

IMPLEMENTING THE SETTLEMENT OF
*STATE OF NORTH DAKOTA, BY AND THROUGH THE
NORTH DAKOTA STATE BOARD OF HIGHER EDUCATION,
AND THE UNIVERSITY OF NORTH DAKOTA*
V.
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

GRANT H. SHAFT*

I.	INTRODUCTION	747
II.	BOARD ACTIONS AND THE LAWSUIT PRECEDING THE SETTLEMENT AGREEMENT	748
III.	BOARD ACTIONS AND COMMUNICATIONS FOLLOWING THE SETTLEMENT AGREEMENT	750
IV.	EPILOGUE OF THE SETTLEMENT AGREEMENT	756

I. INTRODUCTION

Article VIII, section 6 of the North Dakota Constitution provides for a state board of higher education consisting of eight members appointed by the Governor. The State Board of Higher Education has “full authority over the institutions under its control”¹ Accordingly, the North Dakota State Board of Higher Education (Board) has control over the University of North Dakota (UND) located in Grand Forks, North Dakota.²

The controversy surrounding UND’s Fighting Sioux athletic nickname and logo is not a new one. After several decades of protests on the campus of UND, the Board, on December 21, 2000, exercised its power under the state constitution and took full control over UND’s continued use of the

*President of the North Dakota State Board of Higher Education, appointed in 2007 by Governor John Hoeven and reappointed in 2011 by Governor Jack Dalrymple. Shaft is a former state legislator, representing Districts 17 and 18 (Grand Forks, North Dakota) in the North Dakota House of Representatives from 1986-1990. He holds a Bachelor’s degree from Arizona State University and a Juris Doctorate degree from the University of North Dakota. Shaft has practiced law with the Grand Forks firm of Shaft, Reis & Shaft, Ltd. in Grand Forks, North Dakota since 1986.

1. N.D. CONST. art. VIII, § 6(6)(b).
2. *Id.* § 6(1)(a).

Fighting Sioux nickname and logo.³ Despite the Board's decision to take a final stand on the issue, a long battle resulted, which remains unsolved today.

II. BOARD ACTIONS AND THE LAWSUIT PRECEDING THE SETTLEMENT AGREEMENT

On October 26, 2007, the Board met in executive session in Grand Forks, North Dakota with North Dakota Attorney General, Wayne Stenehjem. Pursuant to North Dakota Century Code sections 44-04-19.1 and 44-04-19.2, the purpose of the executive session was attorney consultation regarding UND's pending lawsuit with the National Collegiate Athletic Association (NCAA) for the continuing use of the University's Fighting Sioux nickname and logo.⁴ Present at executive session were Board members, the Chancellor of the North Dakota University System, general counsel for the North Dakota University System, Board staff, the Attorney General, an assistant attorney general, and UND legal counsel.⁵

The Attorney General briefed Board members as to the background of the lawsuit between UND and the NCAA. On August 5, 2005, the NCAA adopted its policy prohibiting the display of Native American names or imagery on team uniforms or other associated paraphernalia at NCAA championship events and further prohibited member schools continuing to use such names and imagery from hosting or bidding to host championship events.⁶ Member schools were also encouraged to refrain from scheduling regular season competition with member schools continuing to use such names and imagery.⁷ The only exception to the policy enabling member schools to use Native American names and imagery was formal approval for the use of the name and imagery from a sovereign tribe.⁸

3. N.D. State Bd. of Higher Educ. Minutes, Dec. 21, 2000, *available at* http://www.ndus.nodak.edu/uploads/resources/139/12-21-00_board_minutes.pdf.

4. *See* State v. Nat'l Collegiate Athletic Ass'n, No. 18-06-C-01333 (N.D. Dist. Ct. Nov. 11, 2006).

5. N.D. State Bd. of Higher Educ. Minutes, Oct. 26, 2007, *available at* <http://www.ndus.nodak.edu/uploads/resources/1056/10-26-07-minutes-for-the-web.pdf> (listing as present Board members Sue Andrews, Jon Backes, Duaine Espegard, Pam Kostelecky, Nate Martindale, Grant Shaft, Richie Smith, and John Q. Paulsen, Chancellor Bill Goetz, General Counsel Pat Seaworth, Assistant Attorney General Tag Anderson, and UND General Legal Counsel Julie Evans).

6. Press Release, Nat'l Collegiate Athletic Ass'n, NCAA Executive Committee Issues Guidelines for Use of Native American Mascots at Championship Events (Aug. 5, 2005) (on file with the NORTH DAKOTA LAW REVIEW).

7. *Id.*

8. *See id.* When the NCAA initially adopted its policy prohibiting the use of Native American names and imagery, it identified approximately eighteen schools in violation of the policy. The schools were the Alcorn State Braves, Central Michigan Chippewas, Florida State

UND administratively appealed the NCAA's inclusion of UND on the list of member schools violating the policy.⁹ The NCAA rejected UND's administrative appeal on April 27, 2006.¹⁰ In response, the Board authorized UND to file a lawsuit against the NCAA, which UND did on October 26, 2006 alleging breach of contract, breach of the implied covenant of good faith and fair dealing, and for violations of North Dakota's antitrust law.¹¹ The district court, on November 11, 2006, issued a preliminary injunction in favor of UND, prohibiting the NCAA from applying its policy against UND until the issues of the lawsuit were resolved at trial.¹²

The Attorney General also briefed the Board on the strengths and weaknesses of the various allegations contained in the lawsuit and the likelihood of success on the merits. Ultimately, the Attorney General recommended the Board approve his negotiated settlement agreement with the NCAA with the following terms: UND was provided a three-year period from November 30, 2007 to November 30, 2010 to secure formal approval from both North Dakota Sioux Tribes—Spirit Lake and Standing Rock.¹³ During the three-year period, UND would not be subject to the NCAA restrictions.¹⁴ If UND obtained the consent of both tribes, it would no longer be subject to the NCAA restrictions unless the NCAA changed its policy and no longer allowed schools to be exempt from the restrictions, or either North Dakota Sioux Tribe withdrew its approval at any time.¹⁵ After

Seminoles, Utah Utes, Bradley Braves, Arkansas State Indians, Illinois Fighting Illini, Louisiana-Monroe Indians, Catawba College Indians, Midwestern State Indians, Indiana University-Pennsylvania Indians, Carthage College Redmen, Chowan College Braves, McMurry Indians, Mississippi College Choctaws, Newberry College Indians, University of North Dakota Fighting Sioux, and Southeastern Oklahoma State Savages. *Id.* Of the above-listed schools, Florida State University, Utah, and Central Michigan obtained formal tribal approval and are no longer sanctioned by the NCAA. Illinois was granted an exception to use the name Illini due to its close association with the name of the State of Illinois but was required to retire its use of its mascot and other imagery.

9. Letter from Charles Kupchella, President, Univ. of N.D., to Myles Brand, President, & Bernard Franklin, Senior Vice-President for Governance & Membership, Nat'l Collegiate Athletic Ass'n (Aug. 30, 2005) (on file with the NORTH DAKOTA LAW REVIEW).

10. Letter from Walter Harrison, Chair, Nat'l Collegiate Athletic Ass'n Exec. Comm., to Charles Kupchella, President, Univ. of N.D. (Apr. 28, 2006) (on file with the NORTH DAKOTA LAW REVIEW); Letter from Walter Harrison, Chair, Nat'l Collegiate Athletic Ass'n Exec. Comm., to Charles Kupchella, President, Univ. of N.D. (May 15, 2006) (on file with the NORTH DAKOTA LAW REVIEW).

11. N.D. State Bd. of Higher Educ. Minutes, June 15, 2006, *available at* <http://www.ndus.nodak.edu/uploads/resources/937/minutes-for-the-web.pdf>.

12. State v. Nat'l Collegiate Athletic Ass'n, No.18-06-C-01333 (D. Ct. Grand Forks County Nov. 11, 2006).

13. Settlement Agreement and Mutual Release at 3, *Nat'l Collegiate Athletic Ass'n*, No. 18-06-C-01333 (N.D. Dist. Ct. Oct. 26, 2007) [hereinafter Settlement Agreement].

14. *Id.*

15. *Id.* at 3-4.

the Board approved the Attorney General's recommendation by a unanimous vote,¹⁶ the district court then considered the settlement agreement and dismissed the lawsuit with prejudice.¹⁷

III. BOARD ACTIONS AND COMMUNICATIONS FOLLOWING THE SETTLEMENT AGREEMENT

With the settlement agreement in place, UND's ability to continue using the Fighting Sioux nickname and logo shifted from the Attorney General to the Board by virtue of the settlement agreement's requirement that UND obtain formal approval from the Spirit Lake and Standing Rock Tribes and the Board's state authority over the nickname and logo issue.¹⁸ Immediately following the settlement agreement and in spirit of the same, the Board unanimously supported an exhaustive effort to obtain tribal approval. At its next formal meeting on December 20, 2007, the Board instructed the Chancellor to make personal contact with Standing Rock Tribal Chairman Ron His Horse Is Thunder and Spirit Lake Tribal Chairwoman Myra Pearson in order to receive their respective positions as to granting approval pursuant to the settlement agreement.¹⁹ At the February 21, 2008 Board meeting, the Chancellor reported he met personally with both tribal chairs and discussed the terms of the settlement agreement and the type of approval necessary from each tribe. Both tribal chairs expressed their tribal council's continued objection to UND's use of the nickname and logo, and further indicated they had no interest participating in discussions regarding tribal approval.²⁰

In addition to the Board's public efforts, significant private efforts aimed at gaining tribal approval had been ongoing since the date of the settlement agreement. Private efforts included discussions with members of the Spirit Lake and Standing Rock Sioux Tribes along with UND alumni and representatives of the Ralph Engelstad Arena.²¹ Between March and September of 2008, Board member Shaft had numerous meetings with pri-

16. N.D. State Bd. of Higher Educ. Minutes, *supra* note 5.

17. Order for Judgment of Dismissal, *Nat'l Collegiate Athletic Ass'n*, No. 06-C-01333.

18. *See* Settlement Agreement, *supra* note 13, at 3; N.D. State Bd. of Higher Educ. Minutes, *supra* note 3.

19. N.D. State Bd. of Higher Educ. Minutes, Dec. 20, 2007, *available at* <http://www.ndus.nodak.edu/uploads/resources/1109/12-20-07-minutes-for-the-web.pdf>.

20. N.D. State Bd. of Higher Educ. Minutes, Feb. 21, 2008, *available at* <http://www.ndus.nodak.edu/uploads/resources/1096/02-21-08-minutes-for-the-web.pdf>.

21. Private efforts were led by Earl Strinden—former UND Alumni Association President; Jody Hodgson—General Manager of Ralph Engelstad Arena; Tom Iron—enrolled member of the Standing Rock Sioux Tribe; Eunice Davidson—enrolled member of the Spirit Lake Sioux Tribe; John Chaske—Spirit Lake Sioux Tribe Spiritual Leader; and Sam Dupris—enrolled member of the Cheyenne River South Dakota Sioux Tribe.

vate individuals and tribal members to update them on the Chancellor's efforts on the reservation. Although the private efforts initially appeared more encouraging given the apparent entrenched opposition from tribal leaders, as of October 8, 2008, the efforts failed to produce any indication from tribal leadership that formal approval of UND's use of the Fighting Sioux nickname and logo was attainable.

Following the failed efforts, the Board requested Board member Espegard draft an action plan with a timetable for the Board's consideration.²² On October 16, 2008, the Board discussed the status of obtaining tribal approvals.²³ Based on the discussion and the reported lack of any progress, the Board adopted a formal action plan.²⁴ The plan provided for the Chancellor, at the direction of the Board, to form a high level committee known as the UND Logo/Nickname Committee (Committee) within the university system and the State of North Dakota to meet with the leaders of both Sioux Nations no later than January of 2009.²⁵ The plan also provided for the Chancellor to make an attempt to set up a meeting with the tribal chairpersons or their designee at their respective government offices from January 2009 to October 2010. The objective of the meeting was to see if there was any way in which UND could use the Sioux logo at its sporting events.²⁶

If the meetings had not resulted in a formal agreement for the use of the nickname and logo, the Chancellor would ask the UND President to assemble a transition team consisting of UND administration, faculty, students, alumni, and staff to facilitate the retiring of the nickname and logo.²⁷ If the Committee's meetings resulted in tribal consent for the use of the name and logo, the Committee would negotiate a formal long-term agreement for UND's continued use of the nickname and logo.²⁸ The

22. N.D. State Bd. of Higher Educ. Minutes, Oct. 8, 2008, *available at* <http://www.ndus.nodak.edu/uploads/resources/1158/10-08-08-board-minutes-for-the-web.pdf>.

23. N.D. State Bd. of Higher Educ. Minutes, Oct. 16, 2008, *available at* <http://www.ndus.nodak.edu/uploads/resources/1159/10-16-08-sbhe-minutes-for-the-web.pdf>.

24. *Id.*

25. The spirit of the settlement agreement intended meetings at the highest level of both higher education and tribal government. The effort involved engaging all interested constituencies, including the Standing Rock and Spirit Lake leadership, Ralph Engelstad Arena, UND, alumni, local, state, and federal officials.

26. N.D. State Bd. of Higher Educ. Minutes, *supra* note 23 (indicating the Board believed if the first attempt did not yield a positive result or if, in fact, the tribes did not want to meet, at least an attempt was made by the Committee to discuss the issue).

27. *Id.* The Board also allowed for the transition committee to function even while efforts by the Committee continued until November 30, 2010. *Id.*

28. The question remained: should an agreement for a term of years be required? The general consensus of Board members was if the Board received approvals from the tribes, they should contain an agreement for a period of years even though such an agreement was not a requirement under the NCAA settlement agreement. Without an agreement for a term of years, both

Chancellor would report periodically on developments under the action plan. It was understood the action plan was subject to modification at any time at the direction of the Board or upon request of the Chancellor or the Committee.²⁹

Pursuant to the Board's directive, the Chancellor contacted the various constituencies that would be represented on the Committee. On February 11, 2009, the Chancellor appointed eleven individuals to the Committee from different backgrounds and disciplines.³⁰ No tribal leaders from the Spirit Lake or Standing Rock Sioux Tribe agreed to serve. Although the tribal leadership declined participation on the Committee, on February 13, 2009, Chancellor Goetz contacted Chairpersons Ron His Horse Is Thunder and Myra Pearson, expressing his appreciation for their willingness to meet with him in the past and encouraging them to participate with the Committee.

the Board and other interested parties feared the tribal approval could be withdrawn as easily as it was given. Therefore, the Board's council and the Attorney General's office began to research what the requirements were in order to enter into a legally binding agreement with the tribes. The primary issue was whether North Dakota Century Code chapter 54-40.2 was applicable, which requires the Governor to approve all tribal agreements with the State and also requires a series of public notices and public hearings prior to entering into such agreements. N.D. CENT. CODE §§ 54-40.2-03.1 to -04 (2008). Ultimately, the Attorney General's office indicated the provisions of the chapter would apply to such an agreement.

29. N.D. State Bd. of Higher Educ. Minutes, *supra* note 23. While the above process was ongoing, the UND President and its athletic director, Brian Faison, notified the Board that UND wished to seek league affiliation with the Division I Summit League. According to UND, their lack of solid league affiliation was jeopardizing UND's transition to Division I athletics. However, the Summit League refused to consider UND's application until the nickname and logo issue was resolved. Rather than wait for UND, the Summit League intended to continue seeking other interested schools in hopes of filling the league's need for an additional team. Based on the urgency presented by UND and the Summit League's stated position on the nickname and logo, the Board was forced to address whether it was in the best interest of UND and its athletic programs to delay application to the Summit League until November 30, 2010 or shorten the timeline for tribal approval in order to accommodate the Summit League application. Ultimately, on April 8, 2010, due to the continued opposition from Standing Rock's leadership and information that UND's application would need to be submitted to the Summit League by June 1, 2010 in order to be considered for membership and competition in 2012, the Board directed the UND President to proceed with the process of retiring the nickname and logo, subject to formal approvals from both tribes being obtained prior to November 30, 2009, rather than November 30, 2010. Following the action, a group of Spirit Lake tribal members calling themselves the Committee for Understanding and Respect filed an action against the Board. *Davidson v. State*, 2010 ND 68, ¶ 6, 781 N.W.2d 72, 74. The plaintiffs' intention was to require the Board to abide by the timeline set forth in the settlement agreement. *Id.* The North Dakota Supreme Court ruled in favor of the Board and affirmed the district court's dismissal of the plaintiffs' claims. *Id.* ¶¶ 20-22, 781 N.W.2d at 78.

30. Press Release, N.D. Univ. Sys., UND Logo/Nickname Committee to Meet, *available at* <http://www.ndus.edu/news/detail.asp?newsID=40>. The Committee included Grant Shaft—Board member; Ryan Bernstein—Governor's counsel; Robert Boyd—UND Vice President of Student Services; Steve Burian—UND Alumni and logo supporter; Pam Gulleeson—United States Senator Byron Dorgan's state director; Jody Hodgson—Ralph Engelstad Arena's general manager; Tom Iron—enrolled member of Standing Rock Sioux Tribe; Erich Longie—resident of the Spirit Lake Reservation; Jeremiah Lunde—UND law student; Celeste Melander—UND student and member of Standing Rock Sioux Tribe; and John Chaske—Spirit Lake Tribe Spiritual Leader. *Id.*

The Committee held its first meeting on February 26, 2009.³¹ The Committee resolved that its purpose was to (1) initiate contact with the Standing Rock and Spirit Lake Tribal Councils to discuss UND's future use of the Fighting Sioux nickname and logo; (2) ascertain the tribal leadership's interest in providing the necessary approvals as required under the settlement agreement; and (3) issue a final report to the Board.³² The Committee agreed to a series of four meetings, consisting of an initial meeting on each reservation with the Spirit Lake tribal leadership and Standing Rock Sioux tribal leadership, a meeting at UND, and a final meeting to generate a report to the Board.

On March 17, 2009, the Committee's chairman, Grant Shaft, sent a letter to the tribal leaders introducing the Committee and stating its intention to solicit the views of the tribes for the appropriate use of the nickname and related imagery.³³ The letter further stated if tribal consent was not obtained, the Board would take steps to retire the Fighting Sioux nickname and logo.³⁴ Shaft then requested a public meeting on each reservation whereby the Committee could seek tribal input as to "[t]he position of tribal members and leaders opposed to the nickname and logo; [t]he position of tribal members and leaders in favor of the nickname and logo; [t]he history of the name and logo as it relates to the [tribes];" Native American student experiences, including issues of discrimination, harassment, student life, campus opportunities, scholarships, and services related to students; and whether there was any use, full or limited, of the Fighting Sioux nickname or logo that would be permitted by the tribe and under what terms and conditions.³⁵

The Committee received no response to its letter or any follow-up correspondence from members of the Standing Rock Sioux or the Spirit Lake tribal leadership.³⁶ Because the goal of the Committee was to engage the tribal leadership, the purpose of the committee was rendered moot. Thereafter, the Committee disbanded.

Despite the Committee's efforts being rejected by the tribal leadership, the Board continued its resolve to obtain approval and closely monitored a referendum process undertaken by tribal members at the Spirit Lake tribe. On April 21, 2009, the Spirit Lake tribe held a successful referendum vote,

31. *Id.*

32. *See generally* Letter from Grant Shaft, Member, State Bd. of Higher Educ., to Myra Pearson, Chairwoman, Spirit Lake Sioux Tribe (Mar. 17, 2009) (on file with author).

33. *Id.*

34. *Id.*

35. *Id.*

36. N.D. State Bd. of Higher Educ. Minutes, May 14, 2009, *available at* <http://www.ndus.nodak.edu/uploads/resources/1739/5-14-2009-board-minutes-for-the-web.pdf>.

requiring the Spirit Lake Tribal Council to adopt a resolution authorizing UND to use the Fighting Sioux nickname and logo.³⁷ Although the referendum passed, the tribal leadership at Spirit Lake refused to give formal approval to UND until September 19, 2009.³⁸

With the Spirit Lake Tribe's formal approval to UND to conform with the terms and conditions of the settlement agreement, the Board's efforts then turned to obtaining approval from the Standing Rock Sioux Tribe. Given Standing Rock's longstanding opposition to the Fighting Sioux name and logo,³⁹ the only remaining option was to hope for a change in tribal leadership in the tribal elections to be held in October of 2009.⁴⁰

On September 11, 2009, two Board members met with private parties for a briefing on the upcoming tribal elections at Standing Rock. At the meeting, the parties informed them the likelihood of new leadership being elected was good and the candidates expressed a favorable view towards giving consent to UND for the use of the nickname and logo. Of the candidates, the best hope for obtaining tribal approval was the election of Charles Murphy as Standing Rock Sioux Tribal Chairman.⁴¹ If elected, he would replace Chairman Ron His Horse Is Thunder, who had a long-standing opposition to the nickname and logo.

On October 1, 2009, the Standing Rock tribe elected Charlie Murphy and other new members of the Standing Rock Sioux Tribal Council. In a letter dated October 8, 2009, the Chancellor congratulated Chairman Murphy on his election and summarized the terms of UND's settlement

37. Press Release, Statement From the Spirit Lake Committee for Understanding and Respect, (Sept. 18, 2009) (on file with the NORTH DAKOTA LAW REVIEW).

38. See Spirit Lake Resolution No. A05-09-191, available at <http://legacy.grandforksherald.com/pdfs/Spirit%20Lake%20Tribe%20Resolution.pdf>. Language in the resolution gave "perpetual" permission, although its legal effect was unknown. *Id.* It should be further noted prior to expiration of the three-year period set forth in the settlement agreement, petition efforts had been undertaken at Spirit Lake to revoke this authorization.

39. In May 2009, Standing Rock's leadership appeared before the Board to formally express their continued opposition to the nickname and logo. N.D. State Bd. of Higher Educ. Minutes, *supra* note 36. They also informed the Board there was a tribal moratorium on the issue and the referendum process was not available under Standing Rock's constitution. *Id.* The opposition was underscored in August 2009 when the Standing Rock leadership refused to schedule a referendum vote requested by members of the tribe. The Standing Rock leadership appeared before the Board again on September 17, 2009 to restate its continued opposition. N.D. State Bd. Of Higher Educ. Minutes, Sept. 17, 2009, available at <http://www.ndus.edu/uploads/resources/1771/9-17-2009-BOARD-MINUTES-.PDF>. Overall, on nine occasions between 1992 and 2010 and under different chairmen and council members, the Standing Rock Tribal Council formally resolved to oppose UND's use of the nickname and logo or placing the issue on the ballot.

40. A meeting was held on August 19, 2009 at Ralph Engelstad Arena, inviting Standing Rock Sioux Tribe community leaders for the purpose of an open discussion of all issues relating to the name and logo.

41. Charles Murphy was also a past-appointed member of the Board.

agreement with the NCAA and the approvals that were necessary.⁴² The Chancellor and Chairman Murphy had a conversation about obtaining the approvals, and on October 29, 2009, the Chancellor, the Board's attorney, Chairman Murphy, and the tribe's attorney had a telephone conference on the matter. At the conclusion of the telephone conference, Chairman Murphy indicated the nickname and logo were not tribal priorities and he would issue a follow-up letter to the Chancellor. The following day, Chairman Murphy reiterated his position by letter and indicated he would call a tribal council meeting in early November of 2009, at which the tribe would discuss the name and logo.

To ensure there was no misunderstanding as to what was necessary to obtain approval, the Chancellor requested and received a personal meeting with Chairman Murphy and several Board members prior to the November tribal council meeting.⁴³ Following the meeting, the Chancellor reported both Chairman Murphy and the tribe's attorney reiterated the low priority of the nickname and logo issue to the Standing Rock Sioux Tribe. Further, Chairman Murphy did not expect the tribal council to take any further action on the issue, and a moratorium on any council action on the nickname and logo remained in effect. Finally, Chairman Murphy indicated even in the unlikely event tribal approval was given to UND, the approval would be short-term and not binding on any future tribal council.

Even in light of the position taken by the new chairman, the Board continued to delay taking action on the name and logo while efforts among the tribal members at Standing Rock were underway to petition for a referendum, in spite of the existing moratorium on the same. Standing Rock tribal members began the process of seeking a referendum vote at Standing Rock even though tribal leadership claimed a referendum vote was not allowed under their constitution.⁴⁴ Tribal members organized a petition to be circulated at Standing Rock, which cited the preamble and article XI of Standing Rock's constitution in requesting the tribal council to set a special election to determine the tribal membership's approval or disapproval of UND's continued use of the Fighting Sioux nickname and logo. One thousand and four signatures in favor of the special election were ob-

42. Letter from Chancellor William Goetz, N.D. Univ. Sys., to Charles Murphy, Chairman, Standing Rock Tribal Council (Oct. 8, 2009) (on file with the NORTH DAKOTA LAW REVIEW).

43. The meeting was held at Standing Rock on November 13, 2009 between the Chancellor, Chairman Murphy, Board President Richie Smith, Board member Claus Lembke, and the tribe's attorney.

44. See STANDING ROCK SIOUX TRIBE CONST. art. IV, § 1(i), XII (noting the only two references for referenda).

tained.⁴⁵ Shortly thereafter, a second petition with 1010 signatures opposing the nickname and logo was obtained.⁴⁶ On June 17, 2010, by a vote of ten to four, the tribal council refused to consider either petition and stated it reached a final resolution not to discuss or consider the Fighting Sioux nickname and logo further.⁴⁷

The final private effort to obtain Standing Rock's approval was a Standing Rock Tribal Court action filed on October 18, 2010.⁴⁸ Ten Standing Rock tribal members representing the 1004 petitioners in favor of the nickname and logo filed an action against the Standing Rock Tribal Council and its individual members to compel them to give its support for UND's use of the nickname and logo or to allow a constitutional referendum vote.⁴⁹ The tribal court denied their petition.⁵⁰ The tribal members appealed to the Standing Rock Sioux Supreme Court, and on November 15, 2010, the Supreme Court dismissed the appeal and sent the matter back to the tribal court.⁵¹ The tribal court then dismissed the action in its entirety.⁵²

IV. EPILOGUE OF THE SETTLEMENT AGREEMENT

With the end date of the settlement agreement having passed on November 30, 2010, the Board confirmed its decision for UND to retire the Fighting Sioux nickname and logo no later than August 15, 2011. However, the epic of the Fighting Sioux nickname and logo did not die with the Board's final directive to UND. On January 10, 2011, the Majority Leader of the North Dakota House of Representatives, Representative Al Carlson, introduced a bill to the Legislative Assembly, which stated:

The intercollegiate athletic teams sponsored by [UND] shall be known as the [U]niversity of North Dakota [F]ighting Sioux. Neither [UND] nor the [Board] may take any action to discontinue the use of the [F]ighting Sioux nickname or the [F]ighting Sioux logo in use on January 1, 2011. Any actions taken by the [Board] and [UND] before the effective date of this Act to discontinue the use of the [F]ighting Sioux nickname and logo are preempted by

45. Matt Cory & Wayne Nelson, *Standing Rock Council Votes to Keep UND Nickname Retired*, GRAND FORKS HERALD, June 17, 2010, at A2.

46. *Id.*

47. *Id.*

48. Order, *Fool Bear v. Standing Rock Sioux Tribal Council*, No. COMP-10-563 (Standing Rock Nov. 15, 2010).

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

this Act. If the [NCAA] takes any action to penalize [UND] for using the [F]ighting Sioux nickname or logo, the [A]ttorney [G]eneral shall consider filing a federal antitrust claim against that association.⁵³

On March 15, 2011, Governor Jack Dalrymple signed the bill into law⁵⁴ with an effective date of August 1, 2011.⁵⁵

The passage and implementation of House Bill 1263 will undoubtedly raise a number of additional issues for the Board's consideration, including, but not limited to, the NCAA's response, individual league responses, and the constitutionality of the new law. As of the date of this article, these issues remain outstanding and the fate of UND's Fighting Sioux nickname and logo remains unresolved.

53. H.R. 1263, 62d Legis. Assemb. (N.D. 2011).

54. 2011 N.D. Laws 4.

55. Generally, laws take effect August 1 unless certain circumstances exist. *See* N.D. CENT. CODE § 1-02-42 (2008).