; *See also*: NCCAA Press Release Archive, NCAA Executive Committee Issues Guidelines for Use of Native American Mascots at Championship Events, August 5, 2005, at: <http://fs.ncaa.org/Docs/PressArchive/2005/Announcements/NCAA%2BExecutive%2BCommittee%2BIssues%2BGuidelines%2Bfor%2BUse%2Bof%2BNative%2BAmerican%2BMascots%2Bat%2BChampionship%2BEvents.html>.

<sup>94</sup> Wright Testimony, Transcript III, p. 3 lines 1-8; Yenyo Testimony, Transcript III, p. 14 lines 7-24.

<sup>95</sup> Yenyo Testimony, Transcript III, p. 14 lines 7-17; 31-38.

<sup>96</sup> Fryberg Testimony, Transcript III, p. 10 lines 15-32.

<sup>97</sup> Bellar Testimony, Transcript II, p. 13 lines 17-27.

education as well as input from schools and tribal leaders.<sup>98</sup> Mr. Bellar suggested that any policy changes should also answer questions such as potential exemptions for schools on Indian reservations, or schools with permission from the tribe or tribes associated with their name and/or mascot.<sup>99</sup>

Regardless of these considerations Chairman Wright of the Ponca Tribe pointed to the fact that many teams have changed, at the professional level as well as local schools, to reiterate that financial challenges cannot be used to justify continued racism.<sup>100</sup> Mr. Bellar reported that while the Nebraska School Activities Association does not have the authority to mandate schools retire their mascots, they can assist schools in developing and implementing plans to change them.<sup>101</sup> Senator Wishart offered that the Nebraska Legislature may be able to create incentives and provide funding for schools wishing to transition away from Native mascots.<sup>102</sup>

While removing mascots alone is insufficient to address underlying concerns of racism and systemic discrimination,<sup>103</sup> panelists described it as an important first step.<sup>104</sup> Edward Ventura of the Prairie Band Potawatomi Nation urged, “Remember no students, alumni, or staff members’ lives will be tragically or detrimentally altered when Native American mascots are retired.”<sup>105</sup> Chairman Wright concluded:

We are human beings as determined by our creator and defined by the laws of this land. We are not anyone’s mascot. This is not political correctness or political correctness run amok. This is pointing out systemic racism and how it continues to be justified and condoned by allowing Native-themed mascots. Sports have the power to influence and inspire people of all ages. Let’s end the use of Native mascots in sports and build a better world that we want to see together.<sup>106</sup>

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<sup>98</sup> Bellar Testimony, Transcript II, p. 13 lines 3-36; *See also*: Reiman Testimony, Transcript II, p. 25 lined 12-20.

<sup>99</sup> Bellar Testimony, Transcript II, p. 18 line 40 – p. 19 line 15.

<sup>100</sup> Wright Transcript III, p. 22 line 32 – p. 23 line 18.

<sup>101</sup> Bellar Testimony, Transcript II, p. 14 lines 4-10; p. 14 line 33 – p. 15 line 3.

<sup>102</sup> Wishart Testimony, Transcript II, p. 16 lines 30-37; p. 20 line 34 – p. 21 line 12.

<sup>103</sup> Harjo Testimony, Transcript I, p. 10 lines 23-33.

<sup>104</sup> Harjo Testimony, Transcript I, p. 9 line 16 – p. 10 line 33.

<sup>105</sup> Ventura Testimony, Transcript I, p. 18 lines 12-17; *See also*: Ventura Written Testimony, Appendix D.

<sup>106</sup> Wright Testimony, Transcript III, p. 6 lines 18-27. *See also*: Yenyoy Testimony, Transcript III, p. 15 lines 10-13.

## **Recommendations**

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws, and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.<sup>107</sup> In keeping with these responsibilities, and given the testimony heard on this topic, the Nebraska Advisory Committee submits the following recommendations to the Commission:

1. The U.S. Commission on Civil Rights should:
  - a. *Reiterate its findings that the continued use of Native American and/or indigenous mascots by non-native institutions remains a violation of civil rights consistent with the Commission's findings in 2001 and inflicts harm upon the whole of the native community.*
  - b. *Note further its concern and dismay that, in the face of that 2001 report, an even greater quantity of empirical scholarly evidence concerning the harmful impact, and some constructive progress with respect to the issue, there remain vestiges of the practice across the United States.*
  - c. *In this context, encourage even schools that maintain Native-themed mascots existing on Tribal lands or serving a majority of Native students to reexamine the impact of such mascots on their students and the community at large.*
2. The U.S. Commission on Civil Rights should issue the following recommendation to the Nebraska Department of Education:

*In view of the constructive progress the Department has made in amending its social studies curriculum, with a specific focus on a greater degree of inclusion for historically underrepresented groups in the state, we find that a logical next step would be the rejection of Native American mascots in non-native NE schools. Failure with respect to such rejection would create an incongruity in that former effort, given the empirical evidence documenting the negative impact upon indigenous populations posed by such cultural misappropriation. Embracing such a rejection, would constitute a continuity of efforts by the Department at higher levels of representative inclusion for the states residents', inclusive of indigenous communities and the punctuation of textual commitment with substantive measures.*

3. The U.S. Commission on Civil Rights should issue the following recommendations to the Nebraska School Activities Association:

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<sup>107</sup> 45 C.F.R. § 703.2 (2018).



*Consistent with the restrictions put in place by the NCAA, the NSAA should announce that its member schools will be expected to phase out their mascots over the next three years. This measure should be enforced by placing restrictions on postseason play which prohibit teams not in compliance at the end of the 3-year period from participating.*

4. The U.S. Commission on Civil Rights should issue the following recommendations to the Nebraska Legislature:

*The legislature should make a formal resolution statement that it is in support of non-native public schools in Nebraska abandoning Native American and indigenous-themed mascots. It should back this resolution with a measure authorizing state funds for the purpose of defraying a portion of districts' costs to that end.*

5. The U.S. Commission on Civil Rights should issue the following recommendations to the Nebraska Governor:

- a. *The Governor should issue a formal statement or an executive order publicly endorsing the elimination of Native-themed mascots in Nebraska schools.*
- b. *Such a statement should be contextualized alongside broader State efforts to be inclusive and to encourage greater levels of awareness about indigenous people's experience in and contributions to the State.*

6. The U.S. Commission on Civil Rights should issue the following recommendations to the United States Congress:

- a. *Congress should advance a resolution in support of eliminating native-themed mascots in public schools at the national level.*
- b. *Congress should invite/encourage members of the Nebraska's Congressional delegation to advance such a resolution on behalf of the state.*

7. The U.S. Commission on Civil Rights should issue the following recommendations to the Nebraska League of Municipalities:

*The League should issue a resolution supporting city governments throughout the state in prohibiting the use of native-themed mascots for Nebraska schools.*

8. The U.S. Commission on Civil Rights should make additional recommendations and requests of the appropriate public officials to address and correct the additional concerns identified in this report and the accompanying testimony.

## Appendix

- A. December 14, 2020 Web Briefing<sup>108</sup>
  - a. Transcript I
  - b. Agenda
  - c. Minutes
  - d. Panelist Presentations (PPT)
- B. December 16, 2020 Web Briefing<sup>109</sup>
  - a. Transcript II
  - b. Agenda
  - c. Minutes
  - d. Panelist Presentations (PPT)
- C. January 7, 2021 Web Briefing<sup>110</sup>
  - a. Transcript II
  - b. Agenda
  - c. Minutes
  - d. Panelist Presentations (PPT)
- D. Written Testimony<sup>111</sup>
  - a. ACLU of Nebraska, Spike Eickholt
  - b. Espinoza
  - c. Kile
  - d. Lukasiewicz
  - e. Maio
  - f. Ventura
- E. Additional Resources & Supporting Documents

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<sup>108</sup> December 14, 2020 Documents available at: <https://bit.ly/3rORndy>.

<sup>109</sup> December 16, 2020 Documents available at: <https://bit.ly/3t6An2y>.

<sup>110</sup> January 7, 2021 Documents available at: <https://bit.ly/3l8zp32>.

<sup>111</sup> Written Testimony available at: <https://bit.ly/30CuptQ>.

- a. Midlands Voices: School districts should end use of Native American Mascots, Edward T. Ventura Jr. February 7, 2021, Omaha World Herald, at: [https://omaha.com/opinion/columnists/midlands-voices-school-districts-should-end-use-of-native-american-mascots/article\\_82478aa2-6593-11eb-baec-2fbbfdd2d3d7.html](https://omaha.com/opinion/columnists/midlands-voices-school-districts-should-end-use-of-native-american-mascots/article_82478aa2-6593-11eb-baec-2fbbfdd2d3d7.html)
- b. Chief of Cherokee Nation: Jeep is wrong to use our name, CNN Business (2021), at <https://www.cnn.com/videos/business/2021/02/22/ Cherokee-nation-chief-jeep-stop-using- Cherokee-name-orig.cnn-business?fbclid=IwAR0g49DZsSXJrO7roJ44m9YXoJhIc0Mkcijivz kpEwpDeKgNZSdbDhFdunE>

F. Committee Member Statements

- a. Allen Dwayne Ball, Dissenting

# Dissent on the Nebraska Advisory Committee to the U.S. Commission on Civil Rights Report on the Use of Native American School Mascots.

March 10, 2021

Dr. Dwayne Ball

Let me preface my dissent by stating I recognize that, according to current research, about half of enrolled tribal members in the U.S. are offended by Native American (NA) mascots. Other research shows that a small but significant fraction of people who identify as NA (not all of them enrolled tribal members) are offended. Regardless of the number offended, I personally see no reason to give needless offense. Speaking only for myself, and if I still had children in high school, I would prefer not to have their schools use any ethnic mascots that gave substantial offense. However, there are important public policy issues raised by the recommendations in the report that overwhelm my personal concerns.

1. Suppressing expression that is offensive to some, though not directed towards harming a particular individual or small group, is not good public policy. The recommendations in the report stop short of suggesting the use of official power, except the recommendation that the NSAA refuse to allow schools with NA mascots to participate in post-season tournaments. Mascots are under the control of a school board elected by the voters in its district. Presumably, the voters are satisfied, or they would elect school board members who wanted to change the mascots. So, forcing change on those voters imposes the will of an outside entity on a decision that those voters consider rightfully theirs. This will create anger. Furthermore, if a school district refuses to comply, and its athletes are denied participation opportunities, it only damages those athletes, who surely are not the target of this recommendation.

2. Suppressing expression because it allegedly causes emotional harm to someone not personally targeted is not good public policy. The report cites research which alleges to show that NA youth are emotionally harmed by exposure to NA mascots. This is a strong partial basis for the recommendations to end NA mascots. This research was not conducted using Nebraska high school mascots and Nebraska high school students, but rather the likely most offensive mascots and symbols, nationally. I question its applicability. Regardless of research findings, there is a far more important issue here. If we allow what we do, either as individuals or as communities, to be forcefully controlled by allegations of emotional harm, then we are all held hostage to the most sensitive people in range of our expression. I do not think it wise to set such a precedent. Surely, anyone can see where that would lead. Almost any action or expression by anyone can be suppressed because it allegedly hurts someone's feelings.

3. Suppressing expression by law, regulation, or rule for some but not others is not good public policy. The report offers recommendations to eliminate the use of NA mascots by Nebraska high schools, except for those high schools with a majority NA student body. Sorry, but if rules, regulations, or laws mean anything, they should apply to everyone. No one should get a pass on the basis of "identity."

4. Singling out the symbols of one identity group for suppression is not good public policy. Why should we make rules or pass resolutions concerning one ethnic group and not other groups of any kind? We are setting a precedent that any group that complains strongly enough can control who gets to use certain symbols, words, or other forms of expression. Again, surely anyone can see where this leads. I would pity the administrator or legislator who had to answer to a body of constituents who wanted to control the use of symbols and words because they were offended. The offense would never end.

The way to end the use of high school Native American mascots is not to use power, but rather persuasion of the voters in the districts where those mascots are in use. I grant that this is not easy. It is a long and frustrating road. But, these mascots are disappearing all over the United States, and I think this is largely because people of good will are being persuaded.

**Nebraska Advisory Committee to the  
United States Commission on Civil Rights**



**U. S. Commission on Civil Rights Contact**

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