

2013 HOUSE JUDICIARY

HCR 3037

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HCR 3037
DATE March 6, 2013
JOB 19520

☐ Conference Committee

Carmen Hickle

Explanation or reason for introduction of bill/resolution:

Concurrent resolution relating to support for nonpublic schools and use of public moneys.

Minutes:

Attachments 1,2,3,4,5

Chairman Kim Koppelman: Opens the hearing on HCR 3037.

Rep. Grande: See attached for written testimony #1 and handout #2. Time on tape :20 to 5:32. Introduced the resolution.

Rep. Lois Delmore: What will the cost to the state of ND if we amend our constitution and allow this to move forward?

Rep. Grande: There is no fiscal note because this does nothing but remove language.

Rep. Lois Delmore: If this would go before a vote of the people and be approved it's your contention that unless the Legislature passes a specific bill there is no cost?

Rep. Grande: Correct.

Vice Chairman Larry Klemin: Would you have any issue if we amended this to remove the reference to article 20 of the Constitution in section 2? That has to deal with prohibition and that part of the Constitution was repealed in 1933.

Rep. Grande: I have no problem with you addressing that part as I had the exact same question.

Rep. Kathy Hogan: In terms of section 2 what is your intent?

Rep. Grande: I was directed by Council and was told it would allow for a bill similar to Rep. Dosch that was argued on the floor and I don't believe that has to be dealt with here.

Rep. Lois Delmore: You talked specifically about Catholics and Catholic schools, is it your intent that they would be the only ones that would be eligible for state money?

Rep. Grande: No, I don't believe that is how this would be. I wanted to be clear on what we had understood as history.

Morgan Forness, Superintendent at Shiloh Christian School: Testimony #3, see attached. Time on tape 9:45 to 14:47.

Rep. Lois Delmore: Rep. Grande said there would be no cost but looking at HB 1466 there was a considerable cost. What's the difference other than we are setting up and enabling which also says yes we can pass legislation with that same price tag? Isn't there a reason why a fiscal note should be included as part of this?

Morgan Forness: This is separate from 1466 I referenced that as 1466 was a vehicle to help meet the educational needs to the state. Private schools desire to be used as a tool to help that, funding would have been critical to help us meet that need. In this particular case we do believe the Blaine Amendment is discriminatory, that it is something that was set up as anti-Catholic legislation, it is problematic as we desire to work with the state. Very seldom do we have access to the resources to implement the requirements that often go with operating as a school. Public schools already are using public dollars with private to meet educational needs.

Rep. Lois Delmore: This would open the door to all private non-profit are you telling me the bottom line with this bill to not increase funding to all of those institutions?

Morgan Forness: Are there future potential resources that could benefit private non-public organizations? I sure but I don't see the purpose of this legislation specific to that.

Rep. Lois Delmore: Can you tell me what the testing requirements are for schools like Shiloh and Oak Grove as compared to those in the public school?

Morgan Forness: Our students take the same standardized state tests as the public schools, as well as the ACT, SAT all of those. We meet the same criteria in testing our students as well as for hiring of teachers, providing a curriculum they are all the same. DPI would not let us operate if we did not meet those expectations.

Rep. Lois Delmore: Do you have any copies of those results that we could compare to the public schools? As far as student success rate, where they score etc. to see if there is a difference and what the differences are?

Morgan Forness: Each school could provide those test results to you. They are not tabulated within the state test results but we have not only met those standards but exceeded the state and national averages by two to three points each.

Rep. Lois Delmore: Is there a reason why we don't tabulate those with others?

Morgan Forness: I think there is access to those some of it has to do with the standardized reporting process that costs money that private schools aren't funded for. There is a unified student data base in private schools some access that and some doesn't.

We would like to be a part of that state data base if we could also receive the funding for that.

Rep. Karen Karls: Over the years I have seen criticism of private schools how are those qualifications being met now? You do have qualified teachers, you take the same testing the one thing you do over and above what public schools is you have an interview process and you are selected to attend a private school. Do you have an answer to that charge?

Morgan Forness: I assume you are referencing who we accept as part of our admissions process? We do have an admissions process as a private school, we operate within the context of mission and the faith component is a part of that. Private school is a choice, we probably cannot meet the entire scope and spectrum based on who we are but I don't believe you have to be a Catholic to attend a Catholic school or to be a certain denomination to attend a Christian school. We have a mission that we ask parents and students to understand so if they choose that school they understand how we operate.

Rep. Bill Kretschmar: Do you know how many children in the Bismarck-Mandan area attend non-public schools?

Morgan Forness: 1,800 students are in the private schools. With the state of affairs in Bismarck-Mandan it would be problematic if those students showed up tomorrow for public school.

Rep. Bill Kretschmar: If private schools did not exist in this area where would those children go to school?

Morgan Forness: I believe they would go to the public schools.

Vice Chairman Larry Klemin: Are you aware of the history in other states that have the Blaine Amendment and have they changed their Constitutions with what we are being asked to do?

Morgan Forness: Yes, the Blaine Amendment has been overturned in a number of states but it is an expensive proposition. I believe the Blaine Amendment was part of a stipulation that was included to grant North Dakota statehood.

Vice Chairman Larry Klemin: When you say that it was overturned in a number of other states was that by Constitution Amendment or by courts?

Morgan Forness: I believe but the courts. It has been challenged through the court system.

Vice Chairman Larry Klemin: Why have we tried to challenge this on the Constitutional ground in ND?

Morgan Forness: I know that is a very expensive proposition and I would have to lean on legal experts to figure out how that is done. We are a private school organization, we

operate primarily on a volunteer basis we don't have paid legal staff but we would have to look at that we decided to go that direction.

Rep. Roger Brabandt: What are the graduation rates between public and nonpublic schools?

Morgan Forness: Private schools the graduation rates for the past 20 years have been between 90 and 100% with the vast majority going on to higher education.

Rep. Andy Maragos: Do you think if this was put before the voters and the restriction is removed that the homeschoolers should be able to come and request funds to help education also?

Morgan Forness: Homeschool students already have access to resources that nonpublic schools don't. For example home school students can access some of the curriculum resources from the public districts, the public districts provide testing resources for them, and in the nonpublic schools we do that all on our own.

Rep. Andy Maragos: Would you be eligible to access public if you wished the same as homeschoolers?

Morgan Forness: I don't believe this legislation would change that. I would have to be some future bill for consideration.

Rep. Andy Maragos: If you wished to participate the way the homeschoolers do with public schools would you be denied?

Morgan Forness: Currently we are denied of all of those requests. Which doesn't make sense to us, the Dakota Boys and Girls Ranch is a private nonpublic Christian organization that provides academic services to the public schools that is paid for in full by public school dollars. That is not accessible to us in any way.

Rep. Andy Maragos: Does the Minot School Board control who teaches at Dakota Boys and Girls Ranch and the curriculum?

Morgan Forness: I believe there is a local school board but you have to meet the school approval process of the Department of Public instruction. That is true for public schools and nonpublic schools.

Rep. Lois Delmore: If we are fair at looking at graduation rates you don't have to accept every student that applies? If a student is not living up to the standards that you wish you do not need to retain that student am I correct? That would be a big difference between a public school and a school like yours.

Morgan Forness: Yes you are correct. However, nonpublic schools service a percentage of students with learning disabilities but we not funded to meet the extensive needs.

Rep. Diane Larson: Colorado has Charter Schools is a school choice option, are you familiar with Charter Schools and why some states allow choice instead of public schools?

Morgan Forness: Each state is different in determining the best education to meet their needs.

Rep. Kathy Hogan: If this was to pass and you were to get funding do you think private schools should have the right to continue to refuse to take some children or should the same rules apply that apply to public schools?

Morgan Forness: Certainly if we were funded 100% as all public schools it would be appropriate to expect the same. At no time has the private school organization ever requested full funding for our students. We have asked for small amounts to meet expectations of public safety, CPR training, heart monitors, textbook resources.

Rep. Kathy Hogan: If you got 50% you could still deny some children?

Morgan Forness: I suppose that would be up to the Legislature to determine.

Rep. Kathy Hogan: Those hard to manage children are the most expensive in any system, that's the kind of equity we need to look at.

Morgan Forness: You are correct. We have many of those children as well; we work with Youthworks, with Dakota Boys and Girls Ranch just like the public schools. There are times when we realize we have reached the end of our resources.

Rep. Kathy Hogan: Then they go to the public schools?

Morgan Forness: There are public schools students who choose private and are successful.

Chairman Kim Koppelman: Do you sense that sometimes students who fall through the cracks in the public system or deemed hard to handle sometimes come to you is that common?

Morgan Forness: Yes, we have students with high needs and we work hard on an individual basis to meet those expectations.

Rep. Andy Maragos: Do you foresee if this goes to the ballot it's going to create a difficult situation for the voters of ND? Do you think we should still move forward with this in the possibility of a very negative circumstance?

Morgan Forness: I think it's how it is sold and I want bothered me on 1466 was inaccurate and untrue statements that were made that was very difficult to defend. I would hope accurate information could come forth. I do believe this amendment is not good for public or private or the state of North Dakota as a whole. I think the intent was prejudice at the time.

Chairman Kim Koppelman: Do you have any sense how many students are in nonpublic schools?

Morgan Forness: Statewide there are 45 schools with just under 7000 students.

Chairman Kim Koppelman: Another idea that has been proposed in other states is called school choice or vouchers some cases it is a tax credit how do you think that works what we currently have in law and Constitution in ND?

Morgan Forness: I think we would support that. I was tried a decade and half ago but because of the Blaine Amendment was shot down.

Rep. Kathy Hogan: Are there any of the 44 schools that are not religious based?

Morgan Forness: There is some private nonpublic schools that are not religious based.

Kelly Koppinger, Superintendent of Dickinson Catholic Schools: Time on tape 45:30 to 55:25. Testimony handout #4 see attached.

Kayla Pulvermacher, NDEA: Time on tape 55:54 to NDEA is not against public schools, we are for people having choice. Private schools can screen children and if they can't take a child for whatever reasons, the public schools don't have that choice. We are concerned about funding since we are required to take every child that comes to us.

Rep. Randy Boehning: How do you this would affect funding for K-12?

Kayla Pulvermacher: I think there is a possibility that in the future we will not have the kind of dollars that we have now and it could be conceivable that we would be competing for dollars at the state level that we would both need to educate children.

Rep. Randy Boehning: I see this as an opportunity for the private school to take on more special needs students because they would have the funding, wouldn't this help? It would relieve some of the pressure of the public schools.

Kayla Pulvermacher: It would be there choice to do that whereas we are required and do take care of students.

Rep. Diane Larson: Do you think if more private schools open and it didn't cost as much to attend that you would lose a lot of your public school students?

Kayla Pulvermacher: That is a hard question to answer.

Rep. Diane Larson: You are getting a per pupil payments for students and so you would lose some money is if you no longer had the students.

Kayla Pulvermacher: The state is taking on a much larger amount of funding for our schools and we hope this will continue into the future.

Rep. Diane Larson: This particular bill is just about removing religious discrimination and that could then allow for some funding at a later time for private schools. Do you know if the Indian schools receive any funding?

Kayla Pulvermacher: I believe there was a bill that talked for scholarships for that population but I'm not sure how much funding they get.

Chairman Kim Koppelman: It seems we are getting away from per pupil payments are you fearful for loss of dollars if it is based on a block grant of money from the state to education?

Kayla Pulvermacher: We are not getting away from the per pupil payment because what we are talking about in HB 1319 is raising that per pupil payment.

Chairman Kim Koppelman: Are you opposed to having this put before the people?

Kayla Pulvermacher: I don't feel it would be appropriate to let you know what our idea is and our position on this bill.

Rep. Roger Brabandt: What percentage of public school teachers belong to the NDEA?

Kayla Pulvermacher: We have about 8,000 members and there is 9,000 to 10,000 teachers.

Rep. Roger Brabandt: Do you know the percentage of nonpublic teachers that belong to the NDEA?

Kayla Pulvermacher: We don't have any members who are nonpublic.

Jon Martinson, North Dakota School Board Association: Time on tape 1:07:00 to 1:08:23. See attached testimony #5.

Chairman Kim Koppelman: US Constitution doesn't apply to higher education, if it applies to K-12 if your assertion is that it is unconstitutional?

Jon Martinson: Separation of church and state in terms of private and public things are all over with that. For example on the House floor when 1466 discussed it was mentioned that before each session each house has a prayer. School boards cannot have a prayer before their meeting. We are opposed to the use of public funds for private schools.

Chairman Kim Koppelman: Separation of church and state is not in the United States Constitution.

Tamara Uselman, Superintendent of Bismarck Public School: Time on tape 1:10:30 to Public schools are governed by a publically elected school board so when all of our tax monies come into the school as revenue whether you choose private or public school has a say in how that money is spent through the voting process supporting elected members.

The questions come to taxation without representation if the board is not publicly elected and the open meeting laws aren't being related to public meetings. 3037 is difficult to support because I believe in the separation of church and state but also believe with tax dollars going toward an entity then they should have to answer to the public through their electoral process.

Rep. Vicky Steiner: What I understand our discussion is that this is about the word sectarian and as it relates to a different term. Your interpreting that a little different if this is a discrimination of the past that needs to be cleared would you then support cleaning up the constitution in terms of its history?

Tamara Uselman: I think this is a substantial change to the constitution so if the intent of this to tie to 1466 that would be problematic for me.

Rep. Roger Brabandt: You said you oppose public money for sectarian schools what about nonsectarian private schools?

Tamara Uselman: My issue isn't with sectarian schools it is with the fact they must be publically elected boards and subject to open meeting laws where those tax dollars go. I'm a strong supporter of choice.

Rep. Roger Brabandt: So you are against public money for sectarian and nonsectarian public schools?

Tamara Uselman: I believe tax dollars go toward for education those dollars need to be governed by publicly elected boards so public tax payers get to weigh in on voting for their members.

Chairman Kim Koppelman: We have heard a lot about public money, whose money is this?

Tamara Uselman: The public's money.

Chairman Kim Koppelman: Closes the hearing.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HCR 3037
DATE March 13, 2013
JOB 19838

☐ Conference Committee

Carson Hickel

Explanation or reason for introduction of bill/resolution:

Concurrent resolution relating to support for nonpublic schools and use of public moneys.

Minutes:

Chairman Kim Koppelman: Opens for committee work. This deal with the Blaine amendment in the Constitution and the sectarian schools.

Rep. Diane Larson: Made a do pass motion for HCR 3037.

Rep. Vicky Steiner: Second the motion.

Rep. Vicky Steiner: Does section 18 allow the state to send a check? I was asked if the language I have in 3036 is what would need to be used if in fact that is what we are doing with that section. My working is different in my bill.

Motion and second was withdrawn.

Chairman Kim Koppelman: Rep. Grande asked to take out Section 2. Legislative Council added it.

Vice Chairman Larry Klemin: Made a motion to amend HCR 3037 to delete Section 2.

Rep. Diane Larson: Second the motion.

Voice vote carried.

Rep. Diane Larson: Made a motion for do pass as amended.

Rep. Randy Boehning: Second the motion.

10-3-1

Rep. Gary Paur: Will carry the resolution.

March 13, 2013

VLC
3/13/13

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3037

Page 1, line 1, remove "and section 18 of article X"

Page 1, line 2, remove "and use of public"

Page 1, line 3, remove "moneys"

Page 1, line 6, remove "and allows the state to forward public moneys to"

Page 1, line 7, remove "individuals and nonpublic entities"

Page 1, line 10, replace "amendments" with "amendment"

Page 1, line 10, remove "and section 18 of"

Page 1, line 11, remove "article X"

Page 1, line 11, replace "are" with "is"

Page 1, remove lines 21 through 25

Page 2, remove lines 1 through 3

Renumber accordingly

Date: 3-13-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE

ROLL CALL VOTES

BILL/RESOLUTION NO. HCR 3037

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Larson Seconded By Rep. Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Withdrawn

Date: 3-13-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE

ROLL CALL VOTES

BILL/RESOLUTION NO. HCR 3037

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Klemin Seconded By Rep. Larson

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote - Carried

Date: 3-13-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE

ROLL CALL VOTES

BILL/RESOLUTION NO. HCR 3037

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Larson Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore		/
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson		/
Rep. Randy Boehning	/		Rep. Kathy Hogan		/
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos					
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 10 No 3

Absent 1

Floor Assignment Rep. Paur

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

REPORT OF STANDING COMMITTEE

HCR 3037: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HCR 3037 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "and section 18 of article X"

Page 1, line 2, remove "and use of public"

Page 1, line 3, remove "moneys"

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Page 1, remove lines 21 through 25

Page 2, remove lines 1 through 3

Renumber accordingly

2013 TESTIMONY

HCR 3037

This Resolution is aimed at righting a wrong. Our Constitution includes a provision from a sad chapter in our national history.

A recent article in the Fargo Forum reviewed the history of the Ku Klux Klan in North Dakota and it is important to revisit that history from time to time – to learn from our history.

The story pointed out that a revival of the KKK in North Dakota during the 1920's was based in large part on religious discrimination – religious discrimination that can be traced back to our North Dakota Constitution and before.

This Resolution is intended to remove a provision from our Constitution which is generally referred to as the "Blaine Amendment". This Blaine Amendment is based on anti-catholic religious bigotry. And it has no place in our Constitution and no place in our state.

The same religious bigotry that fueled the KKK in North Dakota in the 1920's is still found in our state Constitution today.

In order to fully understand this issue it is vital to know the context of this provision.

James G. Blaine was a prominent politician in the late 1800's. Blaine served as Secretary of State for a couple of Presidents and served as Speaker of the US House of Representatives. Following the Civil War anti-catholic sentiment was very strong and Blaine proposed an amendment to the US Constitution that is basically the same provision contained in our state Constitution.

Blaine's proposed amendment to the US Constitution passed the House but failed in the Senate. The language was then picked up by a majority of states, including North Dakota based on a widespread mistrust of the Catholic religion.

At that time in our national history, protestant beliefs were widespread in our public schools and there was great fear of the Catholic religion. In fact, the term "sectarian" that is used in the Blaine Amendment was commonly understood at that time to mean "Catholic".

This is not an issue on the "separation of church and state" – a phrase that is found nowhere in the US Constitution – but a question of religious liberty – which is expressly protected by the First Amendment.

The US Supreme Court has not yet ruled directly on the constitutionality of the Blaine Amendment, but Court opinions over the past 15 to 20 years on related matters draw serious concerns about the Blaine Amendment.

The State of North Dakota must stand for what is right – for what is true. Religious bigotry will not be tolerated in this state.

Article VIII, Section 5 has its root in - and fosters - religious bigotry in direct conflict with Article I, Section 3 of our Constitution.

Religious liberty is protected both by our US Constitution and by the Constitution of this state. The Blaine Amendment is a direct strike on religious liberty and has no place in this state. This Resolution is a first step in removing this scar from our past.



HCR 3037

3-6-13

2

Rep. Grande

Published March 02, 2013, 11:30 PM

The history of the Klan in the Red River Valley

In the mid-1920s, Ku Klux Klan attracted thousands of followers, wielded political power in area

FARGO - Three mischievous fans of the Roughriders' hockey team flouted a taboo when they recently wore hooded Ku Klux Klan robes to taunt the opposing squad. But the Red River High School hockey spectators might not have known just how prevalent the Ku Klux Klan once was in the Red River Valley - nor that Grand Forks, home of Red River High, was a hotbed for the group, which railed against Catholics, blacks, Jews, Asians and foreigners.

By: Patrick Springer, INFORUM

FARGO - Three mischievous fans of the Roughriders' hockey team flouted a taboo when they recently wore hooded Ku Klux Klan robes to taunt the opposing squad.

But the Red River High School hockey spectators might not have known just how prevalent the Ku Klux Klan once was in the Red River Valley - nor that Grand Forks, home of Red River High, was a hotbed for the group, which railed against Catholics, blacks, Jews, Asians and foreigners.

In popular memory, the KKK often is associated with the post-Civil War South, where the organization was founded by former Confederate soldiers.

Less well-known is the Klan's revival in the 1920s. The group thrived in the Midwest, where its message touting Protestant Christianity, moral rectitude and patriotism found a receptive audience.

The "Invisible Empire" attracted thousands of followers throughout North Dakota, once drawing a crowd of 8,000 in Fargo, as well as a parade of 800 robed marchers and horseback riders who pointedly filed past St. Mary's Cathedral.

The Klan first surfaced in the Red River Valley in 1922, and enjoyed some political successes in the mid-1920s, notably in Grand Forks, but then quickly faded by the end of the decade.

The North Dakota Klan staged its signature nighttime cross burnings and appearances of members in ghostly white robes and masks in many communities throughout the state, efforts meant to draw supporters and intimidate its targets.

In Minnesota, Hawley is remembered as an active site of Klan activity, and a historian once estimated that ministers of half of the Norwegian Lutheran evangelical congregations in the region were members or tacit supporters, according to research by Clay County Historical & Cultural Society.

The Klan often sought sympathetic preachers to spread its message and to help win converts. It also took on many of the characteristics of a fraternal organization, popular social outlets in the early 1900s.

In the Rev. F. Halsey Ambrose, a Presbyterian minister in Grand Forks, the Klan found a devoted and persuasive evangelist. Ambrose was a fervent anti-Catholic, a position he preached from the pulpit.

His sermons were so entertaining, in an age before television, that they even attracted admirers from outside the congregation, according to accounts from Grand Forks Herald archives.

The first reported meeting of the Klan in North Dakota, a gathering of the Grand Forks Knights of the Ku Klux Klan, was reported by the Grand Forks Herald in September 1922 in a tone that suggested more amusement than alarm:

"Despite the rain and the muddy roads, the Knights held forth in all their glory," a Herald reporter wrote of the event 22 miles west of town. "It is suspected that their white nighties were not heavy enough to shed the rain but a Konclave was held nevertheless."

Ambrose succeeded in convincing his congregation and others that Grand Forks was in jeopardy of a Catholic takeover - a remote possibility, since Catholics comprised 20 percent of the population in the 1920s, according to a history of the Klan in North Dakota by Joann Flynn.

By 1923, the Klan had gained enough influence that both North Dakota and Minnesota passed laws prohibiting adults from publicly wearing masks or regalia that concealed their identity.

Ambrose made statewide news when he testified in Bismarck before the North Dakota Legislature against the anti-mask bill. He portrayed the Klan's membership as "pillars of the community," many of them business owners or professionals.

In the Klan's charter for the "realm" of North Dakota, Ambrose was listed as the Exalted Cyclops.

Despite efforts to curb the Klan's influence, the group continued to pick up support, especially in Grand Forks, according to the archives of the Grand Forks Herald and accounts by Flynn and historical researcher William Harwood.

By 1924, the Klan began to flex its political muscle by electing a known Klan member a city justice in Grand Forks. It also managed to defeat two Protestant women school board candidates that Ambrose painted as "Catholic pawns."

Two years later, in 1926, the Klan wielded more clout when it captured four of five seats on the Grand Forks City Commission. The leaders swiftly purged City Hall of Catholics, firing five employees, including the police chief, city engineer and assessor - as well as a janitor. Herald archives indicate

To curry public support and lend itself a patriotic shine, the Klan tried to associate itself with military veterans. The most notable example in North Dakota came on the Fourth of July in 1925, when the American Legion held a celebration in Hillsboro.

The Klan decided to crash the party by holding a "Konklave" and parade nearby, attracting an estimated 1,000 Klan members, including a contingent of 500 robed marchers. A special train from Fargo-Moorhead brought in 700 or 800.

The American Legion, however, disavowed the Klan, according to Mark Peihl, the archivist for the Clay County Historical & Cultural Society, who wrote about the Klan's activity in the area.

Fargo also was the scene of cross burnings and major Ku Klux Klan events.

On Aug. 24, 1924, the Moorhead Daily News reported a cross burning in a western Fargo neighborhood.

"It is reported that there is quite a strong Klan organization in Fargo and apparently the organization intends to purify the morals of Fargo and Cass County, especially in the country dance line," the Daily News reporter wrote.

On Nov. 26 of that year, the Fargo Forum reported two cross burnings, one on the campus of the now-defunct Fargo College, near Island Park, and another in the park near Oak Grove.

The most significant Ku Klux Klan events in Fargo, as reported by the Fargo Forum, occurred in the fall of 1925.

On Sept. 9, a parade of about 800 robed Klansmen, without hoods, marched through the streets. In addition to the marching band and drum corps, robed children rode on a float and a little red school house appeared in the parade, a symbol of the Klan's support for education.

The parade was a prelude to a rally at the old fairgrounds, where Fargo North High now stands. Participants and spectators listened to fiery speeches and were treated to a fireworks show.

Also that September, another Klan rally drew a ball park crowd in Washburn of 4,000 or 5,000, one of the largest ever seen, according to the Washburn Leader newspaper.

"Three large crosses were burned during the speaking and numerous Klansmen were present in their regalia, most of them strangers to the people of Washburn," the newspaper reported.

The following year, on Aug. 23, 1926, the Klan staged a daylong rally at the fairgrounds in Grand Forks that attracted an audience of 5,000 – an impressive turnout for a city with a population at the time of about 15,000, Flynn noted.

The star attraction was Hiram W. Evans, the national Klan's Imperial Wizard, who gave a speech against a backdrop of burning crosses that exhorted North Dakota Klan members to keep fighting to preserve Prohibition, according to Grand Forks Herald archives.

The Wizard's appearance was billed as bringing a message of "Americanism by an American."

Elsewhere in North Dakota, cross burnings and outdoor meetings often were held on Mill Hill in Jamestown, according to Flynn.

In Bismarck, a trench shaped like a cross was dug into the side of Falconers Hill, filled with hay and oil and set ablaze during Klan meetings.

Further west, large rallies often were held on the prairies between Gladstone and Dickinson, Flynn wrote.

The Rev. William Sherman, a retired Catholic priest and sociologist in Grand Forks, compiled information on about 50 cross burnings throughout North Dakota during the 1920s and made his research available to Flynn.

Often, the targets of cross burnings were Catholic churches or the homes of Catholics. There were few Jews or blacks in the state at the time.

In 1927, however, a cross burning in New Rockford was aimed at a black person, the only known instance Sherman documented. There also was a report of a cross burning on the lawn of a Jewish family in Fargo, Sherman said.

"The Catholics were the foreigners then," Sherman said, noting they often were immigrants from Ireland or other countries.

Also, German Catholics, unlike Norwegian Protestants, were not supporters of Prohibition, a cause the Klan championed.

"A lot of the activity in the Fargo-Moorhead area was more about bootlegging and licentious behavior," Peihl said of Klan activism. "They weren't so interested in the Catholics."

Norwegian immigrants might have embraced the Klan because it was a way to demonstrate support for patriotism and moral purity, messages the KKK emphasized to win support, Sherman said.

The Klan's appearance on the stage in North Dakota and western Minnesota during the 1920s was brief, and seemed to peak around 1925 and 1926, historians agree.

Hypocrisy was a major ingredient of the group's rapid loss of support.

Support for the Klan deflated after a 1925 scandal involving the national leader in Indiana, who was convicted of kidnapping, beating and sexually assaulting a young woman, who attempted suicide. The woman died and the Grand Dragon went to prison, Peihl said.

Ambrose, ever true to the Klan, tried to revive the organization, but was unable to field a slate of candidates in 1928, and the North Dakota Klan essentially disintegrated around 1930, historians agree.

After leaving Grand Forks, Ambrose was a preacher in St. Paul and later Iowa, where he seems to have been defrocked in the late 1930s, according to correspondence in the archives at the University of North Dakota that Peihl has reviewed.

Another preacher who knew Ambrose disapproved of him, writing that the former Exalted Cyclops violated the church's ideals, drinking to intoxication, "annoying women," and taking money from the collection plate.

The flames of the burning crosses had by then died out.

Readers can reach Forum reporter Patrick Springer at (701) 241-5522

Tags: north dakota, news, minnesota, politics

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Published March 04, 2013, 11:30 PM

Letter: Forum's story on KKK is much-appreciated

Thank you and thanks to Patrick Springer for the excellent articles on the KKK in the Red River Valley. It was historical journalism at its best.

By: Lloyd Anderson, Washburn, N.D., INFORUM

Thank you and thanks to Patrick Springer for the excellent articles on the KKK in the Red River Valley. It was historical journalism at its best.

I heard stories from my father about Klan activities in the Washburn, N.D., area when he was young, including a cross burning. He also told of a subsequent incident when the Klan marched to downtown Washburn in full regalia with the intent of severely punishing the owner of a local gas station who had supposedly committed some moral transgressions or other. The transgressor pulled a pistol and ordered the Knights to remove their hoods. According to my dad, that ended the KKK reign of terror in Washburn.

I wrote a letter about that incident to the Washburn Leader some years ago, and when the letter was published, an elderly woman from the West Coast sent me a note telling me how strongly she remembered being a young Catholic girl in Washburn when the cross was burned and how terrified she had been. The terror remained with her 70 years later.

Again, thanks to The Forum and to your great reporter, Springer.

Tags: opinion, letters

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Wednesday, March 6, 2013

HOUSE JUDICIARY COMMITTEE

My name is Morgan Forness. I currently serve as Superintendent at Shiloh Christian School in Bismarck and previously spent 20 years at Oak Grove Lutheran School in Fargo. I am appearing here today on behalf of the State Association of Non-Public Schools (SANS) in reference to House Concurrent Resolution 3037.

SANS membership represents over 45 private, (non-profit) schools in North Dakota made up of almost 7,000 students. These students come from families that pay state taxes to support public education, while at the same time, pay tuition for private school education.

As North Dakotans we can be proud of our educational system. Both public and private schools have an important role in educating students for success in the ever changing world of work. We consider it a privilege to work in collaboration with our public school counter-parts to meet the needs of North Dakota students. The economy is booming and communities are being stretched to meet the infrastructure, housing, business, and educational demands of their communities. Legislation is often written to provide incentives, guidelines, rules of operation, and funding to help meet those needs and often times both public and private entities benefit.

SANS recognizes that changing the Constitution is not something to be taken lightly. Non-Public Schools are dedicated to educating the "whole child" with both "academic excellence" as well as instilling a "value system" for a life of service and community involvement, similar to our public school counter-parts. However, the portion of the Constitution outlined by Rep. Grande is often used to block any type of "common sense" assistance that benefits all, even if it is from a different funding source than the common schools trust fund.

We don't feel that this was intended to include things like "contracted services" that was proposed in HB 1466. In fact that already occurs regularly to meet the various educational needs of public school students, be it Dakota Boy's and Girl's Ranch, Psychiatric Hospitals, or private organizations to meet special ed. needs. Additionally, it has been cited in blocking legislation for non-public schools in sharing of textbooks, defibrillators and even CPR Training. Even Home Schooled children receive these benefits but non-public schools do not.

The Blaine Amendment was originally written to prevent any church body to dictate a state sponsored school. Those days are long gone and private (not for profit) schools should not be viewed as a competitor but rather an additional resource and alternative available to educating our student population in North Dakota. All students should have options as the "one size fits all approach" is not always what's best for every student.

Choice is a hallmark of democracy and American ideal. This allows for institutions, businesses, and products to ultimately produce a “high quality” product, whether it is a car, neighborhood in which you choose to live, or a school.

Finally, contrary to what most believe, private schools are NOT prep schools that only rich attend. Virtually all private schools provide significant financial aid to families who otherwise would be unable to attend. Aid is available to families from all ethnic and socio-economic status. While most non-public schools have a mission that may be different from the public schools, we are all equally committed to quality academics and high standards, making us a great benefit for the state North Dakota. Variety brings creativity, creativity breeds new ideas, new ideas build reform and reform usually translates to “Excellence!”

Parents of private schools students pay taxes that help fund public education but reap very few benefits personally. Yet these private schools provide tremendous resources and rich learning environments to many communities ultimately saving public school funding, hundreds of millions of dollars We are quality private schools that often do more with less and desire to be a part of our communities in which we can assist in meeting the ever growing needs.

Many states have written legislation that allows public tax dollars to be used in public/private partnerships. Private education is a viable means and option that ultimately help meet the end goal. SANS would appreciate your willingness to recognize our role as an important part to the state of North Dakota and encourage you to support and be committed to our institutions as we partner together in meeting the educational needs of the state.

We are all in the business of educating top quality students, and by working together we are all better. Again, SANS is supportive HCR 3037. I would be happy to answer any questions you may have.

3-6-13 HCR 3037

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Good morning. My name is Kelly Koppinger, and I am the Superintendent of the Dickinson Catholic Schools. Thank you for the opportunity to come before you today to discuss the history of Blaine Amendments, and particularly their connection to anti-Catholicism.

As you know, Blaine Amendments are state constitutional amendments that were passed in the latter half of the 19th Century out of the nativist sentiment then prevalent in the United States. They expressed and implemented that sentiment by excluding from government funding schools that taught "sectarian" faiths (mainly Catholicism), while allowing those funds to the "common schools," which taught the "common" or "nonsectarian" faith (*i.e.*, non-denominational Protestantism).

The first of these amendments were passed in New York and Massachusetts, corresponding to waves of Catholic immigration, but they gradually spread through the Midwest. In 1875, James G. Blaine, a Congressman and presidential candidate came to be associated with these amendments by proposing one at the federal level. Although Blaine's amendment narrowly failed, it triggered a broader movement to add similar amendments to state constitutions that did not already have them, especially among the western states then in the process of being admitted into the Union. North Dakota was coerced into adopting the Blaine Amendment with the promise of statehood. The last Blaine Amendment was added in the early 20th Century, leaving the current total at approximately thirty-five.

In short, Blaine Amendments were not designed to implement benign concerns for the separation of church and state traceable to the founding, but instead to target for special disadvantage the faiths of immigrants, especially Catholicism.

I realize that I only have a short time for my prepared remarks, so I feel constrained to paint in relatively broad strokes, with the hope of addressing the details in the course of our discussion later. So I'll limit myself to three broader points.

First, I want to identify the watermark of a true Blaine Amendment, which is use of the term “sectarian” to identify those who should be excluded from government aid. **Second**, I want to describe briefly how a majority of Justices currently sitting on the Supreme Court have already acknowledged the historical connection between the Blaine Amendments and anti-Catholicism. **Third**, I'd like to highlight some of the growing body of historical scholarship that has focused on and traced out in detail those same connections.

One of the surest ways to spot a Blaine Amendment in a state constitution is to look for use of the term “sectarian” to describe the kind of entity (such as a “school,” “society,” or “institution”) that bears special legal disadvantage in the form of exclusion from government aid. The term “sectarian” is *not* synonymous with “religious” but instead refers to a narrower subcategory,

connoting one or more “sects” or “denominations” of religion. For example, “nonsectarian prayer” is unmistakably religious but is not tied to any one religious sect. The term “sectarian,” moreover, usually bears a pejorative meaning. Webster’s Dictionary defines “sectarian” to mean “of or relating to a sect or sects, narrow-minded and ready to quarrel over petty differences of opinion.” Along the same lines, the linguist William Safire recently noted that “sectarian is a word long associated with religion that has a nastier connotation than its synonym denominational.” Thus, standing alone, the bare term “sectarian” in a state constitution both draws a religion-based distinction between those who receive and do not receive government aid, and indicates a government purpose to deny government aid to some disfavored subset of all religious persons or groups.

Although the distinction between “sectarian” and “religious” may occasionally be blurred in common usage today, it was not when the Blaine Amendments first became law. Indeed, their historical context makes clear that their use of the term “sectarian” was not an oversight or a matter of mere semantics, but instead a common legal device to target for special disadvantage those who resisted the “common religion” then taught in the “common schools.” In other words, the meaning of “sectarian” can best be understood by reference to the “nonsectarian” religion to which it was opposed at the time.

Specifically, the term “sectarian” both expressed and implemented hostility to the faiths of those immigrants

(especially, but not only, Catholics) who resisted assimilation to the “nonsectarian” Protestantism then taught as the “common faith” in the “common schools.” Denying aid only to “sectarian” schools allowed the government to continue funding the teaching of the government’s preferred “nonsectarian” faith through the public schools, while penalizing financially those who resisted that faith. In other words, state constitutional provisions that defunded “sectarian” groups were not designed to implement benign concerns for the separation of church and state traceable to the founding, but instead to target for special disadvantage the faiths of the religious minorities of the late 19th Century – especially the religions of immigrants, and especially Catholicism.

This basic history of the meaning of “sectarian” as a legal term has been confirmed in opinions of the U.S. Supreme Court written or joined by six current Justices. In *Mitchell v. Helms*, 530 U.S. 793 (2000), a majority of four Justices acknowledged and condemned the religious bigotry that gave rise to the state laws that targeted “sectarian” faiths, commonly called “Blaine Amendments.” The opinion criticized the Court’s prior use of the term “sectarian” in Establishment Clause jurisprudence, because “hostility to aid to pervasively sectarian schools has a shameful pedigree that we do not hesitate to disavow.” The opinion continued:

Opposition to aid to “sectarian” schools acquired prominence in the 1870s with Congress’ consideration (and near passage) of the Blaine Amendment, which would

have amended the Constitution to bar any aid to sectarian institutions. Consideration of the amendment arose at a time of pervasive hostility to the Catholic Church and to Catholics in general, and it was an open secret that “sectarian” was code for “Catholic.”

The majority concluded that “the exclusion of pervasively sectarian schools from otherwise permissible aid programs” – the very purpose and effect of the state constitutional provisions here – represented a “doctrine, born of bigotry, [that] should be buried now.”

In *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), three Justices provided a detailed account of the relevant history in dissent. Not only did they recognize that the Blaine Amendment movement was a form of backlash against “political efforts to right the wrong of discrimination against religious minorities in public education,” they explained how the term “sectarian” functioned within that movement.

[H]istorians point out that during the early years of the Republic, American schools – including the first public schools – were Protestant in character. Their students recited Protestant prayers, read the King James version of the Bible, and learned Protestant religious ideals. Those practices may have wrongly discriminated against members of minority religions, but given the small number of such individuals, the teaching of Protestant religions in schools did not threaten serious social conflict.

In *Zelman*, 536 U.S. at 720. The Justices recounted how the wave of immigration starting in the mid-19th Century increased the number of those suffering from this discrimination, and correspondingly the intensity of religious hostility surrounding the “School Question”:

Not surprisingly, with this increase in numbers, members of non-Protestant religions, particularly Catholics, began to resist the Protestant domination of the public schools. Scholars report that by the mid-19th century religious conflict over matters such as Bible reading “grew intense,” as Catholics resisted and Protestants fought back to preserve their domination. In some States “Catholic students suffered beatings or expulsions for refusing to read from the Protestant Bible, and crowds ... rioted over whether Catholic children could be released from the classroom during Bible reading.”

Finally, the Justices detailed how Catholic efforts to correct this increasingly severe discrimination elicited a reaction in the form of the proposed federal Blaine Amendment and its successful state progeny:

Catholics sought equal government support for the education of their children in the form of aid for private Catholic schools. But the “Protestant position” on this matter, scholars report, “was that public schools must be ‘nonsectarian’ (which was usually understood to allow Bible reading and other Protestant observances) and public money must not support ‘sectarian’ schools (which in practical terms meant Catholic.)” And this sentiment played

a significant role in creating a movement that sought to amend several state constitutions (often successfully), and to amend the United States Constitution (unsuccessfully) to make certain that government would not help pay for “sectarian” (*i.e.*, Catholic) schooling for children.

Zelman, 536 U.S. at 721. To be sure, the Justices in these two opinions differed on the legal consequences of these historical facts, but they still agreed on those facts.

This agreement among the Justices reflects that the weight of scholarly authority in support of this account of the historical meaning and usage of the term “sectarian” is nothing short of crushing. Although these basic facts have long been documented, historians have focused their attention on that narrative much more frequently in recent years. Rather than recite the litany of law review articles and books before you now.

I would only add generally that these are most emphatically *not* revisionist or otherwise marginal works of scholarship. Instead, they represent the very best work available on the topic, including books published by Harvard University Press and the Brookings Institute, and articles published by the Virginia and Michigan Law Reviews. In fact, I would encourage members of the Committee not to take my word for it, but instead to examine these sources for themselves to assess the quality of the scholarship and to assure themselves of this narrative.

I thank you once again for the opportunity to come before you today to discuss this important topic, and I welcome your questions.

Jon Martinson

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**House Judiciary Committee
HCR 3037
March 6, 2013**

The North Dakota School Boards Association (NDSBA) opposes HCR 3037 for the following reasons:

- We believe giving public funds to a faith-based, nonpublic school may be unconstitutional (based on the separation of church and state)
- It would likely be illegal for the Department of Public Instruction to provide public funds to a school with enrollment practices that discriminate against students on the basis of their religious beliefs or their special education needs
- Nonpublic schools:
 - Are not subject to open meeting and open record laws. If this bill passes, non-public schools will receive public funds with no mechanism for transparency
 - Are not required to accept students with special needs
 - Are not required to comply with state law for teacher and administrator nonrenewal
 - Are not required to comply with state law for student suspension and expulsion
 - Are not required to comply with the Family Education Rights and Privacy Act (FERPA) unless they receive federal dollars
 - Are not required to comply with the No Child Left Behind Act (including the "highly qualified" standard for teachers) unless they receive federal dollars

3-11-13

To: House Judiciary Committee
From: Christopher T. Dodson, Executive Director
Subject: HCR 3037
Date: March 11, 2013

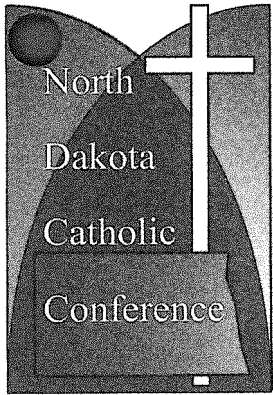
We appreciate this opportunity to express our support for HCR 3037.

HCR 3037 would give North Dakota voters an opportunity to remove a shameful blemish from our state's constitution and give the people of North Dakota the right to decide for themselves questions related to public education and nonpublic schools.

The history of these "Blaine Amendments" is well-documented and some of it was provided in earlier testimony. Briefly, in reaction to the growing number of immigrant Catholics coming to the United States, nativist and other anti-Catholic politicians sought to curtail Catholic influence in the country by ensuring that only "common" schools that were Protestant in character received any public assistance. After failing by just four votes to pass Congressman James Blaine's amendment to the U.S. Constitution, supporters of the proposal turned to the states. Both explicitly and implicitly, Blaine Amendment supporters in Congress made adoption of state Blaine Amendments in state constitutions a prerequisite for admission as a state.¹ The discriminatory and prejudicial origin of these provisions has been recognized by the U.S. Supreme Court, which has called these provisions "a shameful pedigree" and one "born of bigotry" that "should be buried."²

Beyond its origins, the sentence of Article VIII, section 5 that HCR 3037 would repeal, is itself not worthy of inclusion in the North Dakota Constitution. Very often the *original* intent and use of words in the state constitution is what binds future courts and, by extension, the people of North Dakota. As the U.S. Supreme Court has noted, the historical evidence is well-established that the use "sectarian" in these provisions was code for Catholic.³ The word "sectarian," rather than "religious," was used to distinguish the minority Catholic schools from the "common schools" which were shaped by the majority Protestant ethos.

Even today, "sectarian" is not synonymous with "religious." "Sectarian" connotes a subset, like a "sect" or "cult." Its synonyms are almost exclusively negative.⁴ Linguist William Safire noted that "[s]ectarian is a word long associated with religion that has a nastier connotation than its synonym denominational."⁵ Just as this Legislative Assembly has done in the past, it is time to remove prejudicial and bias language from our state's laws.



*Representing the Diocese of Fargo
and the Diocese of Bismarck*

Christopher T. Dodson
Executive Director and
General Counsel

HCR 3037 would also give North Dakotans an opportunity to decide whether they want to place conditions, beyond those set by the U.S. Constitution, on how the state assists in the education of children. North Dakotans may have different views on whether to allow such assistance, but they have never had the opportunity to decide that for themselves. The provision in question was imposed on the people of North Dakota as a condition of statehood by powerful outside groups acting without the interests of North Dakotans in mind and with a motive that has no place in society today. HCR 3037 is a chance to right the wrong done to North Dakota at statehood.

Accordingly, HCR 3037 is **not** about providing financial assistance to nonpublic schools or the parents who choose to send their children to those schools. It is **not** about how the state should prioritize or fund education in the state. HCR 3037 is **not** about the quality of nonpublic schools or the performance of their students. Even if HCR 3037 passes the legislature and is approved by the voters, it will not change any law in North Dakota.

HCR 3037 is only about two things. First, it gives the people of North Dakota an opportunity to remove from their constitution a provision “born of bigotry” and prejudicial on its face. Second, it would, if adopted, give the people of North Dakota the right to decide for themselves whether to allow any assistance to religiously-affiliated schools.

We respectfully request a **Do Pass** recommendation on HCR 3037.

¹ Kyle Duncan, *Secularism's Laws: State Blaine Amendments and Religious Persecution*, 72 Fordham L. Rev. 493 (2003). Available at: <http://ir.lawnet.fordham.edu/flr/vol72/iss3/2>. [Recaps historical record showing that North Dakota was among the new states subjected to this requirement.]

² *Mitchell v. Helms*, 530 US 793 (2000); see also dissent of Justice Breyer in *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), which traces the historical record of state Blaine amendments.

³ “Consideration of the amendment arose at a time of pervasive hostility to the Catholic Church and to Catholics in general, and it was an open secret that “sectarian” was code for “Catholic.” *Mitchell*, 530 U.S. at 828.

⁴ The *Oxford American Writer's Thesaurus* lists them as: factional, separatist, partisan, parti pris; doctrinaire, dogmatic, extreme, fanatical, rigid, inflexible, bigoted, hidebound, narrow-minded.

⁵ “Is It Sectarian Violence, Communal Fighting or Civil War?” New York Times (Apr. 9, 2006).