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Salveta Rickford
Operator's Signature

10/16/03
Date

2003 JOINT CONSTITUTIONAL REVISION
HCR 3067

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Yolanda Richardson
Operator's Signature

10/16/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 3067

Joint Constitutional Revision Committee

Conference Committee

Hearing Date February 26, 2003

Tape Number	Side A	Side B	Meter #
1		X	3010-end
2	X		13-1735
Committee Clerk Signature <i>Elizabeth R. Fein</i>			

Minutes: **Chair Kretschmar** opened hearing on HCR 3067.

Rep. Eckre: Discussed intent of resolution and supports with written testimony.

Sen. Seymour: What will happen in ND in the future? Rep. Eckre noted that the last time this was in bill form. The only group that objected to it real strongly and had amendments was higher education because they have scholarships based upon race. What will change is, for example, at UND Medical School right now provides so many slots for Native Americans. They can't just say Native Americans. They will have to say certain tribes. They will have to follow what federal law says. Right now ND is allowing all different types of races. Schools may have to designate funds a bit differently.

Rep. Winrich: I noticed in the language there is a clause that says "does not prohibit action that must be taken to establish or maintain eligibility for any federal program" (pg 1, line 21-22), basically maintaining eligibility for federal funds. A lot of the programs that you referenced at UND that give preference to Native Americans are in fact federally funded. **Rep. Eckre** said that

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Joint Constitutional Revision Committee
Bill/Resolution Number 3067
Hearing Date Feb. 26, 2003

is correct. That is why this is in there. This law is written exactly like the one in California and the one in Washington is very similar and this is exactly what the courts laid down in the state of Texas. Yes, federal law takes precedent over state law, and federal constitution over state constitution. **Rep. Winrich** then asked that if we need to make exceptions for this, for federal programs which have been deemed constitutional under the United States Constitution, why is it necessary to protect rights in ND? They are already protected by the federal constitution, are they not? **Rep. Eckre** replied that that is why he put it in there. We do not have a lot of minorities in ND. California does. They said it could not work, but it has worked. Colleges enrollment in minorities is way up. We have to follow the rules on federal programs. That's true. That is what this is saying. We can't change that. For example, the federal highway system in ND is the interstate. They have to accept so many minority contracts, but not any more. There will be different contracting. **Rep. Winrich** then asked if the state is going to have different standards than the federal governments? **Rep. Eckre** replied that yes, federal law supersedes state law. **Rep. Winrich** said that what he does not understand why we are abrogating certain rights that are in the federal constitution in ND. **Rep. Eckre** said that state law cannot supersede federal law. We have no choice but to put that in here. **Rep. Winrich** then said that we are only honoring those rights where federal money is involved. Otherwise we are going to take them away. **Rep. Eckre** clarified that yes, when federal programs are involved.

Cheryl Bergian (Dir. of ND Human Rights Coalition): Opposed with written testimony.

Bergian also questioned if Native Americans are a political group because they are also an ethnic group. Bergian spoke with David Gipp, President of the United Tribes Technical College, and he asked that action be deferred until he can provide the committee with more information on

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Joint Constitutional Revision Committee

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Hearing Date Feb. 26, 2003

United Tribes' perspective. Martin Luther King Jr. wanted people to be judged on their character, not on their color. That was a dream. We have not reached that dream in North Dakota yet. More than 60% of nonwhite respondents to a Dept. of Labor study say they have experienced discrimination. We are not there yet. Do not have a constitutional amendment that will prohibit a solution to a problem if it exists in ND. She also questioned if an Indian tribe is a political group and not an ethnic group. They are definitely an ethnic group. They may also be a political group, but to say that preferential treatment policies would not apply to them because they are a political group, she is not sure that would stand up in the long run because they are an ethnic group also.

Glenn Baltrusch: Opposed. This does not belong in the constitution. Amendments are intended to correct problems that actually exist. This does not belong in the constitution in ND. If this is needed, it should be put into law, not into the Constitution. Section 7.1 of Article I deals rights of employment. Therefore, he urges the committee to vote DNP.

Jim Laducer (Indian business owner): Laducer and Associate, an information technology company. He moved away from the reservation in the 1970s after getting out of the service and lived in his car and got a job. He received preference to go to Mary College (now U-Mary) and also received preference for a loan to start his business. Today they do over \$15 M in sales and employs over 250 employees. He is required by law to develop an affirmative action plan. He questions what kind of message this sends to other states concerning minorities and females. Out-migration could come from this. Minorities and females are leaving ND. He grew up where no opportunities existed. Look at reservations right now. There is no economic base. The only systems that employ people on these reservations are the education systems and your BIA

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Joint Constitutional Revision Committee

Bill/Resolution Number 3067

Hearing Date Feb. 26, 2003

systems. Without that, we do not have the small infrastructure, small businesses. Programs like this set up opportunities for small businesses. Recommends DNP.

Connie Hildebrand (Pres. of American Assoc. of University Women, ND): This eliminates potential solutions and does not help. Urge a DNP.

Carol Two Eagles: In the matter of economics, women still earn less than men. Discussed the DNA differences between Asians, Caucasians, and Indians. She put herself through college, turning down full-ride scholarships. She was asked why as an Indian or a female she didn't study something more suitable to her, like library science. She has worked with different Indians who have established businesses. They needed financial assistance and needed preferential treatment in order to get the assistance because they are so small and cannot compete with large contractors. She is the CEO and founder of a micro corporation. The mission statement says, that they "exist to provide jobs for Indians in ND, to provide a market for durum producers in ND, and to support family farmers in ND." They went to the agriculture department in ND and were told they will never get a grant because the mission statement says they will provide jobs to Indians. They approached this from different angles and were told no because they are Indians. If that doesn't define discrimination in ND, Two Eagles does not know what does. She took her business to the Capital Credit Union to buy a pickup truck. Her credit is good and the chief loan officer of the CCU said, "I don't want to make a loan to your company so as long as you are the head of it or involved in any aspect of management because," she said, "your people historically have a problem managing money and credit." We need to kill this bill and continue to seek solutions that enable Indians to get off of welfare and create jobs. It will cut the suicide rate, the domestic violence rate, and the alcohol and drug abuse rate, it will improve everybody's lifestyle.

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Phil Baird (Dean of Vocational Academic Programs, United Tribes Technical College):

Representing President Gipp from UTTC. Discrimination exists. There are two other things about this bill and we are talking about a level playing field and we are talking about creating opportunities for the future. In terms of a level playing field, there are two things that are happening right now that we can relate to; one is basketball season. We look at district and regional tournaments for a level playing field, understanding that our youth can have a fair shot. We are vigilant in making sure there is an opportunity to have as close to a level field where everyone has an opportunity to show their best. This would not provide that opportunity. The other thing from a more political standpoint is the Missouri River issue. The battle here in ND and the other forces with water. They want a level playing field with the other states. These are used as examples of something we can talk about in terms of a level playing field that we can all relate to. To follow up on Laducer's comments, this would send a terrible message in terms of cultural diversity issues and again, when you talk about the reservation population, which is the fastest growing population in ND. We talk about out-migration, it truly is. We talk about work force issues here in the future. 50% of reservation population in ND is 18 yr. of age and younger. What message are we sending about the future workforce. This is a reality that we are dealing with here. Looking at tribal colleges, he remembers when Congress talked about providing a level playing field and education opportunities for American Indians. Legislators at one point said they do not need that. They were told Indians were better off working with their hands, or farming and pigs were more their deal than 4 year degrees. If we had listened, we wouldn't have 34 tribal colleges across the country making an impact on human resources. We wouldn't have United Tribes Technical College, which has an economic impact on Bismarck. The point is that

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Salvatore Riccardi

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Joint Constitutional Revision Committee
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Hearing Date Feb. 26, 2003

had they listened, we wouldn't have what is afforded them today. Was once told SD is the Alabama of the North. He is very proud to be in ND and would be disappointed if ND had the same reputation. Opposes this resolution.

Sen. Bercler: ND is currently importing a tremendous number of folks who are immigrants who are being mistreated. Fargo, for example, knowing there is a problem there, we appropriated one or two sessions ago \$300,000 for English literacy in that area. That is important. That tells him something and he thinks it tells ND something. And that is that we need to get people in this state and what can happen from that, we need to get people who understand the English language. Laducer testified earlier. He is the president and CEO of Laducer and Associates, who is a member of the Turtle Mountain band of the Chippewa people, employs over 200 people, talking about new contracts coming into the state. Some of the programs and the implications this could have may cause further gray area for the whole state. The federal government agreed with some of these programs and the state did not. This does not belong in the state constitution. It is not friendly to outside groups. Also said Native Americans are political and cultural entities. It took both the federal and tribal governments to agree in order for ND to become a state. This creates exemptions. Where does it stop? How can you stop it? Every time there's an exemptions for one thing or another, there is almost nothing you can do without some exemptions at some point, but with this piece of legislation and the diversity we are striving for, we are trying to attract people because of out-migration. This is going to make a major divide in the people. This piece of legislation will hinder the growth of ND, it is not going to make it a better ND. It will make it a tougher place to live. People in city governments and contracting are going to have a harder time to figure out if state law applies or not. Federal mandates rule. If you create gray

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areas, people will be confused. The first thing that will happen is that this will end up in litigation and all the attorneys will make the money. Ever since President Bush went to Michigan State to discuss college enrollment and affirmative action, ever since, in his opinion, the ball has started rolling in that direction. He is the President and he supports him, but he disagrees with the direction we are going. This is a wrong road for the legislature to take. We shouldn't have this in our ND Constitution.

Rosey Sand (Dept. of Public Instruction): Testified that the English language learning program would not be permissible if this passed. A couple more examples for the committee include the 21st Century Program, which is an after-school program. The schools are chosen based on poverty. The schools on the list have a high population of Native children or high population of (can't hear). When the grant applications came in, she wanted people who are familiar with those types of situations, not what tribe they were from. Feels if they hire grant readers who know the situation better, grants will be better distributed. Last year they received a grant from the Beaumont Foundation to distribute Toshiba computers. They were to look for schools with poverty. The computers went to 3 reservations and Carson. These are things the committee needs to think about. This is not a simple solution to a simple problem. There is an exception in this bill on page 1, line 19. Right now in the human rights act allows that exception, but it also allows the exception based upon religion, national origin, physical or mental disability, or marital status. When looking for undercover drug agents, you may need to discriminate on national origin. You need an agent that will fit in with the population. Another area where a simple solution may cause a problem.

Chair Kretschmar: Closed hearing on HCR 3067

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 3067

Joint Constitutional Revision Committee

Conference Committee

Hearing Date March 5, 2003

Tape Number	Side A	Side B	Meter #
1	X		2263-2738

Committee Clerk Signature *Elizabeth R. Linn*

Minutes: **Chair Kretschmar**: Opened discussion on HCR 3067

Larry Isaak (University System Chancellor): Was not here when the original hearing was held. The Board has not met on this, but opposed a similar resolution two years ago. This would not affect the INMED program. They do provide minority tuition incentives to attract students and this would hurt the process.

Rep. Eckre moved a DP. 2nd by Sen. Mutch

Vote: **4 Yes 6 No 0 Absent and not voting. Motion fails**

Sen. Nichols moved a DNP. Second by Rep. Maragos.

Vote: **7 Yes 3 No 0 Absent and not voting**

Carriers: **Rep. Winrich** **Sen. Nichols**

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Date: 3/5/03
Roll Call Vote #: 2

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3067

House Joint Constitutional Revision Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DNP

Motion Made By Nichols Seconded By Maragos

Representatives	Yes	No	Senators	Yes	No
Rep. Kretschmar, Chair	✓		Sen. Tollefson, Co-Chair	✓	
Rep. Maragos	✓		Sen. Mutch		✓
Rep. Hawken	✓		Sen. Krebsbach		✓
Rep. Eckre		✓	Sen. Nichols	✓	
Rep. Winrich	✓		Sen. Seymour	✓	

Total (Yes) 7 No 3

Absent _____

Floor Assignment Winrich Nichols

If the vote is on an amendment, briefly indicate intent:

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Yolanda Richardson 10/16/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
March 6, 2003 11:06 a.m.

Module No: HR-40-4076
Carrier: Winrich
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HCR 3067: Joint Constitutional Revision Committee (Rep. Kretschmar, Chairman)
recommends **DO NOT PASS** (7 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING).
HCR 3067 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-40-4076

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10/16/03
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2003 TESTIMONY

HCR 3067

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10/16/03
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NORTH DAKOTA

UNIVERSITY SYSTEM

The Vital Link to a Brighter Future

HCR 3067 POTENTIAL IMPACTS

- HCR 3067 may impact these NDUS programs:
 - Native American scholarships under chapter 15-63 (\$204,000 general fund appropriation).
 - UND's goal of becoming the leading university for Native American students (UND would not be able to grant waivers, award scholarships, etc.).
 - Slots reserved for Native Americans in health programs intended to address the critical need for more Native American health professionals (medicine, pharmacy, physical and occupational therapy, dietetics, nursing) (UND's INMEDS program or other programs for which receipt of federal funds is conditioned on making those slots available would be OK).
 - Programs enabling displaced homemakers or other disadvantaged women to return to school and supporting female students in nontraditional fields (e.g., BSC's Phoenix Program).
 - Tuition waivers or scholarships for international students or minorities (if status as an international student or minority is a consideration).
 - Affirmative steps to encourage minority job applications (similar language in a California law has been interpreted to prohibit minority outreach and recruitment, even when minority applicants receive no hiring preference).
- The Higher Education Roundtable Cornerstone # 2 ("Education Excellence") notes that the NDUS must prepare students to be successful in "an increasingly global, multicultural society." That is the goal of NDUS diversity programs.
- The Roundtable report states: "Strategies designed to provide (Native Americans) with skills training and employment opportunities can be an advantage to all parties – individuals, the tribes, employers, and the state."
- Many large corporations and other employers support (and expect) affirmative action and diversity in education. A coalition of numerous Fortune 500 and other companies filed a brief in support of the University of Michigan's affirmative action programs in a case challenging those programs in the United States Supreme Court.

State Capitol - 600 E. Boulevard Ave., Dept. 215, Bismarck, ND 58505-0230
Phone: 701.328.2960 • Fax: 701.328.2961
E-mail: NDUS.office@ndus.nodak.edu • Web: www.ndus.nodak.edu

The North Dakota University System is governed by the State Board of Higher Education and includes:
Bismarck State College • Dickinson State University • Lake Region State College • Mayville State University •
Minot State University • Minot State University-Bottineau Campus • North Dakota State College of Science •
North Dakota State University • University of North Dakota • Valley City State University • Williston State College.

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10/16/03
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North Dakota Human Rights Coalition

P.O. Box 1961, Fargo, ND 58107-1961 (701) 239-9323 Fax (701) 478-4452 www.ndhrc.org



Testimony
February 26, 2003
Joint Constitutional Revision Committee

HCR 3067
Relating to discrimination and preferential treatment

Chairman Kretschmar and members of the Joint Constitutional Revision Committee, I am Cheryl Bergian, Director of the North Dakota Human Rights Coalition. The Coalition includes a broad-based, statewide membership of individuals and organizations interested in the furtherance of human rights in North Dakota; the Coalition's mission is to effect change so that all people in North Dakota enjoy full human rights. Our work is based on the principles enunciated in the Universal Declaration of Human Rights.

I speak in opposition to HCR 3067 as far as it prohibits granting preferential treatment to individuals or groups on the basis of gender, race, color, ethnicity or national origin.

To my knowledge, North Dakota's only preferential treatment policies relate to veterans. Historically, preferential treatment policies based on protected classes have been created to remedy a history of discrimination against that class, just as preferential treatment policies for veterans were created to remedy the disadvantage they experienced because of their service in the armed forces of the United States.

The reason for preferential treatment policies is to level the playing field for members of protected classes who have experienced a history of discrimination, so they have the chance to compete. Preferential treatment policies overcome unfair obstacles which have been in place and create equal opportunities.

HCR 3067 would create a constitutional amendment against preferential treatment policies. It would prohibit the state from identifying a solution to a problem of historical discrimination, should that problem exist. The recently released 2001 Public Perception Study of Discrimination in North Dakota by the North Dakota Department of Labor documented that more than 50% of Native American and more than 50% of "Non-White" respondents reported that they had experienced discrimination. A constitutional amendment prohibiting preferential treatment policies would remove a solution to institutionalized discrimination, should it exist in North Dakota. Removing possible solutions to institutionalized discrimination will not enhance the quality of life in North Dakota, for those who live here and for those who might live here. Please vote Do Not Pass on HCR 3067.

Salvatore Richardson
Operator's Signature

10/16/03
Date

As you may know, this resolution was introduced quite recently, just one week ago. I've spoken with David Gipp, President of the United Tribes Technical College, and he would like an opportunity to provide the committee with testimony regarding the tribes' concerns regarding this bill, but was unable to attend this hearing. Please defer action on this resolution until Mr. Gipp has had the opportunity to provide the tribes' perspective, which I anticipate will be provided to you as quickly as possible.

I appreciate this opportunity to testify on behalf of the ND Human Rights Coalition.

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Yolanda Richardson
Operator's Signature

10/16/03
Date



Representative Bruce Eckre
 District 25
 1300 North Seventh Street
 Wahpeton, ND 58075-3625
 beckre@state.nd.us

NORTH DAKOTA HOUSE

STATE CAPITOL
 600 EAST BOULEVARD
 BISMARCK, ND 58505-0360



COMMITTEES:
 Judiciary
 Political Subdivisions

TESTIMONY PREPARED BY REPRESENTATIVE BRUCE ECKRE

Members of the Joint Constitutional Revision Committee, this Resolution, addresses a need to judge our citizens by their merit, and not by their race, gender or ethnicity. The 14th Amendment bans racial discrimination; in my view, racial preferences and set-asides are racial discrimination.

California Prop. 209, an initiated measure, passed 55% to 45%, in a state that is 51% minority. Washington State also passed a similar initiated measure. The State of Texas did this through court action. The State of Florida did a similar measure through Executive Action by Governor Jeb Bush (see photo). It's worth noting that the language of Prop. 209 in California was taken from the Civil Rights Act of 1969. House Bill ²⁰¹⁶ 1435 is worded that way also.

Preferences teach the lesson that "what you get depends on what your are, not on what you can do." In George Orwell's book, Animal Farm, one of the main themes is "Some people are more equal than others." That simple little book teaches us a big lesson. Martin Luther King Jr., in his last great speech, said, "People should be judged by the content of their character, not the color of their skin."

There is no such thing as a "woman's" approach to mathematics, or an "African-American's" approach to physics. If we are really concerned about diversity, we need indicators more meaningful than the color of the applicant's skin or gender. Universities should indeed be looking for faculty members with differing perspectives and with experience and expertise in different cultures and ways of life. A good university will have liberals and conservatives, faculty members with expertise in the classics, and faculty members with expertise in jazz. It will have anthropologists who have field experience in the Peace Corps in far away parts of the world, and theoretical physicists who seldom stray very far from their computers. But it shouldn't matter whether an expert in women's history is a woman or a man; what should matter is how knowledgeable the expert is.

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Similarly, police and fire departments should indeed have employees who can communicate effectively with all the city's residents. But again, it shouldn't matter if a police officer speaks Spanish because she is Mexican-American, or because she learned Spanish in high school, so long as they both are equally fluent. This bill does not prevent the consideration of real diversity. The only bases for discrimination that it bans are race, sex, color, ethnicity, and national origin - and those should be factors without importance anyway. It leaves the state free to consider the rich variety of skills, perspectives and experiences that North Dakotans are rightly known for.

The UND Aerospace program concerns are that no Norwegians, Taiwanese, and others that come over in groups will not be able to take Air Traffic Control programs. This is false. You must speak Norwegian or Taiwanese to participate in the program. This bill does not hinder that. If an individual wants to take Chemistry 400 at a college/university, he must usually have one or two lower level chemistry courses as prerequisites. This bill does not stop colleges/universities from setting standards. If I, as a North Dakotan, want to attend the University of Minnesota Law School, it has the right to set higher standards of entrance for non-Minnesota residents, just as the University of North Dakota Law School does for nonresidents. These are political standards, not racial or ethnic standards, and they would still be permitted under this bill.

Under federal constitutional law, classifications turning on a person's membership in an Indian tribe are generally not seen as being based on race or national origin. Because an Indian tribe is not just an ethnic group, but a political one, the Federal Courts have viewed "preferences" for "members of federally recognized tribes" as "political rather than racial in nature." This makes sense. The government sorts us by political allegiance in various ways: it sometimes distinguished U.S. citizens from aliens, and North Dakotans from out-of-state citizens. An Indian tribe is likewise a different sovereign. Tribal Indians, unlike other North Dakotans, belong to a political group that's specifically recognized by federal law, not merely to an ethnic group that has no independent legal standing.

This bill is aimed at hastening the day when people's race or ethnicity will be irrelevant to their civic lives. But, a person's membership in an Indian tribe will necessarily (and properly) remain relevant in at least some ways, just as a person's being a North Dakotan or an American

will remain relevant. The state may, therefore, legitimately want to consider a prospective employee's, student's, or contractor's Indian tribe affiliation in seeking to better serve the needs of this separate political community.

It, thus, seems proper to allow the federal constitutional example, and view classifications based on Indian tribe membership as not being based on race or ethnicity or national origin. Classifications based only on being an Indian, however, are racial; discrimination against or preference for nontribal Indians - or even for tribal Indians if the justification is their race and not their tribal status - would thus violate this bill.

In the National Republican platform, it states:

We believe rights inhere in individuals, not in groups. We will attain our nation's goal of equal opportunity without quotas or other forms of preferential treatment. It is as simple as this: No one should be denied a job, promotion, contract, or chance at higher education because of their race or gender. Equal access should guarantee every person a fair shot based on their potential and merit.

A generation ago, we did it right. We passed civil rights laws to prohibit discrimination, but special interests hijacked the civil rights movement. Instead of equality, governments imposed quotas, preferences and set-asides.

Thank you. Representative Bruce Eckre, District 25

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